

ORDINANCE NO. 131-23

**AN ORDINANCE RATIFYING THE MAYOR'S EXECUTION OF AN AGREEMENT
WITH LORAIN COUNTY PUBLIC HEALTH TO PROVIDE CERTAIN PHASE II
STORMWATER SERVICES IN THE CITY OF AVON
AND DECLARING AN EMERGENCY**

WHEREAS, the City of Avon and Lorain County Public Health (LCPH) are committed to improving the water quality in Lorain County and protecting the health of residents within its jurisdiction; and

WHEREAS, the City of Avon has been issued a National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit by the Ohio Environmental Protection Agency (OEPA) which requires the City to perform specific functions related to inspecting and monitoring stormwater quality within the municipality; and

WHEREAS, one part of the Avon's MS4 plan includes the monitoring of storm sewer outfalls after periods of dry weather to determine if any signs of illicit discharges are present; and

WHEREAS, the OEPA requires that a policy be in place relative to actions to take when an illicit discharge is discovered, including specifically identifying who will correctly draw stormwater samples, maintain a proper chain of custody, store and transport the samples in an acceptable manner and test the samples according to standardized methods; and

WHEREAS, LCPH has the proper testing capabilities as well as staff knowledgeable in sampling protocols and procedures who can provide the City of Avon with Phase II Stormwater Sampling Services in support of the Avon's MS4 compliance efforts; and

WHEREAS, LCPH and the City of Avon had previously entered into an agreement in 2021, per Ordinance 82-21; and

WHEREAS, LCPH is amenable to enter into a new agreement which would extend the provision of LCPH services on an as needed basis through December 31, 2026 as determined by the Avon City Engineer and sets a per sample cost structure for sampling and a per hour rate for additionally requested supplemental services. Said agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 – That the agreement between the City of Avon and Lorain County Public Health (LCPH) for the provision of stormwater sampling services in the 2024, 2025 and 2026 calendar years, which was executed by the Mayor on November 20, 2023, is hereby ratified. A copy of said agreement is attached hereto and incorporated herein as Exhibit A.

Section 2 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and

any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3 - That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to ratify the Mayor's execution of an agreement to retain the services of LCPH to maintain compliance with Avon's OEPA MS4 Stormwater Permit Program, therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: December 18, 2023 DATE SIGNED: December 18, 2023

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: December 19, 2023

Bryan K. Jensen

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: December 29, 2023
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 131-23, passed by the Council of said City on December 18, 2023.

IN WITNESS WHEREOF, I have on this 19th day of December, 2023, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

EXHIBIT A TO ORDINANCE NO. 131-23

EXHIBIT A

SAMPLING AND INSPECTION AGREEMENT

THIS SAMPLING AND INSPECTION AGREEMENT (the "Agreement") is entered into by and between Lorain County Public Health ("LCPH") and the City of Avon (the "City"), for the provision by LCPH of services to perform sampling of storm sewers located within the City and provide investigative services in order to facilitate the City's compliance with its Ohio EPA National Pollutant Discharge Elimination System ("NPDES") Permit for Storm Water Management.

A. DUTIES AND RESPONSIBILITIES.

Upon request from the City, LCPH will collect samples for testing from selected locations within the City's storm sewer system for E. Coli bacteria. The City Engineer will provide a list of storm water discharge pipes (hereinafter "Outfall Locations") where sampling is warranted, as determined by the City's prior inspection using the Ohio EPA Illicit Discharge inspection procedures. During the term of this Agreement, LCPH will perform sampling services in accordance with the following procedures:

- 1) Outfall Locations, as identified by the City, will be sampled during a dry weather period (minimum seventy-two (72) hours with no rain event).
- 2) Sample results will be provided to the City Engineer to be included within the City's annual report to the Ohio EPA.
- 3) The City will provide employees and equipment necessary to open storm sewer manholes where and when needed for the purpose of collecting samples.

B. TERM.

The term of this Agreement shall be from January 1, 2024, through December 31, 2026. Either party may terminate this Agreement upon sixty (60) days prior written notice to the other party. However, prior to the effective date of termination, the parties agree to meet to discuss possible resolution of issues of concern. In the event this Agreement is terminated prior to December 31, 2026, LCPH shall, within twenty (20) calendar days after the effective date of termination, submit a certified progress report identifying all work that has been at least seventy-five (75%) completed as of the effective date of termination and an invoice for such work, which shall be paid by the City pursuant to this Agreement.

C. COMPENSATION.

The City shall pay the LCPH the following amounts for services performed pursuant to this Agreement, subject to the appropriation of necessary funds by City Council as required by law:

- 1) The sum of One Hundred Dollars (\$160.00) per sample collected at the City's request.
- 2) The sum of One Hundred Dollars (\$160.00) for each sample requested by the City where the LCPH was unable to collect the requested sample due to lack of flow at the Outfall Location at the time of visit.
- 3) Upon an investigation request by the City, the sum One Hundred Dollars (\$115.00) per hour, or any part thereof, for the total elapsed time dedicated to the investigation, assisting with the investigation or otherwise resolving a confirmed illicit discharge.

D. PAYMENT.

LCPH shall submit an invoice to the City for payments due hereunder within thirty (30) calendar days of completion of such service.

E. INDEPENDENT CONTRACTORS.

LCPH is performing its duties and responsibilities under this Agreement as an independent contractor and not as an agent or employee of the City. LCPH shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors, contractors, subcontractors or agents to the extent permitted by applicable law.

F. LIABILITY AND INSURANCE

Each party to this Agreement agrees to assume liability for its own actions and responsibilities under this Agreement. Each party shall be solely liable for its own debt, obligations, acts and omissions, including the payment of all tax liabilities, including, without limitation, federal, state and local withholdings, Public Employers Retirement Contributions, workers' compensation, and any other taxes or benefits on behalf of its employees.

The parties to this Agreement agree to maintain at all times during the time of this Agreement, comprehensive general and professional liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for injury or death to one (1) person in any accident or occurrence and in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for injury or death for more than one (1) person.

Title	City of Avon Agreement for Sampling and Inspection
File name	8c mou Avon.pdf
Document ID	c2811af6b03868ea9eae103d6c8a92b6379110f
Audit trail date format	MM / DD / YYYY
Status	* Signed

Document History


SENT

11 / 14 / 2023
15:14:32 UTC-5

Sent for signature to Mark Adams
(madams@loraincountyhealth.com) and Chris Pyanowski
(chris.pyanowski@lcprosecutor.org) from
slesco@loraincountyhealth.com
IP: 74.219.43.162


VIEWED

11 / 14 / 2023
15:14:47 UTC-5

Viewed by Mark Adams (madams@loraincountyhealth.com)
IP: 166.137.83.63


SIGNED

11 / 14 / 2023
15:14:58 UTC-5

Signed by Mark Adams (madams@loraincountyhealth.com)
IP: 166.137.83.63


VIEWED

11 / 15 / 2023
09:28:05 UTC-5

Viewed by Chris Pyanowski (chris.pyanowski@lcprosecutor.org)
IP: 199.18.52.10


SIGNED

11 / 15 / 2023
09:28:36 UTC-5

Signed by Chris Pyanowski (chris.pyanowski@lcprosecutor.org)
IP: 199.18.52.10


COMPLETED

11 / 15 / 2023
09:28:36 UTC-5

The document has been completed.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Sampling and Inspection Agreement as of the dates indicated below.

BOARD OF HEALTH FOR LORAIN
COUNTY PUBLIC HEALTH

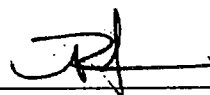
CITY OF AVON



By: Mark H. Adams, REHS, MPH

Title: Health Commissioner

Date: 11 / 14 / 2023



Bryan K. Jensen, Mayor of Avon

Date: 11/20/23

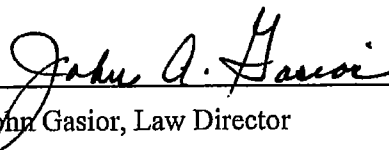
APPROVED AS TO FORM:

APPROVED AS TO FORM:



By: Chris Pyanowski

Title: Assistant Prosecuting Attorney



John Gasior, Law Director