

Avon Lake Board of Municipal Utilities

AGENDA

For

Tuesday

June 6, 2016

6:30 PM

1. Call to Order
2. General Matters
 - A. Approve Minutes
 - B. Public Speakers (*3 minutes each*)
 - C. Correspondence
3. Expenditures
4. Lateral Loan Program
5. Revisions to Regulations
6. Construction Administration/Resident Project Representative Services
7. Chemical Optimization Study
8. Informational Items
 - A. Reports/Updates
 - 1) Lake Road Closure
 - 2) June 21, 2016 Board Meeting
 - 3) Chairman/Committee/Member Reports
 - 4) CUE Report
 - B. Miscellaneous
9. Public Speakers
10. Adjourn

Avon Lake Regional Water
MEMORANDUM

To: **Board of Municipal Utilities**

From: **Todd Danielson**

Subject: **Agenda Items – June 7, 2016**

Date: **June 3, 2016**

Item 4: **Lateral Loan Program – TAD**

Following the Board's approval of the conceptual framework for the Lateral Loan Program, staff has been working with the Law Director and OWDA to develop the attached draft loan agreement.

With the approval of the Lateral Loan Agreement, we need to create a new fund for the program. With the Board's authorization, the CUE will work with the Finance Director to create the Lateral Loan Fund. The fund will initially be seeded with (advanced) \$200,000 from the Trunk Sanitary Sewer Fund, which will provide loans for at least 50 customers. With the approval of the WPCLF loan from OEPA, the \$200,000 will be returned to the Trunk Sanitary Sewer Fund.

The program would provide a 10-year loan of up to \$4,000 to customers wanting to separate laterals. Customers would be required to pay a simple, 2% interest rate to secure the funds and would repay it as part of water and wastewater bills. The program would complement the Lateral Separation Program that provides \$1,000 in wastewater rate rebates over a 10-year period for customers that separate their laterals.

The project is one component of our Water Quality Enhancement strategic initiative. In making this decision, the Principles that would help guide the Board are:

- ◆ Provide quality, affordable water services.
- ◆ Maintain existing assets, while investing in infrastructure that will take us into the future.
- ◆ Lead by influencing change that will leave a legacy for future generations.
- ◆ Exercise fiduciary responsibility.

Recommended motion:

I move to authorize the Lateral Loan Program, using a loan agreement substantially similar to the agreement attached.

Furthermore, I move to:

1. *Establish a Lateral Loan Fund,*
2. *Appropriate \$200,000 to the Trunk Sanitary Sewer Fund Budget,*
3. *Advance \$200,000 from the Trunk Sanitary Sewer Fund Budget to the newly created Lateral Loan Fund, and*
4. *Appropriate \$200,000 to the Lateral Loan Fund Budget.*

Item 5: Revisions to Regulations - TAD

Because Avon Lake's Sewer Use Ordinance is part of the Regulations of Avon Lake Regional Water, the Regulations must be periodically reviewed by Ohio EPA. In a recent review by Ohio EPA, the attached changes were recommended. In general, the changes update references to Ohio Revised Code.

Recommended Motion:

I move to update the Regulations of Avon Lake Regional Water as shown in the attached document.

Item 6: Construction Administration/Resident Project Representative Services - TAD

In order to assist Avon Lake Regional Water with oversight of the construction project at the Water Pollution Control Center, staff asked CDM Smith to prepare and negotiate a Scope of Work (SOW) and budget for Construction Administration and Resident Project Representative Services for two years (the currently anticipated duration of the project). The services as shown in the attached SOW will include reviewing approximately 200 shop drawings, preparing responses to approximately 310 Requests for Information (RFIs) from the contractor, preparing up to 15 Change Order packages, reviewing requests for material substitutions, conducting construction and substantial completion inspections, assisting in training for and starting equipment systems, and providing fulltime, onsite project representative services. The lump-sum cost for the assistance is \$2,132,884, which is approximately 6.4% of the construction cost. These services will be paid through the OEPA loan.

The assistance will help assure the construction project is completed successfully, which is one component of our Water Quality Enhancement strategic initiative. In making this decision, the Principles that would help guide the Board are:

- ◆ Provide quality, affordable water services.
- ◆ Maintain existing assets, while investing in infrastructure that will take us into the future.
- ◆ Exercise fiduciary responsibility.

Recommended Motion:

I move to authorize the CUE to execute Amendment 8 with CDM Smith for Construction Administration and Resident Project Representative Services for the Water Pollution Control Center Plant Improvements Project for up to \$2,300,000, which includes an approximate 8% contingency for out-of-scope services the CUE deems necessary for the project.

Item 7: Chemical Optimization Study – TAD

Avon Lake Regional Water has historically complied with all regulatory water quality requirements by adjusting water chemistry. For instance, we have met the Lead and Copper Rule with greater than 90% of sample results being below the 15 ppb Action Level for lead and the 1.3 ppm Action Level for copper, in part, by adding lime to raise the pH and alkalinity. During the past several years, we have slowly reduced the amount of lime we add in order to allow pH levels to drop closer to neutral in order to reduce potential for disinfection byproducts compliance issues. Even though sample results indicate that we continue to comply with the Lead and Copper Rule, we believe it is time to perform a chemical optimization study, design, and construct a new chemical dosing system to maintain compliance with the multiple, competing regulations.

In making this decision, the Principles that would help guide the Board are:

- ◆ Provide quality, affordable water services.
- ◆ Maintain existing assets, while investing in infrastructure that will take us into the future.
- ◆ Lead by influencing change that will leave a legacy for future generations.
- ◆ Exercise fiduciary responsibility.

Recommended Motion:

I move to authorize the CUE to amend the current agreement with MWH Americas to include a study and design services to optimize chemical addition at the Water Filtration Plant for a fee of \$96,000.

Item 8A1: Lake Road Closure – TAD

In order to install several water lines under Lake Road in association with the Storage Improvements Project, Lake Road will be closed for up to 60 days beginning June 14, 2016. The official detour will be from east to west Abbe Road, to Colorado Road, to Route 83. Avon Lake residents will be able to drive on several other roads to drive around the detour.

Item 8A2: June 21, 2016 Board Meeting – TAD

Neither the CUE (the Clerk of the Board), nor the CUO (the Acting Clerk in the CUE's absence) is available for the June 21, 2016 Board meeting. At the Board's pleasure, the CUE suggests the Board either appoint Steve Baytos to act as the Clerk for the meeting on June 21, 2016, or to reschedule the meeting for June 28, 2016, when the CUO would be available.

Board of Municipal Utilities
Regular Meeting Minutes
May 17, 2016
201 Miller Road
Avon Lake, Ohio

Call to Order – Roll Call

The meeting was called to order at 6:24 PM.

Present: Mr. Dzwonczyk, Mr. Rush, Mr. Rickey, Mr. Berner and Ms. Schnabel.

Also present: Chief Utilities Executive Danielson, Chief of Utility Operations Eberle, WPCC Manager Baytos, Councilmember Fenderbosch and Mayor Zilka.

Approve Minutes

Chairman Dzwonczyk presented the minutes of the May 3, 2016 meeting and with no changes, additions or corrections noted, ordered the minutes to stand and be distributed as presented.

Public Speakers – None.

Correspondence – None.

Expenditures

Following review of expenses dated May 17, 2016 for funds and amounts as follows, Mr. Rush moved, Mr. Rickey seconded, that all be approved and paid per budget:

Water Fund 701	\$	170,310.81
Wastewater Fund 721	\$	180,982.15
MOR Fund 703 ETL1	\$	108,744.56
MOR Fund 762 ETL2	\$	242,488.80
LORCO Fund 749	\$	20,339.65

Ayes: Dzwonczyk, Berner, Rickey, Rush, Schnabel

Nays: None

Motion carried.

Reports/Updates

Troy Water Warriors: Mr. Danielson spoke about the Water Warriors program with Troy Intermediate School being held May 17, 19 & 20 with fifth grade students. The day starts with a general overview of Avon Lake Regional Water, followed by touring both the water and wastewater plants. Experiments for students will include flocculating dirty water, observing microorganisms under the microscope, and a completing puzzle about the treatment process.

Employee Anniversary: Will Fischer completes his first year in the WPCC Operator position on June 1, 2016. Based on the recommendation of his immediate supervisor

and management's concurrence, the Board recognized Mr. Fischer as a permanent employee and will receive the requisite step increase on his anniversary date.

Chairman/Committee/Members Reports

Chairman Dzwonczyk attended the Sewer Committee meeting with nothing to report.

Mr. Rush reported he attended the Economic Development Committee meeting which will be discussed in the Executive Session.

CUE Report

CUE Danielson reported algae bloom predictions for 2016 to be a relatively minimal impact to Avon Lake Regional Water this year.

Miscellaneous

None

Executive Session

Mr. Rickey moved, Mr. Dzwonczyk seconded, to meet in Executive Session as allowed by ORC 121.22 (G)(2) to discuss the purchase of land and to include all board members, Chief Utilities Executive Danielson, Chief of Utility Operations Eberle, WPCC Manager Baytos, Mayor Zilka, and Councilmember Fenderbosch in the discussion.

Ayes (per rollcall vote): Dzwonczyk, Berner, Rickey, Rush, Schnabel

Nays: None

Motion carried.

The Board reconvened at 7:37 PM

Adjourn

As there was no further business, Mr. Rush moved, Mr. Rickey seconded, that the meeting adjourn at 7:38 PM.

Ayes: Dzwonczyk, Berner, Rickey, Rush, Schnabel

Nays: None

Motion carried.

Approved June 7, 2016

John G. Dzwonczyk, Chairman

Todd A. Danielson, Clerk

Board of Municipal Utilities
Work Session Minutes
May 17, 2016
201 Miller Road
Avon Lake, Ohio

The work session was called to order at 6:00 PM.

Present: Mr. Berner, Mr. Dzwonczyk, Mr. Rickey, Mr. Rush, and Mrs. Schnabel.

Also present: Mayor Zilka, Councilmember Fenderbosch, Chief Utilities Executive Danielson, Chief of Utility Operations Eberle, and WPCC Manager Baytos.

Updating Financials

CUE Danielson presented an update regarding projected revenues and expenses following the recent loan activity for the WPCC rehabilitation project and other recent loans. By working with Ohio EPA to get a 30-year loan at a 0.45% interest rate, the originally anticipated 6 years of 15% interest rate increases may be reduced to 3 years of 15% increases followed by 2 years of 10% and a year of 8% based upon current estimates for upcoming projects and anticipated loan incentive programs offered by Ohio EPA. (Only the first 2 years of 15% rate increases have been approved by the Board.)

The CUE also presented that through April, expenses have been as anticipated and water and wastewater revenues have been somewhat higher than anticipated due to the warm fall and higher use, which led to higher revenues in January.

Finally, the CUE indicated that after the 2016 budgets were approved, he determined that the WFP needed to pay more for the residuals and backwash treatment at the WPCC and that he would likely be asking the Board to approve an increase to Fund 701 appropriations to cover that expense.

The work session adjourned at 6:23 PM.

Approved June 7, 2016

John G. Dzwonczyk, Chairman

Todd A. Danielson, Clerk

06/01/16

**Avon Lake Municipal Utilities
Water Fund 701 Expenses**

June 7, 2016

Name	Amount	Memo	Account
Jun 7, 16			
1. Water Employees	69,564.87	Salaries P/R #11 5/2/16-5/15/16	701 5-180 7-102-...
2. Water Employees	69,883.15	Salaries P/R #12 5/16/16-5/29/16	701 5-180 7-102-...
3. Water Employees	3,867.79	Parttime P/R #11 5/2/16-5/15/16	701 5-180 7-105-...
4. Board of Municipal Utilities	1,541.67	May 2016 Board Salaries - RRE	701 5-180 7-105-...
5. Water Employees	5,247.58	Parttime P/R #12 5/16/16-5/29/16	701 5-180 7-105-...
6. Water Employees	3,737.00	Overtime P/R #11 5/2/16-5/15/16	701 5-180 7-106-...
7. Water Employees	7,199.94	Overtime P/R #12 5/16/16-5/29/16	701 5-180 7-106-...
8. Medical Mutual of Ohio	471.69	Medical Mutual Payment 05/17/16	701 5-180 7-203-...
9. Medical Mutual of Ohio	844.59	Medical Mutual Payment 05/24/16	701 5-180 7-203-...
10. Medical Mutual of Ohio	2,298.24	Med Mut Opt-Out P.R #11 5/15/16	701 5-180 7-203-...
11. Medical Mutual of Ohio	-1,835.00	Med Mut Emp Contrib P/R #11	701 5-180 7-203-...
12. PERS	23,422.91	PERS - April 2016 Wages	701 5-180 7-209-...
13. Medicare	1,016.67	Medicare - 05/15/16 Wages - P/R #11	701 5-180 7-212-...
14. PERS	4,058.36	PERS Pickup - April 2016 Wages	701 5-180 7-219-...
15. W.B. Mason Co., Inc.	56.58	1/2-Office Supplies-LS	701 5-180 8-601-...
16. Avon Lake Printing	41.00	Bag Recycle Promo-EW	701 5-180 8-601-...
17. Federal Express	46.41	Shipping Charges - LS	701 5-180 8-601-...
18. FriendsOffice	17.34	1/2-Office Supplies-KK	701 5-180 8-601-...
19. MailFinance	243.16	1/2-Qtrly Meter Charges 6/11/16-9/10/...	701 5-180 8-601-...
20. W.B. Mason Co., Inc.	137.64	1/2-Office Supplies-LS	701 5-180 8-601-...
21. Shamrock	146.58	1/2-Print/Mail 2nd Notices-RRE	701 5-180 8-601-...
22. Staples	124.59	1/2-Office Supplies - KK	701 5-180 8-601-...
23. Uline	15.87	1/2-Office Supplies-KK	701 5-180 8-601-...
24. U.S. Bank	345.01	1/2-Qtrly Lease Pmt - 2 Ricoh Copiers-...	701 5-180 8-601-...
25. USALCO	9,041.16	74.37 Tons Alum - SH	701 5-180 8-602-...
26. Titan Supply	1,486.25	1/2-Maintenance Supplies-RK	701 5-180 8-603-...
27. ABC Equipment Rental	114.40	Maintenance Supplies-RK	701 5-180 8-603-...
28. Grainger Inc.	13.88	Maintenance Supplies-SH	701 5-180 8-603-...
29. GVS Safety Supplies, Inc.	88.35	Maintenance Supplies-SH/RK	701 5-180 8-603-...
30. Indy Equipment	84.55	1/2-Maintenance Supplies-RK	701 5-180 8-603-...
31. Kinzua Environmental Inc.	370.66	Maintenance Supplies - SH	701 5-180 8-603-...
32. McMaster-Carr Supply	16.59	Maintenance Supplies-SH	701 5-180 8-603-...
33. Roberts Surveying Supplies	124.80	1/2-Maintenance Supplies-JRG	701 5-180 8-603-...
34. Titan Supply	121.82	1/2-Maintenance Supplies-RK	701 5-180 8-603-...
35. Trico Oxygen Company	140.77	1/2-Maintenance Supplies-RK	701 5-180 8-603-...
36. HD Supply Waterworks, Ltd.	2,201.80	Alten Subdivision Tap-RK	701 5-180 8-607-...
37. C & K Industrial Services, Inc.	756.00	Clean Baghouse/Dust Collector-SH	701 5-180 8-607-...
38. Grainger Inc.	615.51	Equipment Maintenance-SH	701 5-180 8-607-...
39. HD Supply Waterworks, Ltd.	209.00	Corp Valves for Sludge Line-SH	701 5-180 8-607-...
40. McMaster-Carr Supply	166.80	Equipment Maintenance-SH	701 5-180 8-607-...
41. North Shore Pump & Equip...	17,895.00	Rebuild Backwash Pump-SH	701 5-180 8-607-...
42. Harold Archer & Sons	679.86	1/2 - 75.33 Tons Stone - RK	701 5-180 8-612-...
43. HD Supply Waterworks, Ltd.	3,754.00	Water Distribution Supplies-RK	701 5-180 8-612-...
44. Huberts Landscaping Co., I...	2,350.00	Lawn/Landscape Repairs-RK	701 5-180 8-612-...
45. Westview Concrete Corp.	725.75	Street Repairs - RK	701 5-180 8-612-...
46. Alloway	630.00	Lab Analysis-SH	701 5-180 8-615-...
47. Columbia Gas	26.73	GasSvc@WFP Lab 4/19/16-5/18/16-SH	701 5-180 8-700-...
48. Columbia Gas	421.47	GasSvc@WFPPlant 4/19/16-5/18/16-SH	701 5-180 8-700-...
49. Columbia Gas	182.43	GasSvc@WFPGarage 4/19/16-5/18/16-...	701 5-180 8-700-...
50. Columbia Gas	28.49	GasSvc@WFP Aux 4/19/16-5/18/16-SH	701 5-180 8-700-...
51. Time Warner Cable	74.50	1/2-InternetSvc@201Miller 5/14/16-6/1...	701 5-180 8-700-...
52. Knowles Municipal Forestry	260.00	Tree Inspection & Report@33063Red...	701 5-180 8-701-...
53. AWWA	182.00	AWWA Membership-G.Mosher-LS	701 5-180 8-701-...
54. General Crane Rental, LLC	1,260.00	Crane Rental @ Water Plant-SH	701 5-180 8-701-...

06/01/16

**Avon Lake Municipal Utilities
Water Fund 701 Expenses**

June 7, 2016

Name	Amount	Memo	Account
55. Gutschow, Jeff	55.62	Reimbursement for Mileage-JRG	701 5-180 8-701-...
56. Sapp, Melissa	500.00	Poster/Name Tag Designs-EEW	701 5-180 8-701-...
57. SME	2,600.00	GeotechnicalSvc-Walker WaMain-2/21...	701 5-180 8-701-...
58. Solar Testing Laboratories, I...	3,125.50	Testing/Inspect SIP 4/18/16-4/29/16 -R...	701 5-180 8-701-...
59. Solar Testing Laboratories, I...	2,491.75	1/2-Test/Analysis-Curtis 2/15/16-5/5/16...	701 5-180 8-701-...
60. SOS Integration Service	1,808.00	SCADA Work-SH	701 5-180 8-701-...
61. Technology Management S...	646.88	1/2-ComputerSupport-April 2016-RRE	701 5-180 8-701-...
62. Technology Management S...	800.00	1/2-Offsite Backup - May 2016-RRE	701 5-180 8-701-...
63. Endress+Hauser, Inc.	3,770.40	Hydrostatic Level Probe-SH	701 5-180 8-701-...
64. Schnabel, Dana	35.00	Reimburse - OEC Filing Fee-TAD	701 5-180 8-701-...
65. Avon Lake Regional Water	9.24	Water Used on ETL1 - May 2016-RRE	701 5-180 8-703-...
66. Fuelman of Northern Ohio	414.75	1/2-Fuel for vehicles 5/9/16-5/22/16-LS	701 5-180 8-707-...
67. Advance Auto Parts	48.34	1/2-Misc Truck Parts-RK	701 5-180 8-707-...
68. Fisher Auto Parts Inc.	4.69	1/2-Misc Truck Parts-RK	701 5-180 8-707-...
69. Grainger Inc.	584.56	Bookshelves-SH	701 5-180 8-708-...
70. Gross Plumbing Inc.	137.50	1/2-Annual Sprinkler Inspection-RK	701 5-180 8-708-...
71. Grainger Inc.	644.79	Building Maintenance-SH	701 5-180 8-708-...
72. Konecranes	850.00	Annual Crane & Hoist Inspection-SH	701 5-180 8-708-...
73. Lescher Tree Care	100.00	Tree Removal & Clearing @WTP-SH	701 5-180 8-708-...
74. Parker Supply LLC.	313.18	Building Maintenance Supplies-SH	701 5-180 8-708-...
75. Sherwin-Williams Co.	38.78	1/2-Paint & Supplies - RK	701 5-180 8-708-...
76. SiteOne Landscape Supply	127.41	1/2 Building Maint Materials-RK	701 5-180 8-708-...
77. Jani-King of Cleveland	322.50	1/2-CleaningSvc@201Miller-June2016...	701 5-180 8-709-...
78. Speed Exterminating Comp...	30.00	1/2-Exterminating@201Miller-May2016...	701 5-180 8-709-...
79. Columbia Gas	156.71	GasSvc@201Miller 4/27/16-5/26/16-R...	701 5-180 8-711-...
80. Carpenter, Dan & Michelle	30.06	Refund Cr Bal on Closed Acct-LS	701 9-180 8-901-...
81. Baird, Kathy	5.75	Refund Cr Bal on Closed Acct-LS	701 9-180 8-901-...
Jun 7, 16	<u>256,167.62</u>		

06/01/16

**Avon Lake Municipal Utilities
Wastewater Fund 721 Expenses**

June 7, 2016

Name	Amount	Memo	Account
Jun 7, 16			
1. Wastewater Employees	39,815.85	Salaries P/R #11 5/2/16-5/15/16	721 5-190 7-102...
2. Wastewater Employees	39,854.40	Salaries P/R #12 5/16/16-5/29/16	721 5-190 7-102...
3. Wastewater Employees	4,960.00	Parttime P/R #11 5/2/16-5/15/16	721 5-190 7-105...
4. Board of Municipal Utilities	1,541.66	May 2016 Board Salaries - RRE	721 5-190 7-105...
5. Wastewater Employees	5,737.25	Parttime P/R #12 5/16/16-5/29/16	721 5-190 7-105...
6. Wastewater Employees	3,196.55	Overtime P/R #11 5/2/16-5/15/16	721 5-190 7-106...
7. Wastewater Employees	6,452.48	Overtime P/R #12 5/16/16-5/29/16	721 5-190 7-106...
8. Mackin, Andrea	10.00	1 Employee Meal Allowance-LS	721 5-190 7-200...
9. Kasten, Rick	5.00	1 Employee Meal Allowance - RRE	721 5-190 7-200...
10. Knick, Dennis	10.00	1 Employee Meal Allowance - RRE	721 5-190 7-200...
11. Dillon, Timothy	20.00	2 Employee Meal Allowances-LS	721 5-190 7-200...
12. Fischer, William	30.00	3 Employee Meal Allowances - LS	721 5-190 7-200...
13. Mitchell, Dale	10.00	1 Employee Meal Allowance - RRE	721 5-190 7-200...
14. Sadowski, Dale	20.00	2 Employee Meal Allowances- LS	721 5-190 7-200...
15. Spinks, Joshua D.	10.00	1 Employee Meal Allowance-LS	721 5-190 7-200...
16. Medical Mutual of Ohio	480.67	Medical Mutual Payment 05/17/16	721 5-190 7-203...
17. Medical Mutual of Ohio	860.65	Medical Mutual Payment 05/24/16	721 5-190 7-203...
18. Medical Mutual of Ohio	-1,338.26	Med Mut Emp Contrib P/R #11	721 5-190 7-203...
19. Dependent Health Care	600.00	Dependent Healthcare April-June 2016	721 5-190 7-203...
20. PERS	14,302.44	PERS - April 2016 Wages	721 5-190 7-209...
21. Medicare	656.33	Medicare - 05/15/16 Wages - P/R #11	721 5-190 7-212...
22. PERS	877.88	PERS Pickup- April 2016 Wages	721 5-190 7-219...
23. W.B. Mason Co., Inc.	56.57	1/2-Office Supplies-LS	721 5-190 8-601...
24. FriendsOffice	17.34	1/2-Office Supplies-KK	721 5-190 8-601...
25. MailFinance	243.16	1/2-Qtrly Meter Charges 6/11/16-9/10/16-R...	721 5-190 8-601...
26. W.B. Mason Co., Inc.	137.64	1/2-Office Supplies-LS	721 5-190 8-601...
27. Shamrock	146.58	1/2-Print/Mail 2nd Notices-RRE	721 5-190 8-601...
28. Staples	124.57	1/2-Office Supplies - KK	721 5-190 8-601...
29. Uline	15.86	1/2-Office Supplies-KK	721 5-190 8-601...
30. U.S. Bank	345.02	1/2-Qtrly Lease Pmt - 2 Ricoh Copiers-TAD	721 5-190 8-601...
31. Bonded Chemicals Inc.	14,074.50	70.87 Tons Lime-SB	721 5-190 8-602...
32. Bonded Chemicals Inc.	1,152.00	8.6777 Tons Ferric Chloride-SB	721 5-190 8-602...
33. Goldstar Products Inc.	2,001.50	Operating Supplies - SB	721 5-190 8-602...
34. Titan Supply	1,486.25	1/2-Maintenance Supplies-RK	721 5-190 8-603...
35. ABC Equipment Rental	112.85	Maintenance Supplies-RK	721 5-190 8-603...
36. Grainger Inc.	206.89	Maintenance Supplies-SB	721 5-190 8-603...
37. GVS Safety Supplies, Inc.	427.95	Maintenance Supplies-SB/RK	721 5-190 8-603...
38. Indy Equipment	84.55	1/2-Maintenance Supplies-RK	721 5-190 8-603...
39. McMaster-Carr Supply	106.40	Maintenance Supplies-SB	721 5-190 8-603...
40. Parker Supply LLC.	440.61	Maintenance Supplies-SB	721 5-190 8-603...
41. Roberts Surveying Suppli...	124.80	1/2-Maintenance Supplies-JRG	721 5-190 8-603...
42. Titan Supply	121.81	1/2-Maintenance Supplies-RK	721 5-190 8-603...
43. Trico Oxygen Company	140.77	1/2-Maintenance Supplies-RK	721 5-190 8-603...
44. United Laboratories	325.58	Brush & Sprayers-SB	721 5-190 8-603...
45. Applied Industrial Techn...	339.10	Bearings-SB	721 5-190 8-607...
46. Clear Edge	14,780.00	Filter Press Cloths-SB	721 5-190 8-607...
47. Grainger Inc.	72.36	Equipment Maintenance-SB	721 5-190 8-607...
48. McMaster-Carr Supply	601.41	Equipment Maintenance-SB	721 5-190 8-607...
49. W.W. Williams	600.00	Generator Maintenance-SB/RK	721 5-190 8-607...
50. Zoro	673.77	Solenoid Valve for Press-SB	721 5-190 8-607...
51. Harold Archer & Sons	679.85	1/2 - 75.33 Tons Stone - RK	721 5-190 8-612...
52. Hach Company	42.30	Lab Supplies - SH	721 5-190 8-615...
53. Jones & Henry Labs Inc.	170.00	Mercury Testing/Priority Pollution-SB	721 5-190 8-615...
54. Columbia Gas	941.02	Gas Svc@WPCC 3/19/16-4/19/16-RRE	721 5-190 8-700...

06/01/16

Avon Lake Municipal Utilities
Wastewater Fund 721 Expenses

June 7, 2016

Name	Amount	Memo	Account
55. GDF Suez	11,605.10	Elect@WPCC 4/8/16-5/6/16-RRE	721 5-190 8-700...
56. Columbia Gas	27.14	GasSvc@Center P.S. 4/19/16-5/18/16-RK	721 5-190 8-700...
57. Interstate Gas Supply, Inc.	902.47	Gas Svc @ WPCC April 2016-SB	721 5-190 8-700...
58. Time Warner Cable	74.50	1/2-InternetSvc@210Miller 5/14/16-6/13/16-...	721 5-190 8-700...
59. Time Warner Cable	273.10	Internet/PhoneSvc@WPCC 5/22/16-6/21/16-...	721 5-190 8-700...
60. Brown & Caldwell	11,485.00	Coll Sys Modeling Update 3/10/16-4/28/16-...	721 5-190 8-701...
61. Solar Testing Laboratorie...	2,491.75	1/2-Test/Analysis-Curtis 2/15/16-5/5/16-RRE	721 5-190 8-701...
62. Technology Managemen...	646.87	1/2-ComputerSupport-April 2016-RRE	721 5-190 8-701...
63. Technology Managemen...	800.00	1/2-Offsite Backup - May 2016-RRE	721 5-190 8-701...
64. Treasurer, State of Ohio	7,450.00	NPDES Permit Renewal Fee-RRE	721 5-190 8-701...
65. Republic Services	34,536.23	Sludge Disposal-April 2016-SB	721 5-190 8-702...
66. Fuelman of Northern Ohio	414.75	1/2-Fuel for vehicles 5/9/16-5/22/16-LS	721 5-190 8-707...
67. Advance Auto Parts	48.33	1/2-Misc Truck Parts-RK	721 5-190 8-707...
68. Fisher Auto Parts Inc.	4.69	1/2-Misc Truck Parts-RK	721 5-190 8-707...
69. Great Lakes Petroleum ...	3,909.30	2249 Gals Diesel Fuel-RK	721 5-190 8-707...
70. Avon Lake Sheet Metal ...	20,575.00	Digester Roof Repair-SB	721 5-190 8-708...
71. Gross Plumbing Inc.	137.50	1/2-Annual Sprinkler Inspection-RK	721 5-190 8-708...
72. Sherwin-Williams Co.	38.78	1/2-Paint & Supplies - RK	721 5-190 8-708...
73. SiteOne Landscape Supply	127.41	1/2 Building Maint Materials-RK	721 5-190 8-708...
74. Warren Roofing & Insulat...	2,740.00	Install Safety Railing-SB	721 5-190 8-708...
75. Jani-King of Cleveland	322.50	1/2-CleaningSvc@201Miller-June2016-RRE	721 5-190 8-709...
76. Speed Exterminating Co...	30.00	1/2-Exterminating@201Miller-May2016-RRE	721 5-190 8-709...
77. Sherwin-Williams Co.	1,649.00	Pressure Washer-SB	721 5-190 8-804...
78. Carpenter, Dan & Michelle	50.34	Refund Cr Bal on Closed Acct-LS	721 9-190 8-901...
79. Baird, Kathy	4.97	Refund Cr Bal on Closed Acct-LS	721 9-190 8-901...
80. O'Shaunessy, Lucy	83.29	Refund Cr Balance on Closed Account-LS	721 9-190 8-901...
Jun 7, 16	<u>259,333.93</u>		

06/01/16

Avon Lake Municipal Utilities
MOR Fund 703 Expenses - ETL1
June 7, 2016

Name	Amount	Memo	Account
Jun 7, 16			
1. Illuminating Co.	8,224.95	Elect@Moore P.S.4/12/16-5/10/16-RRE	703 5-180 8-703...
2. GDF Suez	8,162.10	Elect@Moore P.S. 4/12/16-5/10/16-RRE	703 5-180 8-703...
3. Avon Lake Regional W...	123,268.44	Water Used from ETL1 - May 2016-RRE	703 5-180 8-704...
4. Indy Equipment	99.00	Lear-Nagel Street Repair Material-RK	703 5-180 8-740...
5. Titan Supply	239.64	12" Valve for ETL1-RK	703 5-180 8-740...
6. Ohio Edison	23.72	Elect@Lear/NMills PRV 3/8/16-3/17/16-...	703 5-180 8-743...
7. Direct Energy	6.38	Elect Svc@Moore PRV 4/1216-5/10/16-...	703 5-180 8-743...
Jun 7, 16	<u>140,024.23</u>		

06/01/16

Avon Lake Municipal Utilities
MOR Fund 762 Expenses - ETL2
June 7, 2016

Name	Amount	Memo	Account
Jun 7, 16			
1. Illuminating Co.	4,142.94	Elect@Moore P.S.4/12/6-5/10/16-RRE	762 5-180 8-70...
2. GDF Suez	5,466.36	Elect@Moore P.S.4/12/16-5/10/16-RRE	762 5-180 8-70...
3. Avon Lake Regional W...	270,000.85	Water Used from ETL2 - May 2016 - RRE	762 5-180 8-70...
4. Fenik, John	200.00	Lawn Svc@IslandRd- May 2016-RRE	762 5-180 8-74...
5. W.W. Williams	250.00	Generator Maintenance @FourPlex-RRE	762 5-180 8-74...
6. Illuminating Co.	223.36	Elect@Detroit PRV 4/12/16-5/10/16-RRE	762 5-180 8-74...
Jun 7, 16	<u>280,283.51</u>		

06/01/16

Avon Lake Municipal Utilities
LORCO Fund 749 Expenses
June 7, 2016

Name	Amount	Memo	Account
Jun 7, 16			
1. PERS	262.50	PERS Pickup - April 2016	749 5-190 7-209...
2. RLCWA	50.69	Water Used@Tri-Plex 4/4/16-5/3/16-RRE	749 5-190 8-700...
3. RLCWA	83.64	Water Used@Four-Plex 4/4/16-5/3/16-...	749 5-190 8-700...
4. Frontier	56.15	TelephoneSvc@Four Plex 5/25/16-6/24...	749 5-190 8-700...
5. Fenik, John	100.00	Lawn Svc@Four Plex-May 2016-RRE	749 5-190 8-701...
6. Shamrock	381.91	Print/Mail LORCO Bills April 2016 - RRE	749 5-190 8-848...
Jun 7, 16	<u>934.89</u>		

06/01/16

Avon Lake Municipal Utilities
Water Works Construction Fund 704 Expenses
June 7, 2016

Name	Amount	Memo	Account
Jun 7, 16			
1. Underground Utilities I...	3,220.00	Pmt #20-Moorewood Water Line Pjt-RRE	704 5-180 8-75...
2 MWH Americas	140,000.00	Prof Svc 2/27/16-5/6/16-TAD	704 5-180 8-80...
Jun 7, 16	<u>143,220.00</u>		

06/01/16

Avon Lake Municipal Utilities
Sewer System Construction - Fund 724
June 7, 2016

<u>Name</u>	<u>Amount</u>	<u>Memo</u>	<u>Account</u>
Jun 7, 16			
1. Underground Utilities Inc.	33,705.00	Pmt #20-Moorewood Sw Project-RRE	724 5-190 9-751-...
Jun 7, 16	<u><u>33,705.00</u></u>		

LATERAL LOAN AGREEMENT

THIS LATERAL LOAN AGREEMENT ("Agreement") is made and entered into as of _____, 201____, by and among _____ ("Customer"), _____ ("Owner"; Customer and Owner, jointly, "Borrower"), and the City of Avon Lake, Ohio (the "City"), a municipal corporation, by and through its Board of Municipal Utilities dba Avon Lake Regional Water (the "Board"; Customer, Owner and the Board, collectively, the "Parties" and individually a "Party").

RECITALS:

- A. The Board was created by the Charter of the City of Avon Lake to manage, conduct, control and furnish service of the sanitary sewerage treatment works and systems, among other public utilities owned by the City.
- B. The Board furnishes water and wastewater service to the property at _____, Avon Lake, Ohio (the "Property").
- C. Owner is the fee simple owner of the Property.
- D. Customer (who may or may not be the same as Owner) is the person or entity to whom the Board issues bills for water and wastewater services supplied to the Property and is the person or entity with primary responsibility for the payment of same.
- E. The Ohio Environmental Protection Agency ("Ohio EPA") has adopted the City of Avon Lake's Long-Term Control Plan ("LTCP") that requires complete separation of combined sewers by December 31, 2019.
- F. In order to comply with the LTCP, in addition to separating sewers within the public rights of way (the cost of which is paid through the rates and charges of the Board), individual customers must assure that clean water from sources such as downspouts, yard drains, and foundation drains is not discharged into sanitary laterals on private property.
- G. Customers must assure these clean water sources from private property have been removed from their sanitary laterals by the later of February 1, 2018, or one year after the sewer in the street in front of their property is separated, whichever is later, and all clean water sources must be removed from laterals by June 30, 2019.
- H. In order to help customers fund the cost of complying with this requirement, the Board has established the Lateral Loan Program (the "Program"), which allows qualified borrowers to borrow up to \$4,000.00 from the Board to be repaid with water and wastewater bills, or in a manner deemed most appropriate by the Board. The Program is complementary to the Board's Sewer Lateral Program, pursuant to which customers in the currently and formerly combined sewer areas of Avon Lake who prevent clean water from entering the sanitary sewer by adding a lateral or laterals to send clean water to the storm sewer and dirty water to the sanitary sewer receive a \$1,000.00 sewer rate rebate.
- I. If it is determined that clean water is entering the sanitary or combined sewer lateral(s) on the Property, then Borrower desires to borrow money from the Board to assist Borrower in paying the cost of completing a lateral separation of the sewer at the Property (the "Project").

WITNESSETH:

NOW, THEREFORE, in consideration of the above premises and the mutual covenants herein contained, the Parties do hereby agree as follows:

ARTICLE I – ACCESS AND DETERMINATION OF NECESSITY

- 1.1. Borrower shall allow employees or other representatives of the Board to inspect the home or building at the Property at a mutually agreeable time to determine whether clean water is entering the sanitary lateral.
- 1.2. Promptly after the inspection is completed, the Board's representative shall notify Borrower of its determination and whether Borrower is eligible to participate in the Program.
- 1.3. If the Board's representative determines that clean water is entering the sanitary lateral serving the Property, then, regardless of whether Borrower participates in the Program, Borrower shall take such actions as the Board shall require to eliminate such condition.

ARTICLE II – LOAN

- 2.1. If the Board's representative determines that the Project is necessary, then, upon the written request of Borrower, and subject to the terms and conditions hereinafter set forth, the Board agrees to make to Borrower a loan (the "Loan") up to the maximum principal amount of _____ Dollars (\$_____).
- 2.2. The proceeds of the Loan may only be used to pay for Eligible Costs. As used herein, "Eligible Costs" means Borrower's actual out-of-pocket costs of completing the Project, including the cost of: (a) obtaining goods, materials and services to install an additional lateral or laterals on the Property; (b) adding related appurtenances, such as backwater valves and/or yard drains; and (c) returning the surface of the Property to substantially its original condition.

ARTICLE III – CONDITIONS TO LOAN ADVANCES

- 3.1. Prior to commencement of the Project, Borrower shall furnish the Board with a fully executed contract (the "Contract") with a licensed and bonded contractor qualified to undertake and complete the Project ("Borrower's Contractor"). The Project shall not be completed prior to execution of this Agreement.
- 3.2. It is recommended, though not required, that Borrower's Contractor meet with the Board's representative to discuss the Project prior to completion of the Project.
- 3.3. Borrower will provide a copy of a bill or bills from Borrower's Contractor for all Eligible Costs for the Project and only request Loan disbursements for Eligible Costs.
- 3.4. Borrower will return within thirty (30) days any Loan proceeds disbursed to Borrower that were not used to pay for Eligible Costs.

ARTICLE IV – LOAN ADVANCES

- 4.1. The Board's staff will review bills/invoices/receipts submitted by Borrower for Eligible Costs. The Board will disburse the Loan proceeds by issuing two checks. The first check shall be issued within thirty (30) days after the Project has been substantially completed and shall be in the amount of ninety percent (90%) of the lesser of the documented Eligible Costs or the amount of the Loan. The second check shall be issued within thirty (30) days after the Project has been fully completed, inspected and approved by representatives of the Board and shall be in the amount of the lesser of the balance of the documented Eligible Costs or the undisbursed amount of the Loan. Both checks shall designate Borrower's Contractor as the payee. The checks shall be issued only after Borrower signs an acknowledgement that the project is complete or substantially complete (depending upon the check) and the Project has passed the requisite inspection by Board representatives. Both checks (i.e., the complete amount) may be requested simultaneously.
- 4.2. Loan advances will only be made to one Borrower's Contractor. If Borrower contracts with more than one contractor, only one may be considered Borrower's Contractor for the purpose of issuing Loan advances.

ARTICLE V - REPAYMENT

- 5.1. Borrower shall repay the Loan with interest at the times and in the amounts set forth below.
- 5.2. The Loan repayment period will be ten (10) years and will be invoiced as part of the water and wastewater bill, which is currently quarterly but may be at some other frequency in the future. A payment schedule will be established so that one-tenth of the outstanding principal of the Loan is repaid each year.
- 5.3. Ten years of repayment will begin with the next water and wastewater bill issued to Borrower after the Loan proceeds are disbursed.
- 5.4. Interest on the outstanding principal balance of the Loan will be charged and paid as follows. The interest payable for any Repayment Year shall be equal to two percent (2%) of the Loan balance outstanding on the first (1st) day of such Repayment Year. For example, if \$4,000.00 of the Loan is outstanding on the first day of the Repayment Year, then the interest for that Repayment Year would be 2% of \$4,000.00, or \$80.00. Interest for any Repayment Year will be payable in equal installments over the number of water and wastewater bills that will be issued for that Repayment Year. Thus, if the bills are issued quarterly, \$20.00 in interest would be payable with each bill. As used herein, "Repayment Year" means each successive period of twelve (12) consecutive months commencing on the date the Loan proceeds have been disbursed. Under no circumstances will the interest rate exceed the maximum rate allowed by applicable law, and the Board shall promptly refund or any interest paid by Borrower in excess of that allowed by applicable law.
- 5.5. Payments received by the Board from Borrower on account of a bill will be applied first to interest payable on the Loan, second to the outstanding principal of the Loan, third to the wastewater bill, and finally to the water bill. Hence, unless payment is received in full (Loan interest and principal payments, wastewater, water) by the due date on the bill, the Board shall have the right to discontinue supplying water to the Property, as established in the Regulations of Avon Lake Regional Water.

- 5.6. Borrower shall have the right to prepay the Loan at any time without premium or penalty.
- 5.7. If title to the Property is transferred either voluntarily or involuntarily, then the outstanding balance of the Loan and all interest payable must be paid in full, and water and wastewater service shall not be established in the name of another party until such payment has been made.
- 5.8. Transfer of the Property or Borrower's interest therein shall not relieve Borrower of the obligation to repay the Loan and interest thereon.
- 5.9. Borrower understands, acknowledges and agrees that the Board will pledge as security to funding agencies from which the Board borrows money the payments the Board is entitled to receive from Borrower.

ARTICLE VI – COMPLETION OF PROJECT AND PAYMENT OF COSTS THEREOF

- 6.1. If it is determined that action must be taken to prevent clean water from entering the sanitary lateral, Borrower shall construct one or more new laterals so that at least one lateral is connected to the sanitary sewer and another lateral is connected to the storm sewer either when the Project is complete or once the sewer in the right-of-way has been separated at a later date and the contractor for that project connects the separated laterals to the respective sewers. It is recommended that a new sanitary lateral be installed as part of the Project. If Borrower opts not to install a new sanitary lateral and it is later determined that the sanitary lateral is leaking and allowing significant clean water to enter the sanitary sewer, then Borrower will be required to remedy this condition, as stated in the Regulations of Avon Lake Regional Water.
- 6.2. Borrower shall comply with all of the standards and requirements of the Board and the City for construction of new laterals, sump pumps, and/or other associated appurtenances/materials.
- 6.3. Borrower shall comply with the requirements for the Program and Borrower's Contractor has or will obtain all permits necessary through the Board and the City in order to complete the Project.
- 6.4. Borrower shall allow employees or other representatives of the Board to inspect the Project as it is progressing and once completed to assure clean water has been permanently prevented from entering the sanitary lateral. If the requisite inspections are not completed by representatives of the Board, the Board will be unable to issue Loan advances.
- 6.5. Borrower shall provide or obtain funds for all non-Eligible Project Costs and for Eligible Project Costs in excess of the Loan proceeds to assure that the Project is completed.

ARTICLE VII – EVENTS OF DEFAULT AND REMEDIES

- 7.1. Each of the following events or circumstances shall be an Event of Default if it continues to exist thirty (30) days after Borrower has been given notice thereof, except that the events or circumstances described in clauses 7.1.1, 7.1.3, 7.1.4, 7.1.5 and 7.1.7 shall constitute an Event of Default immediately upon the occurrence thereof:
 - 7.1.1 Borrower shall fail to make any payment of principal or interest on the Loan when due or within any grace period provided by the Board.

- 7.1.2 Borrower shall fail to observe and perform any obligation, agreement or provision of this Agreement.
- 7.1.3 Any representation or warranty made by Borrower in this Agreement or in any certification or other document furnished by Borrower to the Board pursuant to or in connection with this Agreement shall at any time during the Loan repayment period prove to be false or misleading in any material respect when made or when deemed made.
- 7.1.4 Borrower shall be declared incompetent and a guardian shall be appointed for Borrower, or a trustee, custodian, or similar officer shall be appointed for any substantial part of Borrower's property, without the application or consent of Borrower, or any bankruptcy, insolvency, readjustment of debt, or similar proceedings under the laws of any jurisdiction shall be brought against Borrower, and such appointment or proceedings shall remain undischarged or undismissed for a period of sixty (60) days.
- 7.1.5 Borrower shall: (i) admit in writing Borrower's inability to pay his/her/its debts when due; (ii) make an assignment for the benefits of creditors; (iii) apply for or consent to the appointment of any guardian for Borrower or trustee or custodian for any substantial part of Borrower's property, or (iv) institute (by petition, application, or otherwise) or consent to any bankruptcy, insolvency, readjustment of debt, or similar proceedings under the laws of any jurisdiction against Borrower.
- 7.1.6 Any final, unappealable and uninsured money judgement or judgments for an amount in excess in the aggregate of Ten Thousand Dollars (\$10,000) shall be rendered against Borrower or Borrower's assets, or any writ or warrant of attachment, or similar process shall be entered or filed against Borrower or any of Borrower's assets, and such writ, warrant, or process shall remain unsatisfied, unsettled, unvacated, unbonded, and unstayed for a period of thirty (30) days of in any event later than five business days prior to the date of any proposed sale of Borrower's assets thereunder.
- 7.1.7 Any material provision of this Agreement shall cease to be valid and binding on Borrower, or the validity or enforceability thereof shall be contested or denied by Borrower.
- 7.2. Upon the occurrence of an Event of Default, the Board may exercise any one or more of the following rights and remedies: (a) terminate or suspend the disbursement of Loan funds; (b) require that Borrower take corrective action to remedy the event or violation (Borrower hereby agreeing to perform such corrective action); (c) declare the outstanding principal of the Loan and all accrued interest immediately due and payable; and (d) certify to the Lorain County Auditor's office the full outstanding Loan balance and accrued interest for recovery on the tax list and duplicate as a lien against the Property.
- 7.3. The rights and remedies conferred upon the Board in Section 7.2 are in addition to all other legal or equitable rights and remedies the Board may be entitled to exercise upon the occurrence and during the continuation of an Event of Default, and no right or remedy conferred upon the Board is intended to be exclusive of any other right or remedy given herein, by law, or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law, or otherwise.

ARTICLE VIII – GENERAL REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

- 8.1. Borrower hereby represents and warrants that:
 - 8.1.2. While any Loan balance is outstanding, Borrower shall remain in compliance, and shall take whatever actions are necessary to assure compliance, in all material respects, with all applicable federal, state, and local laws, ordinances, rules, regulations and provisions of this Agreement.
 - 8.1.3. There is no litigation or administrative action or proceeding pending or, to the best of Borrower's knowledge, threatened against Borrower, wherein a result adverse to Borrower could reasonably be expected to have a materially adverse effect on the ability of Borrower to meet Borrower's obligations under this Agreement.
 - 8.1.4. Except as heretofore disclosed in writing to the Board, no judgement or consent order has been rendered against Borrower; and Borrower is not a party to any agreement, which imposes, will impose, or has imposed any fines or monetary penalties upon Borrower for the violation of any federal, state, or local law, ordinance, or regulation, for which fines or monetary penalties have not heretofore been paid in full.
 - 8.1.5. Borrower has full power and authority to execute this Agreement and to perform Borrower's obligations under the Agreement, and to enter into and carry out the transactions contemplated thereby. Such execution does not, and will not, conflict with or result in a default under any agreement or instrument to which Borrower is a party, or by which Borrower or Borrower's property may be bound. This Agreement has, by proper action, been duly executed by Borrower, and all necessary actions have been taken in order for the Agreement to constitute the legal, valid, and binding obligation of Borrower.
 - 8.1.6. Owner will preserve and maintain Owner's title to the Property. In the event title to the Property is transferred, the entire outstanding Loan balance and accrued interest must be paid in full.
- 8.2. Owner shall pay or cause to be paid when due and payable and before interest or penalties are due thereon, without any deduction, defalcation or abatement, all real estate taxes and assessments levied against the Property or any part thereof.
- 8.3. The funding agency that the Board uses will be a third party beneficiary of this Agreement.
- 8.4. Borrower releases the City, the Board and any eventual funding agency and the respective officials, officers, directors, representatives, agents and employees from and agrees that they shall not be reliable for and agrees to indemnify and hold them harmless from and against any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the Project, or the use thereof; provided that such indemnity under this section shall not be effective for damages that result from negligent or intentional acts of the Board, the City, the eventual funding agency or their officials, officers, directors, representatives, agents and employees.

ARTICLE IX – MISCELLANEOUS PROVISIONS

- 9.1. All notices or requests permitted or required under this Agreement must be in writing and shall be delivered by personal delivery or first class mail and shall be addressed to the following persons:

Customer

Board of Municipal Utilities

Avon Lake Regional Water
201 Miller Road
Avon Lake, Ohio 44012
Attention: Chief Utilities Executive

Owner (if different from Customer)

Notices shall be effective upon delivery to the above addresses. Either Party may notify the other that a new person has been designated by it to receive notices, or that the address for the delivery of such notices has been changed, provided that, until such time as the other Party receives such notice in the manner provided for herein, any notice addressed to the previously-designated person and/or delivered to the previously-designated address shall be effective.

- 9.2. If any portion of this Agreement is determined by any court of competent jurisdiction to be invalid, unconstitutional, or unenforceable for any reason, the same shall not be held to invalidate or impair the validity, force, or effect of any other portion of this Agreement unless it clearly appears that such other portion is wholly or necessarily dependent for its operation upon the portion so held invalid, unconstitutional, or unenforceable.
- 9.3. Borrower shall not have the right to assign its rights under this Agreement without the written consent of the Board.
- 9.4. Each person identified as "Borrower" is jointly and severally liable for all obligations of Borrower pursuant to this Agreement.
- 9.5. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate or be construed to be a waiver of any subsequent breach thereof.
- 9.6. This Agreement constitutes the entire agreement among the Parties. It incorporates all prior negotiations and understandings of the Parties. There are no covenants, promises, agreements, letters, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than those set forth herein, and all such matters are merged with and incorporated herein. No representation or warranty has been made by or on behalf of any Party (or any official, officer, director, trustee, employee or agent thereof) to induce any other Party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except those expressly set forth herein.
- 9.7. No alteration, amendment, change or addition to this Agreement shall be binding upon any Party unless in writing and signed by such Party.

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

CUSTOMER:

_____ (signed)	_____ (signed)
_____ (printed)	_____ (printed)

OWNER (if different from Customer):

_____ (signed)	_____ (signed)
_____ (printed)	_____ (printed)

CITY:

CITY OF AVON LAKE, OHIO

By: Board of Municipal Utilities

By: _____ (signed)

_____ (printed)

_____ (title)

Approved as to form

_____ (signed)

Abraham Lieberman, Esq., Law Director

June 1, 2016
LateralLoanAgreement - rev3

CHAPTER 2 - DEFINITIONS

As used in these Regulations, as amended by the Board from time to time, the following terms shall have the meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined) set forth below, which shall apply in the interpretation and enforcement of these Regulations:

Section 2.01 Act or the Clean Water Act shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended from time to time (33 U.S.C. §§ 1251, *et. seq.*).

Section 2.02 Administrative Fee means the charge assessed users to cover billing costs (including meter reading) and laboratory costs. Billing, laboratory and other costs associated with industrial surcharges are not included in the Administrative Fee.

Section 2.03 Air Gap Separation means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle.

Section 2.04 ANSI means the American National Standards Institute.

Section 2.05 Avon Lake Water System means the public potable water supply system of Avon Lake, Ohio and all systems, facilities and appurtenances thereto.

Section 2.06 AWWA means the American Water Works Association.

Section 2.07 Backflow means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable water supply from any source other than the intended source of the potable water supply.

Section 2.08 Backflow Prevention Device means any device, method, or type of construction intended to prevent backflow into a potable water system.

Section 2.08.01 Best Management Practices also known as (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 1.02 of Title IV. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Comment [PL2]: If I number this Section 2.09, I will have to renumber everything after that. ☹

Comment [PL3]: OAC 3745-3-01(D)

Section 2.09 Billable Water Consumption means the amount of potable water used during the applicable billing period at the premises, as measured through a City water meter, with the following exceptions:

1. The billable sewer consumption for an individual residential account shall be determined in accordance with Title II, Section 2.19.
2. The billable sewer consumption for other than an individual residential account shall be the amount of potable water consumed on the premises, unless the Owner or other interested party of the premises can demonstrate to the satisfaction of the CUE that a measurable portion of the water from all sources consumed on said premises cannot and does not enter the public sewage system.

Section 2.75 Sewer Service Charge means those wastewater charges identified in Chapter 1 of Title III.

Section 2.76 Shall is mandatory; may is permissible.

Section 2.77 Significant Industrial Use ("SIU") means:

1. All discharges subject to Categorical Pretreatment Standards under 40 CFR Chapter I, Subchapter N; and

2. All noncategorical dischargers that;

a. in the opinion of the Board, have a reasonable potential to adversely affect the POTW's operation;

b. discharge or has the potential to discharge 25,000 gallons or more of process water (excludes sanitary water, non-contact cooling water, and boiler blowdown) in a day; or

c. that contribute a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW.

2-3. However, the Board need not designate as significant any noncategorical Industrial User that, in the opinion of the Chief Utilities Executive, has no potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. Any noncategorical Industrial User designated as significant may petition the Board to be deleted from the list of Significant Industrial Users on the grounds that it has no potential for adversely affecting the POTW's operation or violating any pretreatment standard or requirement.

Section 2.78 Sludge shall mean any solid, semi-solid or liquid waste generated by a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other waste having similar characteristics and effects as defined in standards issued under Section 402 of the Act (33 U.S.C. § 1342) and Section 405 of the Act (33 U.S.C. § 1345) and in the applicable requirements under Section 2001, 3004, and 4004 of the Solid Waste Disposal Act (PL 94-580; 42 U.S.C. §§ 6901- 6992k).

Section 2.79 Slug or Slug Discharge shall mean any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions, pollutant, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which will cause interference at the WPCC.

Comment [PL4]: OAC 3745-3-03(C)(2)(f)

Section 2.80 Standard Methods shall mean the current edition of *Standard Methods for the Examination of Water and Wastewater* as published by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation.

TITLE IV - DISCHARGE PERMITS

CHAPTER 1 - PROHIBITED DISCHARGES

Section 1.01 General Discharge Prohibitions.

1. It shall be unlawful to discharge sewage, industrial wastes, or other wastes to any sewer within the jurisdiction of the Board without having first complied with the terms of these Regulations.
2. Industrial wastes shall not be discharged into a storm sewer but may be discharged into a sanitary sewer if the waste is of such character as not to be detrimental to the sewer system or to the WPCC. Where such waste is detrimental to the sewer system or the WPCC, it shall be otherwise disposed of in a satisfactory manner or so improved in character as not to be detrimental to the sewer system or WPCC.
3. Surface water, rain water from roofs, subsoil drainage, building foundation drainage, cistern overflow, clean water from condensers, waste water from water motors and elevators, and any other clean and unobjectionable waste water shall be discharged into a storm water or combined sewer and in no case into a sanitary sewer.
4. Sewage, including wastes from water closets, urinals, lavatories, sinks, bathtubs, showers, laundries, cellar floor drains, garage floor drains, bars, soda fountains, cuspidors, refrigerator drips, drinking fountains, stable floor drains, and other objectionable wastes shall be discharged into a sanitary or combined sewer and in no case into a storm sewer.
5. Industrial wastes entering sewers not connected to the WPCC shall be of such characteristics as not to be detrimental to the public sewage system or to the receiving stream, according to the standards determined by the Ohio Environmental Protection Agency or the CUO.
6. Sanitary sewage shall be discharged into a sanitary sewer whenever a sanitary sewer is reasonably accessible. If such sanitary sewer is not reasonably accessible, then sanitary sewage shall be discharged into a combined sewer.
7. Where the public sewage system is reasonably accessible to the property, no privy shall be constructed, maintained, or used, and any person owning property in Avon Lake on which there is a privy where the public sewage system is reasonably accessible, shall have sixty (60) days after notification by the Board to do away with such privy or be subject to the penalties provided in these Regulations.
8. Connection with a cesspool or a privy vault shall not be made into a sanitary, combined, or storm sewer.
9. No person shall discharge into a building sewer or tap a public sewer for the purpose of discharging into it any waste or drainage water prohibited by the provisions of this Section. Any existing connection in violation of the provisions of this Section shall be abandoned and removed.
10. No person shall access the sewer system or POTW for any activity including discharge of hauled septic or industrial wastes except at locations and at times as designated

by the CUO. Any removal of manhole lids, or other access to the sewer system for the purpose of discharging wastes at times and/or locations other than those designated by the CUO, or without the expressed permission of the CUO, shall be considered a violation and shall be subject to enforcement action including fines and penalties allowed under these Regulations.

Section 1.02 Specific Discharge Prohibitions.

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- a. Having a temperature higher than 104 degrees F (40 degrees C);
- b. Containing more than 10 ppm by weight of fats, oils, or grease;
- c. Containing any garbage that has not been ground by household type or other suitable garbage grinders;
- d. Containing any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch, manure, or any other solids or viscous substances capable of causing obstructions or other interferences with proper operation of the sewer system;
- e. Having a pH lower than 5.0 or higher than 11.0, or having any other corrosive property capable of causing damage or hazards to structures, equipment, or personnel of the sewer system;
- f. Containing toxic or poisonous substances in sufficient quantity to injure or interfere with any wastewater treatment process, to constitute hazards to humans or animals, or to create any hazard in waters which receive treated effluent from the sewer system treatment plant. Toxic wastes shall include, but are not limited to wastes containing cyanide, chromium, Cadmium, mercury, copper, and nickel ions;
- g. Containing noxious or malodorous gases or substances capable of creating a public nuisance, including pollutants which result in the presence of toxic gases, vapors, or fumes within the sanitary sewers or WPCC in a quantity that may cause acute worker health or safety problems.
- h. Containing solids of such character and quantity that special and unusual attention is required for their handling;
- i. Containing any substance which may affect the WPCC's effluent and cause violation of the NPDES permit requirements;
- j. Containing any substance which would cause the WPCC to be in noncompliance with sludge use, recycle or disposal criteria pursuant to guidelines or regulations developed under Section 405 of the Act (33 U.S.C. § 1345), the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or other regulations or criteria for sludge management and disposal as required by the State;
- k. Containing color which is not removed in the treatment processes;

- i. Containing any medical or infectious wastes;
- m. Containing any radioactive wastes or isotopes;
- n. Pollutants which create a fire or explosion hazard in the sanitary sewers or WPCC, including but not limited to wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test method specified in 40 CFR §261.21;
- o. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass-through; or
- p. Containing any pollutant released at a flow rate and/or pollutant concentration which would cause interference with the treatment plant.

Section 1.03 Interceptors. Grease, oil, and sand interceptors shall be provided when, in the opinion of the CUO, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes containing grease in excessive amounts, or any flammable wastes, sand, and other harmful ingredients, except that such interceptors shall not be required for private quarters or dwelling units. Where installed, all grease, oil, and sand interceptors shall be maintained by the owner, at his expense, in continuous and efficient operation at all times while being used.

Section 1.04 Enforcement.

1. The CUO may issue Orders to any industrial user to insure compliance with any requirements under these Regulations including applicable National Categorical Pretreatment Standards, other discharge limits, and reporting requirements. Such Orders shall be in the form of a Permit signed by the CUO and may include but shall not be limited to a list of pollutants to be monitored, location of sampling points, type of sample, frequency of sampling, and compliance schedules to meet discharge limits.

2. If any wastewater or water being discharged to the WPCC has any of the characteristics mentioned in Section 1.02 above or exceed the limits established in this Chapter 1, the CUO may:

- a. Reject the wastewater or water.
- b. Require the user to pretreat or modify the wastewater or water to acceptable condition before discharging into a public sewer.

3. If any wastewater or water being discharged to the WPCC exceeds the limits established in Section 2.02 (b), the CUO may:

- a. Require the user to pretreat or modify the wastewater or water to meet the appropriate limits before discharging into a public sewer.
- b. Require the user to pay the additional cost or expense incurred by the WPCC for handling and treating the additional load imposed on the treatment system.

4. If the volume of any proposed discharge(s) or increased actual or proposed volume of an existing discharge exceeds the capacity of the receiving sewer or exceeds the

volume of the flow that the WPCC can treat under the terms and condition of its NPDES permit, then the CUO shall have the authority to limit or prohibit said discharge(s).

Section 1.05 Specific Pollutant Limitations.

1. Toxic Pollutant Limitations

No person shall discharge or cause to be discharged into a public sewer wastes which contain any of the pollutants contained in the following list of toxic pollutants unless the person is issued a permit by the CUO which allows the discharge of such pollutants. In the absence of such specific permits, no person shall discharge any of the following toxic pollutants except as such pollutants may occur and only in the concentrations such pollutants may occur in the water supply to their premises. Discharge of such pollutants allowed by a permit shall not exceed the following maximum daily and 30-day average concentrations:

Parameter	ug/l	
	Max. Daily Concentration	30 Day Average
Cadmium (total)	260	150
Chromium (total)	2300	1710
Copper (total)	2070	1500
Cyanide (total)	652	650
Lead (total)	430	430
Mercury (total)	0.0	----
Nickel	2380	1100
Silver	240	100
Zinc (total)	1500	1480
Arsenic	290	----
Chromium (HEX)	252	----

The CUO may develop BMPs and such BMPs shall be considered local limits and pretreatment standards for the purpose of this rule.

Comment [PLB]: OAC 3745-3-03(C)(4)

2. Compatible Pollutant Limitations

No wastewater shall be discharged which exceeds the maximum daily concentration established for the following compatible pollutants without permission from the CUO and payment of the appropriate surcharge:

Parameter	mg/l
	Max. Daily Concentration
BOD	365
COD	725
SS	400
Ammonia Nitrogen	30
Oil & Grease	10
Phosphorous	10
Dissolved Solids	3500

Section 1.06 National Categorical Pretreatment Standards. National Categorical Pretreatment Standards as promulgated by the U.S. Environmental Protection Agency pursuant to the Act

shall be met by all dischargers of the regulated industrial categories. An application for modification of the National Categorical Pretreatment Standards may be considered for submittal to the Regional Administrator by the CUO, when the WPCC achieves consistent removal of the pollutants. "Consistent Removal" shall mean the reduction in the amount of a pollutant or alteration of the nature of the pollutant by the wastewater treatment plant to a less toxic or harmless state in the effluent provided that the plant meets the NPDES permit limits established for that pollutant and the sludge meets all the applicable requirements for the preferred method of disposal.

Section 1.07 State Requirements. State requirements and limitations on discharges to the WPCC shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this or any other applicable Regulation.

Section 1.08 Right of Revision. The Board reserves the right to amend these Regulations to provide for more stringent limitations or requirements on discharges to the WPCC where deemed necessary to comply with the objectives set forth in these Regulations.

Section 1.09 Dilution. No user shall increase the use of potable or process water in any way nor mix separate waste streams for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in these Regulations.

Section 1.10 Prevention of Accidental Discharges.

1. Each user shall provide protection from accidental discharge or prohibited or regulated materials or substances established by these Regulations. Any direct or indirect connection or entry point for persistent or deleterious wastes to the user's plumbing or drainage system shall be eliminated. Where such action is impractical or unreasonable, the user shall appropriately label such entry points to warn against discharge of such wastes in violation of this Regulation. Where necessary, facilities to prevent accidental discharge of prohibited material shall be provided and maintained at the user's expense.

(a) Detailed plans, known as the Spill Prevention Control and Countermeasure (SPCC) Plan, showing facilities and operating procedures to provide this protection shall be submitted to the CUO for review and shall be approved by the CUO before construction of the facility.

(b) The SPCC Plan shall include the following:

(i) Description of discharge practices, including non-routine batch discharges;

(ii) Description of stored chemicals;

(iii) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under Section 1.02 of Title IV, with procedures for follow-up written notification within five days;

Comment [PL6]: Note that if an SPCC Plan is required for a permittee, the plan must be specifically referenced or otherwise incorporated into the IU's control mechanism. Page 2 of <http://www.epa.ohio.gov/portals/35/guidance/prstreatment2.pdf>.

Comment [PL7]: OAC 3745-3-03(C)(2)(b)(iv)

(iv) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of wastewater discharge, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), or measures and equipment for emergency response.

(c) Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify this facility as necessary to meet the requirements of these Regulations.

2. In order that employees of users be informed of City requirements, users shall make available to their employees copies of these Regulations together with such other wastewater information and notices which may be furnished by the City from time to time directed toward more effective water pollution control. A notice shall be furnished and permanently posted on the user's bulletin board advising employees whom to call in case of an accidental discharge in violation of these Regulations.

3. The CUO shall be notified immediately of a facility that has an accidental discharge which exceeds the limitations of these Regulations. A report stating the date, time and cause of the accidental discharge, the quantity and characteristics of the discharge, and measures taken to prevent future discharges shall be filed within five (5) days of the occurrence of the accident.

4. The CUO shall be notified at least 30 days in advance if a facility anticipates a substantial change in its wastewater quantity or quality. The substantial change may be due to production rate, scheduled maintenance or operations, scheduled bypass, etc.

Section 1.11 Operating Upsets. Any permittee that experiences an upset in operations that places the permittee in a temporary state of noncompliance with the provisions of these Regulations shall inform the CUO within 24 hours of becoming aware of the upset at Avon Lake Regional Water offices.

A written follow-up report of the upset shall be filed by the permittee with the CUO within five (5) days. The report shall specify:

1. Description of the upset, the cause(s) thereof, and the upset's impact on the permittee's compliance status;
2. Duration of noncompliance, including exact dates and times of noncompliance, and, if not corrected, the anticipated time the noncompliance is expected to continue; and
3. All steps taken or to be taken to reduce, eliminate, and prevent recurrence of such an upset.

The report must also demonstrate that the treatment facility was being operated in a prudent and workmanlike manner.

A documented and verified operating upset shall be an affirmative defense to any enforcement action brought against the permittee for violations attributable to the upset event.

CHAPTER 2 - PERMIT ADMINISTRATION

Section 2.01 Industrial Pretreatment Permit Requirements.

1. All non-domestic users must notify the CUO of the nature and characteristics of their wastewater prior to commencing their discharge. The CUO is authorized to prepare a form for this purpose.
2. It shall be unlawful for significant industrial users to discharge wastewater, either directly or indirectly, into the City's sanitary sewer system without first obtaining an industrial user pretreatment permit from the CUO. Any violation of the terms and conditions of an industrial user pretreatment permit shall be deemed a violation of these Regulations. Obtaining an industrial user pretreatment permit does not relieve a permittee of its obligation to obtain other permits required by federal, state, or local law.
3. The CUO may require that other industrial users obtain industrial user pretreatment permits as necessary to carry out the purposes of these Regulations.
4. Existing Connections: Any significant industrial user which discharges non-domestic waste into the sanitary sewer system prior to the effective date of these Regulations except in accordance with a permit issued by the CUO.
5. New Connections: Any significant industrial user proposing to begin or recommence discharging non-domestic wastes into the sanitary sewer system must obtain a pretreatment permit prior to beginning or recommencing such discharge. An application for this permit must be filed at least ninety (90) days prior to the anticipated start-up date.

Section 2.02 Permit Application.

1. In order to be considered for a pretreatment permit, all industrial users required to have a permit must submit the following information on an application form approved by the CUO:
 - a. Name, address, and location (if different from the address);
 - b. Standard Industrial Classification (SIC) code of both the industry as a whole and any processes for which federal categorical standards have been promulgated;
 - c. Wastewater constituents and characteristics including any federal, state, or local standards. Sampling and analysis will be undertaken in accordance with 40 CFR Part 136;
 - (1) Sampling shall be representative of daily operations
 - (2) When BMPs apply, documentation must be submitted to determine compliance with the standard
 - d. Time and duration of the discharge;

e. Daily maximum, daily average, and monthly average wastewater flow rates, including daily, monthly, and seasonal variations, if any;

f. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally be discharged to the POTW;

g. The site plans, floor plans, and mechanical and plumbing plans and details to show all sewers, floor drains, and appurtenances by size, location, and elevation;

h. Each product produced by type, amount, process or processes and rate of production;

i. Type and amount of raw materials processed (average and maximum per day);

j. Number and type of employees and hours of operation, and proposed or actual hours of operation of the pretreatment system;

k. A list of other environmental control permits;

Comment [PL8]: OAC 3745-3-06(C)

kl. Whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet all applicable federal, state, and local standards. If additional pretreatment and/or O&M will be required to meet the standards, then the industrial user shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional treatment and/or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation). No increment referred to in (a) above shall exceed nine (9) months nor shall the total compliance period exceed eighteen (18) months;

(2) No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the CUO including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the CUO.

2. Any other information as may be deemed by the CUO to be necessary to evaluate the permit application.

2.02
3. All plans required in ~~Section 2.03~~ must be certified for accuracy by a State registered professional engineer.

Comment [PL9]: This doesn't look like it requires any plans. Could this be referencing 2.02.1.g?

3.02
4. All applications shall contain the certification statement required by ~~Section 3.03~~ of Title IV.

Comment [PL10]: Should this reference 3.02?

3.03
5. All applications shall be signed as required by ~~Section 3.04~~ of Title IV.

Comment [PL11]: Should this reference 3.03?

6. Industrial users with categorical standards that require compliance with a BMP or pollution prevention alternative shall submit documentation to determine compliance with the standard when submitting baseline reports.

Comment [PL12]: OAC 3745-3-06(E)(4)(f)

Section 2.03 Pretreatment Permit Contents.

1. Pretreatment permits shall include such conditions as are reasonably deemed necessary by the CUO to prevent pass-through or interference, protect the quality of the water body receiving the POTW's effluent, protect worker health and safety, facilitate POTW sludge management and disposal, protect ambient air quality, and protect against damage to the POTW collection system or plant. Permits may contain (but are not be limited to) the following:

- a. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization;
- b. Limits on the average and/or maximum concentration, mass, or other measure of identified wastewater constituents or properties;
- c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- d. Development and implementation of spill control plans or other special conditions including additional management practices necessary to adequately prevent accidental, unanticipated, or routine discharges (see Section 1.10 of Title IV);
- e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
- f. Requirements for installation and maintenance of inspection and sampling facilities;
- g. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules;
- h. Compliance schedules;
- i. Requirements for submission of technical reports or discharge reports;
- j. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the CUO and affording the CUO or his representatives, access thereto;

k. Requirements for notification of any new introduction of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the POTW, including the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12 (P);

l. Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the permittee;

m. Requirements for notification of excessive, accidental, or slug discharges;

n. Other conditions as deemed appropriate by the CUO to ensure compliance with these Regulations and State and federal laws, rules, and regulations;

o. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal pretreatment standards, including those which become effective during the term of the permit.

Section 2.04 Permit Issuance Process.

1. Permit Duration. Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than five (5) years, at the discretion of the CUO.

2. Permit Appeals. The CUO will provide notice of final permit decisions. Upon notice by the CUO, the industrial user may petition to appeal the terms of the permit within thirty (30) days of the notice.

a. Failure to submit a timely petition for review shall be deemed to be a waiver of the appeal.

b. In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to be placed on the permit.

c. The effectiveness of the permit shall not be stayed pending a reconsideration of the Board. If, after considering the petition and any arguments put forth, the CUO or the Board determines that reconsideration is proper, it shall remand the permit back to the CUO for reconsideration and possible re-issuance. Those permit provisions being reconsidered by the CUO shall be stayed pending re-issuance.

d. The Board of Municipal Utilities' decision not to reconsider a final permit shall be considered final administrative action for purposes of judicial review.

e. Aggrieved parties seeking judicial review of the final Control Authority action must do so by filing a complaint with the court of competent jurisdiction.

3. Permit Action. The CUO may modify the permit for good cause including, but not limited to, the following:

a. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

b. Material or substantial alterations or additions to the discharger's operation processes or discharge volume or character which were not considered in drafting the effective permit.

c. A change in any condition in either the industrial user or the POTW elimination of the authorized discharge;

d. Information indicating that the permitted discharge poses a threat to the Avon Lake collection and treatment systems, POTW personnel, or the receiving waters;

e. Violation of any terms or conditions of the permit;

f. Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting;

g. Revision of or a grant of variance from such categorical standards pursuant to 40 CFR 403.13; or

h. To correct typographical or other errors in the permit;

i. To reflect transfer of the facility ownership and/or operation to a new owner/operator;

j. Upon request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, rules, or regulations.

The filing of a request by the permittee for a permit modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

4. Permit Transfer. Permits may be reassigned or transferred to a new owner and/or operator with prior approval of the CUO:

a. The permittee must give at least thirty (30) days advance notice to the CUO;

b. The notice must include a written certification by the new owner which:

(1) States that the new owner has no immediate intent to change the facility's operations and processes;

(2) Identifies the specific date on which the transfer is to occur;

(3) Acknowledges full responsibility for complying with the existing permit.

5. Permit Termination. Pretreatment permits may be terminated for the following reasons:

a. Falsifying self-monitoring reports;

b. Tampering with monitoring equipment;

- c. Refusing to allow timely access to the facility premises and records;
- d. Failure to meet effluent limitations;
- e. Failure to pay fines;
- f. Failure to pay sewer charges;
- g. Failure to meet compliance schedules.

6. Permit Re-issuance. The user shall apply for permit re-issuance by submitting a complete permit application a minimum of ninety (90) days prior to the expiration of the user's existing permit.

7. Continuation of Expired Permits. An expired permit will continue to be effective and enforceable until the permit is re-issued if:

- a. The industrial user has submitted a complete permit application at least ninety (90) days prior to the expiration date of the user's existing permit;
- b. The failure to re-issue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the industrial user.

8. Special Agreements. Nothing in these Regulations shall be construed as preventing any special agreement or arrangement between the POTW and any user whereby wastewater of unusual strength or character is accepted into the POTW and specially treated and subject to any payment or user charges, as may be applicable. However, no discharge which violates pretreatment standards will be allowed under the terms of such special agreements. If, in the opinion of the CUO, the wastewater may have the potential to cause or result in any of the following circumstances, no such special agreement will be made:

- a. Pass-through or interference;
- b. Endanger municipal employees or the public.

Section 2.05 Significant Industrial User ("SIU"). Notwithstanding any other provision of these Regulations, Significant Industrial Users shall be subject to the following requirements:

1. New connections and existing connections that subsequently become subject to these Regulations shall install and start-up any pretreatment technology prior to discharge and achieve compliance within 90 days after the commencement of discharge.

2. Users subject to subparagraph 1 above shall have ninety (90) days after commencement of discharge to submit a Compliance Report to the CUO updating the permit application, required by Title IV with actual production, flow, and pollutant data. The forms for this report will be supplied by the CUO.

3. The CUO, in accordance with Section 403.6 (c) (2), ~~and (5)~~, and (6) of the Federal Pretreatment Regulations (40 CFR §403), may convert categorical limits based on mass per unit of production to equivalent mass per day or concentration limits. Users subject to

Comment [PL13]: This refers to converting limits to equivalent concentration-based limits.

a production based standard shall then be required to comply with the equivalent limits in lieu of the promulgated standards.

4. A determination of significant noncompliance shall automatically institute the appropriate enforcement and penalty actions as outlined in Title V of these Regulations.

5. All significant industrial users shall be required to submit to the CUO Compliance Reports on the user's self-monitoring on a quarterly basis. The deadline for submittal shall be a part of each users specific permit conditions. Industrial users with categorical standards that require compliance with a BMP or pollution prevention alternative shall submit documentation to determine compliance with the standard when submitting quarterly self-monitoring reports.

Comment [PL14]: OAC 3745-3-08(E)(4)(f)

CHAPTER 3 - STANDARD CONDITIONS FOR DISCHARGE PERMITS

All dischargers to the public sewers that are subject to the permit requirements of these Regulations shall also be subject to the following standard conditions and shall have them incorporated as a portion of their formal discharge permit.

Section 3.01 General Conditions.

1. Severability. The provisions of a discharge permit are severable, and, if any provision of the permit or the application of any provision of the permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of the permit shall not be affected thereby.
2. Duty to Comply. The permittee must comply with all conditions of the permit. Failure to comply with the requirements of the permit may be grounds for administrative action or enforcement proceedings including civil or criminal penalties, injunctive relief, and summary abatements:
3. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact to the public treatment plant or the environment resulting from non-compliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the non-complying discharge.
4. Permit Modifications. The discharge permit may be modified in accordance with Chapter 2 of Title IV.
5. Permit Termination. The discharge permit may be terminated pursuant to the conditions of Chapter 2 of Title IV.
6. Permit Appeals. The permittee may petition to appeal the terms of the permit within thirty (30) days of the notice.

This petition must be in writing; failure to submit a petition for review shall be deemed to be a waiver of the appeal. In its petition, the permittee must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to be placed in the permit.

The effectiveness of the permit shall not be stayed pending a reconsideration by the Board. If, after considering the petition and any arguments put forth by the Chief of Utility Operations, the Board determines that reconsideration is proper, it shall remand the permit back to the Chief of Utility Operations for reconsideration and possible reissuance. Those permit provisions being reconsidered by the Chief of Utility Operations shall be stayed pending reissuance.

The Board of Municipal Utilities' decision not to reconsider a final permit shall be considered final administrative action for purposes of judicial review. The permittee seeking judicial review of the Board's final action must do so by filing a complaint with the court of competent jurisdiction.

7. Permit Transfer. Permits may be reassigned or transferred to a new owner and/or operator upon the written consent of the CUO in accordance with Chapter 2 of Title IV.

8. Duty to Reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must submit an application for a new permit at least 90 days before the expiration date of the existing permit.

9. Continuation of Expired Permits. An expired permit will continue to be effective and enforceable in accordance with Chapter 2 of Title IV.

10. Property Rights. The issuance of a permit does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any violation of federal, state, or local laws or regulations.

11. Dilution. The permittee shall not increase the use of potable or process water or, in any way, attempt to dilute an effluent as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the permit.

12. General Discharge Prohibitions. The permittee shall comply with all the general prohibitive discharge standards in these Regulations.

13. Compliance with Applicable Pretreatment Standards and Requirements. Compliance with the permit does not relieve the permittee from its obligations regarding compliance with any and all applicable local, state, and federal pretreatment standards and requirements including any such standards or requirements that may become effective during the term of the permit.

Section 3.02 Certification Requirements. All applications, reports, or information submitted to the Chief of Utility Operations must contain the following certification statement:

"I certify under penalty of perjury and other applicable law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Section 3.03 Signatures on Applications and Reports. All applications, reports, or other documents required by these Regulations and submitted to Avon Lake Regional Water shall be signed as follows by an authorized representative of the industrial user. An authorized representative may be:

1. ~~By a~~^A responsible corporate officer, if the Industrial User submitting the reports is a corporation. For the purpose of this paragraph, a responsible corporate officer means

(a) ~~e~~ Either a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or who is duly authorized to legally bind the corporation.

(b) The manager of one or more manufacturing, production, or operation facilities, provided the manager:

Comment [PL15]: OAC 3745-3-08(F)(1)(b)

(i) Is authorized to make management decisions that govern the operation of the regulated facility, including having explicit or implicit duty of making major capital investment recommendations, and of initiating and directing other comprehensive measures, to assure long-term environmental compliance with environmental laws and regulations;

(ii) Can ensure that the necessary systems are established or that the necessary actions are taken to gather complete and accurate information for control mechanism requirements; and

(iii) Is assigned or delegated the authority to sign documents in accordance with corporate procedures.

2. ~~By a~~ general partner or proprietor if the Industrial User submitting the reports is a partnership or sole proprietorship respectively;

3. The principal executive officer having responsibility for the overall operation of the discharging facility if the Industrial User submitting the reports is a federal, state, or local governmental entity, or its agents; or

4. By a member or manager if the applicant is a limited liability company.

Section 3.04 Operation and Maintenance of Pollution Controls.

1. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes but is not limited to: effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

2. Duty to Halt or Reduce Activity. Upon reduction of efficiency of operation or loss or failure of all or part of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control its production or discharges or both until operation of the treatment facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities.

- a. Bypass is prohibited unless it is unavoidable to prevent loss of life, personal injury, or severe property damage, or no feasible alternatives exist.
- b. The permittee may allow bypass to occur which does not cause effluent limitations to be exceeded but only if it is also for essential maintenance to assure efficient operation.
- c. Notification of bypass:

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior written notice, at least ~~thirtyten~~ (30) days before the date of the bypass to the Chief of Utility Operations,

(2) Unanticipated bypass. The permittee shall immediately notify the Chief of Utility Operations and submit a written notice to the POTW within five (5) days after the bypass. This report shall specify:

- (i) A description of the bypass, its cause and duration;
- (ii) Whether the bypass has been corrected; and
- (iii) The steps being taken or to be taken to reduce, eliminate, and prevent a reoccurrence of the bypass.

4. Removed Substances. Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in accordance with Section 405 of the Clean Water Act (33 U.S.C. § 1345) and Subtitles C and D of the Resource Conservation and Recovery Act (40 CFR Parts 260-279).

Section 3.05 Monitoring and Records.

1. Monitoring Facilities. If so required by its/his permit, a user shall be required to provide and operate a suitable monitoring location and/or equipment to facilitate observation, sampling, and measurement of the discharge. Such monitoring locations and/or equipment shall be accessible and safely located and shall be constructed in accordance with plans approved by the Chief of Utility Operations. The monitoring location and/or equipment shall be installed by the user at his expense and shall be maintained by the user so as to be safe and accessible at all reasonable times.

2. Representative Sampling. Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in the permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. All equipment used for sampling and analysis must be routinely calibrated, inspected, and maintained to ensure its accuracy. Monitoring points shall not be changed without notification to and the approval of the Chief of Utility Operations.

3. Flow Measurements. If flow measurement is required by the permit, the appropriate flow measurement devices and methods consistent with approved scientific

Leave

Comment [N 16]: There is no specific rule about this. This is just Ohio EPA's suggestion, so you can keep it at 10 days if you want.

practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ten percent (10%) from true discharge rates throughout the range of expected discharge volumes.

4. Analytical Methods to Demonstrate Continued Compliance. All sampling and analysis required by the permit shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, otherwise approved by EPA, or as specified in the permit.

a. Grab samples shall be taken for pH, hexavalent chromium, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds. All other pollutants are done by flow proportional sampling and are representative of discharge.

b. Using protocols (including appropriate preservations) specified in 40 CFR 136 and appropriate US EPA guidance, multiple grab samples collected during a twenty-four-hour period may be composited prior to the analysis as follows: for hexavalent chromium, cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory.

Comment [PL17]: OAC 3745-3-06(H)(7)

5. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures identified in these Regulations, the results of this monitoring shall be included in the permittee's self-monitoring reports.

6. Inspection and Entry. The permittee shall allow the Chief of Utility Operations or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit;

d. Sample or monitor, for the purposes of assuring permit compliance, any substances or parameters at any location; and

e. Inspect any production, manufacturing, fabricating, or storage area where pollutants, regulated under the permit, could originate, be stored, or be discharged to the sewer system.

7. Retention of Records.

a. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Chief of Utility Operations at any time.

b. All records that pertain to matters that are the subject of special orders or any other enforcement or litigation activities brought by the Board shall be retained and preserved by the permittee until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

8. Record Contents. Records of sampling and analyses shall include:

a. The date, exact place, time, and methods of sampling or measurements, and sample preservation techniques or procedures;

b. Who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. Who performed the analyses;

e. The analytical techniques or methods used; ~~and~~

f. The results of such analyses; and

g. The documentation showing chain of custody.

9. Falsifying Information. Knowingly making any false statement on any report or other document required by this permit or knowingly rendering any monitoring device or method inaccurate, is a crime and may result in the imposition of criminal sanctions and/or civil penalties.

Section 3.06 Additional Reporting Requirements.

1. Planned Changes. The permittee shall give notice to the Chief of Utility Operations 90 days prior to any facility expansion, production increase, or process modifications which results in new or substantially increased discharges or a change in the nature of the discharge, including the listed or characteristic hazardous wastes for which the permittee has submitted initial notification under 40 CFR 403.12 (P).

2. Anticipated Noncompliance. The permittee shall give a 30 day advance notice to the Chief of Utility Operations of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Automatic Resampling. If the results of the permittee's wastewater analysis indicates a violation has occurred, the permittee must notify the Chief of Utility Operations within 24 hours of becoming aware of the violation and repeat the sampling and pollutant analysis and submit, in writing, the results of this repeat analysis within 30 days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the

industrial user, the control authority shall perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis.

Comment [PL18]: OAC 3745-3-08(H)(6)

4. Duty to Provide Information. The permittee shall furnish to the Chief of Utility Operations within 30 days any information which the Chief of Utility Operations may request to determine whether cause exists for modifying, revoking, re-issuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also, upon request, furnish to the Chief of Utility Operations within thirty (30) days copies of any records required to be kept by the permit.

5. Operating Upsets. Any permittee that experiences an upset in operations that places the permittee in a temporary state of noncompliance with the provisions of the permit shall inform the Chief of Utility Operations within 24 hours of becoming aware of the upset.

A written follow-up report of the upset shall be filed by the permittee with the Chief of Utility Operations within five (5) days. The report shall specify:

- a. Description of the upset, the cause(s) thereof, and the upset's impact on the permittee's compliance status;
- b. Duration of noncompliance, including exact dates and times of noncompliance, and if not corrected, the anticipated time the noncompliance is expected to continue; and
- c. All steps taken or to be taken to reduce, eliminate, and prevent recurrence of such an upset.

The report must also demonstrate that the treatment facility was being operated in a prudent and workmanlike manner.

A documented and verified operating upset shall be an affirmative defense to any enforcement action brought against the permittee for violations attributable to the upset event.

6. Annual Publication. A list of all industrial users which during the previous twelve (12) months, were in significant noncompliance of applicable Pretreatment Standards or other Pretreatment Requirements shall, at least, annually be published by the Chief of Utility Operations in a daily newspaper within the service area. Significant noncompliance shall be determined in accordance with Title V of these Regulations.

7. Recovery of Costs Incurred. In addition to civil and criminal liability, the permittee violating any of the provisions of a permit or these Regulations or causing damage to or otherwise inhibiting the City of Avon Lake wastewater disposal system shall be liable to the City for any expense, loss, or damage caused by such violation or discharge. The Chief of Utility Operations shall bill the permittee for the costs incurred by the City for any cleaning, repair, or replacement work caused by the violation or discharge.

8. Confidential Information. Any information and/or data supplied by the user in reports, questionnaires, monitoring programs, and inspections may be made available to the public or other governmental agencies unless the user requests and demonstrates that such information should be kept confidential. Any information submitted by the user claimed as confidential must be in accordance with 40 CFR Part 2 (Public Information). Such information

may be made available to the federal, state, or local authorities during a judicial review or enforcement proceeding involving the user.

Information and data having to do with the quality and quantity of the wastewater discharges of a user shall not qualify as confidential.

[END OF TITLE IV]

TITLE V - ENFORCEMENT

CHAPTER 1 - PENALTIES AND DEFENSE

Section 1.01 Judicial Remedies. If any person or entity violates any provision of Title II-Water System, Title III-Sewers or Title IV-Discharge Permits, or discharges sewage, industrial wastes, or other wastes into the public sewer system contrary to any of the provisions of these Regulations or any order or permit issued hereunder, the Chief Utilities Executive may commence an action against such person or entity for appropriate legal and/or equitable relief in the Common Pleas Court for Lorain County.

Section 1.02 Injunctive Relief. Whenever a person or entity violates any provision of Title II-Water System, Title III-Sewers or Title IV-Discharge Permits, or violates or continues to violate any of the provisions of these Regulations or any permit or order issued hereunder, the Chief Utilities Executive may petition the Court for the issuance of a preliminary or permanent injunction or both, as may be permitted by the Ohio Revised Code, which restrains or compels the activities on the part of the person or entity.

Section 1.03 Civil Penalties.

1. Any person or entity violates any provision of Title II-Water System, Title III-Sewers or Title IV-Discharge Permits, or violates or continues to violate any of the provisions of these Regulations or any order or permit issued hereunder, shall be liable to Avon Lake Regional Water for a civil penalty of not more than one thousand dollars (\$1,000.00) per violation, to be assessed by the Chief Utilities Executive, plus actual damages incurred by Avon Lake Regional Water, for as long as the violation continues. In addition to the above described penalty and damages, Avon Lake Regional Water may recover attorney's fees, court costs, and all other expenses associated with all such enforcement activities, including sampling and monitoring expenses.

2. Avon Lake Regional Water shall take all action necessary to recover all such penalties, damages, fees, and costs. In determining the amount of the penalty to be assessed and damages to be recovered, Avon Lake Regional Water shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the person or entity, the compliance history of the person or entity, and any other factor as justice requires.

Section 1.04 Criminal Penalties.

1. Violations.

a. Any person or entity who violates any provision of these Regulations or any orders or permits issued hereunder shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00) per violation per day or imprisonment for not more than one year or both.

b. In the event of more than one conviction described in Subparagraph 1(a) above, the person or entity shall be punished by a fine not to exceed three thousand dollars (\$3,000.00) per violation per day or imprisonment for not more than three years or both.

2. Falsifying Information.

a. Any person or entity who knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to these Regulations, or wastewater permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under these Regulations shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation or imprisonment for not more than one year or both.

b. In the event of more than one conviction described in subparagraph (1) above, the person or entity shall be punished by a fine not to exceed three thousand dollars (\$3,000.00) per violation or imprisonment for not more than three years or both.

Section 1.05 No Waiver. The Board, the CUE, or the CUO may refer any person or entity to the appropriate officials for the initiation of investigation, prosecution, or other proceedings for a criminal violation under these Regulations without commencing enforcement proceedings outlined in this Chapter. The failure or delay by the Board to enforce any of these Regulations shall not operate as a waiver or otherwise preclude the Board's enforcement of these Regulations at a later time, subject to the applicable statute of limitations. Additionally, no waiver shall be enforceable against the Board unless such waiver is in writing and signed by a duly authorized person.

Section 1.06 Affirmative Defenses.

1. Treatment Upsets.

a. Any industrial user which experiences an upset in operations that places it in a temporary state of noncompliance, which is not the result of operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation, shall inform the Chief of Utility Operations thereof immediately upon becoming aware of the upset. Where such information is given orally, a written report thereof shall be filed by the user within five days after the upset. The report shall contain:

- (1) A description of the upset, its cause(s), and impact on the discharger's compliance status
- (2) The duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance is continuing, the time by which compliance is reasonably expected to be restored.
- (3) All steps taken or planned to reduce, eliminate, and prevent recurrence of such an upset.

b. An industrial user which complies with the notification provisions of this Section in a timely manner shall have an affirmative defense to any enforcement action brought by the Chief Utilities Executive for any noncompliance with these Regulations or an order or permit issued hereunder by the user which arises out of violations attributable to and alleged to have occurred during the period of the documented and verified upset.

2. Treatment Bypasses.

a. A bypass of the treatment system is prohibited unless all of the following conditions are met:

(1) The bypass of the treatment system is prohibited unless all of the following conditions are met:

(2) There was no feasible alternative to the bypass, including the use of auxiliary treatment or retention of the wastewater; and

(3) The industrial user properly notified the Chief of Utility Operations as described in subparagraph b below.

b. Industrial users must provide immediate notice to the Chief of Utility Operations upon discovery of an unanticipated bypass. If necessary, the Chief of Utility Operations may require the industrial user to submit a written report explaining the cause(s), nature, and duration of the bypass, and the steps being taken to prevent its recurrence.

c. An industrial user may allow a bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it is for essential maintenance to ensure efficient operation of the treatment system. Industrial users anticipating a bypass must submit notice to the Chief of Utility Operations at least 10 days in advance. The Chief of Utility Operations may only approve the anticipated bypass if the circumstances satisfy those set forth in this Section.

Section 1.07 Notification of Violation.

1. Whenever the Chief Utilities Executive or the Chief of Utility Operations finds that any person or entity has violated or is violating any provision of Title II-Water System, Title III-Sewers or Title IV-Discharge Permits, or violates or continues to violate any of the provisions of these Regulations or any permit or order issued under these Regulations, the Chief Utilities Executive shall serve upon said person or entity a written Notice of Violation by U.S. Certified Mail, return receipt requested. The Notice of Violation shall include a detailed description of the alleged violation for which action may be commenced by the Board, and an explanation of the recipient's required actions pursuant to these Regulations.

2. Within thirty (30) days of the receipt of the notice, the notified person or entity shall submit in writing to the Chief Utilities Executive, an explanation of the cause of the violation and a plan for the satisfactory correction and prevention thereof, including specific required actions and time schedules for completing the same.

3. Submission of the plan in no way relieves the person or entity of liability for any violation occurring before or after receipt of the Notice of Violation.

4. A Notice of Violation containing any violation of Chapter 3734 of the Ohio Revised Code shall also comply with the requirements of Section 3734.101(B) of the Ohio Revised Code, including a copy of the Notice of Violation shall be sent by U.S. Certified Mail to the Director of the Ohio Environmental Protection Agency and the Ohio Attorney General.

Section 1.08 Show Cause Hearing.

1. Any person who or entity which has been cited for a violation and upon whom the Chief of Utility Operations has recommended enforcement actions be imposed shall, upon written request to the Board made within thirty (30) days of receipt of the Notice of Violation, have the opportunity to show cause, in an evidentiary hearing before the Board, why the enforcement actions should not be imposed ("Show Cause Hearing"). Should the person or entity fail to make a written request for a Show Cause Hearing within thirty (30) days after receipt of the Notice of Violation, and the person or entity shall be deemed to have waived any right to a Show Cause Hearing, and the Board shall impose such fine or penalty against such person or entity as it deems appropriate under the facts.

2. Following the Board's receipt of a timely written request by the cited person or entity for a Show Cause Hearing, the Board shall cause a notice of the Show Cause Hearing to be served on the person or entity cited personally or by certified mail (return receipt requested).

3. The notice of the Show Cause Hearing shall be served at least ten (10) days prior to the hearing and shall include the date, time, and place of the hearing, the proposed enforcement action, and the reasons for such actions. The duly notified person or entity wishing to appear at and participate in the Hearing must so notify the Chief of Utility Operations not less than five (5) days prior to the date of the hearing. The Show Cause Hearing shall be tape recorded, and the Board shall maintain the recording of the Show Cause Hearing as required by these Regulations and law. All witnesses at the Show Cause Hearing shall testify under oath. The person or entity requesting the Show Cause Hearing may be represented by counsel, may confront and examine all witnesses, and may present all evidence concerning the alleged violation.

4. After the Show Cause Hearing, the Board shall promptly inform the cited person or entity, by written notice, of the determination of the Board regarding the cited violation and the enforcement action, if any, to be taken including the assessment of any fine or penalty.

Section 1.09 Consent Orders.

1. In order to assure correction of a violation, the Chief Utilities Executive may enter into a Consent Order with the person or entity responsible for the noncompliance.

2. The Consent Order will be a written agreement between the parties that assures voluntary compliance and will include specific action to be taken by the person or entity in violation to correct the noncompliance within a specified period of time. The Consent Order may contain such other provisions or conditions reasonably determined by the CUE.

Section 1.10 Compliance Orders.

1. When the CUE finds that a person or entity has violated or continues to violate these Regulations or a permit or order issued hereunder, he may issue a Compliance Order to the responsible person or entity directing that, following a specific time period, sewer or water service shall be discontinued unless adequate correction to the noncompliance has been completed. Such Orders may contain any requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of a pretreatment technology or the implementation of additional self-monitoring and management practices.

2. All Compliance Orders shall include the opportunity for the appropriate person or entity to show cause in accordance with this Chapter.

3. All Compliance Orders shall be served on the person or entity who has violated or continues to violate these Regulations personally or by certified mail (return receipt requested).

Section 1.11 Cease and Desist Orders. When the CUE finds that a person or entity has violated or continues to violate these Regulations or any permit or order issued hereunder, the CUE may issue an order to cease and desist all such violations and direct the person or entity in noncompliance to:

1. Comply with these Regulations immediately; and

2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

Section 1.12 Emergency Suspensions.

1. The CUE Operations shall have the authority to require or, when circumstances so dictate, cause the cessation of any discharge into the City's wastewater treatment and public sewer system which either significantly endangers the health or welfare of the public or environment, or poses a significant threat to the effective operation of the Water Pollution Control Center. The Chief of Utility Operations shall give notice, if possible, to the owner, lessor, occupant, agent, officer, or authorized representative of the user prior to causing the cessation of the discharge. The emergency cessation shall be accomplished using reasonable measures under the circumstances.

2. The CUE shall have the authority to terminate the service of any person or entity who refuses reasonable access to the user's premise by representatives of the City for the purpose of inspection or monitoring. Such termination shall take place no sooner than 24 hours after notice of proposed termination has been delivered and provided that reasonable access continues to be refused.

3. The CUE shall have the authority to terminate the service of any user who makes a new connection to the public sewer system without authorization by the CUE or his designee. Such termination shall take place no sooner than 24 hours after written notice of the proposed termination to the user.

4. After taking any of the actions described in subparagraphs (1), (2), or (3) of this Section, the CUE shall give the affected user a written notice of violation and, either concurrently or in a separate writing, of the precondition, including the payment of fines, for restoration of service. These notifications shall be made as soon as practicable. Any affected user can request an opportunity to show cause in accordance with this Chapter as to why the preconditions for the restoration of service should not be enforced.

5. If a user upon whom the notice prescribed by this Section refuses to receive said notice, then written notice shall not be required, provided that notice is given to the extent possible under the circumstances. For the purposes of subparagraphs (2) and (3) of this Section, the time of notice shall be the time receipt of notice was refused.

Section 1.13 Termination of Service.

1. If an Order referenced in these Regulations is not complied with in accordance with its terms, then the CUE shall terminate service to that person within 24 hours of notice given to the affected user regarding the scheduled termination. Notice shall be given in accordance with this Chapter.

2. Service terminated in accordance with subparagraph (1) of this Section shall not be restored until the above referenced Order is complied with and the appropriate reconnection charge and applicable fine, if any, are paid, or as the Board may direct in a subsequent Order.

3. The decision issued by the Board pursuant to this Chapter shall constitute a final action from which an appeal may be made to a court of competent jurisdiction.

Section 1.14 Annual Publication of Significant Violations. The Chief of Utility Operations shall publish, at least annually, in the daily newspaper circulated in the service area, a description of those industrial users which were found to be in significant noncompliance, as defined below, with any provisions of these Regulations or any permit or order issued hereunder during the period since the previous publication.

For industrial users which do not fall under the category of a Significant Industrial User, a Significant Noncompliance ("SNC") shall be determined by meeting the criteria in Section 1.14 items 1.c., 1.d. or 5 below.

For significant industrial users, a SNC shall be determined by any of the following:

1. Violations of Discharge Limits:
 - a. Chronic Violations – Sixty-six percent (66%) or more of the measurements exceed the same daily maximum limit, ~~or the same average limit, or instantaneous limit~~ in a six-month period (any magnitude exceeding the limit) for the same pollutant parameter. Chronic violations are applicable to any permitted monitoring point.
 - b. Technical Review Criteria (TRC) Violations – Thirty-three percent (33%) or more of the measurements for each pollutant parameter exceed the same daily maximum, ~~or the same average limit, or instantaneous limit~~ by more than the TRC in a six-month period. TRC violations are applicable to any permitted monitoring point.
- Group 1 for Compatible Pollutants (BOD, TSS, Fats, Oil and Grease): TRC = 1.4 or 40% over the Limit
- Group 2 for all other Pollutants (all other pollutants, except pH): TRC = 1.2 or 20% over the Limit
 - c. Any other violation of a discharge limit (average or daily max.) that the CUO believes has caused, alone or in combination with other discharges, interference (e.g., slug loads) or pass-through or endangered the health of Avon Lake Regional Water personnel or the public.

Comment [PL19]: There is a distinction between what a SIU does to be in SNC and what a non-SIU does to be in SNC.
OAC 3745-3-03(C)(2)(h)

d. Any discharge of a pollutant which has caused imminent endangerment to human health, welfare, or the environment or has resulted in Avon Lake Regional Water's exercise of its emergency authority to halt or prevent such a discharge.

2. Violations of compliance schedule milestones for starting construction, completing construction, or attaining final compliance by ninety (90) days or more after the schedule date.

3. Failure to provide reports for compliance schedules, self-monitoring data, or categorical standards (baseline monitoring reports, 90-day compliance reports, etc.) within thirty (30) days from the due date.

4. Failure to accurately report noncompliance.

5. Any other violation or group of violations (including violations of BMPs) that the CUO determines will adversely affect the operation or implementation of the Avon Lake Pretreatment Program.

A determination of significant noncompliance shall automatically be cause for the Board's commencing the appropriate enforcement and penalty actions as outlined in this Title V.

LEAVE

~~Comment [PL 20]: OAC 3745-3-03(C)(2)(h) says 45 days, but 30 days is ok.~~

**AMENDMENT NO: 8
TO AGREEMENT
BETWEEN
OWNER AND ENGINEER**

This Amendment No: 8 is made and entered into this day of June, 2016 to the Agreement between CDM Smith Inc. (CDM Smith) ("ENGINEER") and Avon Lake Regional Water ("OWNER") dated May 3, 2007, ("the Agreement").

WHEREAS, ENGINEER and OWNER entered into the Agreement for the professional engineering services to design improvements for the Plant Improvements Project at the Avon Lake Water Pollution Control Center, and

WHEREAS, the parties desire to amend the Agreement so as to amend the scope of work, time periods of performance and payment, and/or responsibilities of OWNER; and

WHEREAS, the Agreement provides that any amendments shall be valid only when expressed in writing and signed by the parties.

NOW THEREFORE, in consideration of the mutual understandings and Agreements contained herein, the parties agree to amend the Agreement as follows:

1. The Basic Services of ENGINEER as described in the Agreement are amended and supplemented as follows:
See attached Exhibits A, B, and C dated June 3, 2016.
2. The responsibilities of OWNER as described in the Agreement are amended and supplemented as follows:
See attached Exhibits A, B, and C dated June 3, 2016.
3. The time periods for the performance of ENGINEER's services as set forth in the Agreement are amended and supplemented as follows:
See attached Exhibits A, B, and C dated June 3, 2016.
4. The payment for services rendered by ENGINEER shall be as set forth below:
OWNER shall reimburse ENGINEER for the expenditures incurred in the accomplishment of all work and services set forth above in a total fee amount not to exceed \$2,132,884.
5. Except as herein modified, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date indicated above for the purpose herein expressed.

ENGINEER

OWNER

DATE:

DATE:

EXHIBIT A
AVON LAKE REGIONAL WATER
CITY OF AVON LAKE, OHIO

AVON LAKE WATER POLLUTION CONTROL CENTER
PLANT IMPROVEMENTS PROJECT

CONSTRUCTION ADMINISTRATION AND RESIDENT PROJECT REPRESENTATIVE
SERVICES

SCOPE OF SERVICES AND FEE PROPOSAL

June 3, 2016

This is an exhibit attached to and made part of Amendment No. 8 dated June _____, 2016, between Avon Lake Regional Water (OWNER or ALRW) and CDM Smith Inc. (ENGINEER or CDM Smith) for professional services.

Project Description

The main goal of the Plant Improvements Project at the Avon Lake Water Pollution Control Center (WPCC) is to replace or rehabilitate aged equipment that has reached its useful service life, does not meet capacity needs, and has performance limitations. Other goals of these improvements are to incorporate biological nutrient removal (BNR) for harmful algal bloom (HAB) prevention and to capture additional treatment capacity through operational changes or minor improvements so that major capital improvements can be postponed. Likewise, these improvements will enhance the operation of the facility and align the plant for long-term expansion.

Currently, CDM Smith is providing bidding and award services for Avon Lake Regional Water on the WPCC project. At ALRW's request, CDM Smith is providing a Scope of Services and Fee Proposal for construction administration (CA) and resident project representative (RPR) services in conjunction with the project. The form and scope of this proposal are based on CDM Smith's understanding of the scope of services, familiarity with the work to be performed, and discussions with ALRW staff.

The construction duration specified in the Contract Documents for the Plant Improvement Project is 3 years. This Scope and Fee Proposal covers the first two years of the project. If the Contractor does not achieve Final Completion in two years, then this contract will be amended accordingly.

A detailed outline of CDM Smith's scope of services is given below.

Construction Administration and Resident Project Representative Services

Construction Administration Services

In addition to the scope of services listed in Exhibit B attached to Amendment No. 8 for construction administration services, CDM Smith will perform the following tasks:

1. Assist ALRW in addressing comments related to the zoning, building, and SWP3 permits. Provide documentation as necessary to obtain the permits.
2. Participate in the pre-construction meeting. Prepare and distribute meeting minutes.
3. Prepare responses for Contractor requests for information (RFIs). Up to 310 RFIs are estimated. Interpret and clarify the Contract Drawings and Specifications and prepare supplemental drawings and specifications when clarification is required or to resolve changes brought by actual field conditions encountered. CDM Smith will evaluate ALRW's and/or Contractor's requests for materials and equipment substitutions for items specified in the Contract Documents and ALRW and/or Contractor's requests for design changes and/or deviations from the Contract Documents. CDM Smith will assist the ALRW in the solicitation, review, negotiation, and preparation of change orders. CDM Smith will prepare the necessary documents for the implementation of the contract modifications authorized by ALRW. Up to 15 change order packages (i.e., packages with multiple change orders) are estimated.
4. During the course of construction work, the Contractor shall red-line/mark-up and maintain file copies of the Contract Drawings showing deviations in the work as approved from the Contract Drawings. RPR will keep his own set of red-lines, take pictures throughout project, and ensure the Contractor is maintaining red-line/mark-up sets on a daily basis as the work occurs.
5. Participate in up to 34 construction progress meetings and other job-related meetings.
6. Upon substantial completion of the project, CDM Smith will conduct a final inspection with ALRW and the Contractor (two-day effort anticipated) and prepare a punch list of outstanding items, which must be completed or repaired prior to acceptance of the Contractor's work. The punch list will be prepared and distributed to the Contractor and ALRW. A follow-up inspection (two-day effort anticipated) will be conducted to verify that the Contractor has completed all items on the punch list and achieved Final Acceptance (Final Completion).
7. Provide technical consultation support with a factory-trained manufacturer's representative for on-site equipment installation and commissioning (startup and testing). Provide assistance with refining and adjusting equipment and systems. Make sure that commissioning work is properly executed and documented. Confirm that warranties are submitted to ALRW.
8. Assist manufacturer's representatives in training plant staff to operate and maintain the new facilities and equipment. CDM Smith will coordinate and administer the training sessions (classroom training) by manufacturer's representatives.
9. Review manufacturer-supplied, equipment-specific operation and maintenance (O&M) training submittals and O&M Manuals.

Resident Engineering Services

CDM Smith will provide the services of a Resident Project Representative for the duration of the project. The RPR will be on-site for the projected 24-month construction period. Exhibit C attached to Amendment No. 8 defines the RPR’s scope of services.

Terms and Conditions

Project Schedule

A summary of the major project milestones is presented below:

- Notice to Award June 10, 2016
- Contract Execution June 10, 2016
- Notice to Proceed June 14, 2016
- Contract Time Start June 14, 2016
- Substantial Completion February 14, 2019
- Final Completion June 14, 2019

Note that the above schedule is based on the schedule milestones (i.e., calendar days) specified in the Contract Documents. The scope and fee of this contract is based on the Contractor achieving Final Completion in two years instead of three.

Fees and Payment

ALRW shall reimburse CDM Smith for the expenditures incurred in the accomplishment of all work and services set forth above in a total fee amount not to exceed \$2,132,884. The scope and fee of this contract is based on the Contractor achieving Final Completion in two years instead of three. If project completion extends beyond two years, then the scope and fee will be amended accordingly.

The proposed engineering fee breakdown given in the table below is based on the project approach and the scope of services outlined in this proposal for this project.

Proposed Engineering Fee Schedule

Task	Labor Fee	Other Direct \$	Total \$/Task
Construction Administration Services	\$1,593,414	\$33,500	\$1,626,914
Resident Project Representative Services	\$484,620	\$21,350	\$505,970
PROJECT TOTAL	\$2,078,034	\$54,850	\$2,132,884

It is understood and agreed that the compensation for the services described above is a “lump sum” method of compensation. Partial payments will be made on a monthly basis in proportion to the percentage of work completed and the balance of payment made when the scope of work stated herein is completed. Fee amount may not be exceeded without prior written authorization by ALRW. CDM Smith invoices will be prepared in accordance with ALRW requirements.

Additional Services

Additional services, such as review of RFIs, preparation of change orders, and meetings beyond the numbers set forth above in this proposal, may be required during this project. It is understood that if additional services are needed, then it will be paid for out of a project contingency.

Communication (eRoom)

All shop drawings/submittals (for review and approved) and RFIs (for review and final) shall be placed online so that the information is accessible to ALRW and the Contractor. Updates shall be maintained at least with weekly updates. As part of project closeout, CDM Smith will prepare a CD with all eRoom files for ALRW.

Standard of Care

The standard of care for all professional engineering and related services performed or furnished by CDM Smith will be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

Assumptions and Owner's Responsibilities

This proposal is based on the following assumptions related to the scope of work and the understanding that ALRW will assume the following responsibilities:

1. ALRW will provide available existing shop, construction, as-built, and record drawings of the plant site, equipment, and facilities.
2. Post-construction services (i.e., preparation of Record Drawings and O&M Manuals) are not included in this contract. Record Drawings include drawing revisions and supplemental drawings to show final "As-Built" conditions, which shall incorporate all sketches, clarifications, field changes, and changes orders and also include the Contractor's reinforcing steel shop drawings.
3. Up to 310 RFIs are estimated.
4. Up to 15 change order packages are estimated.
5. Up to 400 shop drawings/submittals are estimated. This total count includes estimated resubmittals and multi-discipline review submittals.
6. ALRW will enforce reimbursement to CDM Smith by Contractor for repetitive shop drawing/submittal reviews. As per Specification Section 01300, shop drawings, O&M manuals, and other submittals will be reviewed no more than twice at ALRW's expense. All subsequent reviews will be performed at the Contractor's expense. Contractor shall reimburse ALRW for all costs invoiced by Engineer for the third and subsequent reviews.

EXHIBIT B
AVON LAKE REGIONAL WATER
CITY OF AVON LAKE

AVON LAKE WATER POLLUTION CONTROL CENTER
PLANT IMPROVEMENTS PROJECT

CONSTRUCTION ADMINISTRATION SERVICES

This is an exhibit attached to and made part of the Amendment No. 8 dated June ____, 2016, between Avon Lake Regional Water (OWNER or ALRW) and CDM Smith Inc. (ENGINEER or CDM Smith) for professional services.

1.0 ENGINEER'S SERVICES

1.1 Construction Phase

During the Construction Phase:

1.1.1 General Administration of Construction Contract

ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided herein. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

1.1.2 Visits to Site and Observation of Construction

In connection with observations of the work of Contractor while in progress:

1.1.2.1 ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 1.1. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based

on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 1.1.2.2 and other express or general limitations in this Agreement and elsewhere.

1.1.2.2 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

1.1.2.3 Duties, Responsibilities and Authority of the Resident Project Representative are set forth in Exhibit C.

1.1.3 Defective Work.

During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

1.1.4 Clarifications and Interpretations; Field Orders.

ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract

Documents.

1.1.5 Change Orders and Work Change Directives.

ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

1.1.6 Shop Drawings

ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Up to 400 shop drawings/submittals are estimated. This total count includes estimated resubmittals and multi-discipline review submittals.

1.1.7 Substitutes

ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

1.1.8 Inspections and Tests.

ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

1.1.9 Disagreements between OWNER and Contractor

ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

1.1.10 Applications for Payment.

Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

1.1.10.1 ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 1.1.10.1 are expressly subject to the limitations set forth in paragraph 1.1.10.2 and other express or general limitations in this Agreement and elsewhere.

1.1.10.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.1.11 Contractor's Completion Documents.

ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 1.1.6)

which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

1.1.12 Substantial Completion

Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

1.1.13 Final Notice of Acceptability of the Work

ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of paragraph 1.1.10.2) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

1.1.14 Limitation of Responsibilities

ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

1.1.15. Duration of Construction Phase

The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 1.1 are amended and supplemented as follows:

2.0 OWNER'S RESPONSIBILITIES

2.1 Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:

2.1.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;

- 2.1.2 The services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment;
- 2.1.3 Appropriate professional interpretation of all of the foregoing;
- 2.1.4 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;
- 2.1.5 Field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;
- 2.1.6 Property descriptions;
- 2.1.7 Zoning, deed and other land use restrictions; and
- 2.1.8 Other special data or consultations not covered in Article 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

- 2.2 Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.
- 2.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 2.4 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.
- 2.5 Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.
- 2.6 Provide, as may be required for the Project:
 - 2.6.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;
 - 2.6.2 Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and
 - 2.6.3 Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

2.7 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

2.7.1 That Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or

2.7.2 That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 2.7.1 and 2.7.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

2.8 Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

2.9 Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Special Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

2.10 If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

2.11 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 2.1, 2.2 and 2.4 through 2.11, inclusive) and other costs so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

2.12 Attend the pre-construction conferences, construction progress and other job-related meetings and Substantial Completion and final payment inspections.

2.13 Provide labor and safety equipment to open and protect manholes and/or to operate valves and hydrants as required by the ENGINEER.

2.14 Bear all costs incident to compliance with the requirements of the OWNER's Responsibilities.

3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

See Exhibit A attached to Amendment No. 8.

4.0 METHOD OF PAYMENT

The method of payment for Services rendered by ENGINEER shall be as set forth below:

See Exhibit A attached to Amendment No. 8.

5.0 SPECIAL PROVISIONS

OWNER has established the following special provisions and/or other considerations or requirements in respect of the Assignment:

N/A

EXHIBIT C
AVON LAKE REGIONAL WATER
CITY OF AVON LAKE, OHIO

AVON LAKE WATER POLLUTION CONTROL CENTER
PLANT IMPROVEMENTS PROJECT

DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY
OF THE RESIDENT PROJECT REPRESENTATIVE

This is an Exhibit attached to and made part of Amendment No. 8 dated June __, 2016 between Avon Lake Regional Water (OWNER or ALRW) and CDM Smith Inc. (ENGINEER or CDM Smith) for providing professional services.

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, as a result of such observations of Contractor's work, supervise, direct, or have control over any Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by any Contractor, for safety precautions and programs incident to the work of any Contractor, for any failure of any Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's Agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals schedule of values, and other schedules prepared by Contractor and consult with ENGINEER concerning

their acceptability.

2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings (but not Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
4. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Construction Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
5. *Shop Drawings and Samples:*
 - a. Record date of receipt of Shop Drawings and Samples.
 - b. Receive Samples that are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.
 - c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.
6. *Review of Work, Defective Work, Inspections, Tests and Start-ups:*
 - a. Report to ENGINEER whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform ENGINEER of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
 - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
 - d. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

- e. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
 - f. Accompany visiting inspectors representing public or other agencies having jurisdiction over the work, record the results of these inspections and report to ENGINEER.
7. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
8. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
9. *Records:*
- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, copies of Construction Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, approved Shop Drawing submittals and other Project-related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, Subcontractors present at the Site weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses, e-mail addresses, websites and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment.
10. *Reports:*
- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.

- d. Report immediately to ENGINEER and OWNER the occurrence of any accident.
11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.
 12. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
 13. *Completion:*
 - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
 - c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.
 - d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority by RPR

Resident Project Representative:

1. Shall not authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or any Constructor.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.