

**VOTING ORDER**

J. Fenderbosch  
R. James  
D. Kos  
L. Meiners  
M. O'Donnell  
J. Shondel  
D. Bucci

CITY OF AVON LAKE  
150 AVON BELDEN ROAD  
AVON LAKE, OHIO

The following business is to be considered at the regular meeting of the Avon Lake City Council on January 11, 2016 in the Council Chamber.

**Pledge of Allegiance**

**Roll Call:** Mr. Bucci, Mrs. Fenderbosch, Mr. James, Mr. Kos, Mr. Meiners, Mr. O'Donnell, Mr. Shondel, Mayor Zilka, Director of Law Lieberman, Director of Finance Presley, Public Works Director Reitz.

**Approval of Minutes:** December 14, 2015 and December 21, 2015 as prepared and published.

**Correspondence**

**Reports** Mayor  
Council President  
Public Works Director  
Director of Law  
Director of Finance  
Standing Committees  
Special Committees

**Audience Participation**

**Motions**

Authorizing the Mayor to apply for State funding for 2016 capital projects – R. James.

**Legislation**

**Third Readings:**

Temporary Legislation #10599, adopting a job description for the position of Cable Production Operator.

**Temporary Legislation #10605, adopting a Risk Management Policy for the Avon Lake Recreation Department.**

**Second Readings:**

**Temporary Legislation #10612, authorizing a cooperative agreement for construction of Lear Nagel sanitary sewer force main between the City of Avon Lake and the Ohio Water Development Authority.→**

**Temporary Legislation #10613, authorizing a cooperative agreement for construction of Mull/Norman sanitary sewer rehabilitation between the City of Avon Lake and the Ohio Water Development Authority.→**

**First Readings:**

**Temporary Legislation #10617, amending Codified Ordinance Section 886.21, the Income Tax Ordinance.→**

**Temporary Legislation #10618, amending Planning & Zoning Code Section 1214.07 (b) regarding the membership of the Zoning Board of Appeals.**

**Miscellaneous Business and Announcements**

**Public Input**

**Executive Session**

**In compliance with Ohio Revised Code Section 121.22, Council will adjourn to Executive Session to discuss imminent litigation.**

**Reconvening of Open Council Meeting**

**Adjournment**

BY: Mr. Bucci

TEMP NO: 10599

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADOPTING A JOB DESCRIPTION FOR THE POSITION OF CABLE PRODUCTION COORDINATOR FOR THE AVON LAKE CABLE TELEVISION STUDIO, ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION, AND DECLARING AN EMERGENCY.

WHEREAS, it has been recommended by the administration and the Human Resources Committee that a job description for the position of Cable Production Coordinator for the Avon Lake Cable Television be adopted, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the specifications, responsibilities, and duties applicable to the position of Cable Production Coordinator for the Avon Lake Cable Television Studio shall be as shown on the job description, a copy of which is attached hereto and made a part hereof.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure in order to adequately staff the cable studio to bring optimal services and programming to keep the residents of Avon Lake informed, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

1<sup>st</sup> reading: 12/14/15  
2<sup>nd</sup> reading: 12/21/15  
3<sup>rd</sup> reading:

PASSED: \_\_\_\_\_  
President of Council

POSTED: \_\_\_\_\_  
Approved

ATTEST: \_\_\_\_\_  
Clerk of Council Mayor

# CITY OF AVON LAKE

## POSITION DESCRIPTION

### Production Coordinator

(Full Time)

Job Title: Cable Production Coordinator  
Department: Cable Access  
Immediate Supervisor: Cable Access Manager  
Positions Supervised: Part-time staff in Managers absence  
FLSA Status: Exempt  
Bargaining Unit: TBD (None)  
Civil Service Status: Unclassified

#### **GENERAL RESPONSIBILITIES:**

Under the direction of the Cable Access Manager this employee will produce programming for the government access channel, assist community producers in the use of equipment and production of shows, contribute to the updating of online communications and perform general office tasks. He/she will be responsible for the supervision of the office during Cable Access Managers absence.

#### **GENERAL QUALIFICATIONS:**

Any combination of training and work experience, which indicates attainment of the skills, possession of the knowledge and the ability to perform the duties below.  
*An individual who poses a direct threat to the health and safety of himself/herself or others in the workplace will be deemed not qualified for this position.*

# CITY OF AVON LAKE

## POSITION DESCRIPTION Production Coordinator (Full Time)

### SPECIFIC DUTIES

- Perform managerial duties of ALC-TV at Cable Access Managers discretion or absence.
- Produce programming for the government channel including editing and location filming.
- Assist community producers with equipment use and production of shows including training on and operation of equipment.
- Encode and program shows for air.
- Construction of on-air bulletin board pages and public service announcements.
- Routine maintenance of equipment, software, inventory, and studio.
- Maintain media inventory and databases
- Dubbing and duplication of media.
- Update online communications including Facebook and the City website.

### REQUIRED KNOWLEDGE, SKILLS AND ABILITIES

Must have a basic working knowledge of computers and the ability to learn the technical aspects of the job. Must have effective oral and written communication skills and the capability to develop working relationships with associates and the general public. Must be able to lift and carry cameras and equipment.

*The job description does not constitute an employment agreement between the City of Avon Lake and the employee and is subject to change by the City as the needs of the City and the requirements of the job change.*

BY: Mr. James

TEMP NO: 10605

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADOPTING A RISK MANAGEMENT POLICY  
FOR THE RECREATION DEPARTMENT, AND DECLARING  
AN EMERGENCY.

WHEREAS, the Recreation Department has adopted a policy designed to create a safe environment for all participants associated with recreation activities, and

WHEREAS, Council coming now to consider said policy accepts it in full, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE,  
STATE OF OHIO:

Section No. 1: That the Risk Management Policy for the Avon Lake Recreation Department, attached hereto, is hereby adopted by the Avon Lake City Council.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity to adopt a Risk Management Policy to help ensure the safety of all participants in Avon Lake Recreation Department activities, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

1<sup>st</sup> reading: 12/14/15  
2<sup>nd</sup> reading: 12/21/15  
3<sup>rd</sup> reading:

PASSED: \_\_\_\_\_  
President of Council

POSTED: \_\_\_\_\_  
Approved

ATTEST: \_\_\_\_\_  
Clerk of Council Mayor

# **City of Avon Lake Recreation Department**

## **Risk Management Policy**

### *Statement of Policy*

The City of Avon Lake Recreation Department (ALRC) has adopted a policy designed to create a safe environment for all participants associated with recreation activities.

### *Statement of Position*

In order to implement the policy above, the ALRD has adopted the following positions:

1. The ALRD shall exclude from all of its programs any adult person with a documented history of molestation, sexual abuse, exploitation, physical abuse or any other crime against an adult or minor. Other crimes include, but are not limited to, neglect, harassment, child abandonment, violation of a restraining order and providing or selling alcohol or unlawful drugs.
2. The policy enumerated above, including exclusion from programs, shall apply to the following:
  - a. Coaches, including assistant coaches
  - b. All employees of ALRD, if they have direct contact with program participants or visitors to Recreation Department facilities.
  - c. All individual contractors who enter into contracts with ALRD.
  - d. Sports Officials, if such persons have direct contact with minors outside of such programs and without the presence of coaches, parents, Supervisors, and/or other adults involved with such programs.
3. The City of Avon Lake shall adopt special rules of conduct, which will apply to all adults who have direct contact, and supervision of program participants, including senior citizens and minors.

### *Statements of Requirements for the Employee/Volunteer Disclosure Form*

The ALRD shall require all persons described in Item 2 above to submit an Employee/Volunteer Disclosure Statement in writing pursuant to procedures adopted by the ALRD. Further, all such persons shall agree to be subject to a background check designed to disclose activities, which may result in exclusion from the ALRD programs. This background check may consist of no less than a Social Security Number check, a National Sex Offender check, and a Foreign Nationals Database check.

All adults listed in the Statement of Position, 2. (a-d) shall complete the Disclosure Statement in writing, or in a contemporary and secure manner, and shall sign such

statement. Among other information, each such adult must supply their social security number (or registration numbers for non-United States citizens) and all valid driver's license numbers. If the required Disclosure Statements are incomplete, unsigned or are not submitted as required by any such person who is required to submit the Statement, the ALRD reserves the right to exclude that person from all programs. The ALRD will appoint a Risk Management Coordinator (most likely the Human Resources Director) and an Assistant Risk Management Coordinator (most likely the Recreation Director). The Assistant will not be involved in any examination of documents or decisions, unless the Coordinator is not able to perform the functions designated. The Risk Management Coordinator is to apply the standards contained in this document impartially and fairly along the strict guidelines included herein.

The ALRD shall be responsible for providing the Disclosure Statements to all affected persons. In order to preserve confidentiality, the completely executed and signed Disclosure Statement shall be returned to the Risk Management Coordinator in a contemporarily acceptable manner. The Risk Management Coordinator and the Assistant Risk Management Coordinator will be the only persons who will have access to the Disclosure Statements and all background checks.

Notwithstanding the prior statement, the Risk Management Coordinator, or the Assistant Risk Management Coordinator in the case of absence of the Risk Management Coordinator may disclose the Disclosure Statement or the data from the background check if: (i) the person submitting the data authorizes disclosure; or (ii) the person submitting the data challenges the decision by the Risk Management Coordinator or Assistant to exclude such person from ALRD activities, in which instance the decision is to be appealed to the Appeals Committee. (The appeals process is contained further in this document.) The confidential information will be released to the Chairperson of the Committee, who is authorized to release it to the members of the committee.

All Disclosure Statements received by the Risk Management Coordinator shall be deemed to be valid for the two-year period established by ALRD. Once the Risk Management Coordinator receives disclosure statements, the Risk Management Coordinator shall establish a random selection process whereby some or all of the disclosure statements will be reviewed.

All records, forms, and results of reviews will be handled in strict confidence by the Risk Management Coordinator, or Assistant Risk Management Coordinator in the absence of the Risk Management Coordinator. All documents received shall be kept secure employing the most contemporary methods. Sole possession of all disclosure statements shall be with the Risk Management Coordinator. Any disclosure statements or other materials more than two years old shall be destroyed in a manner that will preserve confidentiality.

Once a Disclosure Statement is reviewed by the Risk Management Coordinator, he or she shall apply standards adopted by the ALRD as enumerated herein and adopted in order to determine whether a person submitting the disclosure Statement should be excluded from participation in ALRD programs. The Risk Management

Coordinator shall have sole authority as to the continuation of any person in any ALRD program. If the Risk Management Coordinator determines that a person should be excluded from the program, the Risk Management Coordinator shall notify that person in writing in the most contemporary manner as to ensure confidentiality.

The contents of this correspondence will require resignation of the person from all ALRD affiliated organizations within ten days of receipt. If the person decides to appeal the decision of the Risk Management Coordinator, the person shall send a letter to the Chairperson of the Appeals Committee within ten days of receipt of the letter requesting an appeal hearing. The normal appeal process of the ALRD will then be in effect. As a condition of appeal, the person agrees to have no contact with players, and/or programs participants, until the appeal is heard.

Using the criteria within this policy, all persons requiring a background check, must have this check performed in a timely manner through the City's current process, procedures, and vendor. This is despite any applicant possessing documentation of any recent checks performed by other means, or by other entities. Only an equivalent, or deeper, background check conducted by the City's current vendor, and conducted within twelve months of the initiation the current relationship with the City, will be allowable. All background checks conducted through the City's vendor, and conducted for the purpose at hand, will be conducted at the expense of the City and/or ALRD.

### **ALRD POLICY RM-1:**

*Policy for Exclusion from Programs Operated by the City of Avon Lake.*

Adult persons shall be excluded from participation in any manner and at any level for any programs directly or indirectly overseen by ALRD for conviction of any of the following crimes as listed in Ohio Revised Code Section 109.572(A)(1): aggravated murder with specific intent to cause death, murder; kidnapping; felonious assault. aggravated assault, assault, rape, aggravated robbery, robbery, burglary, aggravated burglary, voluntary manslaughter, involuntary manslaughter, failing to provide for functionally impaired person, aggravated menacing, patient abuse/neglect, abduction, child stealing, child enticement, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, public *indecenty*, felonious sexual penetration, compelling prostitution, procuring, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity oriented material or performance, unlawful abortion, endangering children, contributing to the delinquency of a minor, domestic violence, promoting prostitution (children), prostitution: after positive HIV test, corruption of a minor, custodial interference. carrying concealed weapons, having a weapon while under a disability, improperly discharging a weapon at or near a school or dwelling, corrupting another with drugs, trafficking in drugs, illegal manufacture of drugs or cultivation of marijuana, funding of drug or marijuana trafficking, illegal administration or distribution of anabolic steroids, possess of drugs (that is not a minor drug possession offense), placing harmful objects in food or confection, and

any substantially equivalent offense of the above. Any conviction for simple assault, where judgment is rendered any time during the ten years prior to the date of the receipt of the Disclosure Statement will result in exclusion from participation in any manner and at any level for any programs directly or indirectly overseen by ALRD.

**ALRD POLICY RM-2:**

*Policy for Exclusion from Operating Automobiles in any Program Operated by the ALRD*

Drivers shall be prohibited from driving any players or youth referees (accept a son or daughter of the driver) for any programs directly or indirectly overseen by ALRD:

- a. Suspension or revocation of a driver's license which has occurred any time during the five years prior to submission of the Disclosure Statement; and
- b. Any conviction of driving under the influence of drugs or alcohol where such judgment was entered within the twenty (20) years prior to the submission of the Disclosure Statement

**ALRD POLICY RM-3:**

*Policy for Suspension from Programs Operated or Affiliated with the City of Avon Lake*

Any person participating in any ALRD program who becomes a defendant in any litigation, the outcome of which would result in exclusion under the policies identified in ALRD POLICY RM-1 or ALRD POLICY RM-2, the outcome of which would result in exclusion under the policies identified above or any litigation based upon activities otherwise detrimental to the welfare of program participants, shall be suspended from all recreation-related activities until such litigation is resolved by court order. The phrase "matters detrimental to the welfare" of program participants shall include all the offenses listed above as well as any other crimes or charges of moral turpitude and other felonies. For purposes of this policy, the phrase "a defendant in litigation" shall include the arrest, indictment, citation or equivalent formal charge of any adult person for any crimes or other offenses listed above. The Risk Management Coordinator will determine the period of suspension.

**ALRD POLICY RM-4:**

*Policy Regarding Criminal Activity*

If the Risk Management Coordinator, or Alternate Risk Management Coordinator; any employee; any participant volunteer; or any other person associated with the ALRD comes into knowledge of any criminal activity, any or all such persons shall report such criminal activity as required by law.

*Statement of Policy Concerning Safety and Security of Minor Program Participants and Youth Sports Officials and Youth Coaches outside the presence of Parents and/or Guardians*

The ALRD supports and adopts procedures for the safety and security of Minor Program Participants in the direct care of its programs, as well as the implementation of the procedures for all Minor Program Participants outside the presence of parents and/or guardians. For purposes of clarity, a Minor Program Participant shall include all persons under the age of 18 years. It is the policy of the ALRD that all Minor Program Participants are entitled to protection and vigilance by the adults appointed to be responsible for them in settings outside the presence of parents and/or guardians.

**ALRD POLICY RM-5:**

*Policy Concerning Care of Minor Program Participants Outside the Presence of Parents and/or Guardians*

It is the policy of the ALRD that the following rules apply to the care of Minor Program Participants outside the presence of parents and/or guardians in ALRD directly operated programs.

**RULES:**

1. All adults accepting responsibility for the care of minor program participants must have a completed Employee/Volunteer Disclosure Form on file as indicated in the Risk Management Policy of the ALRD.  
Adults must be fingerprinted if requested pursuant to this policy.
3. Emergency Medical Forms, signed by parents/guardians must be completed. The form must be accessible at all activities.
4. If medical personnel are not to be on-site, then telephones or other devices must be available to call emergency medical services.
5. At the beginning of the first program, minor program participants must be informed of fire and bad weather procedures, location of fire escapes, and a location for the team to meet outside of the facility in case of emergency.
6. No person under the age of 21 is permitted to drive minor program participants while outside of the control of the parent without written permission of the parent. When transporting minor program participants the driver must obey all traffic and speed laws.
7. Minor program participants are not permitted to leave the team situation unless permitted by the program, and unless the parent gives written permission. Any

person removing a minor program participants must present picture identification, and must be the specific person listed in the parent's permission.

8. Non-related adults and minor program participants are never to be in a room alone together. Another adult or another ~~player~~ minor program participants must always be present.
9. Minor program participants must be supervised at all times.

### **ALRD POLICY RM-5.1**

#### Policy concerning adult participation in any ALRD program

Any of the following people must comply with this policy. Failure to do *so* may result in disciplinary action including but not limited to dismissal, cancellation of contract, suspensions, or other discipline.

- a. Coaches, including assistant coaches
- b. Trainers
- c. Program Directors/Team managers
- d. All employees of ALRD, who have direct contact with program participants.
- e. All individual contractors who enter into contracts with ALRD.
- f. Sports officials, most specifically if such persons have direct contact with minors and/or senior citizens outside the presence of ~~such~~ other adult persons and/or parents.
- g. Volunteers

The above persons will be required to submit fingerprints, and a background check will be done if they are involved in a program that involves conducting and/or participating in an ALRD program with ONE or more of the following on a regular basis:

1. Activities held in an isolated setting
2. with little or no parental involvement
3. one adult supervising a child or children, or senior citizen
4. activity with one child, or senior citizen
5. interaction with a specific child, or senior citizen over a long period of time
6. overnight stay
7. activity involving physical contact as a part of instruction or control
8. activity held in a private home
9. activity with a child, children, senior citizen, or team without another adult present
10. Activity involving changing clothes or showering by children, senior citizens, or in the presence of children, or senior citizens.

Any adult listed above, who meets even one of the above criteria, must immediately submit to a background check done before continuing the program.

Adults listed above who find themselves in a situation *where* they have unsupervised *access* to a minor or senior citizen in an ALRD program must immediately have a fingerprint background check before starting or continuing in the program.

Unsupervised means that no other person 18 years or older is present in the same room with the minor or senior citizen and/or if outdoors, no other person 18 years or older is within a 30 yard radius of the minor or senior citizen or has visual contact with the child minor or senior citizen. A minor is defined as an individual under the age of 18 or a mentally and/or physically handicapped individual under the age *of* 21. A senior citizen is defined as an individual over the age of 60 (59?).

All of the people listed above including current and future persons will complete an application with references, which will be checked. The application form is attached.

Persons with no contact with minors or senior citizens are not required to submit to fingerprint checks.

Persons meeting the criteria above who do not comply will be subject to disciplinary action and removal from the program until compliance.

If the background check results in a hit for an offense on the ORC 109.572 list, the person will be asked to resign their position. If they do not resign, the person will be notified of their removal from the program by the Risk Management Coordinator.

### **ALRD POLICY F-3:**

#### Policy Regarding Appeals of Suspensions or Exclusions

Any person subject to any suspension or exclusion pursuant to the policies adopted by the ALRD of the City of Avon Lake, may appeal any such suspension or exclusion by the Risk Management Coordinator through the established Appeals Committee. All appeals shall be handled by procedures adopted by the ALRD and made available to any person who exercises his or her right to appeal.

### **ALRD POLICY A-1**

#### ALRD Appeal Process

Upon receipt of an appeal, as allowed and perfected by this policy, the Chairperson shall set a hearing within thirty (30) days. At such hearing the appellant may appear in person or by counsel, and the Risk Management Coordinator may likewise appear in person or by counsel, and each may offer such evidence upon the matter as may be pertinent and relevant.

Upon conclusion of the hearing, the Committee may take such action as it deems appropriate based upon the evidence presented at the hearing.

The Appeals Committee shall consist of the Mayor, the Council Representative to the Recreation Commission, and the Recreation Commission Chairperson. The Mayor shall be the Chairperson of the Appeals Committee.

BY: Mrs. Fenderbosch

TEMP NO: 10612

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING A COOPERATIVE AGREEMENT FOR CONSTRUCTION OF LEAR NAGEL SANITARY SEWER FORCE MAIN BETWEEN THE CITY OF AVON LAKE AND THE OHIO WATER DEVELOPMENT AUTHORITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake (hereinafter referred to as the "LGA") through its Board of Municipal Utilities desires to extend the Lear Nagel sanitary sewer force main; and

WHEREAS, the LGA desires to obtain a loan from the Ohio Water Development Authority (hereinafter referred to as the "OWDA") to finance costs of the planning of such facilities on the terms set forth in the Cooperative Agreement (defined below); and

WHEREAS, the OWDA has indicated its willingness to make a loan for that purpose and on those terms, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the LGA hereby approves the construction of the aforesaid project in cooperation with the OWDA under the provisions, terms and conditions set forth in the "Cooperative Agreement for Construction, Maintenance, and Operation of State Water Project or Wastewater Project" as set forth in Exhibit A (the "Cooperative Agreement") and hereby authorizes the Chief Executive Officer and the Chief Fiscal Officer of the LGA to execute the Cooperative Agreement with the OWDA substantially in the form set forth in Exhibit A.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution/ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of Avon Lake for the reason that the immediate construction of the Lear Nagel sanitary sewer force main at the earliest possible time is necessary in order to protect the health of the inhabitants of the LGA by providing a cleaner lake and reducing chances for sewer backups for City residents; wherefore, this ordinance shall be in full force and effect from and immediately after its passage and approval by Council.

1<sup>st</sup> reading: 12/21/15

2<sup>nd</sup> reading:

3<sup>rd</sup> reading:

Passed: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Posted: \_\_\_\_\_

\_\_\_\_\_  
Approved

Attest: \_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

COOPERATIVE AGREEMENT FOR CONSTRUCTION, MAINTENANCE  
AND OPERATION OF STATE WATER PROJECT OR WASTEWATER PROJECT

THIS AGREEMENT made and entered into as of the date specified on Schedule I hereto (the "Term Sheet," which is fully incorporated herein and made a part hereof) as the "Agreement Date," by and between the OHIO WATER DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Revised Code of Ohio (hereinafter referred to as the "OWDA") and the governmental body specified as the "LGA" on the Term Sheet (hereinafter referred to as the "LGA"), a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or a resolution passed by the legislative authority thereof on the date specified on the Term Sheet as the Resolution Date;

WITNESSETH:

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of the state, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the state for the protection and preservation of the comfort, health, safety, convenience, and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of the state, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Revised Code; and

WHEREAS, the water system or wastewater system (hereinafter more fully defined and referred to as the "System") of the LGA will require the supply of services (the "Services") for the treatment and/or transmission of drinking water (in the case of a water project) or for the treatment or disposal of wastewater (in the case of a wastewater project) from the construction, operation and maintenance of new or additional facilities (which facilities are hereafter referred to as the "Project Facilities"); and

WHEREAS, the LGA is desirous of obtaining the Services for the System in cooperation with the OWDA; and

WHEREAS, the OWDA is willing to cooperate with the LGA in obtaining such Services, and the LGA has given the OWDA reasonable assurances that the LGA will make the payments hereinafter provided for and will fulfill its other obligations hereunder; and

WHEREAS, the OWDA and LGA have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

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

## ARTICLE I - DEFINITIONS

Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

### DEFINITIONS RELATING TO PHYSICAL FACILITIES

(a) "Approved Application" means the application of the LGA dated as of the date specified on the Term Sheet as the "LGA Application Date," submitted to the OWDA, together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA on the date specified on the Term Sheet as the "OWDA Application Approval Date," together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.

(b) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit A attached hereto and made a part hereof and more particularly described in the Approved Application together with any changes therein made pursuant to Article III hereof.

(c) "Project Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities.

(d) "System" means the facilities of the LGA specified as the "System" on the Term Sheet.

### DEFINITIONS RELATING TO COSTS

(e) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the first proviso below), the following costs of the Project Facilities and the Project Site: the purchase price of the Project Site when acquired by purchase, or the value thereof when appropriated as found by the jury, together with the costs of the proceedings and the damages assessed in favor of any owner of the adjoining lands and interests therein, subject to the second proviso set forth below; the cost of demolishing or removing any buildings or structures on the Project Site, including the cost of acquiring any lands to which such buildings or structures may be removed, subject to the second proviso set forth below; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of easements therefor, subject to the second proviso set forth below; the costs of construction of the Project Facilities including, but not limited to, the cost of all machinery, furnishings and equipment included therein; interest on all funds disbursed by the OWDA (other than funds paid over to the OWDA by the LGA for disbursement by the OWDA) at the Contract Interest Rate from the date of disbursement by the OWDA of each portion thereof pursuant to Section 3.8 hereof to the first day of the January or the July next preceding the commencement of the Contract Period of Years based on the then existing cost allocations; engineering expenses for the Project Facilities including, but not limited to, the cost of preliminary and other surveys, the cost of preparing plans, estimates and specifications, the cost of all necessary soil and other investigations and laboratory testing, and resident engineering and inspection fees; the cost of printing and

publishing the notices and legislation required; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all Eligible Project Costs other than such administrative expenses, or \$400, whichever is the greater; any obligation for the repayment of borrowed money incurred by the LGA to the OWDA under any Cooperative Agreement for State Planning Project between the LGA and OWDA with respect to the Project Facilities, and any other necessary miscellaneous expenditures; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the OWDA, the payment of such costs by the OWDA would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation; and provided further, however, that Eligible Project Costs shall include costs for the acquisition of real property or interests therein (other than easements) only if the OWDA shall have received from the LGA reasonably sufficient assurances as to environmental matters related to such real property. Notwithstanding anything contained herein to the contrary, Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by the LGA to a broker or finder as a result of or in connection with the OWDA's agreement to pay the Eligible Project Costs to the LGA as provided herein.

#### DEFINITIONS RELATING TO PARTICIPATION IN COSTS

(f) "Original Loan Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds of the OWDA, which costs shall in no event exceed the amount specified on the Term Sheet as the "Maximum Original Loan Amount."

(g) "Semiannual Payment Obligation" means the amount payable semiannually by the LGA to amortize the Original Loan Amount over the Contract Period of Years with interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate. An estimate of the Semiannual Payment Obligation based on the Maximum Original Loan Amount and the Contract Interest Rate is specified on the Term Sheet beneath the Maximum Original Loan Amount.

If the Contract Period of Years commences prior to the final determination of the Original Loan Amount, the Semiannual Payment Obligation shall be based upon the best figures available at the time the computation of each semiannual payment is required to be made. When such final costs are known, the Semiannual Payment Obligation shall be recomputed and the next following semiannual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Original Loan Amount been used in computing the Semiannual Payment Obligation at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(h) "Contract Interest Rate" means the rate specified as such on the Term Sheet.

(i) "Contract Period of Years" means the period of the Contract Term specified in the Term Sheet, commencing on the date six months prior to the First Payment Date specified in the Term Sheet.

(j) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.

(k) "Pledged Revenues" means the revenues derived by the LGA from the ownership and operation of the System (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the System and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the LGA to secure debt obligations heretofore or hereafter issued or incurred by the LGA for the System.

(l) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the LGA to pay all or a portion of the cost of the Project.

## ARTICLE II - PROPERTY INTERESTS IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the LGA.

Section 2.2. The LGA agrees that the OWDA and its duly authorized agents shall have the right at all reasonable times to enter upon the Project Site and Project Facilities and to examine and inspect the same. The LGA further agrees that the OWDA and its duly authorized agents shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

## ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES AND PAYMENT OF COSTS THEREOF

Section 3.1. Subject to the terms and conditions of this Agreement, the LGA shall do all things necessary to construct the Project Facilities on the Project Site (which the LGA hereby represents has been acquired by the LGA) by means of the construction contract(s) specified on Exhibit B hereto. The LGA shall use its best efforts to cause the Project Facilities to be fully operational by the date specified on the Term Sheet as the "Operational Date."

In connection with the construction of the Project Facilities, the LGA agrees that:

(a) The construction contract(s) will provide that the representatives of the OWDA will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection.

(b) The construction of the Project Facilities on the Project Site will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(c) All laborers and mechanics employed on the Project Facilities shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project Facilities, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

(d) Prior to the commencement of construction, the LGA will arrange and conduct a preconstruction conference to include representatives of the OWDA, the LGA and the consulting or resident engineers of the LGA and each contractor.

(e) Each construction contract and contractor's estimate form will be prepared so that materials and equipment furnished to the LGA may be readily itemized.

(f) All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized.

(g) Any change or changes in a construction contract that would increase the contract price by an amount in excess of one percent (1%) or any change or changes regardless of cost that substantially modify the processes contemplated to be performed by the Project Facilities will be submitted to the OWDA for prior approval.

(h) Notification of all change orders not requiring prior approval of the OWDA will be submitted to the OWDA within one (1) month of the time at which they are ordered by the resident or consulting engineer of the LGA.

(i) The construction of the Project Facilities, including the letting of contracts in connection therewith, will conform to applicable requirements of federal, state and local laws, ordinances, rules and regulations.

(j) The LGA will proceed expeditiously with, and complete, the Project Facilities in accordance with the Approved Application and any surveys, plans, profiles, cross sections and specifications or amendments thereto approved by the Director of Environmental Protection of Ohio.

(k) Notwithstanding anything contained herein to the contrary, the obligation of the OWDA to pay Eligible Project Costs pursuant to the terms and conditions of this Agreement shall expire three (3) years from the date hereof. Upon the expiration of the aforesaid period of years, the OWDA shall not be obligated to pay any additional Eligible Project Costs to the LGA hereunder. In the event that the OWDA, in its sole discretion, decides to pay additional Eligible Project Costs after the expiration of its obligation to do so hereunder, it shall so notify the LGA. No such decision by the OWDA to pay any additional Eligible Project Costs hereunder shall be deemed to constitute an extension of its obligation to pay Eligible Project Costs hereunder.

Except as otherwise provided in this Agreement, the LGA shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

Section 3.2. The LGA shall keep accurate records of the Eligible Project Costs. The LGA shall permit the OWDA, acting by and through the Executive Director of the OWDA or his authorized representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of audit and examination, and the LGA shall submit to the OWDA such documents and information as they may reasonably require in connection therewith.

Section 3.3. The LGA shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to one hundred percent (100%) of the contractor's contract price as security for the faithful performance of the contractor's contract.

Section 3.4. The LGA shall require that each of its contractors and all subcontractors maintain during the life of their contracts Workers' Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance, in amounts and on terms that comply with all applicable legal requirements and that are commercially reasonable. Until the Project Facilities are completed and accepted by the LGA, the LGA or (at the option of the LGA) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the OWDA, the LGA, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.5. The LGA shall provide and maintain competent and adequate resident engineering services satisfactory to the OWDA covering the supervision and inspection of the development and construction of the Project Facilities and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OWDA and the LGA at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

Section 3.6. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA. In the event this Agreement is terminated by the OWDA pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the LGA, whether or not in breach of the Agreement, the Eligible Project Costs incurred prior to the date of the commencement of the construction of the Project Facilities or the date of such termination, whichever is earlier, shall be paid by the LGA. If such termination takes place following the date of the commencement of the construction of the Project Facilities, all Eligible Project Costs incurred following such commencement date and prior to the date of termination, with the exception of all costs attributable to the acquisition of the Project Site, shall be borne by: (1) the LGA if this Agreement is terminated at such time by the LGA; or (2) by the OWDA if this Agreement is terminated at such time by the OWDA, but in any event, all costs attributable to the acquisition of the Project Site shall be borne by the LGA. Any moneys paid by either party hereto pursuant to this Agreement which become the obligation of the other party under the

provisions of this Section shall be repaid in not more than three (3) years after termination with interest on the outstanding balances at the Contract Interest Rate.

Section 3.7. The OWDA may decline to deliver any further certificates of availability of funds pursuant to Section 3.8 hereof from and after any determination by the OWDA that any information furnished to the OWDA, in writing or otherwise, in connection with the LGA's application for the transactions contemplated by this Agreement was false or misleading in any material respect or that such information omitted any other information needed to make the information furnished not false or misleading in any material respect.

Section 3.8. Subject to Section 3.7 hereof, the OWDA shall deliver to the LGA a certificate, certifying that moneys in the amount necessary to pay the Eligible Project Costs obligated or to be obligated up to the Maximum Original Loan Amount are available or are in the process of collection and have been encumbered by the Authority. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the LGA in form and detail satisfactory to the OWDA, the OWDA shall cause to be delivered checks in payment of the invoices, demands for payment, approved contractors' estimates or other evidence of cost incurrence to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth to pay such obligated Eligible Project Costs. The "LGA" represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA."

Section 3.9. Upon completion of the Project Facilities, the LGA shall make a full and complete accounting to the OWDA of the final Eligible Project Costs.

#### ARTICLE IV - PAYMENTS BY LGA

Section 4.1. Subject to the further provisions hereinafter set forth, the LGA agrees to and shall pay semiannually on January 1 and July 1 of each year of the Contract Period of Years, commencing on the First Payment Date (each such date a "Due Date"), to the OWDA, but solely from the Pledged Revenues, the Semiannual Payment Obligation. In the event that the LGA pays less than the full amount due hereunder on any Due Date, then the amount so paid shall be applied first to interest payable hereunder, then to any late charges payable hereunder, and then to the Original Loan Amount payable hereunder. The LGA acknowledges and agrees that the OWDA afforded the LGA the opportunity to choose between a schedule of payments based on equal principal payments and one based on equal debt service payments and that the estimated Semiannual Payment Obligation shown on the Term Sheet reflect the choice of the LGA.

The obligation of the LGA to pay the charges set forth shall not be assignable, and the LGA shall not be discharged therefrom, without the prior written consent of the OWDA. In the event that services supplied by the Project Facilities or any other portion of the System shall cease or be suspended for any reason, the LGA shall continue to be obligated to pay the charges pursuant to this Section 4.1, but solely from the Pledged Revenues. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 5th day after the Due Date, the amount of such default shall bear interest at the Default Rate from the Due Date until the date of

the payment thereof. Interest at the Default Rate shall be calculated for the actual number of days of default from the Due Date until payment on the basis of a 360 day year. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 30th day after the Due Date, in addition to the interest calculated at the Default Rate, a "late charge" of one percent (1%) on the amount of each default shall also be paid to the OWDA by the LGA from the Pledged Revenues for failure to make the payment as provided herein. Thereafter, for each additional thirty (30) days during which the charges remain unpaid, the LGA shall continue to pay from the Pledged Revenues an additional late charge of one percent (1%) on the amount of such default until such charges are paid. In no event shall the OWDA collect interest or late charges in excess of the maximum amount permitted by law. In addition to the foregoing, in the event of a default as aforesaid, all of the costs incurred by the OWDA in curing such default including, but not limited to, court costs and attorney fees, shall (to the extent not previously repaid to the OWDA and to the fullest extent permitted by law) be paid as part of the Eligible Project Costs hereunder and be repaid by the LGA to the OWDA as part of the Original Loan Amount. The Borrower [in other agreements, the "LGA"] represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA."

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor shall the general credit of the LGA be pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be required to be made only from the Pledged Revenues, which are hereby pledged to such payment; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the LGA from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than June 15 and December 15 of each year of the Contract Period of Years, the OWDA shall invoice the LGA for the sum payable by the LGA pursuant to Section 4.1 and that payment of each such invoice shall be made by the LGA to the OWDA not later than the first day of the following month. No failure by the OWDA to send any such invoice and no failure by the LGA to receive any such invoice shall relieve the LGA from its obligation to pay the amount due hereunder on the applicable Due Date.

Section 4.3. The LGA hereby agrees that: (a) from and after the completion and placement into operation of the Project Facilities, it will at all times prescribe and charge such rates for the services of the System as shall result in Pledged Revenues at least adequate to provide for the payments required by Section 4.1 hereof and shall from time to time at the request of the Authority cause a study of the sufficiency of the LGA's rates for that purpose to be done by an independent expert acceptable to the OWDA; (b) the LGA will furnish to the OWDA annually reports of the operation and income of the System and also an annual report of the accounts and operations of the System and such other documents as the OWDA may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the LGA will permit the authorized agent of the OWDA to inspect all records, accounts and data of the System at all reasonable times; and (c) that the LGA will segregate the revenues, funds and properties of the System from all other funds and properties of the LGA. All of the obligations under this Section are hereby established as duties specifically enjoined by law and resulting from an

office, trust or station upon the LGA within the meaning of Section 2731.01 of the Ohio Revised Code.

Section 4.4. If the LGA pays all or any portion of the Semiannual Payment Obligation from Special Assessment Funds and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the LGA may elect to apply the amount of such payment to a reduction of the Original Loan Amount by including that amount with its next payment of the Semiannual Payment Obligation pursuant to Section 4.1 hereof, accompanied by a written notice to the Authority identifying the amount so included and directing the Authority so to apply that amount. Upon the receipt of such payment and notice, the Authority shall recompute the remaining payments of the Semiannual Payment Obligation based on the reduced Original Loan Amount and shall notify the LGA in writing of the reduced amount of the remaining payments.

Section 4.5. In order to enable the OWDA to comply with the requirements of federal securities laws (including, without limitation, Rule 10b-5 and Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended), the LGA agrees to prepare and file with the OWDA or, at the direction of the OWDA, to file with the Municipal Securities Rulemaking Board ("MSRB"), any one or more nationally recognized municipal securities information repositories ("NRMSIRs") or state information depository ("SID"), any annual financial information or material events disclosures that the OWDA may determine it requires to achieve such compliance. The LGA consents to the OWDA's incorporation by reference into OWDA official statements or other OWDA filings with the MSRB, any NRMSIR, or any SID of any official statements or portions thereof, financial statements, or other documents that the LGA may have filed or may file with the MSRB, any NRMSIR, or any SID. In the event the LGA fails to prepare any financial statement or other financial information that this Section requires the LGA to prepare and file with or at the direction of the OWDA, then the OWDA shall have the right (in addition to any other rights it may have to enforce the obligations of the LGA hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof.

#### ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 5.1. The LGA agrees that during the Contract Period of Years that: (a) it will, subject to its right to contest in good faith the issue of non-compliance, operate the Project Facilities and the System, or cause them to be operated, in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and (b) it will, subject to its right to discontinue use or operation of the Project Facilities or the System or any part thereof in accordance with this Agreement, keep the Project Facilities and the System, including all appurtenances thereto and the equipment and machinery therein, or cause them to

be kept, in good repair and good operating condition so that the completed Project Facilities and System will continue to operate with substantially the same efficiency as when first constructed.

The LGA shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site, the Project Facilities, and the System from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the LGA, and the same shall be the property of the LGA and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be, and the System; and provided further that the LGA shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site, the Project Facilities, or the System, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the OWDA thereto.

Section 5.2. The LGA agrees that it will commence, or will cause to be commenced, operation of the Project Facilities immediately upon the completion of the construction thereof and the receipt of any governmental approvals required for the commencement of their operation, and will not discontinue operation of the Project Facilities or any other part of the System without meeting all conditions to and requirements for such discontinuance imposed by law and this Agreement. The LGA agrees that it will provide adequate operation and maintenance of the Project Facilities and the System to comply with all applicable water quality standards established for the river basin served by the Project Facilities and with all applicable rules and regulations of the Director of Environmental Protection of Ohio. The LGA agrees that sufficient qualified operating personnel will be retained by the LGA to operate the Project Facilities and the System, or will be required to be obtained by any independent contractor engaged by the LGA to operate the Project Facilities and the System or any portion thereof, and that all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities and each other part of the System until the end of the Contract Period of Years or the discontinuance of the operation of the Project Facilities or of such other part of the System in accordance with Section 5.1 and this Section 5.2.

The LGA will permit the OWDA and its agents to have access to the records of the LGA pertaining to the operation and maintenance of the Project Facilities and the System at any reasonable time.

Section 5.3. The LGA agrees to insure, or cause to be insured, the Project Facilities and the System in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

Section 5.4. Any insurance policy issued pursuant to Section 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OWDA and the LGA as their respective interests may appear. Each insurance policy provided for in Sections 5.3 and 5.6 hereof shall contain a provision to the effect that the insurance company shall not cancel the

same without first giving written notice thereof to the OWDA and the LGA at least ten (10) days in advance of such cancellation.

Section 5.5. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3 and 5.6 hereof shall be applied as follows: (i) the net proceeds of the insurance required in Section 5.3 hereof shall be applied as provided in Section 5.9 hereof, and (ii) the net proceeds of the insurance required in Section 5.6 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.6. The LGA agrees that it will carry, or will cause to be carried, public liability insurance with reference to the Project Facilities with one or more reputable insurance companies duly qualified to do business in the State of Ohio, in minimum amounts of \$500,000 for the death of or personal injury to one person and \$1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and \$500,000 for property damage for any occurrence in connection with the Project Facilities. The OWDA shall be made an additional insured under such policies.

Section 5.7. Throughout the Contract Period of Years, the LGA shall maintain Workers' Compensation Coverage or cause the same to be maintained in accordance with state law.

Section 5.8. In the event the LGA shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep, or cause to be kept, the Project Facilities in good repair and operating condition, or shall fail to operate, or cause to be operated, the Project Facilities in accordance with Section 5.2 hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2 and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become an additional obligation of the LGA to the OWDA which amounts, together with interest thereon at the Contract Interest Rate or at the rate of eight per centum (8%) per annum, whichever is greater, from the date thereof, the LGA agrees to pay.

Section 5.9. If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and the LGA will (i) promptly repair, rebuild or restore the property damaged or destroyed, and (ii) apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the LGA necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the LGA.

Section 5.10. In the event that title to or the temporary use of the Project Site the Project Facilities, or the System, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and any net proceeds received from any

award made in such eminent domain proceedings shall be paid to and held by the LGA in a separate condemnation award account and shall be applied by the LGA in either or both the following ways as shall be determined by the LGA:

(a) The restoration of the facilities of the System to substantially the same condition as they existed prior to the exercise of said power of eminent domain, or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent that, when added to the remaining real estate and facilities of the System, will cause the System to be substantially the equivalent of the System as it existed prior to the exercise of said power of eminent domain, which real estate and facilities shall be deemed a part of the Project Site or the Project Facilities, as the case may be, and the System, without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the LGA upon delivery to the OWDA of a certificate signed by an authorized officer of the LGA that the LGA has complied with either paragraph (a) or (b), or both, of this Section. The OWDA shall cooperate fully with the LGA in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System, or any part thereof. In no event will the LGA voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System or any part thereof without the written consent of the OWDA.

ARTICLE VI - REPRESENTATIONS AND AGREEMENTS  
OF THE LGA IN REGARD TO ENVIRONMENTAL MATTERS;  
EVENTS OF DEFAULT AND REMEDIES THEREFOR;  
INDEMNIFICATION

Section 6.1. The LGA hereby represents that:

(a) It is, and the LGA hereby covenants that it shall remain, in compliance with all applicable federal, state and local environmental laws and regulations applicable to the System during the Contract Period of Years, subject to its right to contest in good faith the issue of non-compliance;

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the LGA, alleging a violation of any federal, state or local environmental law or regulation applicable to the System except as set forth in the attached;

(c) No judgment or consent order has been rendered against it, nor is it a party to any agreement, which consent order, judgment or agreement imposes, will impose or has imposed any fines or monetary penalties for the violation of any federal, state or local environmental law or regulation applicable to the System that have not been paid in full except as set forth in the attached; and

Section 6.2. The LGA agrees that each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The LGA shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article IV hereof; or

(b) The LGA shall fail to observe and perform any other obligations, agreements or provisions herein, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OWDA; provided, however, that such failure shall not constitute an Event of Default hereunder if the cure of such failure cannot be effected within thirty (30) days and if the LGA is taking all reasonably necessary actions to cure such failure with all deliberate speed.

(c) Any representations made by the LGA in Section 6.1. shall at any time during the Contract Period of Years prove to be false.

Section 6.3. Whenever an Event of Default shall have happened and be subsisting, the OWDA may exercise any and all rights and remedies for the enforcement of the obligations of the LGA hereunder. In addition to any other rights or remedies provided herein, by law or otherwise, the OWDA may:

(a) declare the full amount of the then unpaid Original Loan Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order or agreement affecting the LGA, require the LGA to agree to subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation applicable to the System to the payment of the Original Loan Amount and the interest and any late charges due thereon, and the LGA hereby agrees to use its best efforts to effect such subordination.

Section 6.4. No right or remedy conferred upon the OWDA under Section 6.3 hereof 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.

Section 6.5. The LGA releases the OWDA from, agrees that the OWDA shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the OWDA, its officers, employees and agents harmless 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 System, the Project Facilities, 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 OWDA, its officers, employees and agents. The LGA further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWDA and its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the LGA in the performance of any covenant or agreement on the part of the LGA to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project

Facilities or arising from any act or negligence of or failure to act by the LGA, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities or the System (other than any accident, injury, or damage that results from negligent or intentional acts of the OWDA, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the OWDA by reason of any claim described in this Section, the OWDA agrees to cause written notice of such action or proceeding to be given to the LGA, and the LGA upon notice from the OWDA covenants to resist or defend such action or proceedings at the LGA's expense including all legal and other expenses (including reasonable attorneys' fees).

Section 6.6 Each party agrees that the venue of any suit, action or proceedings relating to this Agreement will be the courts of the County of Franklin, Ohio or the Ohio Supreme Court, and each party irrevocably waives any objection that it may have to that venue and waives any right to trial by jury for any such suit, action or proceedings.

#### ARTICLE VII - PRIVATE BUSINESS USE RESTRICTIONS

Section 7.1. With respect to the financing of Project Facilities by the OWDA as provided herein, the LGA agrees as follows:

(a) At no time will ten percent (10%) or more of any Project Facility or Project Site to be financed with funds borrowed from the OWDA ("OWDA Funds") be used for any private business use (as hereinafter defined) while at the same time the payment of the principal of, or the interest on, the OWDA Funds is directly or indirectly (i) secured by any interest in (A) property used or to be used for a private business use or (B) payments made with respect to such property or (ii) derived from (A) payments with respect to such property (whether or not made to the OWDA) or (B) borrowed money used or to be used for private business use.

(b) No portion of the OWDA Funds will be used to make or finance loans to persons other than other governmental units.

Section 7.2. For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

Section 7.3. For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

Section 7.4. If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the LGA agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided hereinabove.

#### ARTICLE VIII - MISCELLANEOUS PROVISIONS

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by regular, registered or certified mail, postage prepaid, or delivered personally, and

(i) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

The Ohio Water Development Authority  
480 South High Street  
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the address listed on the Term Sheet as the "LGA Notice Address," or at such other addresses with respect to either such party as that party may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.2. Any approval of the OWDA required by this Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth day following the submission of the matter requiring approval to the Executive Director of the OWDA unless disapproved in writing prior to such thirtieth day. Any provision of the Agreement requiring the approval of the OWDA or the satisfaction or evidence of satisfaction of the OWDA, shall be interpreted as requiring action by the Executive Director of the OWDA granting, authorizing or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 8.3. Upon request of the OWDA, the LGA agrees to execute the information report required by Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the LGA. The LGA hereby agrees that the OWDA may file such information report for and on behalf of the LGA with the Internal Revenue Service.

Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and upon the certification of availability of funds as provided in Section 3.8 hereof.

Section 8.5. This Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until all obligations of the LGA under Section 4.1 hereof have been fully satisfied.

Section 8.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Agreement shall not be assigned by the LGA without the prior written consent of the OWDA. The OWDA, at its option, may assign this Agreement without the consent of the LGA. All references to the Environmental Protection Agency of the United States of America or to the Director of Environmental Protection of the State of Ohio or to any offices or divisions of either shall include any successors thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first hereinabove written.

APPROVED AS TO FORM

\_\_\_\_\_  
OWDA General Counsel

OHIO WATER DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
OWDA Executive Director

APPROVED AS TO FORM

\_\_\_\_\_  
LGA Legal Officer or Counsel

LGA: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

PROJECT FACILITIES DESCRIPTION

This project is part of a strategic initiative to reduce sewer surcharging. Most surcharging is associated with too much clean water entering the sanitary sewer during rain events. Surcharging in the Lear Road area may be due to this but is also compounded by this specific line receives force main flow from the City of Avon and discharges into a remote sewage pumping station. The pumping station's capacity is limited and sewage backs up in the line leading to the pumping station. This project will extend a 12" sanitary force main approximately 2,200' so that it may bypass the pumping station and prevent the backups in the gravity line leading to the pumping station.

CONSTRUCTION CONTRACT

Trax Construction of Wicliffe, Ohio was the low-bidder and was awarded the contract by the Board of Municipal Utilities on January 5, 2016, contingent upon a successful pre-award meeting with Avon Lake Regional Water staff and loan approval by OWDA. The contract is currently being prepared now (1/6/16) and will be included in the final loan agreement.

Schedule I

TERM SHEET

The parties to the foregoing Cooperative Agreement hereby agree that the following terms shall be incorporated into said Cooperative Agreement and made a part thereof:

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

LGA: \_\_\_\_\_

The LGA is a (specify category of governmental body, e.g., municipal corporation, county, township, etc.): \_\_\_\_\_

LGA Resolution Date: \_\_\_\_\_

LGA Application Date: \_\_\_\_\_

OWDA Application Approval Date: \_\_\_\_\_

System: All water facilities of the LGA that now exist or that may in the future come into being, including, \_\_\_\_\_ without \_\_\_\_\_ limitation, \_\_\_\_\_ the \_\_\_\_\_ following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Maximum Original Loan Amount: \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_)

(Based on the Maximum Original Loan Amount of \$ \_\_\_\_\_, and the Contract Interest Rate, the estimated Semiannual Payment Obligation equals \$ \_\_\_\_\_.)

Contract Interest Rate: The rate per annum of \_\_\_\_\_ per cent ( \_\_\_\_\_ %).

Contract Term: \_\_\_\_\_ years

First Payment Date: \_\_\_\_\_

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

LGA Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OHIO WATER DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

LGA: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

BY: Mrs. Fenderbosch

TEMP NO: 10613

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING A COOPERATIVE AGREEMENT FOR CONSTRUCTION OF MULL/NORMAN SANITARY SEWER REHABILITATION BETWEEN THE CITY OF AVON LAKE AND THE OHIO WATER DEVELOPMENT AUTHORITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake (hereinafter referred to as the "LGA") through its Board of Municipal Utilities desires to rehabilitate the Mull/Norman sanitary sewer; and

WHEREAS, the LGA desires to obtain a loan from the Ohio Water Development Authority (hereinafter referred to as the "OWDA") to finance costs of the planning of such facilities on the terms set forth in the Cooperative Agreement (defined below); and

WHEREAS, the OWDA has indicated its willingness to make a loan for that purpose and on those terms, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the LGA hereby approves the construction of the aforesaid project in cooperation with the OWDA under the provisions, terms and conditions set forth in the "Cooperative Agreement for Construction, Maintenance, and Operation of State Water Project or Wastewater Project" as set forth in Exhibit A (the "Cooperative Agreement") and hereby authorizes the Chief Executive Officer and the Chief Fiscal Officer of the LGA to execute the Cooperative Agreement with the OWDA substantially in the form set forth in Exhibit A.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution/ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of Avon Lake for the reason that the immediate construction of the Mull/Norman sanitary sewer rehabilitation at the earliest possible time is necessary in order to protect the health of the inhabitants of the LGA by providing a cleaner lake and reducing chances for sewer backups for City residents; wherefore, this ordinance shall be in full force and effect from and immediately after its passage and approval by Council.

1st reading: 12/21/15

2<sup>nd</sup> reading:

3<sup>rd</sup> reading:

Passed: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Posted: \_\_\_\_\_

\_\_\_\_\_  
Approved

Attest: \_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor

COOPERATIVE AGREEMENT FOR CONSTRUCTION, MAINTENANCE  
AND OPERATION OF STATE WATER PROJECT OR WASTEWATER PROJECT

THIS AGREEMENT made and entered into as of the date specified on Schedule I hereto (the "Term Sheet," which is fully incorporated herein and made a part hereof) as the "Agreement Date," by and between the OHIO WATER DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Revised Code of Ohio (hereinafter referred to as the "OWDA") and the governmental body specified as the "LGA" on the Term Sheet (hereinafter referred to as the "LGA"), a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or a resolution passed by the legislative authority thereof on the date specified on the Term Sheet as the Resolution Date;

WITNESSETH:

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of the state, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the state for the protection and preservation of the comfort, health, safety, convenience, and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of the state, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Revised Code; and

WHEREAS, the water system or wastewater system (hereinafter more fully defined and referred to as the "System") of the LGA will require the supply of services (the "Services") for the treatment and/or transmission of drinking water (in the case of a water project) or for the treatment or disposal of wastewater (in the case of a wastewater project) from the construction, operation and maintenance of new or additional facilities (which facilities are hereafter referred to as the "Project Facilities"); and

WHEREAS, the LGA is desirous of obtaining the Services for the System in cooperation with the OWDA; and

WHEREAS, the OWDA is willing to cooperate with the LGA in obtaining such Services, and the LGA has given the OWDA reasonable assurances that the LGA will make the payments hereinafter provided for and will fulfill its other obligations hereunder; and

WHEREAS, the OWDA and LGA have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

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

## ARTICLE I - DEFINITIONS

Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

### DEFINITIONS RELATING TO PHYSICAL FACILITIES

(a) "Approved Application" means the application of the LGA dated as of the date specified on the Term Sheet as the "LGA Application Date," submitted to the OWDA, together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA on the date specified on the Term Sheet as the "OWDA Application Approval Date," together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.

(b) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit A attached hereto and made a part hereof and more particularly described in the Approved Application together with any changes therein made pursuant to Article III hereof.

(c) "Project Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities.

(d) "System" means the facilities of the LGA specified as the "System" on the Term Sheet.

### DEFINITIONS RELATING TO COSTS

(e) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the first proviso below), the following costs of the Project Facilities and the Project Site: the purchase price of the Project Site when acquired by purchase, or the value thereof when appropriated as found by the jury, together with the costs of the proceedings and the damages assessed in favor of any owner of the adjoining lands and interests therein, subject to the second proviso set forth below; the cost of demolishing or removing any buildings or structures on the Project Site, including the cost of acquiring any lands to which such buildings or structures may be removed, subject to the second proviso set forth below; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of easements therefor, subject to the second proviso set forth below; the costs of construction of the Project Facilities including, but not limited to, the cost of all machinery, furnishings and equipment included therein; interest on all funds disbursed by the OWDA (other than funds paid over to the OWDA by the LGA for disbursement by the OWDA) at the Contract Interest Rate from the date of disbursement by the OWDA of each portion thereof pursuant to Section 3.8 hereof to the first day of the January or the July next preceding the commencement of the Contract Period of Years based on the then existing cost allocations; engineering expenses for the Project Facilities including, but not limited to, the cost of preliminary and other surveys, the cost of preparing plans, estimates and specifications, the cost of all necessary soil and other investigations and laboratory testing, and resident engineering and inspection fees; the cost of printing and

publishing the notices and legislation required; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all Eligible Project Costs other than such administrative expenses, or \$400, whichever is the greater; any obligation for the repayment of borrowed money incurred by the LGA to the OWDA under any Cooperative Agreement for State Planning Project between the LGA and OWDA with respect to the Project Facilities, and any other necessary miscellaneous expenditures; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the OWDA, the payment of such costs by the OWDA would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation; and provided further, however, that Eligible Project Costs shall include costs for the acquisition of real property or interests therein (other than easements) only if the OWDA shall have received from the LGA reasonably sufficient assurances as to environmental matters related to such real property. Notwithstanding anything contained herein to the contrary, Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by the LGA to a broker or finder as a result of or in connection with the OWDA's agreement to pay the Eligible Project Costs to the LGA as provided herein.

#### DEFINITIONS RELATING TO PARTICIPATION IN COSTS

(f) "Original Loan Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds of the OWDA, which costs shall in no event exceed the amount specified on the Term Sheet as the "Maximum Original Loan Amount."

(g) "Semiannual Payment Obligation" means the amount payable semiannually by the LGA to amortize the Original Loan Amount over the Contract Period of Years with interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate. An estimate of the Semiannual Payment Obligation based on the Maximum Original Loan Amount and the Contract Interest Rate is specified on the Term Sheet beneath the Maximum Original Loan Amount.

If the Contract Period of Years commences prior to the final determination of the Original Loan Amount, the Semiannual Payment Obligation shall be based upon the best figures available at the time the computation of each semiannual payment is required to be made. When such final costs are known, the Semiannual Payment Obligation shall be recomputed and the next following semiannual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Original Loan Amount been used in computing the Semiannual Payment Obligation at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(h) "Contract Interest Rate" means the rate specified as such on the Term Sheet.

(i) "Contract Period of Years" means the period of the Contract Term specified in the Term Sheet, commencing on the date six months prior to the First Payment Date specified in the Term Sheet.

(j) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.

(k) "Pledged Revenues" means the revenues derived by the LGA from the ownership and operation of the System (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the System and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the LGA to secure debt obligations heretofore or hereafter issued or incurred by the LGA for the System.

(l) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the LGA to pay all or a portion of the cost of the Project.

## ARTICLE II - PROPERTY INTERESTS IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the LGA.

Section 2.2. The LGA agrees that the OWDA and its duly authorized agents shall have the right at all reasonable times to enter upon the Project Site and Project Facilities and to examine and inspect the same. The LGA further agrees that the OWDA and its duly authorized agents shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

## ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES AND PAYMENT OF COSTS THEREOF

Section 3.1. Subject to the terms and conditions of this Agreement, the LGA shall do all things necessary to construct the Project Facilities on the Project Site (which the LGA hereby represents has been acquired by the LGA) by means of the construction contract(s) specified on Exhibit B hereto. The LGA shall use its best efforts to cause the Project Facilities to be fully operational by the date specified on the Term Sheet as the "Operational Date."

In connection with the construction of the Project Facilities, the LGA agrees that:

(a) The construction contract(s) will provide that the representatives of the OWDA will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection.

(b) The construction of the Project Facilities on the Project Site will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(c) All laborers and mechanics employed on the Project Facilities shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project Facilities, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

(d) Prior to the commencement of construction, the LGA will arrange and conduct a preconstruction conference to include representatives of the OWDA, the LGA and the consulting or resident engineers of the LGA and each contractor.

(e) Each construction contract and contractor's estimate form will be prepared so that materials and equipment furnished to the LGA may be readily itemized.

(f) All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized.

(g) Any change or changes in a construction contract that would increase the contract price by an amount in excess of one percent (1%) or any change or changes regardless of cost that substantially modify the processes contemplated to be performed by the Project Facilities will be submitted to the OWDA for prior approval.

(h) Notification of all change orders not requiring prior approval of the OWDA will be submitted to the OWDA within one (1) month of the time at which they are ordered by the resident or consulting engineer of the LGA.

(i) The construction of the Project Facilities, including the letting of contracts in connection therewith, will conform to applicable requirements of federal, state and local laws, ordinances, rules and regulations.

(j) The LGA will proceed expeditiously with, and complete, the Project Facilities in accordance with the Approved Application and any surveys, plans, profiles, cross sections and specifications or amendments thereto approved by the Director of Environmental Protection of Ohio.

(k) Notwithstanding anything contained herein to the contrary, the obligation of the OWDA to pay Eligible Project Costs pursuant to the terms and conditions of this Agreement shall expire three (3) years from the date hereof. Upon the expiration of the aforesaid period of years, the OWDA shall not be obligated to pay any additional Eligible Project Costs to the LGA hereunder. In the event that the OWDA, in its sole discretion, decides to pay additional Eligible Project Costs after the expiration of its obligation to do so hereunder, it shall so notify the LGA. No such decision by the OWDA to pay any additional Eligible Project Costs hereunder shall be deemed to constitute an extension of its obligation to pay Eligible Project Costs hereunder.

Except as otherwise provided in this Agreement, the LGA shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

Section 3.2. The LGA shall keep accurate records of the Eligible Project Costs. The LGA shall permit the OWDA, acting by and through the Executive Director of the OWDA or his authorized representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of audit and examination, and the LGA shall submit to the OWDA such documents and information as they may reasonably require in connection therewith.

Section 3.3. The LGA shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to one hundred percent (100%) of the contractor's contract price as security for the faithful performance of the contractor's contract.

Section 3.4. The LGA shall require that each of its contractors and all subcontractors maintain during the life of their contracts Workers' Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance, in amounts and on terms that comply with all applicable legal requirements and that are commercially reasonable. Until the Project Facilities are completed and accepted by the LGA, the LGA or (at the option of the LGA) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the OWDA, the LGA, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.5. The LGA shall provide and maintain competent and adequate resident engineering services satisfactory to the OWDA covering the supervision and inspection of the development and construction of the Project Facilities and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OWDA and the LGA at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

Section 3.6. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA. In the event this Agreement is terminated by the OWDA pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the LGA, whether or not in breach of the Agreement, the Eligible Project Costs incurred prior to the date of the commencement of the construction of the Project Facilities or the date of such termination, whichever is earlier, shall be paid by the LGA. If such termination takes place following the date of the commencement of the construction of the Project Facilities, all Eligible Project Costs incurred following such commencement date and prior to the date of termination, with the exception of all costs attributable to the acquisition of the Project Site, shall be borne by: (1) the LGA if this Agreement is terminated at such time by the LGA; or (2) by the OWDA if this Agreement is terminated at such time by the OWDA, but in any event, all costs attributable to the acquisition of the Project Site shall be borne by the LGA. Any moneys paid by either party hereto pursuant to this Agreement which become the obligation of the other party under the

provisions of this Section shall be repaid in not more than three (3) years after termination with interest on the outstanding balances at the Contract Interest Rate.

Section 3.7. The OWDA may decline to deliver any further certificates of availability of funds pursuant to Section 3.8 hereof from and after any determination by the OWDA that any information furnished to the OWDA, in writing or otherwise, in connection with the LGA's application for the transactions contemplated by this Agreement was false or misleading in any material respect or that such information omitted any other information needed to make the information furnished not false or misleading in any material respect.

Section 3.8. Subject to Section 3.7 hereof, the OWDA shall deliver to the LGA a certificate, certifying that moneys in the amount necessary to pay the Eligible Project Costs obligated or to be obligated up to the Maximum Original Loan Amount are available or are in the process of collection and have been encumbered by the Authority. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the LGA in form and detail satisfactory to the OWDA, the OWDA shall cause to be delivered checks in payment of the invoices, demands for payment, approved contractors' estimates or other evidence of cost incurrence to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth to pay such obligated Eligible Project Costs. The "LGA" represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA."

Section 3.9. Upon completion of the Project Facilities, the LGA shall make a full and complete accounting to the OWDA of the final Eligible Project Costs.

#### ARTICLE IV - PAYMENTS BY LGA

Section 4.1. Subject to the further provisions hereinafter set forth, the LGA agrees to and shall pay semiannually on January 1 and July 1 of each year of the Contract Period of Years, commencing on the First Payment Date (each such date a "Due Date"), to the OWDA, but solely from the Pledged Revenues, the Semiannual Payment Obligation. In the event that the LGA pays less than the full amount due hereunder on any Due Date, then the amount so paid shall be applied first to interest payable hereunder, then to any late charges payable hereunder, and then to the Original Loan Amount payable hereunder. The LGA acknowledges and agrees that the OWDA afforded the LGA the opportunity to choose between a schedule of payments based on equal principal payments and one based on equal debt service payments and that the estimated Semiannual Payment Obligation shown on the Term Sheet reflect the choice of the LGA.

The obligation of the LGA to pay the charges set forth shall not be assignable, and the LGA shall not be discharged therefrom, without the prior written consent of the OWDA. In the event that services supplied by the Project Facilities or any other portion of the System shall cease or be suspended for any reason, the LGA shall continue to be obligated to pay the charges pursuant to this Section 4.1, but solely from the Pledged Revenues. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 5th day after the Due Date, the amount of such default shall bear interest at the Default Rate from the Due Date until the date of

the payment thereof. Interest at the Default Rate shall be calculated for the actual number of days of default from the Due Date until payment on the basis of a 360 day year. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 30th day after the Due Date, in addition to the interest calculated at the Default Rate, a "late charge" of one percent (1%) on the amount of each default shall also be paid to the OWDA by the LGA from the Pledged Revenues for failure to make the payment as provided herein. Thereafter, for each additional thirty (30) days during which the charges remain unpaid, the LGA shall continue to pay from the Pledged Revenues an additional late charge of one percent (1%) on the amount of such default until such charges are paid. In no event shall the OWDA collect interest or late charges in excess of the maximum amount permitted by law. In addition to the foregoing, in the event of a default as aforesaid, all of the costs incurred by the OWDA in curing such default including, but not limited to, court costs and attorney fees, shall (to the extent not previously repaid to the OWDA and to the fullest extent permitted by law) be paid as part of the Eligible Project Costs hereunder and be repaid by the LGA to the OWDA as part of the Original Loan Amount. The Borrower [in other agreements, the "LGA"] represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA."

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor shall the general credit of the LGA be pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be required to be made only from the Pledged Revenues, which are hereby pledged to such payment; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the LGA from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than June 15 and December 15 of each year of the Contract Period of Years, the OWDA shall invoice the LGA for the sum payable by the LGA pursuant to Section 4.1 and that payment of each such invoice shall be made by the LGA to the OWDA not later than the first day of the following month. No failure by the OWDA to send any such invoice and no failure by the LGA to receive any such invoice shall relieve the LGA from its obligation to pay the amount due hereunder on the applicable Due Date.

Section 4.3. The LGA hereby agrees that: (a) from and after the completion and placement into operation of the Project Facilities, it will at all times prescribe and charge such rates for the services of the System as shall result in Pledged Revenues at least adequate to provide for the payments required by Section 4.1 hereof and shall from time to time at the request of the Authority cause a study of the sufficiency of the LGA's rates for that purpose to be done by an independent expert acceptable to the OWDA; (b) the LGA will furnish to the OWDA annually reports of the operation and income of the System and also an annual report of the accounts and operations of the System and such other documents as the OWDA may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the LGA will permit the authorized agent of the OWDA to inspect all records, accounts and data of the System at all reasonable times; and (c) that the LGA will segregate the revenues, funds and properties of the System from all other funds and properties of the LGA. All of the obligations under this Section are hereby established as duties specifically enjoined by law and resulting from an

office, trust or station upon the LGA within the meaning of Section 2731.01 of the Ohio Revised Code.

Section 4.4. If the LGA pays all or any portion of the Semiannual Payment Obligation from Special Assessment Funds and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the LGA may elect to apply the amount of such payment to a reduction of the Original Loan Amount by including that amount with its next payment of the Semiannual Payment Obligation pursuant to Section 4.1 hereof, accompanied by a written notice to the Authority identifying the amount so included and directing the Authority so to apply that amount. Upon the receipt of such payment and notice, the Authority shall recompute the remaining payments of the Semiannual Payment Obligation based on the reduced Original Loan Amount and shall notify the LGA in writing of the reduced amount of the remaining payments.

Section 4.5. In order to enable the OWDA to comply with the requirements of federal securities laws (including, without limitation, Rule 10b-5 and Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended), the LGA agrees to prepare and file with the OWDA or, at the direction of the OWDA, to file with the Municipal Securities Rulemaking Board ("MSRB"), any one or more nationally recognized municipal securities information repositories ("NRMSIRs") or state information depository ("SID"), any annual financial information or material events disclosures that the OWDA may determine it requires to achieve such compliance. The LGA consents to the OWDA's incorporation by reference into OWDA official statements or other OWDA filings with the MSRB, any NRMSIR, or any SID of any official statements or portions thereof, financial statements, or other documents that the LGA may have filed or may file with the MSRB, any NRMSIR, or any SID. In the event the LGA fails to prepare any financial statement or other financial information that this Section requires the LGA to prepare and file with or at the direction of the OWDA, then the OWDA shall have the right (in addition to any other rights it may have to enforce the obligations of the LGA hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof.

#### ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 5.1. The LGA agrees that during the Contract Period of Years that: (a) it will, subject to its right to contest in good faith the issue of non-compliance, operate the Project Facilities and the System, or cause them to be operated, in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and (b) it will, subject to its right to discontinue use or operation of the Project Facilities or the System or any part thereof in accordance with this Agreement, keep the Project Facilities and the System, including all appurtenances thereto and the equipment and machinery therein, or cause them to

be kept, in good repair and good operating condition so that the completed Project Facilities and System will continue to operate with substantially the same efficiency as when first constructed.

The LGA shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site, the Project Facilities, and the System from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the LGA, and the same shall be the property of the LGA and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be, and the System; and provided further that the LGA shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site, the Project Facilities, or the System, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the OWDA thereto.

Section 5.2. The LGA agrees that it will commence, or will cause to be commenced, operation of the Project Facilities immediately upon the completion of the construction thereof and the receipt of any governmental approvals required for the commencement of their operation, and will not discontinue operation of the Project Facilities or any other part of the System without meeting all conditions to and requirements for such discontinuance imposed by law and this Agreement. The LGA agrees that it will provide adequate operation and maintenance of the Project Facilities and the System to comply with all applicable water quality standards established for the river basin served by the Project Facilities and with all applicable rules and regulations of the Director of Environmental Protection of Ohio. The LGA agrees that sufficient qualified operating personnel will be retained by the LGA to operate the Project Facilities and the System, or will be required to be obtained by any independent contractor engaged by the LGA to operate the Project Facilities and the System or any portion thereof, and that all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities and each other part of the System until the end of the Contract Period of Years or the discontinuance of the operation of the Project Facilities or of such other part of the System in accordance with Section 5.1 and this Section 5.2.

The LGA will permit the OWDA and its agents to have access to the records of the LGA pertaining to the operation and maintenance of the Project Facilities and the System at any reasonable time.

Section 5.3. The LGA agrees to insure, or cause to be insured, the Project Facilities and the System in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

Section 5.4. Any insurance policy issued pursuant to Section 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OWDA and the LGA as their respective interests may appear. Each insurance policy provided for in Sections 5.3 and 5.6 hereof shall contain a provision to the effect that the insurance company shall not cancel the

same without first giving written notice thereof to the OWDA and the LGA at least ten (10) days in advance of such cancellation.

Section 5.5. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3 and 5.6 hereof shall be applied as follows: (i) the net proceeds of the insurance required in Section 5.3 hereof shall be applied as provided in Section 5.9 hereof, and (ii) the net proceeds of the insurance required in Section 5.6 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.6. The LGA agrees that it will carry, or will cause to be carried, public liability insurance with reference to the Project Facilities with one or more reputable insurance companies duly qualified to do business in the State of Ohio, in minimum amounts of \$500,000 for the death of or personal injury to one person and \$1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and \$500,000 for property damage for any occurrence in connection with the Project Facilities. The OWDA shall be made an additional insured under such policies.

Section 5.7. Throughout the Contract Period of Years, the LGA shall maintain Workers' Compensation Coverage or cause the same to be maintained in accordance with state law.

Section 5.8. In the event the LGA shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep, or cause to be kept, the Project Facilities in good repair and operating condition, or shall fail to operate, or cause to be operated, the Project Facilities in accordance with Section 5.2 hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2 and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become an additional obligation of the LGA to the OWDA which amounts, together with interest thereon at the Contract Interest Rate or at the rate of eight per centum (8%) per annum, whichever is greater, from the date thereof, the LGA agrees to pay.

Section 5.9. If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and the LGA will (i) promptly repair, rebuild or restore the property damaged or destroyed, and (ii) apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the LGA necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the LGA.

Section 5.10. In the event that title to or the temporary use of the Project Site the Project Facilities, or the System, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and any net proceeds received from any

award made in such eminent domain proceedings shall be paid to and held by the LGA in a separate condemnation award account and shall be applied by the LGA in either or both the following ways as shall be determined by the LGA:

(a) The restoration of the facilities of the System to substantially the same condition as they existed prior to the exercise of said power of eminent domain, or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent that, when added to the remaining real estate and facilities of the System, will cause the System to be substantially the equivalent of the System as it existed prior to the exercise of said power of eminent domain, which real estate and facilities shall be deemed a part of the Project Site or the Project Facilities, as the case may be, and the System, without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the LGA upon delivery to the OWDA of a certificate signed by an authorized officer of the LGA that the LGA has complied with either paragraph (a) or (b), or both, of this Section. The OWDA shall cooperate fully with the LGA in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System, or any part thereof. In no event will the LGA voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System or any part thereof without the written consent of the OWDA.

ARTICLE VI - REPRESENTATIONS AND AGREEMENTS  
OF THE LGA IN REGARD TO ENVIRONMENTAL MATTERS;  
EVENTS OF DEFAULT AND REMEDIES THEREFOR;  
INDEMNIFICATION

Section 6.1. The LGA hereby represents that:

(a) It is, and the LGA hereby covenants that it shall remain, in compliance with all applicable federal, state and local environmental laws and regulations applicable to the System during the Contract Period of Years, subject to its right to contest in good faith the issue of non-compliance;

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the LGA, alleging a violation of any federal, state or local environmental law or regulation applicable to the System except as set forth in the attached;

(c) No judgment or consent order has been rendered against it, nor is it a party to any agreement, which consent order, judgment or agreement imposes, will impose or has imposed any fines or monetary penalties for the violation of any federal, state or local environmental law or regulation applicable to the System that have not been paid in full except as set forth in the attached; and

Section 6.2. The LGA agrees that each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The LGA shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article IV hereof; or

(b) The LGA shall fail to observe and perform any other obligations, agreements or provisions herein, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OWDA; provided, however, that such failure shall not constitute an Event of Default hereunder if the cure of such failure cannot be effected within thirty (30) days and if the LGA is taking all reasonably necessary actions to cure such failure with all deliberate speed.

(c) Any representations made by the LGA in Section 6.1. shall at any time during the Contract Period of Years prove to be false.

Section 6.3. Whenever an Event of Default shall have happened and be subsisting, the OWDA may exercise any and all rights and remedies for the enforcement of the obligations of the LGA hereunder. In addition to any other rights or remedies provided herein, by law or otherwise, the OWDA may:

(a) declare the full amount of the then unpaid Original Loan Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order or agreement affecting the LGA, require the LGA to agree to subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation applicable to the System to the payment of the Original Loan Amount and the interest and any late charges due thereon, and the LGA hereby agrees to use its best efforts to effect such subordination.

Section 6.4. No right or remedy conferred upon the OWDA under Section 6.3 hereof 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.

Section 6.5. The LGA releases the OWDA from, agrees that the OWDA shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the OWDA, its officers, employees and agents harmless 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 System, the Project Facilities, 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 OWDA, its officers, employees and agents. The LGA further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWDA and its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the LGA in the performance of any covenant or agreement on the part of the LGA to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project

Facilities or arising from any act or negligence of or failure to act by the LGA, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities or the System (other than any accident, injury, or damage that results from negligent or intentional acts of the OWDA, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the OWDA by reason of any claim described in this Section, the OWDA agrees to cause written notice of such action or proceeding to be given to the LGA, and the LGA upon notice from the OWDA covenants to resist or defend such action or proceedings at the LGA's expense including all legal and other expenses (including reasonable attorneys' fees).

Section 6.6 Each party agrees that the venue of any suit, action or proceedings relating to this Agreement will be the courts of the County of Franklin, Ohio or the Ohio Supreme Court, and each party irrevocably waives any objection that it may have to that venue and waives any right to trial by jury for any such suit, action or proceedings.

#### ARTICLE VII - PRIVATE BUSINESS USE RESTRICTIONS

Section 7.1. With respect to the financing of Project Facilities by the OWDA as provided herein, the LGA agrees as follows:

(a) At no time will ten percent (10%) or more of any Project Facility or Project Site to be financed with funds borrowed from the OWDA ("OWDA Funds") be used for any private business use (as hereinafter defined) while at the same time the payment of the principal of, or the interest on, the OWDA Funds is directly or indirectly (i) secured by any interest in (A) property used or to be used for a private business use or (B) payments made with respect to such property or (ii) derived from (A) payments with respect to such property (whether or not made to the OWDA) or (B) borrowed money used or to be used for private business use.

(b) No portion of the OWDA Funds will be used to make or finance loans to persons other than other governmental units.

Section 7.2. For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

Section 7.3. For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

Section 7.4. If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the LGA agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided hereinabove.

#### ARTICLE VIII - MISCELLANEOUS PROVISIONS

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by regular, registered or certified mail, postage prepaid, or delivered personally, and

(i) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

The Ohio Water Development Authority  
480 South High Street  
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the address listed on the Term Sheet as the "LGA Notice Address," or at such other addresses with respect to either such party as that party may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.2. Any approval of the OWDA required by this Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth day following the submission of the matter requiring approval to the Executive Director of the OWDA unless disapproved in writing prior to such thirtieth day. Any provision of the Agreement requiring the approval of the OWDA or the satisfaction or evidence of satisfaction of the OWDA, shall be interpreted as requiring action by the Executive Director of the OWDA granting, authorizing or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 8.3. Upon request of the OWDA, the LGA agrees to execute the information report required by Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the LGA. The LGA hereby agrees that the OWDA may file such information report for and on behalf of the LGA with the Internal Revenue Service.

Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and upon the certification of availability of funds as provided in Section 3.8 hereof.

Section 8.5. This Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until all obligations of the LGA under Section 4.1 hereof have been fully satisfied.

Section 8.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Agreement shall not be assigned by the LGA without the prior written consent of the OWDA. The OWDA, at its option, may assign this Agreement without the consent of the LGA. All references to the Environmental Protection Agency of the United States of America or to the Director of Environmental Protection of the State of Ohio or to any offices or divisions of either shall include any successors thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first hereinabove written.

APPROVED AS TO FORM

OHIO WATER DEVELOPMENT  
AUTHORITY

\_\_\_\_\_  
OWDA General Counsel

By: \_\_\_\_\_  
OWDA Executive Director

APPROVED AS TO FORM

LGA: \_\_\_\_\_

\_\_\_\_\_  
LGA Legal Officer or Counsel

By: \_\_\_\_\_

By: \_\_\_\_\_

PROJECT FACILITIES DESCRIPTION

This project is part of a strategic initiative to reduce sewer surcharging. The Mull and Norman Sanitary sewers were originally installed in the 1930s and were rehabilitated with grout in the 1990s. During several previous heavy rain events, these sewers have surcharged, due to inflow directly entering the sewers. The surcharges have led to basement flooding and sanitary sewer overflows. Avon Lake's sewer system is currently a mix of separate and combined sewers. The Long-Term Control Plan, approved by Ohio EPA in December, 2004, required complete separation of all sewers and prevention of sewer overflows. The project will replace the existing 3,750' of 8" vitrified clay pipe sewers with approximately 2,100' of 10" PVC sewer and 1,650' of 15" PVC sewer. Additionally, because the water line has aged to an extent that it would experience significant damage during the construction, approximately 3,940' of new 8" water line will be installed. Furthermore, approximately 97 year drains will be installed to drain treelawns and new sanitary and storm laterals within the right of way for most, if not all, of the houses will be installed, along with reconstruction of the road after most of it is torn up for all of this underground work.

CONSTRUCTION CONTRACT

Bids will be opened on January 18, 2016, and the contract should be awarded by the Board of Municipal Utilities on January 19, 2016, contingent upon a successful pre-award meeting with Avon Lake Regional Water staff and loan approval by OWDA. The contract will be included in the final loan agreement.

TERM SHEET

The parties to the foregoing Cooperative Agreement hereby agree that the following terms shall be incorporated into said Cooperative Agreement and made a part thereof:

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

LGA: \_\_\_\_\_

The LGA is a (specify category of governmental body, e.g., municipal corporation, county, township, etc.): \_\_\_\_\_

LGA Resolution Date: \_\_\_\_\_

LGA Application Date: \_\_\_\_\_

OWDA Application Approval Date: \_\_\_\_\_

System: All water facilities of the LGA that now exist or that may in the future come into being, including, \_\_\_\_\_ without \_\_\_\_\_ limitation, \_\_\_\_\_ the \_\_\_\_\_ following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Maximum Original Loan Amount: \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_)  
(Based on the Maximum Original Loan Amount of \$ \_\_\_\_\_, and the Contract Interest Rate, the estimated Semiannual Payment Obligation equals \$ \_\_\_\_\_.)

Contract Interest Rate: The rate per annum of \_\_\_\_\_ per cent ( \_\_\_\_\_ %).

Contract Term: \_\_\_\_\_ years

First Payment Date: \_\_\_\_\_

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

LGA Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OHIO WATER DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

LGA: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

BY: Mr. Meiners

TEMP NO: 10617

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 886.21, OF THE AVON LAKE INCOME TAX ORDINANCE, ENTITLED BOARD OF REVIEW, AND DECLARING AN EMERGENCY.

WHEREAS, the Finance Director determined that Section 886.12 of the Income Tax Ordinance needs to be amended to designate the appropriate appointing official, and

WHEREAS, Council coming now to consider said recommendation approves it in full, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE,  
STATE OF OHIO:

Section No. 1: That Codified Ordinance Section 886.21 is hereby amended as follows:

**886.21 BOARD OF REVIEW.**

(A)(1) The Board of Review shall consist of three members. Two members shall be appointed by the legislative authority of the City, but such appointees may not be employees, elected officials, or contractors with the City at any time during their term or in the five years (which applies only to these two appointments) immediately preceding the date of appointment. One member shall be appointed by the ~~[position name of the official]~~ Mayor of the City. This member may be an employee of the City, but may not be the director of finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(2) The term for members of the Board of Review shall be two years. There is no limit on the number of terms that a member may serve if the member is reappointed by the legislative authority. The board member appointed by the ~~[position name of the official]~~ Mayor of the City shall serve at the discretion of the administrative

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity to amend the new Income Tax Ordinance to designate the proper appointing authority to be in compliance with State Law, thus for the public welfare. Therefore, this Ordinance shall be in full force and

effect from and immediately after its passage and approval by the Mayor.

PASSED: \_\_\_\_\_  
President of Council

POSTED: \_\_\_\_\_  
Approved

ATTEST: \_\_\_\_\_  
Clerk of Council Mayor

BY: Mrs. Fenderbosch

TEMP NO: 10618

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING PLANNING & ZONING CODE SECTION 1214.07(b) REGARDING THE MEMBERSHIP OF THE ZONING BOARD OF APPEALS, AND DECLARING AN EMERGENCY.

WHEREAS, Council referred an amendment to Section 1214.07 (b) to Planning Commission for consideration, and

WHEREAS, Planning Commission reviewed said amendment and recommended it at the January 5, 2016 Planning Commission meeting, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE,  
STATE OF OHIO:

Section No. 1: That Planning & Zoning Code Section 1214.07 (b) is hereby amended as follows:

#### 1214.07 ZONING BOARD OF APPEALS

##### (b) Organization

(1) The Zoning Board of Appeals shall consist of five members. Two members shall be appointed by the Mayor and three members shall be appointed by Council, as hereinafter provided. The two members appointed by the Mayor are subject to confirmation and approval by Council. All members, at the date of their respective appointments and thereafter during their terms of office, shall be, and shall have been for the two years last past, qualified electors of the City who hold no other elective or appointive office or position **except for membership on the Citizens Tree Commission, the Cable Advisory Commission, the Environmental Affairs Advisory Board, the Income Tax Board of Review, the Community Reinvestment Area Housing Council, or the Affirmative Action Committee**, who are not otherwise employed within the Municipal Government.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure to utilize the expertise of members of the Zoning Board of Appeals to serve on certain other commissions/boards that are not in conflict with the duties of the Zoning Board of Appeals and enhance the duties of said

boards/commission, thus for the public welfare. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

1<sup>st</sup> reading:  
2<sup>nd</sup> reading:  
3<sup>rd</sup> reading:

PASSED: \_\_\_\_\_  
President of Council

POSTED: \_\_\_\_\_  
Approved

ATTEST: \_\_\_\_\_