

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A LICENSE AGREEMENT WITH THE CITY OF BAY VILLAGE ON BEHALF OF AVON LAKE REGIONAL WATER AND DECLARING AN EMERGENCY.

WHEREAS, the City of Bay Village desires to offer space on an antenna located at the City of Bay Village Service Department garage on Krebs Road to Avon Lake Regional Water; and

WHEREAS, the City of Bay Village will grant a revocable license to Avon Lake Regional Water to temporarily access the Bay Village Service Department garage to install a Repeater; and

WHEREAS, in exchange for the City of Bay Village offering space on its garage, Avon Lake Regional Water will furnish improvements to Walker Road Park; and

WHEREAS, it is necessary for the City of Avon Lake to enter into a license agreement with the City of Bay Village to install a Repeater to advance Avon Lake Regional Water's metering infrastructure.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: The Mayor of the City of Avon Lake is hereby authorized to sign a license agreement with the City of Bay Village. (Exhibit A)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution 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: This Resolution is hereby declared to be an emergency measure, the emergency being the necessity of installing a Repeater that will provide metering services in the eastern section of the City, thus for the preservation of the public peace, health, safety, and welfare. Therefore, this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: 11/27/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 12/01/2023

APPROVED: 11/28/2023

ATTEST: /s/ Valerie E. Rosmarin

Clerk of Council

/s/ Gregory J. Zilka

Mayor

LICENSE AGREEMENT

This LICENSE AGREEMENT (the “Agreement”) made and entered into by and among the **City of Avon Lake**, an Ohio municipal corporation (“Avon Lake”), the **City of Bay Village**, an Ohio municipal corporation (“Bay Village”) (with Avon Lake and Bay Village collectively referred to as the “Cities,” and individually as a “City”), and **Avon Lake Regional Water**, by and through the City of Avon Lake (“Regional Water”) (with Avon Lake, Bay Village, and Regional Water collectively referred to as the “Parties,” and individually, as a “Party”), is to EVIDENCE THAT:

A. Bay Village desires to offer space on an antenna located at the Bay Village Service Department garage on Krebs Road (the “Garage”) to Regional Water for Regional Water to mount a repeater, the specifications of which are attached to this Agreement as Exhibit A and incorporated in this Agreement by reference (the “Repeater”) as part of its advanced metering infrastructure.

B. Bay Village desires to grant a revocable license to Regional Water to temporarily access the Garage to install the Repeater.

C. In exchange for Bay Village offering space on its Garage, Regional Water desires to furnish improvements to Walker Road Park (“Park Improvements”).

NOW, THEREFORE, the Parties agree as follows:

1. License.

a. Grant of License. Bay Village grants a revocable license to Regional Water (“License”) to use and access its Garage, including the Garage’s antenna, for the sole purpose of installing and performing maintenance on the Repeater.

b. Access to Garage. Regional Water shall have access to the Garage during normal business hours, which shall be Monday through Friday between 7 a.m. and 3:30 p.m., except for Bay Village’s observed holidays. Regional Water shall give notice of its intent to access the Garage by calling the Service Department at Bay Village at (440) 871-1221 within a reasonable amount of time prior to accessing the Garage, which access shall not be unreasonably withheld by Bay Village. If Regional Water requires access outside of normal working hours, then Regional Water shall contact the on-call service supervisor at (440) 871-1234 to arrange for access (this is the phone number for the police department dispatch, which will contact the supervisor to coordinate access) and Regional Water shall reimburse Bay Village for access outside of normal working hours at a rate of fifty dollars (\$50.00) per hour.

c. Term. Unless earlier revoked by Bay Village, the License is valid for a period of ten (10) years beginning on the date last signed by the Parties to this Agreement. At Regional Water’s option, Regional Water may extend the Term of the License for one (1) additional ten (10) year period. Regional Water shall exercise the extension period by providing Bay Village with written notice of extension thirty (30) days prior to the end of the preceding Term.

d. Termination. Bay Village shall have the unilateral and voluntary option to revoke or terminate this License upon forty-eight (48) hours prior written notice to Regional Water.

e. No Fee. The Parties agree that there is no additional fee to be paid to the Bay Village for the License granted by this Agreement.

2. Repeater. Regional Water shall be solely responsible for the maintenance, repair, and replacement of the Repeater so long as the Repeater is mounted on the antenna. Regional Water acknowledges that, in the event that the antenna on which the Repeater will be mounted falls down, becomes damaged, or otherwise fails, and/or in the event that Bay Village has to remove the antenna, whether due to the antenna's damage, failure, or for any reason, Bay Village does not owe Regional Water or Avon Lake any duty to reconstruct the antenna or provide a replacement structure on which Regional Water may install a Repeater.

3. Park Improvements. Regional Water shall construct and install the Park Improvements listed on Exhibit B, which is attached to this Agreement and incorporated by reference, and which may be modified by Regional Water, at its sole cost and expense, and without any cost, expense, or liability whatsoever to Bay Village. Regional Water shall construct and install the Park Improvements on certain portions of Walker Road Park, a diagram of which is attached to this Agreement as Exhibit C and incorporated in this Agreement by reference. Regional Water shall construct the Park Improvements no later than one (1) year after the date of this Agreement. The Parties intend for the Park Improvements to be permanent, and the Park Improvements shall be in place beyond the term of the License.

4. Acceptance and Maintenance of Park Improvements. The Cities agree, that, provided the Park Improvements are completed in accordance with the plans and specifications in Exhibits B and C, and in accordance with the ordinances, regulations, and specifications of the Cities currently in effect, then the Cities shall accept the Park Improvements upon their completion and approval. During the term of the License, and after the expiration of the term or termination of the License, the Cities shall cooperate and share equally in the costs of maintaining, repairing, and replacing the Park Improvements.

5. Compliance with Laws. Regional Water shall install the Repeater and shall construct and install the Park Improvements in accordance with the ordinances, regulations, and specifications of the Cities currently in effect.

6. Indemnification and Limit of Liability. Regional Water shall defend, indemnify and save harmless Bay Village, its successors and assigns, and any and all members or agents thereof, from and against any and all claims, losses, damages, liability, costs, expenses or obligations (including attorneys fees and court costs), and to the extent of Regional Water and/or contractor insurance proceeds actually received to cover said loss(es), arising directly as a result of the installation of the Repeater and Park Improvements. Notwithstanding any contrary provision of this Agreement, in the event of any physical damage to the Garage or Walker Road Park as a direct result of the installation of the Repeater and Park Improvements, the Regional Water's obligations under this Agreement shall be limited to restoring the Garage or Walker Road Park to its pre-damage condition.

7. Insurance. Regional Water shall ensure that any contractors performing the installation of the Repeater and Park Improvements are licensed to do business in the Cities and registered to work in the Cities. All contractors shall procure general liability insurance, at least in the amount of One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) in the aggregate. At any time, the Cities may ask that the contractor obtain, with the concurrence of the contractor and if commercially available, other insurance coverage, different limits, or revised deductibles for such periods of time. All property insurance policies shall cover contractor and subcontractors interests and, in case of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or additional insureds under the policies.

8. Condition of Property. Regional Water agrees to leave the Garage in the condition it was found prior to Regional Water accessing the Garage, except for the Repeater. Regional Water understands

that if the Garage is not left in the manner it was presented, except for the Repeater, Bay Village will charge Regional Water for any damage or clean up.

9. Covid-19 and health concerns. When constructing and installing the Repeater and Park Improvements, Regional Water shall follow all federal, state, and local orders, instructions, policies, best practices, and similar guidance related to the COVID-19 global health pandemic and other health emergencies. This necessarily includes all requirements about social distancing, masks, and anything else needed to ensure the public health. Regional Water shall indemnify and hold Bay Village harmless from any claims, demands, suits, citations, or enforcement actions that in any way relate to infectious diseases.

10. Miscellaneous.

a. Amendment; Termination. This Agreement may only be amended by a written agreement of the Parties. This Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party.

b. Assignment. The rights and authority conveyed through this Agreement shall not be assignable or transferrable by either party.

c. Counterparts. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties agree to be bound by facsimile signatures or executed counterparts exchanged electronically in the form of signed PDF copies.

d. Entire Agreement. This Agreement shall be deemed to contain all the terms and conditions agreed upon, it being understood that there are no outside representations or oral agreements.

e. Governing Law. Without regard to its conflict of law principles, the laws of Ohio shall govern all matters with respect to this Agreement.

f. Notices. All notices needed or permitted to be given under any agreement shall be in writing and delivered by hand or overnight courier, or mailed by certified or registered mail, return receipt requested, at the addresses stated below:

If to Regional Water:
Avon Lake Regional Water
201 Miller Road
Avon Lake, OH 44012
Attn: Robert K. Munro, Chief Utilities
Executive
rmunro@avonlakewater.org

If to Avon Lake:
City of Avon Lake
150 Avon Belden Road
Avon Lake, OH 44012
Attn: Gary A. Ebert, Esq., Law Director
GAEBert@avonlake.org

If to Bay Village:
City of Bay Village
350 Dover Center Road
Bay Village, OH 44140
Attn: Mark E. Barbour, Esq., Law Director
mbarbour@cityofbayvillage.com

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) set forth below.

CITY OF AVON LAKE, OHIO:

CITY OF BAY VILLAGE, OHIO:

By: _____
Gregory Zilka, Mayor

By: _____
Paul Koomar, Mayor

Date: _____

Date: _____

AVON LAKE REGIONAL WATER

Approved as to Form:

By: _____
Robert K. Munro, Chief Utilities Executive

Mark E. Barbour, Esq.
Law Director, City of Bay Village

Date: _____

Approved as to Form:

Gary A. Ebert, Esq.
Law Director, City of Avon Lake

EXHIBIT A
Repeater Specifications

Dimensions (h x w x d) (inches)	7.87 in. x 5.91in. x 2.36 in.
Weight (pounds)	3.31 lbs.
Power consumption (amps)	2A
Source voltage (volts)	3.6V
Minimum mounting height (feet)	30 ft.

EXHIBIT B
Improvements Furnished by Regional Water

Item No.	Description	Cost (including labor, materials, and equipment)
1	2" Meter, tap and water service	\$7,568.11
2	Fire hydrant with Storz nozzle	\$3,310.23
3	Mueller Autoflusher with dechlorination	\$6,000.00
4	Outside bottle/drinking fountain with concrete pad	\$12,724.94
5	Two ¾" meters, taps, line	\$10,428.60
	Total	\$40,031.88

EXHIBIT C
Map of Improvements

