

A RESOLUTION ACKNOWLEDGING ACCEPTANCE OF A CAPITAL IMPROVEMENT COMMUNITY PARK, RECREATION/CONSERVATION PROJECT PASS THROUGH GRANT AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to House Bill No. 597, the 134th General Assembly of the State of Ohio has appropriated funds in the amount of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500.00) to make a grant to the Grantees for the costs associated with the construction of a park and recreation or conservation facility in appropriation item C725E2, more fully described as ‘Bay Village Walker Road Retention Basin’, (the “Project”). Furthermore, \$4,250.00 of the total Project appropriations will be used by the ODNR for the administration of the Project; and

WHEREAS, the City of Avon Lake and the City of Bay Village desire to use the Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant for assistance in constructing the Project; and

WHEREAS, this Project will increase capacity of the Walker Road Park Retention Basin by 500,000 cubic feet. The basin is jointly owned by and serves the cities of Bay Village and Avon Lake. Increased rainfall in the last 20 years has led to greater stormwater management needs; and

WHEREAS, Council deems it necessary and in the best interest for the health, safety, and welfare of all City residents to authorize acceptance of the Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant and to enter into the Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant Agreement with the Ohio Department of Natural Resources.

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

Section No. 1: Council authorizes and directs the Mayor to acknowledge acceptance of the Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant Agreement with the Ohio Department of Natural Resources, a copy of which is attached hereto and incorporated herein as Exhibit A.

Section No. 2: Council does hereby agree to obligate the funds required to satisfactorily complete the Project and become eligible for reimbursement under the terms of the Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant Agreement.

Section No. 3: Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including requirements of Section 121.22 of the Ohio Revised Code.

Section No. 4: This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of health, safety, and welfare of the residents of Avon Lake, for the reason that it provides for necessary and time sensitive funding for the Bay Village Walker Road Retention Basin. Therefore, this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: 9/26/2022

/s/ Martin E. O'Donnell
President of Council

POSTED: 9/30/2022

APPROVED: 9/27/2022

ATTEST: /s/Valerie E. Rosmarin
Clerk of Council

/s/ Gregory J. Zilka
Mayor

**Capital Improvement Community Park, Recreation/Conservation Project
Pass-Through Grant Agreement
Ohio Department of Natural Resources**

This Community Recreation/Conservation Project Pass-Through Agreement (hereinafter referred to as the “Agreement”) is made and entered into by and between the State of Ohio, Department of Natural Resources, (hereinafter referred to as “State” or “ODNR”), acting by and through its Director, pursuant to Sections 154.17, 154.22 and 1501.01 of the Ohio Revised Code (“R.C.”) and House Bill No. 597, 134th General Assembly of the State of Ohio and the City of Bay Village, an Ohio political subdivision, and the City of Avon Lake, an Ohio political subdivision (hereinafter referred to as “Grantees”) acting by and through its authorized representative.

Notices: All notices, demands, requests, consents, approvals, and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and shall be deemed to have been properly given when: 1) hand-delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email, and shall be respectively addressed as follows:

(a) with respect to ODNR:

Ohio Department of Natural Resources
Office of Real Estate
2045 Morse Road, E2
Columbus, Ohio 43229
Attn: Program Manager
Email: Teresa.goodridge@dnr.ohio.gov

(b) with respect to the Grantee:

City of Bay Village
3050 Dover Center Road
Bay Village, Ohio 44140
Attn: Project Manager
Email: kkerber@cityofbayvillage.com

(c) with respect to the Grantee:

City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012

Attn: ETAI Kelly Marton
Email: KMarton@avonlake.org

Notices shall be deemed given upon receipt thereof and shall be sent to the addresses appearing above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgment of receipt by the receiving party. The parties designated above shall each have the right to specify as their respective address for purposes of this Agreement any other address upon fifteen (15) days prior written notice thereof, as provided herein, to the other parties listed above. If delivery cannot be made at any address designated for notices, a notice shall be deemed given on the date on which delivery at such address is attempted.

WHEREAS, pursuant to House Bill No. 597, the 134th General Assembly of the State of Ohio has appropriated funds in the amount of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500.00) to make a grant to the Grantees for the costs associated with the construction of a park and recreation or conservation facility in appropriation item C725E2, more fully described in as ‘Bay Village Walker Road Retention Basin’, (hereinafter referred to as “Project”). Furthermore, \$4,250.00 of the total Project appropriations will be used by the ODNR for the administration of the Project. The Project reference number is **CUYA-065C**; and

WHEREAS, the General Assembly has identified the Parks and Recreation Improvement Fund (Fund 7035), created and existing under R.C. § 154.22(F), as the fund from which these monies will be disbursed; and

WHEREAS, pursuant to R.C. Chap.154 and Article VIII, Section 2i of the Ohio Constitution, capital facilities lease-appropriation bonds (the “Bonds”) have been or will be issued by the Ohio Treasurer of State (the “Treasurer”) for the purpose of paying the “costs of capital facilities” including acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging and otherwise improving, equipping, and furnishing capital facilities for parks and recreation, all as defined and described in R.C. §154.01(K). A portion of those Bonds proceeds will be used by ODNR to provide funding to the Grantees for the Project under this Agreement. Because ODNR is funding the Project with proceeds of those Bonds, ODNR requires that the Grantees make certain representations, warranties, and covenants (both affirmative and negative) concerning the Project and use of the grant funds, as more fully described, or provided in this Agreement, in order to comply with federal and state laws, regulations, and rules relating to those Bonds and the projects funded with proceeds of those Bonds.

NOW THEREFORE, for the purposes of providing the funds to Grantees pursuant to House Bill No. 597 of the 134th General Assembly, the parties hereto covenant and agree as follows:

1. FUNDING AMOUNT. ODNR agrees to provide the Grantees Two Hundred Eight Thousand-Two Hundred Fifty Dollars (\$208,250.00), via qualifying advance and reimbursement, to be used toward the total cost of the Project. Four Thousand Two Hundred Fifty Dollars (\$4,250.00) of the amount appropriated for the Project will be retained by ODNR to cover administrative costs. In no event shall ODNR’s payment to Grantees exceed Two Hundred Eight Thousand-Two Hundred Fifty Dollars (\$208,250.00). Funds for this Project have been released by the Controlling Board as of _____ and encumbered by Contract Encumbrance Record Number _____ and are so certified by the Director of Budget and Management on _____. Obligations of the State are subject to the provisions of R.C. §126.07. Any funds provided under this Agreement that are not spent shall be returned in full to the State. Grant funds will be advanced and/or reimbursed directly to the City of Bay Village.

2. PROJECT DESCRIPTION. The Grantees shall use the grant funds for ‘Bay Village Walker Road Retention Basin’, a project to expand the Walker Road Park retention basin by 500,000 cu ft. in Avon Lake, OH, all as more fully described in Exhibit A attached hereto.

3. EFFECTIVE AND TERMINATION DATES. This Agreement shall commence on the date that it is signed by ODNR (the “Effective Date”) and will, unless otherwise earlier terminated

as provided herein, expire on the later of: (i) 15 years from the date of Project completion (or Project acquisition if the Project is solely for the acquisition of real property); or (ii) the date upon which the latest Bond issuance funding or refinancing of the Project is paid in full (the “Term”). Grantees shall complete the Project on or before June 30th, 2024.

4. NO RESTRICTIONS OF RECORD. Grantees hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Project, including without limitation, any encumbrances, liens, or other matters, which would interfere with or otherwise impair the use of the property as described in the Boundary Map attached hereto as Exhibit B, on which the Project will be located and developed as a public parks and recreation or conservation facility (the “Property”). Grantees represents that it is the fee simple owner, or has a lease, exclusive easement, or cooperative use agreement with a term longer than the Term hereof, on the Property and that the only restrictions of record, or otherwise, with respect to the Property are: (a) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental agencies having jurisdiction over the Property, (b) dedicated public rights-of-way identified on Exhibit B, Boundary Map, and (c) the encumbrances, items, and other matters identified in said Exhibit C, Title Encumbrances. Grantees hereby represents and warrants that there are not now, and shall not cause there to be, any restrictions with respect to the Project or Property, including without limitation, any encumbrances, liens, or other matters, which would interfere with or otherwise impair the use of the Property as a public park, recreation facility, or conservation facility.

5. CONSTRUCTION SERVICES. Grantees represents that it will contract for all construction services for the Project and will provide for construction administration. Grantees shall have the full authority to contract with third parties for the design and construction of the Project. Grantees shall secure all necessary permits and licenses for the Project. Grantees warrants that it will cause the Project to be constructed or acquired, as applicable, with all reasonable speed and reasonably adhere to any submitted development timeline. Grantees shall comply with all applicable federal and state requirements relating to the competitive selection of contractors and comply with its own competitive selection policies and procedures. If competitive selection for the Project is not required by law, to the extent reasonably possible as determined by Grantees, Grantees shall employ an open and competitive process in the selection of its contractors. Bid documents designed to be so restrictive to exclude open competitive bidding and bid documents that do not allow for “or equal” provisions may not be acceptable.

6. OPERATION, MAINTENANCE, AND UPKEEP. Grantees shall be solely responsible for the operation, maintenance, and upkeep of the Project, and shall take all actions reasonably necessary to ensure that the Project is available to the public for the intended parks and recreation or conservation purpose during the Term. Failure to comply with this provision or any other provision of this Agreement may result in demand for repayment of all or a portion of the grant funds paid by ODNR to Grantees under this Agreement. The amount to be repaid will be calculated based on the ratio of (x), the number of months from the event triggering the reimbursement to the final scheduled maturity date of the Bonds, over (y), the total number of months that the Bonds are scheduled to be outstanding. Grantees shall not make any grant repayment unless first consulting with ODNR, and ODNR shall not accept any repayment without first obtaining the approval of the Ohio Public Facilities Commission (“OPFC”).

7. **REMITTANCES.** If for any reason funds acquired through this Agreement are required to be paid, repaid, or remitted to the State, they shall be remitted in full by the Grantees within forty-five (45) days of demand to:

Ohio Treasurer of State
30 East Broad Street, 9th Floor
Columbus, Ohio 43215

Any such remittance shall include a copy of this Agreement. A copy of the cover letter transmitting the remittance to the Treasurer of State shall be sent simultaneously to ODNR.

8. **CONVEYANCE OF INTEREST IN PROJECT TO ODNR.** As security for the performance of Grantees' obligations under this Agreement, Grantees hereby conveys to ODNR an interest in the Property, consisting of the right to use and occupy the Property and the facilities funded in whole or in part with grant funds under this Agreement upon default of this Agreement by Grantees. This interest shall remain in effect during the Term of this Agreement. Grantees hereby acknowledges and agrees that ODNR may assign or convey such right to use and occupy such facilities to the OPFC or such other State agency selected by ODNR, and Grantees does hereby consent to such assignment or conveyance. In addition, ODNR has entered into a lease with OPFC relating to the Bonds and the Project; provided that, so long as Grantees shall not default under this Agreement, such lease shall not affect the Project or the use of the Property. ODNR acknowledges that, absent a default by Grantees, ODNR has no right to use or occupy the Property or Project. ODNR shall have the right during the Term hereof to enter upon the Property during normal business hours for purposes of inspection of the Project for compliance with this Agreement.

9. **PROHIBITION AGAINST DISPOSITION.** Grantees shall not dispose of all or any part of the Project or Property funded by ODNR through the Term of this Agreement without the prior written consent of ODNR and OPFC. All notices, demands, requests, consents, approvals, and other communications to OPFC shall be addressed as follows:

Ohio Public Facilities Commission
30 East Broad Street, 34th Floor
Columbus, Ohio 43215
Attn: Assistant Secretary

10. **JOINT OR COOPERATIVE USE AGREEMENT.** If the Property is owned by a separate nonprofit organization and made available to a state agency for its use or benefit, the nonprofit organization must either own, or have a long-term lease (for at least so long as the latest Bond issuance funding or refinancing of the Project have not been paid in full) of, the Property or other capital facility to be improved, renovated, constructed, or acquired and enter into a joint or cooperative use agreement, with and approved by the state agency that meets the requirements of H.B. 687, 134th General Assembly.

11. LIABILITY; WAIVER OF LIABILITY. Grantees shall be solely liable for any and all claims, demands, or causes of action arising from its obligations under this Agreement. Each party to this Agreement must seek its own legal representative and bear its own costs, attorney fees and expenses, in any litigation that may arise from the performance of this Agreement or the Project. It is specifically understood and agreed that ODNR does not indemnify Grantees. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. Nothing in this Agreement shall be construed to be a waiver of any immunity of Grantees granted by statute or the immunity of any of its employees or agents for any purpose. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits. On and after the date of this Agreement, Grantees agrees not to seek any determination of liability against ODNR, OPFC, the Treasurer, or any department, agency, or official of the State in the case of claim or suit arising from the Project including the acquisition of the Property or any future condition, construction, operation, maintenance, or use of the Property or facilities which may be developed in relation to the Project. Grantees forever releases and waives any and all claims, demands, and causes of action it may ever possess or assert against ODNR and its employees, agents, officials, and attorneys arising from, or relating to, the Project.

12. INSURANCE.

a. Adequate Insurance. Unless otherwise agreed to by ODNR in writing, Grantees shall maintain, or cause to be maintained, at no cost to ODNR, commercial general liability insurance and other insurance, including, casualty insurance, and if applicable, professional liability insurance, and builder's risk insurance, to insure ODNR, OPFC, the Treasurer, and the State in an amount and type determined by a qualified risk assessor to be sufficient to cover the full replacement costs of improvements funded, in whole or in part, by the State, and for bodily injury, property damage, personal injury, advertising injury, and employer's liability exposures of Grantees. Unless otherwise agreed to by ODNR in writing, such insurance shall remain in force at all times from the Effective Date hereof through the Term of this Agreement.

b. Self-Insurance. Instead of providing the general liability and casualty insurance above, Grantees may name ODNR, OPFC, the Treasurer, and the State as additional insureds and/or loss payees, as the coverage requires, under a self-insurance program or joint self-insurance pool created under R.C. §§ 2744.08 or 2744.081, respectively, and operated by or on behalf of Grantees, in order to meet the insurance requirements, set forth herein.

13. BONDED AND INSURED EMPLOYEES AND AGENTS. Prior to any advance (but not reimbursement) payments by ODNR, Grantees will provide ODNR with a document that demonstrates that all employees or agents of Grantees who are responsible for maintaining or disbursing advanced funds acquired through this Agreement will be fully bonded or insured against loss of such funds. The bonding agent or insurer shall be licensed to do business in Ohio. No part of the funds acquired by Grantees through this Agreement shall be spent to obtain that bonding or insurance.

14. PUBLIC FUNDS COMPLIANCE. Grantees will assure compliance with all applicable

federal, state, and local laws and regulations pertaining to handling, management, and accountability in relation to public funds. All funds received by Grantees under this Agreement shall be deposited in one or more financial institutions that fully insure, secure, or otherwise protect the funds from loss through federal deposit insurance and/or other deposit and/or collateralization strategies that protect the funds against loss. If Grantees is a political subdivision of the State, grant funds shall be held in compliance with R.C. Chap. 135.

15. REPORTS AND RECORDS. Grantees will keep and make all reports and records associated with the Project funded under this Agreement available to the State Auditor, or the Auditor's designee, ODNR, and OPFC for a period of not less than eighteen (18) years after the date of Project closeout. These reports and records shall include a description of the Project, a detailed overview of the scope of work, disbursement details (including amount, date, nature/object of expenditure), and vendor information. Grantees acknowledges that the Auditor of State and other departments, agencies, and officials of the State may audit the Project at any time, including before, during, and after completion. Grantees agrees that any costs of audit by the Auditor of State or any other department, agency, or official of the State will be borne exclusively by, and paid solely by, Grantees, and that the funds provided under this Agreement will not be used by Grantees for payment of any audit expenses for any reason at any time.

16. RESTRICTIONS ON EXPENDITURES. Grantees affirmatively states that Grantees is fully aware of the restrictions and guidelines for expending funds granted under this Agreement and intends to comply fully with the same. Grantees will implement appropriate monitoring controls to ensure that funds acquired through this Agreement are expended in accordance with all applicable laws, rules, and requirements.

17. DETERMINATION OF INELIGIBILITY. If it is determined by any audit by the Auditor of State or any department, agency, or official of the State or other agency or entity with legal audit authority that any Project expense is ineligible, or not properly documented, Grantees will repay that amount in full to the State.

18. EQUAL OPPORTUNITY COMPLIANCE. If Grantees is a political subdivision, Grantees shall comply with the requirements of R.C. § 125.111 for all contracts for purchases under the Project.

19. REAL PROPERTY ACQUISITION. All appropriations of real property for the Project by Grantees shall be made pursuant to R.C. §§ 163.01 to 163.22, except as otherwise provided in R.C. Chap. 163.

20. PREVAILING WAGE. Except as provided in R.C. § 4115.04, monies appropriated or reappropriated for the Project shall not be used for the construction of public improvements, as defined in R.C. § 4115.03, unless the mechanics, laborers, or workers engaged therein are paid the prevailing rate of wages prescribed in R.C. § 4115.04. Nothing in this section affects the wages and salaries established for state employees under R.C. Chap. 124, or collective bargaining agreements entered into by the State under R.C. Chap. 4117, while engaged on force account work, nor does this section interfere with the use of inmate and patient labor by the State.

21. PROJECT NONDISCRIMINATION. Grantees agrees that any facilities that may be developed now or in the future on the lands comprising the Project will be made available to all persons regardless of race, color, sex, religion, national origin, ancestry, age, military status, handicap, or disability on the same terms and conditions.

22. EMPLOYMENT NONDISCRIMINATION. Pursuant to R.C. Chap. 4112, Grantees agrees that Grantees and any person acting on behalf of Grantees or a contractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status as defined in R.C. § 4112.01, national origin, or ancestry against any citizen of this State in the employment of any person qualified and available to perform services relating to the Project. Grantees further agrees that Grantees and any person acting on behalf of Grantees or a contractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of services relating to the Project on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry. If required by R.C. §125.111(B) and O.A.C §123: 2-3-02, Grantees shall have a valid Certificate of Compliance (COC) from the Ohio Department of Administrative Services, Equal Opportunity Division demonstrating compliance with affirmative action program requirements.

23. ODNR RIGHT TO TERMINATE.

a. **Breach; Notice.** ODNR reserves the right to terminate this Agreement upon written notice to Grantees and to recover any funds distributed by Grantees to contractors or other payees in violation of the terms of this Agreement if Grantees is determined by ODNR to be unable to proceed with the Project, or if Grantees violates any of the terms herein.

b. **Opportunity to Cure.** ODNR, in its sole discretion, may permit Grantees to cure the breach. Such cure period shall be no longer than twenty-one (21) calendar days. Notwithstanding ODNR permitting a period of time to cure the breach or Grantees' cure of the breach, ODNR does not waive any of its rights and remedies provided to ODNR in this Agreement or as may be permitted by law.

24. LEGAL, FEDERAL TAX, AND OTHER COMPLIANCE.

a. **Reports of Expenditures.** Grantees will assure that monies expended under this Agreement are spent in conformity with the intent and purpose of the appropriation, the limitations on use set forth in the legislation containing the appropriation, and R.C. Chap. 154 and all other laws that apply to the expenditure of monies by Grantees. If Grantees is required to submit an annual financial report to the Auditor of State, in accordance with Auditor of State Bulletin 2015-07, then Grantees shall report the funds it acquires through this Agreement as a separate column identified in a manner consistent with the Project description in appropriation item C725E2. If Grantees is not required to submit the aforementioned report, Grantees shall file an annual detailed expenditure report of all expenditures associated with the Project with the Auditor of State by March 1st every year until all funds provided in this Agreement have been spent. The above reports shall be filed in accordance with Auditor of State Bulletin 2015-07.

b. Compliance with Employment Laws. Grantees agrees to comply with all applicable federal, state, and local laws and regulations, in the conduct of the Project and acknowledges that its employees are not employees of ODNR with regard to the application of the Ohio Public Employees Retirement law, Fair Labor Standards Act minimum wage and overtime provisions, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Ohio revenue and tax laws, Ohio Workers' Compensation Act, and Ohio unemployment compensation law.

c. Compliance with Law; Preservation of Tax-Exempt Status of Bonds. Grantees agrees to use funds provided under this Agreement in accordance with the Ohio Constitution and any state or federal laws and regulations that may apply. Grantees shall repay ODNR any funds improperly expended. Additionally, Grantees agrees to comply with all requirements within its control necessary to preserve the tax status of all tax-exempt or tax-advantaged bonds, the proceeds of which are used to provide the funding to Grantees set forth in this Agreement. Unless otherwise determined by the OPFC, such requirements include, but are not limited to, ensuring that the funds provided under this Agreement finance capital expenditures (as opposed to operating expenses) and are not used to refund or otherwise refinance existing debt of Grantees. Grantees shall be liable for any payments to the Internal Revenue Service or the U.S. Treasury as penalties or to preserve the tax status of tax-exempt or tax-advantaged bonds, and any other costs, resulting in whole or in part from actions taken by Grantees, including the failure of Grantees to comply with federal income tax laws applicable to such bonds. Grantees agrees to consult with OPFC if the Grantees is uncertain as to what expenditures are eligible to be financed with funds provided under this Agreement.

25. RELATIONSHIP OF PARTIES.

a. Expenses. Grantees shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Grantees will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any, unless payment for any such item is specifically provided for herein or in the purchase order.

b. No Control Over Means and Methods. While Grantees shall be required to perform its obligations described hereunder during the term of this Agreement, nothing herein shall be construed to imply, by reason of Grantees' obligations hereunder, that ODNR shall have or may exercise any right of control over Grantees with regard to the means or method of Grantees' performance of its obligations hereunder.

c. Right to Bind. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

d. No Agency. Neither Grantees nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of ODNR or the State of Ohio.

26. NO FINDING FOR RECOVERY. Grantees represents and warrants to the ODNR that it is not subject to a finding for recovery under R.C. § 9.24, or that it has taken appropriate remedial steps required under R.C. § 9.24 or otherwise qualifies under that section. Grantees agrees that if this representation or warranty is determined by ODNR to be false, this Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by the State hereunder immediately shall be repaid in full to the State, or an action for recovery immediately may be commenced by the State for recovery of said funds.

27. QUALIFICATION TO RECEIVE GRANT. Grantees affirms that it is a duly authorized federal government agency, municipal corporation, county, or other governmental agency or nonprofit organization, qualified to receive grants under R.C. § 154.22(F). Grantees further affirms that if at any time during the term of this Agreement, Grantees for any reason becomes disqualified from receiving grants under R.C. § 154.22(F), Grantees will immediately notify ODNR in writing and will immediately cease performance of the Project. Failure to provide such notice in a timely manner shall void this Agreement and may be sufficient cause for the State of Ohio to debar the Grantees from future state grant opportunities as may be permitted by law.

28. CAMPAIGN CONTRIBUTIONS. Grantees hereby certifies that neither it, nor any person described in R.C. § 3517.13 (I) or (J), nor the spouse of any such person, has made, as an individual, within the two previous calendar years, one or more contributions to the governor or the governor's campaign committees totaling in excess of the limitations specified in R.C. § 3517.13.

29. ETHICS CERTIFICATION. Grantees, by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in R.C. Chap. 102 and in R.C. §§ 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. Grantees understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State.

30. CERTIFICATION OF FUNDS / NON-APPROPRIATION. It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. § 126.07, have been met, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that ODNR gives Contractor written notice that such funds have been made available to ODNR by ODNR's funding source.

31. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement.

32. MISCELLANEOUS.

- a. Controlling Law.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the state of Ohio. Grantees consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.
- b. Waiver.** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- c. Successors and Assigns.** Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Grantees, without the prior written consent of ODNR.
- d. Conflict with Exhibits.** In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
- e. Headings.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- f. Severability.** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially-enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- g. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- h. Execution.** This Agreement is not binding upon ODNR unless executed in full and is effective as of the last date of signature by ODNR.
- i. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- j. Electronic Signatures.** Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chap. 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

IN TESTIMONY WHEREOF, Grantees and ODNR have caused this Agreement to be executed by their respective duly authorized officers.

FOR THE GRANTEES:

FOR THE STATE OF OHIO, ODNR:

Signature
City of Bay Village

Printed Name: _____

Printed Title: _____

Date: _____

Steven Gray
Assistant Director

Ohio Department of Natural Resources

Date: _____

Signature
City of Avon Lake

Printed Name: _____

Printed Title: _____

Date: _____

ATTORNEY CERTIFICATION

Community Park, Recreation, or Conservation Project Number: **CUYA-065C**

I, _____ [name and title], acting as attorney for the **City of Bay Village** (“Grantee”), and for the reliance of the Ohio Department of Natural Resources, do certify that from my examination of the Capital Improvement Community Park Recreation or Conservation Project — Pass-Through Grant Agreement (the “Agreement”) and my knowledge of Grantee’s organization, that acceptance of the Agreement by Grantee and the execution thereof by the signing officer has been duly authorized and is proper and in accordance with the laws of the State of Ohio. Grantee is a legally constituted public entity or non-profit with full authority and legal capacity to perform all obligations and terms of the Agreement. Upon signature by the signing officer, the Agreement, in my opinion, is a legal obligation of Grantee in accordance with the terms thereof, and Grantee possesses the legal authority to fully perform all obligations incurred by Grantee in signing this Agreement. Grantee’s acceptance of the Agreement and the signing officer’s execution thereof, ___ has ___ has not* been authorized by the governing body of Grantee or has otherwise been authorized by Grantee’s charter. (Resolution or Ordinance No. _____, dated _____, 202__).

*If “has not” is checked, please indicate the reason. _____

Legal Counsel for Grantee _____
(Signature)

Printed Name of Legal Counsel _____

Address _____

Attorney Registration Number _____

ATTORNEY CERTIFICATION

Community Park, Recreation, or Conservation Project Number: **CUYA-065C**

I, _____ [name and title], acting as attorney for the **City of Avon Lake** (“Grantee”), and for the reliance of the Ohio Department of Natural Resources, do certify that from my examination of the Capital Improvement Community Park Recreation or Conservation Project — Pass-Through Grant Agreement (the “Agreement”) and my knowledge of Grantee’s organization, that acceptance of the Agreement by Grantee and the execution thereof by the signing officer has been duly authorized and is proper and in accordance with the laws of the State of Ohio. Grantee is a legally constituted public entity or non-profit with full authority and legal capacity to perform all obligations and terms of the Agreement. Upon signature by the signing officer, the Agreement, in my opinion, is a legal obligation of Grantee in accordance with the terms thereof, and Grantee possesses the legal authority to fully perform all obligations incurred by Grantee in signing this Agreement. Grantee’s acceptance of the Agreement and the signing officer’s execution thereof, ___ has ___ has not* been authorized by the governing body of Grantee or has otherwise been authorized by Grantee’s charter. (Resolution or Ordinance No. _____, dated _____, 202__).

*If “has not” is checked, please indicate the reason. _____

Legal Counsel for Grantee _____
(Signature)

Printed Name of Legal Counsel _____

Address _____

Attorney Registration Number _____