

FIRST READING: 4.10.17
SECOND READING: 4.24.17
THIRD READING: _____

ORDINANCE NO. 17-17

BY: DAVID W. FURRY

AN EMERGENCY ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF ROCKY RIVER AND AECOM FOR PROFESSIONAL SERVICES RELATIVE TO THE PREPARATION OF A SEWER FLOW AND STRENGTH STUDY AS FURTHER DESCRIBED IN EXHIBIT "A" AT A COST NOT TO EXCEED \$51,000.00

WHEREAS, section six of the 1982 Rocky River Wastewater Treatment Plant management agreement states that "the operating and maintenance costs and the annual principal and interest requirements on the bonds issued by the Board to construct the sewage treatment facilities pursuant to the 1970 Agreement shall be apportioned among the Cities according to the relative quantity and strength of the sewage discharged from each City to the Wastewater Treatment Plant" and

WHEREAS, the above referenced section also states that this flow quantity and strength study shall be conducted at four year intervals unless waived by all the Cities, the most recent of which was performed in 2013, thereby requiring a study be performed in 2017 and

WHEREAS, designees of the Rocky River Wastewater Treatment plant management committee, including the Rocky River safety-service director and the superintendent of the wastewater treatment plant, have evaluated proposals for scope of services and statements of qualifications and it is the opinion of the Wastewater Treatment Plant Management Committee, the Administration and the Council of the City of Rocky River AECOM is the most qualified to perform such engineering services.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY OF CUYAHOGA, STATE OF OHIO:

SECTION 1. That the Mayor be and she is hereby authorized to enter into an agreement for engineering services, attached and identified here as Exhibit "A", with AECOM Technical Services, Inc, 1300 East 9th St., 5th Floor, Cleveland, OH 44114, in an amount not to exceed FIFTY-ONE THOUSAND AND 00/100 DOLLARS (\$51,000).

SECTION 2. That \$51,000.00 shall be paid from the Wastewater Treatment Plant Utility Fund – Professional Services Account.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health and safety, and for the further reason that it is necessary to proceed in a timely manner so that the City can comply with the time parameters of the WWTP 1982 Agreement and, provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor: otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: April 24th, 2017

James W. Moran
JAMES W. MORAN
President of Council

PRESENTED
BY THE MAYOR: April 24th, 2017
ATTEST:

APPROVED: April 24th, 2017

Michael A. Thomas
MICHAEL A. THOMAS
DIRECTOR OF FINANCE

Pamela E. Bobst
PAMELA E. BOBST
Mayor

It is hereby certified that the amount required for the execution of this Ordinance has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in the process of collection to the credit of the fund described herein free from any obligation or certification now outstanding.

I, the undersigned clerk of council of the City of Rocky River, State of Ohio, do hereby certify that publication of the foregoing ordinance was duly made by posting a true copy thereof in the lobby of the Rocky River City Hall, in accordance with the charter of Rocky River, commencing on the 24th day of April, 2017.

Thomas H. Grace
Clerk of Council of the City of Rocky River, Ohio

the _____ day of _____, 20____, the undersigned clerk of council of the city of Rocky River, State of Ohio, do hereby certify that publication of the foregoing ordinance was duly made by posting a true copy thereof in the lobby of the Rocky River City Hall, in accordance with the charter of Rocky River, commencing on _____.

City of Rocky River }
County of Cuyahoga } ss

THE UNDERSIGNED CLERK OF THE COUNCIL OF THE CITY OF ROCKY RIVER, OHIO DOES HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 17-17 ADOPTED BY THE COUNCIL OF SAID CITY ON THE 24th DAY OF April, 2017 THAT THE PUBLICATION OF SUCH ORDINANCE HAS BEEN MADE AND CERTIFIED OF RECORD ACCORDING TO LAW; THAT NO PROCEEDINGS LOOKING TO A REFERENDUM UPON SUCH ORDINANCE HAVE BEEN TAKEN; THAT SUCH ORDINANCE AND THE CERTIFICATE OF PUBLICATION THEREOF, ARE OF RECORD IN ORDINANCE RECORD NO. 17-17

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL, THIS 24th DAY OF April, 2017.

Anna L. Price
CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO



AECOM
1300 East 9th St., 5th Floor
Cleveland, OH 44114

216.622.2300 tel
216.622.2301 fax
www.aecom.com

March 29, 2017

Rocky River Wastewater Treatment Plant
CarrieAnne Rosemark
21012 Hilliard Boulevard
Rocky River, OH 44116

Subject: Client Agreement- Professional Services WWTP Year 2017 Sewer Flow and Strength Study

Dear Ms. Rosemark:

Per our discussion, please find attached the Client Agreement, Terms and Conditions, and Scope of Work for the 2017 Sewer Flow and Strength Study from AECOM Technical Services, Inc. (AECOM).

Our lump sum estimate for completing of the work is Fifty One Thousand Dollars (\$51,000.00) and has been revised from the original estimate. Please have the Client Agreement signed and returned to initiate the project.

We look forward to working with you on this project and please contact me if you have questions or require additional information.

Very truly yours,

AECOM Technical Services, Inc.

A handwritten signature in black ink, appearing to read "Scott E. Belz".

Scott Belz
Project Manager

A handwritten signature in black ink, appearing to read "Molly E. Page".

Molly Page, PE
Vice President

AECOM Technical Services, Inc.
Client Agreement

DATE: March 29, 2017

PROJECT NAME: Rocky River WWTP – 2017
Sewer Flow and Strength Study

PROJECT LOCATION: City of Rocky River

CLIENT: City of Rocky River
21012 Hilliard Blvd.
Rocky River, Ohio 44116

CLIENT CONTACT: Ms. CarrieAnne Rosemark

PHONE: 440-331-0600

FAX: 440-895-2621

AGREEMENT TERMS

SCOPE OF SERVICES:

The Rocky River WWTP – 2017 Sewer Flow and Strength Study scope is outlined in the attached scope of work. The fee is indicated in the attached scope of work dated March 29, 2017.

TIME OF PERFORMANCE:

According to the schedule provided in the attached scope of work.

COMPENSATION/TERMS OF PAYMENT:

This is a lump sum Work Order. Labor and expenses will be billed on a percent complete.

Total Agreement Cost Not to Exceed = \$51,000.00

AECOM ADDRESS FOR CORRESPONDENCE/NOTICES:

1300 East Ninth Street, Suite 500
Cleveland, Ohio 44114

PHONE: 216-622-2300 FAX: 216-622-2301

ATTACHMENTS ▸ (AS CHECKED)

☒ SCOPE OF SERVICES ☒ COMPENSATION

☐ OTHER (SPECIFY)

7 TOTAL NO. OF ADD'L SHEETS ATTACHED (Including
General Conditions)

GENERAL CONDITIONS ATTACHED (AS CHECKED):

- ☒ PROFESSIONAL SERVICES
- ☐ ENVIRONMENTAL AUDITS AND SITE ASSESSMENTS
- ☐ ENVIRONMENTAL REMEDIATION SERVICES
- ☐ PETROLEUM FACILITY AND STORAGE TANK SERVICES
- ☐ CONSULTING SERVICES
- ☐ OTHER

ACCEPTED ON BEHALF OF CLIENT:

SUBMITTED BY: AECOM TECHNICAL SERVICES, INC.

SIGNATURE:

DATE:

Molly E. Page
SIGNATURE:

DATE: 3/29/2017

PRINT NAME & TITLE:

Pamela E. Bobst, Mayor

PRINT NAME & TITLE:

Molly E. Page, P.E., Vice President

AECOM TECHNICAL SERVICES, Inc.

"AECOM"

GENERAL CONDITIONS for

Professional Services

CONTRACT DATE: March 29, 2017

NAME OF CLIENT: City of Rocky River

PROJECT NAME: Rocky River WWTP – 2017
Sewer Flow and Strength Study

These General Conditions are a part of the agreement between AECOM TECHNICAL SERVICES, INC. company and its client for the performance of professional services. In these General Conditions, AECOM TECHNICAL SERVICES, INC., company performing the services is called "AECOM", the party for whom the services are performed is called "Client", and the written agreement between the parties, including these General Conditions, is called "this Agreement."

Section 1: Services by AECOM

- 1.1 Scope of services; required standard of care.** AECOM will perform the services described in this Agreement and in any work release documents or change orders which are issued under this Agreement and signed by both parties. AECOM will not have any obligation to perform services unless expressly described in this Agreement. In performing the services, AECOM will exercise the degree of care and skill ordinarily exercised by members of the same profession currently performing the same or similar services in the same geographic area. Upon notice to AECOM and by mutual agreement between the parties, AECOM will correct those services not meeting such a standard without additional compensation. Consistent with the standard of care, AECOM will endeavor to perform its professional services in accordance with applicable federal, state, and local laws, regulations and ordinances which are in effect on the date of execution of this Agreement.
- 1.2 Estimates.** Any opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by AECOM will represent its professional judgement based on its experience and available information. However, Client recognizes that AECOM has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, AECOM does not guaranty that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by AECOM. If the Client wishes greater assurance as to probable construction costs, Client shall employ an independent cost estimator.
- 1.3 Hazardous materials.** AECOM's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any contaminated non-hazardous, hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). Unless provisions have been incorporated into this Agreement to provide for the handling of Oil or Hazardous Materials, the discovery or reasonable suspicion of Oil or Hazardous Materials or hazardous conditions at a site where AECOM is to perform services shall entitle AECOM to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed.
- 1.4 Other contractors.** AECOM shall not have any duty or authority to direct, supervise or oversee any contractors of Client or their work or to provide the means, methods or sequence of their work or to stop their work. AECOM's services and/or presence at a site shall not relieve others of their responsibility to Client or to others. AECOM shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities. Client shall notify all contractors in writing that AECOM has no duty or authority and therefore no responsibility, as stated herein. The client agrees to include in all contracts with construction contractors an exclusion of the construction contractors' right to make a direct claim against AECOM, in a form acceptable to AECOM.
- 1.5 Health and safety.** AECOM shall not be responsible for health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. AECOM shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client or others at Client's site. So as not to discourage AECOM from voluntarily addressing health or safety issues while at Client's site, in the event AECOM does address such issues by making observations, reports, suggestions or otherwise, AECOM shall nevertheless have no liability, responsibility, or affirmative duty under this Agreement or by law arising on account thereof.
- 1.6 Litigation support.** AECOM will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event AECOM is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse AECOM for its costs and compensate AECOM at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.
- 1.7 Confidential information.** Although AECOM generally will not disclose without Client's consent information provided by Client or developed by AECOM in the course of its services and designated by Client as confidential (but

not including information which is publicly available, is already in AECOM's possession, or is obtained from third parties), AECOM shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public. AECOM shall notify Client (in advance, except in emergency) of any such disclosure.

- 1.8 No warranty.** NO WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE OR WILL BE MADE WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.
- 1.9 Certifications.** Any certifications or representations which AECOM may be required to make shall be limited to the existence of conditions which AECOM could, within the scope of its services, reasonably ascertain, and shall be based on AECOM's then-current knowledge, information, and belief.
- 1.10 No construction phase services.** If AECOM's services under this Agreement do not include Project observation, or review of contractors' performances, or any other Construction Phase Services, and that such services will be provided by the Client or others then the Client assumes all responsibility for interpretation of Contract Documents used for the construction of the Project and for construction observation or review and waives any claims against AECOM that may in any way be related thereto.

Section 2: Responsibilities of Client

2.1 Client requirements. Client, without cost to AECOM, shall:

- (a) Designate to AECOM in writing a person to act as Client's representative with respect to the services
- (b) Provide or arrange for access and make all provisions for AECOM to enter any site where services are to be performed
- (c) Furnish AECOM with all available information pertinent to the services
- (d) Furnish AECOM with all relevant information about site conditions property descriptions, zoning, deed and other land use restrictions and with property, boundary, easement, right-of-way and other special surveys, including establishing relevant reference points
- (e) Furnish AECOM data prepared by others including without limitation exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site or hydrographic surveys
- (f) Furnish AECOM environmental assessments, audits, investigations and impact statement and other relevant environmental or cultural studies as to the site and adjacent areas
- (g) Furnish AECOM with all approvals, permits and consents from government authorities and others as may be required for performance of the services
- (h) Notify AECOM promptly in writing of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Materials, and of any other conditions requiring special care, and provide AECOM with any available documents describing the nature, location and extent of such materials, contamination or conditions
- (i) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices AECOM has expressly agreed in writing to give
- (j) Inform the owner of the site (if different from Client) of any contamination by or release of Oil or Hazardous Materials at the site.
- (k) Unless this Agreement expressly provides otherwise, AECOM shall be entitled to rely on the accuracy and completeness of information given to it by the Client and/or others on behalf of Client pursuant to Paragraphs 2.1 (c), (d), (e), (f), (g), (h) and (j), immediately above.

2.2 Hazards. Client represents and warrants that it does not have any knowledge of Hazardous Materials or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials, except as expressly disclosed to AECOM in writing.

2.3 Documents.

(a) All reports, notes, calculations, data, drawings, estimates specifications and other documents (collectively "Documents") and electronic files prepared by AECOM are instruments of AECOM's professional services and not products and shall remain AECOM's property. Documents or electronic files provided to Client are for Client's use only for the purposes disclosed to AECOM and Client shall not transfer them to others or use them or permit them to be used for any extension of the services or for any other project or purpose for which they were not prepared, without AECOM's express written consent. Any reuse thereof without written consent shall be at the Client's or the user's sole risk and without liability or legal exposure to AECOM or their independent contractors or consultants.

(b) Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies). Electronic files in electronic media format of text, data, graphics, or of other types that are furnished by AECOM to

Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

- (c) Because electronic files can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days after receipt thereof, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. AECOM shall not be responsible to maintain electronic files after acceptance by Client.
- (d) When transferring electronic files, AECOM makes no representations as to long-term compatibility, usability, or readability of such files.

Section 3: Changes; Delays; Excused Performance

3.1 Changes.

- (a) Unless this Agreement expressly provides otherwise, AECOM's compensation and time for rendering services represent its professional estimate, taking into account the costs, effort and time it expects to expend in performing the services as it currently understands them to be, based on its reasonable assumption of the conditions and circumstances under which the services will be performed, and based on its anticipation of the orderly and continuous progress of the Work and of the Project through completion of the Work. Unless specific periods of time or specific dates for providing services are specified in this Agreement, AECOM's obligation to render services hereunder will be for a period which may reasonably be required, using due and reasonable diligence consistent with sound professional practices, for the completion of said services.
- (b) As services are being performed, conditions may change or circumstances outside of AECOM's reasonable control (including changes of laws and Client directed changes) may develop which would require AECOM to expend additional costs, effort and time to complete the services, in which case AECOM will notify Client and an equitable adjustment will be made to AECOM's compensation and time for performance.
- (c) If Client fails to give prompt written authorization to proceed with any task or phase of services after completion of the immediately preceding task or phase, or if AECOM's services are delayed through no fault of AECOM, in each case for a period of 90 days or longer, AECOM may, after giving seven days written notice to Client, suspend services under this Agreement. An equitable adjustment to AECOM's compensation and time for performance will be made upon Client's authorization or directive for AECOM to resume performance of its services.
- (d) If AECOM's services are suspended or delayed in whole or in part by Client, or if AECOM's services are extended by actions or inactions of Client or its contractors for more than 90 days through no fault of AECOM, AECOM shall be entitled to an equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by AECOM in connection with, among other things, such delay or suspension and reactivation, and the fact that the time for performance has been revised.
- (e) In the event conditions or circumstances require the services to be suspended or terminated, AECOM shall be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

3.2 Force majeure. AECOM shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority timely to review or to approve the services or to grant permits or approvals, or any other cause beyond AECOM's reasonable control, and AECOM's compensation and schedule shall be equitably adjusted to compensate it for any additional costs and delays it incurs due to any Force Majeure event.

Section 4: Compensation

- 4.1 Rates.** Unless otherwise agreed in writing, AECOM shall be compensated for its services at its standard rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the services such rate schedule is attached as Exhibit A hereto.
- 4.2 Invoices.** AECOM may invoice Client on a monthly or other progress billing basis. Invoices are due and payable upon receipt by Client. On amounts not paid within 30 days of invoice date, Client shall pay interest from invoice date until payment is received at the rate of 1.0% per month or, if less, the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it shall notify AECOM in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 4.3 Suspension, etc.** If payment is not received within 45 days of the invoice date, AECOM may upon 7 days' notice suspend or terminate the services and receive compensation for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

- 4.4 **Taxes, etc.** Unless expressly agreed in writing, AECOM's fees do not include any taxes, excises, fees, duties or other government charges related to the goods or services provided under this Agreement, and Client shall pay such amounts or reimburse AECOM for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption, it shall provide AECOM with a valid exemption certificate.

Section 5: Insurance; Dispute Resolution; Allocation of Risk

- 5.1 **Insurance.** AECOM will maintain workers compensation insurance as required by law; employers liability, commercial general liability and automobile liability insurance each with coverage of \$1 million per occurrence; and professional liability insurance with coverage of \$1 million per claim; and upon request will furnish insurance certificates to Client. AECOM will include the Client as additional insured on the comprehensive general liability and automobile liability insurance. AECOM will purchase additional insurance if requested by Client, provided the insurance is reasonably available from carriers acceptable to AECOM and Client reimburses AECOM for its cost.
- 5.2 **Disputes.** If a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve under the authority of a principal from each party the claim or dispute equitably through negotiation within a period of time no longer than 60 days from the time the claim or dispute is presented in writing to the other party. If, after the 60 days, good faith negotiations fail to achieve a resolution, the parties shall seek resolution of the claim through nonbinding mediation under the rules and auspices of the American Arbitration Association. The parties shall a) limit the submission of evidence to the mediator to a period of no more than 30 days following the demand for mediation, and b) commence mediation no more than 30 days thereafter. If the parties cannot reach a settlement within 15 days following commencement of the mediation proceedings, or such other reasonable time frame as the parties may agree to, the parties may a) mutually agree to subject the claim to binding arbitration in accordance with the rules of the American Arbitration Association, or b) pursue any legal remedy then available. However, prior to or during negotiations, mediation, or arbitration, either party may initiate litigation that would otherwise be barred by a statute of limitations, and AECOM may pursue any property liens or other rights it may have to obtain security for the payment of its invoices.
- 5.3 **Suspension.** If the project is suspended for more than 30 calendar days in the aggregate, AECOM shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the project is suspended for more than 90 calendar days in the aggregate, AECOM, at its option, may terminate this Agreement upon giving notice in writing to the Client. If the Client fails to make payments when due or otherwise is in breach of this Agreement, AECOM may suspend performance of services upon 7 calendar days' notice to the Client. AECOM shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.
- 5.4 **Termination.** The Client may terminate this Agreement at any time with or without cause upon giving AECOM 30 calendar days prior written notice. AECOM may terminate this Agreement upon giving the Client 30 calendar days prior written notice for any of the following reasons:
- (a) Breach by the Client of any material term of this Agreement, including but not limited to compensation provisions.
 - (b) Transfer of ownership of the project by the Client to any other persons or entities not a party to this Agreement without the prior written agreement of AECOM
 - (c) Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and charges for any additional services required because of such changes.
- The Client shall within 30 calendar days of termination pay AECOM for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.
- 5.5 **Indemnification.** The Client and AECOM agree to indemnify, hold harmless and defend each other from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures and suits, together with reasonable attorneys' and witnesses' fees and other costs and expenses of defense and settlement, which the first party may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any person, destruction or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any other damages claimed by third parties (collectively, "Damages") to the extent such Damages are caused directly by the negligence or willful misconduct of second party.

If the negligence or willful misconduct of both parties (or a person or entity for whom each is liable) is a cause for Damages, the loss, cost or expenses shall be shared between the parties in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.

- 5.6 **Indemnification regarding hazardous materials.** Client acknowledges that AECOM does not have any responsibility for preexisting Oil and Hazardous Materials at the site, or for their previous detection, monitoring, handling, storage, transportation, disposal or treatment. Client agrees to indemnify, hold harmless and defend AECOM against all Damages arising out of or related to any Oil or Hazardous Materials located at or removed from the site, including Damages such as costs of response or remediation arising out of the application of common law or statutes such as CERCLA or other "Superfund" laws imposing strict liability or Damages arising out of AECOM's performance or non-performance of its obligations under this Agreement; provided, however, that Client shall not be required to indemnify, hold harmless or defend AECOM to the extent such Damages are caused directly by AECOM's sole negligence or willful misconduct.
- 5.7 **Limitation of liability.** In no event shall either party be liable for special, indirect, incidental or consequential damages including commercial loss, loss of use, or lost profits, even if advised of the possibility of such damages.
- 5.8 **Employee injury.** Client agrees not to implead or to bring an action against AECOM based on any claim of personal injury or death occurring in the course or scope of the injured or deceased person's employment with AECOM and related to the services performed under this Agreement.
- 5.9 **Defense.** Any defense of AECOM required to be provided by Client under this Agreement shall be with counsel selected by AECOM and reasonably acceptable to Client.

Section 6: Miscellaneous Provisions

- 6.1 **Notices.** Notices between the parties shall be in writing and shall be hand delivered or sent by certified mail or acknowledged telefax.
- 6.2 **Assignment, etc.** Neither Client nor AECOM shall assign or transfer any rights or obligations under this Agreement, except that AECOM may assign this Agreement to its affiliates and may use affiliate company labor or subcontractors in the performance of its services under this agreement. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Client and AECOM, without the express written consent of both parties. The relationship between Client and AECOM is that of independent contracting parties, and nothing in this Agreement or the parties' conduct shall be construed to create a relationship of agency, partnership or joint venture.
- 6.3 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws in effect at the Jobsite or as specified in the Supplemental Conditions (if applicable).
- 6.4 **Headings.** The headings in this Agreement are for convenience only and are not a part of the agreement between the parties.
- 6.5 **Entire agreement, etc.** The written document of which these General Conditions are a part is the entire agreement between the parties, and supersedes all prior agreements. Any amendments to this Agreement shall be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order or other document provided by Client modify or amend this Agreement, even if it is signed by AECOM, unless AECOM signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings which comprise this Agreement, the order of precedence shall be as follows: (1) Proposal/Agreement, (2) Supplemental Conditions (if applicable), (3) these General Conditions, (4) Scope of Services, and (5) Other exhibits and attachments (if applicable).
- 6.6 **Severability.** Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. AECOM and Client shall in good faith attempt to replace any invalid or unenforceable provisions of this Agreement with provisions that are valid and enforceable and that come as close as possible to expressing the intention of the original provisions.
- 6.7 **Waiver.** A waiver or failure to strictly enforce any breach or omission shall not constitute a waiver of any subsequent breach or omission unless specifically agreed to in writing by the parties.
- 6.8 **Survival.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility and liability between Client and AECOM shall survive the completion of the services hereunder and the termination of this Agreement.
- 6.9 **Third party beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or AECOM. AECOM's services under this Agreement are being performed solely for the client's benefit, and no other entity shall have any claim against AECOM because of this Agreement or the performance of services hereunder.
- 6.10 **Statute of limitations.** The statute of limitations would commence to run not later than the relevant date of substantial completion of the Work.

AECOM SCOPE OF SERVICES

2017 Sewer Flow and Strength Study

Task 1 – Kick-off Meeting

1. AECOM staff will hold a kick-off meeting with the City of Rocky River officials and members of the Rocky River Wastewater Treatment Plant to coordinate the start of the project and discuss schedules and project contacts.

Task 2 – Flow Monitoring

1. AECOM field staff will install and maintain twenty (20) flow monitors and three (3) tipping bucket rain gauges at the sites referenced in the RFP. The rain gauges and flow meters will be set to record data in 5-minute time increments. AECOM will calibrate all flow meters prior to installation. Site information and depth and velocity measurements will be recorded on a Flow Monitoring Site Installation Form.
2. AECOM will also provide the data retrieval and data analysis for the flow meters. Field crews will collect flow data on a weekly basis and perform the required maintenance. Any maintenance and manual measurements will be recorded on a Flow Monitoring Maintenance Field Form. Flow data will be uploaded to the flow monitoring database weekly for QA review.
3. The AECOM data manager will review all flow data and identify any monitoring sites in need of adjustment or monitor replacement.
4. At the conclusion of the monitoring period, AECOM will remove the flow meters and rain gauges. The monitoring period is a minimum of 60 days.
5. City of Rocky River Wastewater Treatment Plant staff is responsible for installation and maintenance of four (4) automatic samplers to collect wastewater quality samples and for the analysis of all parameters as designated in the previous studies. All wastewater sampling results will be supplied to AECOM for flow strength analysis.
6. AECOM will prepare the flow, precipitation, and quality data in graphical and tabular format.
7. AECOM will attend a biweekly progress meeting with the City if necessary. If deficient flow or rain data are identified by AECOM, the data will be presented to the City. Meetings will be held by teleconference or WebEx.
8. One monthly progress meeting during the sixty day monitoring period will be held to present other information such as flow, precipitation, and quality data collected to date, overall project progress and schedule. If additional monitoring periods are added, monthly progress meetings will be included.

Task 3 – Report

1. After the monitoring period is complete, a report with all flow data, precipitation data and sampling data will be submitted to the city.
2. The report will include the cost allocation analysis for the operation and maintenance of the Rocky River Wastewater Treatment plant for each of the four tributary communities. The predetermined distribution of O & M costs among flow and strength parameters provided in the RFP will be used to allocate the costs to each community.
3. Twenty copies of the final report will be submitted to the city.

4. AECOM will attend up to two meetings to discuss the study results with the communities after the submittal of the final report.

CITY OF ROCKY RIVER WASTEWATER TREATMENT PLANT RESPONSIBILTIES

1. The CITY shall provide AECOM staff, at no cost to AECOM, all available information, reports, studies, testing results, maps and videotapes pertinent to the Project.
2. The CITY shall provide AECOM staff access (consent) to enter upon public and private property as required for the performance of the Work.
3. The CITY shall provide access to the Rocky River WWTP for flow monitoring
4. The CITY shall provide the installation and maintenance of samplers by WWTP staff, including sample retrieval. The CITY will conduct all analysis of the samples for required parameters and report the results to AECOM on a timely basis.
5. The CITY shall be responsible to provide, only if necessary, any sewer cleaning prior to the installation of any flow meters.

SCHEDULE

AECOM will complete the proposed activities within ninety (90) days of being authorized to begin work on the project.

COSTS

Costs for the project are Fifty One Thousand Dollars (\$51,000.00) Lump Sum.