FIRST READING: 4.10.17
SECOND READING: 4.24.17
THIRD READING: 5.8.17

ORDINANCE NO. 20-17

BY: DAVID W. FURRY

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF ROCKY RIVER AND HAZEN AND SAWYER FOR PROFESSIONAL SERVICES RELATIVE TO THE PREPARATION OF A NO FEASIBLE ALTERNATIVES STUDY AS FURTHER DESCRIBED IN EXHIBIT "A" AT A COST NOT TO EXCEED $274,600

WHEREAS, the Rocky River Wastewater Treatment Plant operates under the Ohio EPA issued NPDES Permit #3PE00009, which mandates that this facility conduct and submit to the regulating agency before January 1, 2019, a comprehensive analysis of all feasible alternatives necessary to eliminate the bypass of sanitary sewage at the treatment plant and

WHEREAS, qualifications were requested of seven engineering firms for performance of such engineering services necessary to complete the No Feasible Alternatives study 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 three proposals for scope of services and statements of qualifications and it is the opinion of the Wastewater Treatment Plant Management Committee, the Wastewater Treatment Plant Administration, and the Council of the City of Rocky River that Hazen and Sawyer 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 Hazen and Sawyer 1755 Merriman Road, Suite 350, Akron OH in an amount not to exceed TWO HUNDRED SEVENTY-FOUR THOUSAND, SIX HUNDRED DOLLARS ($274,600).

SECTION 2. That $274,600.00 shall be paid from the Wastewater Treatment Plant Capital Fund- Professional Services Account.

PASSED: May 8th, 2017

JAMES W. MORAN
President of Council

PRESENTED
TO MAYOR: May 8th, 2017

APPROVED: May 8th, 2017

ATTEST:

SUSAN G. PEASE
Clerk of Council

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.

MICHAEL A. THOMAS
DIRECTOR OF FINANCE

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 8th day of May, 20 17.

Susan G. Pease
Clerk of Council of the City of Rocky River, Ohio

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. 20-17 ADOPTED BY THE COUNCIL OF SAID CITY ON THE 8th DAY OF May, 20 17 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. 20-17

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 8th DAY OF May, 20 17.

Anna G. Pease

CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO

Clerk of Council of the City of Rocky River, Ohio

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 ____ day of _____, 20__.

AGREEMENT
FOR PROFESSIONAL SERVICES

Between

City of Rocky River

And

Hazen and Sawyer

FOR

No Feasible Alternative Study

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OWNER: **[City of Rocky River]**

PROJECT: **[No Feasible Alternative Study]**

AGREEMENT BETWEEN ROCKY RIVER AND HAZEN AND SAWYER FOR PROFESSIONAL SERVICES

This Agreement, dated the _____ day of _____, 20___ is made and entered into between

City of Rocky River (Owner, hereinafter "**OWNER**")

21012 Hilliard Boulevard

Rocky River, Ohio 44116.

and

Hazen and Sawyer (hereinafter "**ENGINEER**")

1755 Merriman Road, Suite 350

Akron, Ohio 44313.

WHEREAS, **OWNER's** Project, of which **ENGINEER's** services under this Agreement are a part, is generally identified as follows:

_____

_____

_____,

(hereinafter "**PROJECT**"); and

WHEREAS, **OWNER** requests **ENGINEER's** services in connection with the **PROJECT**;

NOW THEREFORE, in consideration of the mutual promises herein contained, **OWNER** and **ENGINEER** agree as follows:

Art. 1 THE AGREEMENT DOCUMENTS

1.1 Included Documents. The Agreement consists of: (1) this Agreement, including Schedule A, Scope of Services, and Schedule B, Compensation, attached hereto.

1.2 Entire Agreement. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.3 Modification. **Unless otherwise provided for herein**, no amendments, changes, alterations, or modifications of this Agreement shall be effective unless in writing and executed by **OWNER** and **ENGINEER**.

Art. 2. SCOPE OF SERVICES AND DIVISION OF RESPONSIBILITIES

2.1 OWNER Responsibilities. In addition to other responsibilities of **OWNER** as set forth in this Agreement, **OWNER** must designate its representative to fulfill the following responsibilities, at its expense, which **ENGINEER** shall rely upon:

a) Provide **ENGINEER** with all criteria and full information as to **OWNER's** requirements for the **PROJECT**, including design objectives and constraints, flexibility, expandability, capacity and performance requirements, budgetary limitations, operating and testing data, as-built drawings, and previous reports if any. Provide **ENGINEER** with copies of all design and construction standards that **OWNER** will require to be included in the Drawings and Specifications, and provide copies of **OWNER's** standard forms, conditions, and related documents for **ENGINEER** to include in the bid documents, when applicable.

b) Provide to **ENGINEER** any other available information pertinent to the **PROJECT** including reports and data relative to previous designs, or investigation at or adjacent to the Site.

c) Following **ENGINEER's** assessment of initially-available **PROJECT** data and upon **ENGINEER's** request, provide or make available such additional **PROJECT** related information and data as is reasonably required to enable **ENGINEER** to complete its services. Such additional information or data includes the following:

1. Property descriptions.

2. Zoning, deed, and other land use restrictions.

3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the **PROJECT**, the Site, and adjacent areas.

6. Data or consultations as required for the **PROJECT** but not otherwise identified in the Agreement or the Exhibits thereto.

d) Provide prompt written notice to **ENGINEER** whenever **OWNER** observes or otherwise becomes aware of the presence at the Site of any environmental concern, or of any other development that affects the scope or time of performance of **ENGINEER** services, or any defect or nonconformance in **ENGINEER** services, the Work, or in the performance of any contractor.

e) Arrange safe access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under the Agreement.

f) Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the **PROJECT** designed or specified by **ENGINEER** and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the **PROJECT**.

Art. 3. NOTICE TO COMMENCE WORK AND DURATION OF AGREEMENT

3.1 Commencement. **ENGINEER** is authorized to begin rendering services as of the effective date and issuance of Notice-to-Proceed and will terminate either: (1) upon the satisfactory completion of **ENGINEER's** scope of services set forth in Schedule A; (2) on the date specified in Schedule B, if such date is specified, as applicable; or (3) as otherwise terminated under this Agreement.

3.2 Time for Completion. **ENGINEER** shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Schedules A and/or B. If, through no fault of **ENGINEER**, such periods of time or dates are changed, or the orderly and continuous progress of **ENGINEER's** services is impaired, or **ENGINEER's** services are delayed or suspended, then the time for completion of **ENGINEER**' services, and the rates and amounts of **ENGINEER's** compensation, shall be adjusted equitably. If **OWNER** authorizes changes in the scope, extent, or character of the **PROJECT**, then the time for completion of **ENGINEER's** services, and the rates and amounts of **ENGINEER**' compensation, shall be adjusted equitably. **OWNER** shall make decisions and carry out its other responsibilities in a timely manner so as not to delay **ENGINEER's** performance of its services.

Art. 4. PAYMENT AND BILLING

4.1 Payment Amount(s). As compensation for the services to be performed by **ENGINEER**, **OWNER** shall pay **ENGINEER** the amount(s) set forth in Schedule B, attached hereto. The method of compensation shall be set forth in Schedule B. **OWNER** agrees only to be liable for payment to **ENGINEER** for **ENGINEER's** proper performance of services, as provided for in Schedule B.

4.2 Invoicing and Documentation. **ENGINEER** shall keep accurate back-up documentation of the time expended in executing its scope of work. Payment for services performed by **ENGINEER** shall be based upon **ENGINEER's** satisfactory completion of services as properly invoiced and documented by **ENGINEER**. **ENGINEER's** invoices and documentation shall be subject to verification by **OWNER** prior to payment. Invoices submitted by **ENGINEER,** at a minimum, shall:

a) accurately describe the services rendered during the invoice period;

b) identify any other authorized expenses incurred hereunder; and

c) make reference to this Agreement, and otherwise identify the invoice in such manner as **OWNER** may reasonably require.

All invoices and billing documentation shall be sent to **OWNER** at the following address:

City of Rocky River WWTP
Attention: CarrieAnne Rosemark
22303 Lake Road
Rocky River, Ohio 44116

4.3 Failure to Pay. If **OWNER** fails to make any payment due to **ENGINEER** for services and expenses within 30 days after receipt of **ENGINEER's** invoice, then:

a) amounts due to **ENGINEER** will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from the thirtieth day; and

b) **ENGINEER** may, after giving seven days written notice to **OWNER**, suspend services under this Agreement until **OWNER** has paid in full all amounts due for services, expenses, and other related charges. **OWNER** waives any and all claims against **ENGINEER** for any such suspension.

4.4 Disputed Invoices. If **OWNER** contests an invoice, **OWNER** shall promptly advise **ENGINEER** of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

4.5 Legislative Actions. If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on **ENGINEER's** services or compensation under this Agreement, then **ENGINEER** may invoice such new taxes, fees, or charges as a reimbursable expense. **OWNER** shall reimburse **ENGINEER** for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which **ENGINEER** is entitled under the terms of Schedule B.

4.6 Opinions of Probable Construction Cost. **ENGINEER's** opinions of probable construction cost are to be made on the basis of **ENGINEER's** experience and qualifications and represent **ENGINEER's** best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because **ENGINEER** has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, **ENGINEER** cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction costs prepared by **ENGINEER**. If **OWNER** requires greater assurance as to probable construction cost, **OWNER** must employ an independent cost estimator.

4.7 Opinions of Total Project Costs. The services, if any, of **ENGINEER** with respect to total project costs shall be limited to assisting the **OWNER** in collating the various cost categories which comprise total project costs. **ENGINEER** assumes no responsibility for the accuracy of any opinions of total project costs.

Art. 5. DATA AND INFORMATION

5.1 All documents are instruments of services in respect to this **PROJECT** and **ENGINEER** shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of **ENGINEER**) whether or not the **PROJECT** is completed. **OWNER** shall not rely in any way on any document unless it is in printed form, signed or sealed by **ENGINEER** or one of its consultants.

5.2 **OWNER** may make and retain copies of documents for information and reference in connection with use on the **PROJECT** by **OWNER**. **ENGINEER** grants **OWNER** a limited license to use the documents on the **PROJECT**, extensions of the **PROJECT**, and for related uses of the **OWNER**, subject to receipt by **ENGINEER** of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) **OWNER** acknowledges that such documents are not intended or represented to be suitable for use on the **PROJECT** unless completed by **ENGINEER**, or for use or reuse by **OWNER** or others on extensions of the **PROJECT**, on any other project, or for any other use or purpose, without written verification or adaptation by **ENGINEER**; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by **ENGINEER**, as appropriate for the specific purpose intended, will be at **OWNER's** sole risk and without liability or legal exposure to **ENGINEER** or to its officers, directors, members, partners, agents, employees, and consultants; (3) **OWNER** shall indemnify and hold harmless **ENGINEER** and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by **ENGINEER**; and (4) such limited license to **OWNER** shall not create any rights in third parties.

5.3 If **ENGINEER** at **OWNER's** request verifies the suitability of the documents, completes them, or adapts them for extensions of the **PROJECT** or for any other purpose, then **OWNER** shall compensate **ENGINEER** at rates or in an amount to be agreed upon by **OWNER** and **ENGINEER**.

Art. 6. SUBCONTRACTING

Performance of this Agreement shall not be subcontracted in whole or in part without the consent of **OWNER** which shall not be unreasonably withheld. In the event **OWNER** consents to such subcontract, **ENGINEER** shall remain bound by the terms of this Agreement until the satisfactory completion of all work hereunder or the termination or expiration hereof, whichever shall first occur. **ENGINEER** may employ consultants as **ENGINEER** deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by **OWNER**.

Art. 7. CONFLICTS OF INTEREST

7.1 Neither **ENGINEER** nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with **ENGINEER's** loyal and conscientious exercise of judgment related to its performance under this Agreement.

7.2 **ENGINEER** agrees that none of its officers or employees shall, during the duration of this Agreement, serve as an expert witness against **OWNER** in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of **OWNER** for the work performed under this Agreement or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

7.3 In the event **ENGINEER** is permitted to utilize subcontractors to perform any services required by this Agreement, **ENGINEER** agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this Article 7.

Art. 8. SUSPENSION OF SERVICES

8.1 By OWNER. **OWNER** may suspend, delay, or interrupt the **PROJECT** for up to 60 days upon 7 days written notice to **ENGINEER.** The written notice must be in advance of the effective time and date of suspension and will fix the date on which performance of such services will be resumed. **ENGINEER** shall be entitled to an adjustment in compensation, an extension of time, or both, directly attributable to any such suspension, to the extent that such suspension was not due to any fault of **ENGINEER**.

8.2 By ENGINEER. **ENGINEER** may suspend, delay, or interrupt its services, or any portion thereof, for a period of 60 days upon 7 days written notice to **OWNER** for nonpayment.

Art. 9. TERMINATION

9.1 Termination for Cause by Either Party**.** Either party may terminate this Agreement at any time for cause by giving the other party **seven days** written notice if the other party fails to perform its obligations under this Agreement and fails to cure within such **seven day** period.

9.2 Termination for Cause by **ENGINEER**. Upon seven days written notice if **OWNER** demands that **ENGINEER** furnish or perform services contrary to **ENGINEER**' responsibilities as a licensed professional; or upon seven days written notice if **ENGINEER's** services for the **PROJECT** are delayed or suspended for more than 60 days for reasons beyond **ENGINEER's** control, **ENGINEER** may terminate this Agreement. **ENGINEER** shall have no liability to **OWNER** on account of such termination.

9.3 Termination for Convenience. **OWNER** may terminate this Agreement at any time with or without cause upon at least **fourteen days** written notice to **ENGINEER**. In the event of such a termination for convenience, **ENGINEER** will be paid for that portion of the work satisfactorily completed prior to termination.

9.4 Payments Upon Termination. In the event of any termination, **ENGINEER** will be entitled to invoice **OWNER** and to receive full payment for all services performed

or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. In the event of termination by **OWNER** for convenience or by **ENGINEER** for cause, **ENGINEER** shall be entitled, in addition to invoice **OWNER** and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with **ENGINEER's** subcontractors or consultants, and other related close-out costs.

Art. 10. CHANGES IN THE SERVICES

10.1 Written Change Order. **OWNER** may, by written order to **ENGINEER**, request additional services, issue revisions or direct the omission of services within the general scope of this Agreement. Any additional services shall be performed upon execution of an applicable change order regarding compensation and extensions of time. No changes will be made absent specific written direction and agreement for payment.

10.2 Equitable Adjustment. If such changes cause an increase or decrease in **ENGINEER's** cost of, or time required for, performance of any services under this Agreement, an equitable adjustment may be made in price and/or time of performance, provided that any claim for an adjustment must be made in strict accordance with the terms of this Agreement. **ENGINEER** shall submit such claim in writing within **30 days** of receipt of said written order.

Art. 11. NOTICES

All notices or orders provided for in this Agreement shall be in writing, addressed to the appropriate party at the address which appears below (or as modified in writing by such party) and given personally, by United States mail (return receipt requested), or by a courier service. All notices shall be effective upon the date of receipt.

OWNER if mailed by certified or registered mail, postage prepaid to:

City of Rocky River WWTP
Attention: CarrieAnne Rosemark
22303 Lake Road
Rocky River, Ohio 44116;

or

ENGINEER if mailed by certified or registered mail, postage prepaid to:

Hazen and Sawyer
Attention: Scott Ankrom
1755 Merriman Road, Suite 350
Akron, Ohio 44313.

Art. 12. CLAIMS AND DISPUTES

12.1 Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the state where the **PROJECT** is located.

12.2 Dispute Resolution Procedure. **OWNER** and **ENGINEER** each hereby waives any rights it may have to a trial by jury of any such litigation. Further, any such claims or disputes and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the courts of the state in which the **PROJECT** is located.

12.3 Neither **OWNER** nor **ENGINEER** shall be liable to the other for any special, incidental, indirect or consequential damages whatsoever arising out of or relating in any way to this Agreement.

Art. 13. INSURANCE

13.1 ENGINEER Coverage. **ENGINEER** shall procure and maintain insurance as set forth below. **ENGINEER** shall cause **OWNER** to be listed as an additional insured on any applicable general liability insurance policy carried by **ENGINEER**.

13.2. Minimum Coverage of **ENGINEER**. **ENGINEER** shall maintain at a minimum the following insurance policies and coverage with carriers authorized to cover risks and licensed to underwrite policies and have an A.M. Best's rating of A-VII or higher:

(a) Worker's Compensation & Disability Insurance as required by all applicable state and federal laws.

(b) Employer's Liability with limits of **$500,000** each accident, **$500,000** Disease (each employee) and **$500,000** Disease (policy limit).

(c) Comprehensive General Liability with minimum limits of **$1,000,000** per occurrence and **$1,000,000** in the aggregate.

(d) Professional Liability with limits of not less than **$1,000,000**, per claim and **$1,000,000** in the aggregate, insuring the professional liability of **ENGINEER**.

(e) Business Auto Insurance for all owned, hired, non-owned and Employers' non-ownership vehicles with minimum limits of **$1,000,000** combined single limit.

(f) Other Insurance Coverage Requirements:

_____

_____

13.3 Certificates of Insurance. **ENGINEER** shall deliver to **OWNER** certificates of insurance evidencing the coverages indicated in Sections 13.1 and 13.2 above. Such certificates shall be furnished prior to commencement of **ENGINEER's** services and at renewals thereafter during the life of the Agreement.

13.4 At any time, **OWNER** may request that **ENGINEER** or its consultants, at **OWNER's** sole expense, provide additional insurance coverage, increased limits, or revised deductibles.

13.5 Cancellation, Renewal or Modification. Should coverage afforded under any policy be canceled, non-renewed, materially changed (materially changed defined as a reduction in the policy limit by endorsement during the policy period), or allowed to expire, **ENGINEER** shall provide **OWNER** with at least 30 days prior written notice or, in the event of non-payment, ten days prior written notice.

13.6 Failure to Maintain Insurance. In the event **ENGINEER** fails to maintain any of the insurance required under this Agreement, it shall constitute a material breach of this Agreement.

Art. 14. INDEMNIFICATION

14.1 Indemnification by ENGINEER. To the fullest extent permitted by law, **ENGINEER** shall indemnify and hold harmless **OWNER**, and its officers and employees from and against claims, damages, losses and expenses of any nature or kind including, but not limited to, reasonable attorneys' fees, arising out of, resulting from or relating in any way to negligence, recklessness, intentionally wrongful conduct or breach of contract of **ENGINEER**, its subcontractors, anyone directly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 14.

14.2 Mutual Waiver. To the fullest extent permitted by law, **OWNER** and **ENGINEER** waive against each other, and the other's shareholders, directors, officers, agents and employees, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the **PROJECT**.

14.3 This Article 14, Indemnification, shall survive the termination of this Agreement.

14.4 Both parties acknowledge and agree that the foregoing obligations are specific considerations for this Agreement and without such duties and obligations neither party would enter this Agreement.

Art. 15. PERFORMANCE STANDARDS

15.1 Standard of Care. **ENGINEER** shall perform all professional services with the care and skill ordinarily exercised by members of the same profession currently practicing in the United States, on projects of similar size and complexity at the time the services are performed. **ENGINEER** makes no warranties, express or implied, under this Agreement or otherwise, in connection with **ENGINEER's** services.

15.2 Reliance on Others. Subject to the standard of care set forth in Article 15, **ENGINEER** and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited

to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

15.3 **ENGINEER** shall not be required to sign any documents, no matter by whom requested, that would result in **ENGINEER** having to certify, guarantee, or warrant the existence of conditions whose existence **ENGINEER** cannot ascertain. **OWNER** agrees not to make resolution of any dispute with **ENGINEER** or payment of any amount due to **ENGINEER** in any way contingent upon **ENGINEER** signing any such documents.

15.4 During construction, **ENGINEER** neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents.

15.5 During construction, **ENGINEER** shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

15.6 During construction, **ENGINEER** shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other person (except **ENGINEER**; own agents, employees, and consultants) at the site or otherwise furnishing or performing any work; or for any decision made regarding the contract documents, or any application, interpretation, or clarification of the contract documents, other than those made by **ENGINEER**.

Art. 16. RECORDS

16.1 If the services to be performed hereunder relate to a state or federal government contract, the Comptroller General of the United States and the department or agency of the government having cognizance over this Agreement, and any of their duly authorized representatives, shall have access to and the right to examine any directly pertinent books, documents, papers and records of **OWNER** or **ENGINEER** involving transactions related to this Agreement.

16.2 **ENGINEER** shall grant access to such records until the expiration of **three years** after final payment under this Agreement.

Art. 17. AUDIT RIGHT AND RETENTION OF RECORDS

17.1 **OWNER** shall have the right to audit the books and records of **ENGINEER**. **ENGINEER** shall keep such records and accounts as may be necessary in order to record complete and correct entries related to the **PROJECT**.

17.2 **ENGINEER** shall preserve and make available, at reasonable times for examination and audit by **OWNER** all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement until the expiration of **three years** after final payment under this Agreement.

Art. 18. LIMITATION OF LIABILITY

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of **ENGINEER** and **ENGINEER's** officers, directors, members, partners, agents, employees, and Consultants, to **OWNER** and anyone claiming by, through, or under **OWNER** for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the **PROJECT** or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of **ENGINEER** or **ENGINEER's** officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by **ENGINEER** under this Agreement.

Art. 19. SUCCESSORS AND ASSIGNEES

This Agreement is to be binding on the heirs, successors and assignees of **OWNER** and **ENGINEER**, but is not to be assigned by either **OWNER** or **ENGINEER**, without first obtaining the written consent of the other.

Art. 20. MUTUAL WAIVER OF BREACH AND MATERIALITY

Failure by **either party** to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. **OWNER** and **ENGINEER** agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Art. 21. PERMITS, LICENSES, NOTICES AND COMPLIANCE WITH LAWS

21.1 **ENGINEER** shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and worker's compensation acts insofar as applicable to the performance of services under this Agreement.

21.2 **ENGINEER** shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by **OWNER**, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

21.3 **ENGINEER's** decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

21.4 **ENGINEER** shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further

shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, **ENGINEER** shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

21.5 **ENGINEER** shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

Art. 22. SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless **OWNER** elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within **seven days** after the finding by the court becomes final.

Art. 23. JOINT PREPARATION

Preparation of this Agreement has been a joint effort of **OWNER** and **ENGINEER** and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

Art. 24. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in the Articles of this Agreement shall prevail and be given effect.

Art. 25. PROJECT SPECIFIC TERMS

The following additional **PROJECT** specific terms and conditions are:

N/A

Art. 26. COUNTERPARTS

This Agreement may be executed in **counterparts**, each of which shall be deemed to be an original.

Art. 27. APPROVAL

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and is made effective the day and year first above written.

CITY OF ROCKY RIVER

By: _____

Pamela Bobst Date
Mayor

HAZEN AND SAWYER

By: _____

W. James Gellner Date
Vice President

Witnessed By:

_____

CarrieAnne Rosemark Date
WWTP Superintendent

_____

Scott Ankrom Date
Associate

SCHEDULE A

SCOPE OF SERVICES

City of Rocky River

No Feasible Alternative Study

The scope of work to be provided by **ENGINEER** includes professional services for the elements listed below.

Phase 1 – Analysis

(1) a. 1 Review of Existing Information

ENGINEER will provide a list of desired information to OWNER prior to the project kickoff meeting. ENGINEER will review existing information from the Rocky River WWTP, and the City of Rocky River, Bay Village, Westlake and Fairview Park (Four Cities) collection systems. Anticipated information includes the following:

- Current LTCP
- Individual Consent Decrees
- Sewer agreement for Four Cities
- Rocky WWTP design summary information including equipment and process unit sizing and design criteria for the WWTP.
- Historical wastewater treatment plant flows, loadings, and plant operational data
- Latest WWTP drawings and specifications
- Collection system information from Four Cities, including CCTV, inspection information and models
- Collection system plans from Four Cities with flow meter and sampling locations for Strength and Flow Study
- Available pump station information from various communities including, capacities and existing information on actual flows / condition of the pump stations
- Current land use planning documents for various communities
- Current population projections for various communities
- ESRI Geodatabase for the existing WWTP service area
- Detailed financial revenue and expenses, most recent annual audits from Four Cities

It is assumed that OWNER will provide the information in electronic format. A minimum of three years of operations data is preferred.

(1) a. 2 Kickoff Meet ing

ENGINEER will hold a kickoff meeting with OWNER after review of the existing information. During the kickoff meeting, scope, schedule, and major deliverables for the project will be discussed. In addition, initial observations and questions from the existing information provided by the OWNER will be discussed. ENGINEER will provide brief meeting minutes summarizing

key discussion topics and action items will be distributed to meeting attendees for review and comment. Final meeting minutes will be distributed after incorporation of comments.

(1) a. 3 WWTP Site Visit

ENGINEER will conduct a WWTP site visit to review existing facilities and to solicit input from plant personnel on existing plant capacity limitations and issues. ENGINEER will review three years of operating data and available plant drawings, studies, and reports.

ENGINEER will use gathered information to establish original plant design criteria, current loadings, and existing unit process capacities. Process capacities will be established using the most recent version of Ten States Standards and process experience from other projects.

(1) a. 4 Collect and Review Information from Four Cities

ENGINEER will meet with representatives from the Four Cities to obtaining information on their individual collection systems including any plans, inspection reports, CCTV videos and modeling information that is available. It is expected the Four Cities will provide input to ENGINEER pertaining to current problem areas within each Cities system. ENGINEER will also obtain information pertaining to previous collection system improvements, any ongoing projects as well as future collection system projects. In addition to this information the ENGINEER will be provided any SSES, LTCP's or Consent Decree documents from the various communities where applicable.

(1) a. 5 WWTP Flow and Loading Data

ENGINEER will establish WWTP process capacities using the most recent version of Ten States Standards and process experience from other projects. ENGINEER will review the last 3 years of WWTP reporting data and laboratory analysis information. Current flows and loading to the WWTP will be determined based on this information. In addition, future flows and loading will be developed for average and peak flows. Information and findings of the flow and load evaluation will be provided in the NFA study.

(1) a. 6 Review of Collection Systems and Analysis, Maintenance and CCTV Record

Based on available information, ENGINEER will review individual collection system and analysis, inspection reports, CCTV, and any other reports or studies pertaining to the collection system design and capacity. The ENGINEER will perform dry weather and wet weather flow projections based on current population census data, typically I&I ratios and information from the Strength and Flow Study. Documentation of this effort will be included in the NFA report.

The ENGINEER will also review past collection system improvement as well as any current and future collection system projects which will impact the contributing flow from the Four Cities. ENGINEER will review data collected from flow meters and samplers from past and current Strength and Flow Studies and correlate these results with the other information obtained for each individual collection system review.

(1) a. 7 Develop WWTP Hydraulic Profile/ID Hydraulic Limitations

ENGINEER will develop a hydraulic profile model to evaluate hydraulic capacity limitations at the WWTP and individual unit processes. Hydraulic limitations of the WWTP and individual unit processes will be identified in this analysis. The results of the analysis will be utilized when evaluating the various alternatives for increased wet weather capacity at the WWTP as well as the individual collection systems. Findings of the evaluations will be included in the NFA study.

(1) a. 8 Wet Weather Stress Testing

The ENGINEER will develop a plan for stress testing of critical process units and potentially stress testing of hydraulic structures and flow splits. ENGINEER will have a representative's onsite and assist OWNER in conducting 2 stress testing events. The ENGINEER will provide a summary of the procedures and results from the stress testing events which will be included in the NFA Study.

(1) a. 9 Evaluation of WWTP Capacity

An evaluation of the WWTP capacity and individual unit processes will be conducted by ENGINEER. The analysis will determined the peak and average flow capacity of the WWTP. In addition, the analysis will evaluate the peak diurnal flows to establish the duration of peak flow events and impact of the necessary alternative improvements at the WWTP in combination with individual collection system improvements to increase the wet weather capacity of the WWTP to provide secondary treatment.

(1) a. 10 Work Sessions/Management Committee Meetings

ENGINEER will conduct three workshops with OWNER and various communities as necessary during the different phases of the project. The workshops will be conducted to present progress on the particular phases, provide recommendations to the OWNER and obtain input from the OWNER, and appropriate communities related to the phase and review of any draft report or deliverables for individual phases of the project. Two meetings with the Management Committee will also be held at the various Phases of the project.

(1) b. 1 Alternatives ID and Screening

ENGINEER will identify options for increasing capacity of the WWTP and also identify if appropriate, individual collection system that have excess flow which if addressed could significantly impact the overall wet weather flow to the WWTP. Only options that meet the requirements of the current NPDES permit will be considered. ENGINEER will meet with the OWNER to identify the most feasible alternatives for further evaluation. ENGINEER will conduct an alternative screening workshop with the OWNER and to present the draft evaluation prior to finalizing for incorporation into the NFA.

(1) b. 2 Alternatives Evaluation

The ENGINEER will evaluate the alternatives identified in the alternatives ID and screening process and development cost for each selected alternative. Use of three design storm intervals is common practice for identifying cost / benefit relationships. ENGINEER will determine conceptual level capital costs of short-listed alternatives. ENGINEER will conduct a costing

workshop with Owner after which the ENGINEER will meet with the Management Committee to present the results and cost of the alternatives.

Phase 2 - Planning and EPA Report

(2) a. Financial Capability Analysis Collection, Review and Report of Four Cities

In order to provide Ohio EPA with an approvable NFA Report as outline in the USEPA July 2009 Guidance Document the NFA Report needs to include a detailed "snapshot" evaluation of the OWNER financial status. The ENGINEER will prepare a Financial Capability Analysis (FCA), which will be included in the NFA analysis using U.S. EPA's guidelines for affordability, as recently amended. ENGINEER will meet with the Four Cities to gather and review available financial information. The FCA will take into consideration wastewater rates and effective rates based on any purposed improvements. The ENGINEER will provide a detailed FCA report that will include review of annual sewer rates, estimated costs per household of implemented recommended measures, unemployment rate, medium household income, property tax collection rate and any other additional cost that may impact the various Cities financial capability. The ENGINEER will prepare an NFA analysis of each City that will be completed and submitted as part of the NFA Study. The ENGINEER will conduct a FCA workshop with OWNER to review the results of the draft FCA. The ENGINEER will also meet with the Management Committee and various Cities to review the results of the FCA and will incorporate comments / modifications prior to finalization of the report. Information from the FCA will be included in the final NFA report.

(2) b. CIP Planning

ENGINEER will provide a recommended schedule to the OWNER for implementing the recommended improvements to meet the schedule requirements of OWNERS NPDES permit. A FCA workshop will be conduct by the ENGINEER with the OWNER for input and review. The ENGINEER will review the schedule Management Committee and modify the schedule as agreed upon by the parties. The approved schedule may or may not meet the schedule identified in the OWNERS NPDES permit. The final agreed upon schedule will be include as part of the final NFA Report.

(2) c. NFA Report

ENGINEER will prepare a draft NFA report based on the findings of the WWTP and collection system(s) evaluation which will include the alternative and cost benefit analysis as well as the recommended improvements based on the evaluation. In addition, the draft report will include the finding and necessary information from the FCA. The draft report will also include a proposed CIP schedule for the implementation of recommend improvements. The ENGINEER will meet with OWNER to discuss the NFA report and incorporate any changes. ENGINEER will also meet with the Management Committee to present findings of the NFA and incorporate any of their changes into the final NFA report to be submitted to Ohio EPA.

Phase 3 – Ohio EPA Submission

1. Final NFA Report

ENGINEER will incorporate changes received by the OWNER and Management Committee into the final FCA Study. ENGINEER will provide OWNER with the final NFA Study prior to January 1, 2019 for submission to Ohio EPA for review.

2. Review Final NFA Report with Ohio EPA

Engineer will meet with OWNER and Ohio EPA prior to the submittal of the final NFA Study to review the details of the study and to improve EPA's understanding and answer any questions or address items in the study prior to the final study submittal.

3. Prepare Response to EPA Review Comments

ENGINEER will coordinate with OWNER review of questions received from Ohio EPA after their review of the NFA Study. ENGINEER will draft responses for the OWNER to review. ENGINEER will meet with the OWNER, if necessary to review responses. ENGINEER will provide OWNER with agreed upon responses for submittal to Ohio EPA.

TIME OF COMPLETION

1. Anticipated Project Schedule

Proposed schedule is based upon receive notice to proceed on May 1, 2017

Phase 1. Analysis	May 2017 – April 2018
Phase 2. Planning and NFA Report	May 2018 – September 2018
Phase 3. Ohio EPA Submission	November 2018 – February 2019

SCHEDULE B

COMPENSATION

City of Rocky River

No Feasible Alternative Study

OWNER shall pay **ENGINEER** as full compensation for the services identified under Schedule A the amount(s) listed below. Task amounts are not limits and may be exceeded provided that the total amount is not exceeded. Compensation shall be on a not-to-exceed basis.

Billing will be on a monthly basis, based on hours spent on the project, direct hourly rates times a multiplier of 3.15. All outside expenses incurred by ENGINEER for project assignments, except for internal expenses specified above, will be invoiced at cost.

TASK NAME	AMOUNT
Phase 1. Analysis	$164,364
Phase 2. Planning and NFA Report	$ 83,154
Phase 3. Ohio EPA Submission	$ 22,226
Expenses	$ 4,856
TOTAL	**$274,600**

SCHEDULE B1
City of Rocky River, Ohio
NFA Study
4/6/2017

TASK	PP/QC	SA/TA	A/PM	SPE	PE	Admin	CAD	Total Hours	Fee Labor
Hourly Rate =	$ 70.00	$ 60.00	$ 57.00	$ 42.00	$ 38.00	$ 27.00	$ 33.00		
Phase 1. Analysis									
Phase 1a. Review WWTP and Existing Collection Systems									
Kickoff Meeting	4		4	4				12	$ 2,129
WWTP Site Visit	4	6	8	6	4			28	$ 4,725
Collect and Review Information from 4 Cities	16		24		40	4		84	$ 12,965
Review WWTP Flow and Loading Data / Develop Design Criteria (includes Flow/Load study data)	8	8	16	50	60	4		146	$ 20,286
Collection Systems Review and Analysis	8		16		40			64	$ 9,425
Review Maintenance/CCTV Records	4		16		60			80	$ 10,937
Develop Hydraulic Profile / ID Hydraulic Limitations	4		12	30	80	1	10	137	$ 17,706
Wet Weather Stress Testing	4	4	16	24	24			72	$ 10,559
Evaluation of Existing WWTP Capacity (peak and avg.)	4	8	10	36	70		8	136	$ 18,163
WWTP and Collection System Capacities Workshop	4		10	6	4			24	$ 3,950
Phase 1b. Alternative Analysis									
ID and Screen Alternatives	4	6	10	30	40	2	16	108	$ 14,402
Alternative Screening/Process Meeting	4	4	8	6			2	24	$ 4,076
Evaluate / Cost Alternatives	8	16	24	60	80		16	204	$ 28,274
Alternative Evaluation Workshop	2	6	8	12				28	$ 4,599
Meeting with Management Committee	4	4		4				12	$ 2,167
TASK 1 TOTAL =	**82**	**62**	**182**	**268**	**502**	**11**	**52**	1159	$ 164,364
Phase 2. Planning and NFA Report									
Phase 2a Financial Capability Analysis									
Gather/Review Information from Four Cities	24		20					44	$ 8,883
Perform FCA for each City	70		24					94	$ 19,744
Prepare Draft FCA Report	12		8	12		4		36	$ 6,010
FCA Workshop	8		8					16	$ 3,200
Review Draft FCA Report with Four Cities	8		8					16	$ 3,200
Prepare Final FCA Report	4		4	8		4		20	$ 2,999
Phase 2b CIP Planning									
Develop Draft CIP Schedule	4	4	10	16		2		36	$ 5,720
CIP Schedule Workshop	4		6	6			4	20	$ 3,169
Prepare Final CIP Schedule	2		4	10		2		46	$ 2,652
Phase 2c NFA Report									
Prepare Draft NFA Report	8	16	16	40	64	8	16	168	$ 22,957
Draft NFA Report Review Meeting	4		6	4				14	$ 2,489
Meeting with Management Committee	4		4	4				12	$ 2,129
TASK 2 TOTAL =	**152**	**20**	**118**	**100**	**64**	**20**	**20**	494	$ 83,154
Phase 3. Ohio EPA Submission									
Final NFA Report / Submit to OEPA	4	4	8	24	24	4	8	76	$ 10,294
Review Meeting with Ohio EPA	8		12	8				28	$ 4,977
Prepare Responses / Modify Report / Resubmit	4	2	6	16	16	2	4	50	$ 6,955
TASK 3 TOTAL =	**16**	**6**	**26**	**48**	**40**	**6**	**12**	154	$ 22,226
Total Hours	**250**	**88**	**326**	**416**	**606**	**37**	**84**	**1,807**	
Labor Fee Subtotal									$ 269,744

Hazen and Sawyer Labor Classifications
PP/QC - Project Principal / Quality Control
SA/TA Senior Associate and Technical Advisor
A/PM- Associate and Project Manager
SPE - Senior Principal Engineer
PE- Project Engineer
Admin - Administrative
CAD - CAD Designer

Direct	Indirect	Fixed Fee	Total
1.00	1.85	0.30	3.15

Multiplier	3.15

Expenses	Units			Unit Cost	Total $
Mileage	5000			$ 0.54	$ 2,675
Travel / Lodging	ls			$ 2,000.00	$ 2,000
Miscellaneous				$ 181.00	$ 181
Other Direct Costs Subtotal					$ 4,856

TOTAL PROJECT FEE	$ 274,600

Hazen