

FIRST READING: 11.9.20
SECOND READING: 11.23.20
THIRD READING:

ORDINANCE NO. 94-20

BY: DAVID W. FURRY

AN EMERGENCY ORDINANCE AUTHORIZING THE MAYOR AND SAFETY SERVICE DIRECTOR TO ENTER INTO A "MUTUAL RELEASE AND SETTLEMENT AGREEMENT" BETWEEN THE CITY OF ROCKY RIVER AND AECOM TECHNICAL SERVICES, INC. REGARDING ENGINEERING SERVICES REQUIRED FOR PRIMARY SLUDGE PUMP INSTALLATION AT THE ROCKY RIVER WASTEWATER TREATMENT PLANT AS FURTHER DESCRIBED IN EXHIBIT "A"

WHEREAS, AECOM and the City executed an Agreement dated July 7, 2017 as detailed in Ordinance No. 49-17, pursuant to which AECOM agreed to provide design and construction administration services to the City in connection with a capital improvements project to upgrade the Primary Clarifier Building and Final Clarifier Building at the Rocky River Wastewater Treatment Plant (the "Project"); and

WHEREAS, the City has alleged that AECOM committed certain errors or omissions in connection with the provision of these services, including, but not limited to, issues concerning the primary sludge pumps, HVAC, flodlar sensor, flow meter, dewatering pump pad, and insulation (collectively, the "Claim"); and

WHEREAS, AECOM denies liability for the Claim; and

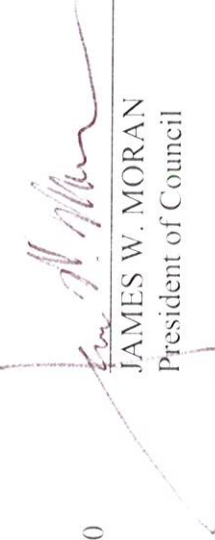
WHEREAS, the Parties have discussed the Claim and have agreed to amicably resolve their dispute and desire to set forth the terms of their resolution in writing, as further detailed in the attached Exhibit "A", which includes a payment to the City of Rocky River of \$100,000.00.

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 of the City of Rocky River is hereby authorized to enter into a Mutual Release and Settlement Agreement with AECOM Technical Services, 1300 E 9th Street, Suite 500, Cleveland, OH 44114, which agrees to follow mutual promises and covenants contained in the Mutual Release and Settlement Agreement prepared and reviewed by Legal Counsel of both parties.

SECTION 2. - That a summary of the Mutual Release and Settlement Agreement is attached as Exhibit "A" and the passing of this Settlement by legislation is requested by Dave Matty, Rocky River Wastewater Treatment Plant Legal Counsel.

PASSED: November 23rd 2020


JAMES W. MORAN
President of Council

PRESENTED TO

MAYOR: November 23rd 2020

TEST:


SUSAN G. PEASE
Clerk of Council

APPROVED: November 23rd 2020


PAMELA E. BOBST
Mayor

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 23rd day of November, 2020.


Clerk of Council of the City of Rocky River, Ohio

City of Rocky River } ss
County of Cuyahoga }

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. 94-20 ADOPTED BY THE COUNCIL OF SAID CITY ON THE 23rd DAY OF November, 2020. 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. 94-20

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 23rd DAY OF November, 2020.

Amanda A. Benson
CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO

MATTY, HENRIKSON & GREVE LLC

DAVID J. MATTY
THOMAS F. GREVE
KIRK R. HENRIKSON
MARK R. MARONG

ATTORNEYS AT LAW
1001 Lakeside Avenue

Suite 1410
CLEVELAND, OHIO 44114

SHANA A. SAMSON
ERIN E. HOOPER
JESSE P. KANNER

TELEPHONE (216) 621-6570
TOLL FREE (866) 621-6570
FACSIMILE (216) 621-1127

MEMORANDUM

TO: Nicholas Barille, WWTP Superintendent
FROM: David Matty, Legal Counsel
RE: AECOM Settlement
DATE: November 4, 2020

Nicholas,

At your request, please consider this memorandum as a brief summary of the Mutual Release and Settlement Agreement which I have negotiated to remedy both the newly installed primary sludge pumps at the WWTP, which are not performing as expected and all outstanding change orders for the Capital Improvements Project to upgrade the Primary Clarifier Building and Final Clarifier Building at the WWTP. I respectfully request passage of this Settlement by legislation by the Rocky River City Council.

This proposed Settlement will provide the city with 1) \$100,000.00 for the purchase of two (2) new primary sludge pumps, associated variable frequency drives and related electrical equipment; and 2) the necessary engineering services for the design and installation of said pumps and equipment at no cost to the city (such services estimated to be in excess of \$60,000.00).

Finally, this proposed Settlement will also resolve any and all other claims between the city and AECOM except for any claims that may arise from this proposed project.


DM

Cc: Mayor Pamela Bobst
Attachment: Mutual Release and Settlement Agreement

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This **MUTUAL RELEASE AND SETTLEMENT AGREEMENT** ("Agreement") is entered into as of _____, 2020, by and between AECOM Technical Services, Inc. ("AECOM") and the City of Rocky River, Ohio ("City"). Throughout this Agreement, the foregoing entities may be individually referred to as the "Party" or collectively as the "Parties."

WHEREAS, AECOM and the City executed an Agreement dated July 7, 2017, pursuant to which AECOM agreed to provide design and construction administration services to the City in connection with a capital improvements project to upgrade the Primary Clarifier Building and Final Clarifier Building at the Rocky River Wastewater Treatment Plant (the "Project");

WHEREAS, the City has alleged that AECOM committed certain errors or omissions in connection with the provision of these services, including, but not limited to, issues concerning the primary sludge pumps, HVAC, Flodar sensor, flow meter, dewatering pump pad, and insulation (collectively, the "Claim");

WHEREAS, AECOM denies liability for the Claim;

WHEREAS, the Parties have discussed the Claim and have agreed to amicably resolve their dispute and desire to set forth the terms of their resolution in writing.

NOW THEREFORE, in consideration of their mutual promises and covenants herein contained and intending to be legally bound hereby, the Parties agree as follows:

I. SETTLEMENT PAYMENT:

- a. AECOM agrees to issue a one-time payment to the City in the amount of One Hundred Thousand Dollars (\$100,000.00) and to perform additional engineering services in connection with the installation of two new primary sludge pumps, associated variable frequency drives, and electrical equipment (all of which are to be provided by the City), free of charge, in full and final satisfaction of the Claim, including, without limitation, claims for interest, costs and attorneys' fees. The engineering services to be provided by AECOM hereunder are set forth fully in the scope of work attached hereto as Exhibit A. In performing said 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.
- b. AECOM shall issue payment to the City within thirty (30) days of execution of this Agreement.
- c. The City shall provide AECOM all necessary tax information to the extent necessary to facilitate payment.

2. **MUTUAL RELEASE:** In further consideration of this Agreement, AECOM, on behalf of itself and its agents and representatives, hereby releases the City and its officers, directors, shareholders, governors, trustees, employees, agents, representatives, subsidiaries, affiliates and other related entities from any and all asserted and unasserted claims for payment for services that AECOM may have against the City that arise out of, are related to, or could have been raised related to the Project.

In further consideration of this Agreement, the City, on behalf of itself and its agents and representatives, hereby releases AECOM and its officers, directors, shareholders, governors, trustees, employees, agents, representatives, subsidiaries, affiliates and other related entities from any and all asserted and unasserted claims or other causes of action that City may have against AECOM that arise out of, are related to, or could have been raised related to the Project. However, it is agreed by the Parties that the City will provide a release for the engineering services set forth in Paragraph 1.a. above, with the scope of work attached hereto as Exhibit A, after the services are provided with the degree of care and skill set forth in Paragraph 1.a. above.

3. **COUNTERPARTS:** This Agreement may be executed in counterparts, which taken together shall form the whole Agreement.

4. **APPLICABLE LAW:** This Agreement shall be interpreted in accordance with the laws of the State of Ohio, excluding any laws on that would apply the law of another jurisdiction.

5. **NO ADMISSION:** This Agreement is meant as a compromise settlement of a disputed claim. Nothing contained in this Agreement shall constitute an admission of liability or be construed against the interest of any Party.

6. **REPRESENTATIONS:** The Parties represent that they: (1) have all necessary approvals to enter into this Agreement without the consent of any other person or entity, (2) have not assigned or transferred the claims being released, and (3) that the persons executing on their behalf have the authority to do so and bind that Party.

7. **ENTIRE AGREEMENT AND MODIFICATION:** This is the full integration of the entire settlement agreement between the Parties. There are no other agreements, representations, or understandings of any kind, verbal, written or otherwise. This Agreement shall not be modified, altered or amended except by a writing executed by the Party to be bound.

8. **EXECUTION OF NECESSARY DOCUMENTS:** The Parties agree to execute any and all additional documents necessary to effectuate the intent and purposes of this Agreement.

AECOM TECHNICAL SERVICES, INC. CITY OF ROCKY RIVER, OHIO

By: _____ By: _____

Its: _____ Printed Name & Title Its: _____ Printed Name & Title

Dated: _____ Dated: _____

Approved as to form:

David J. Matty
Special Counsel, Rocky River Wastewater Treatment Plant

EXHIBIT A

Scope of Services

Rocky River WWTP – 2017-20 Capital Improvements – New Pump Installation Services

Scope

Upon execution of the settlement agreement between AECOM Technical Services, Inc. (“AECOM”) and the City of Rocky River (“City”), AECOM will move forward with the following scope of services:

- Develop hydraulic calculations to size the two (2) new primary sludge pumps. The calculations shall determine the operating points for the new pumps.
- Develop design drawings and specifications for two (2) new primary sludge pumps and associated piping and pump pads.
- Develop design drawings and specifications for electrical improvements as necessary to provide power to the two (2) new primary sludge pumps. Electrical improvements will involve two (2) variable frequency drives and may include new wiring, conduit, and/or modifications as necessary in the motor control center in order to provide power.
- Submit draft drawings and specifications for review with the City of Rocky River before finalizing and submitting the drawings and specifications for procurement and installation.
- Review shop drawings and answer RFIs and visit the construction site a maximum of four times to observe construction of the replacement pumps.
- Develop and submit as-built record drawings to the City one (1) week following construction completion.

Schedule

AECOM will move forward with design of the pump replacement according to the following schedule:

- One (1) week following execution of the settlement agreement, schedule a meeting with the City to review the sludge pump design parameters for the pump replacement.
- Two (2) weeks following meeting, AECOM will submit draft drawings and specifications for installation of two new primary sludge pumps.
- One (1) week following draft submittal, AECOM will meet with the City to review the documents and document comments to address.
- One (1) week following receipt of comments from the City, AECOM will revise documents to send to the Contractor for pricing, shop drawings, and construction.