

FIRST READING: 10.25.21
SECOND READING: 11.8.21
THIRD READING: 11.22.21

ORDINANCE NO. 76-21

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 CONSULTING SANITARY ENGINEERING SERVICES IN 2022 AND 2023 FOR THE ROCKY RIVER WASTEWATER TREATMENT PLANT (WWTP) IN AN AMOUNT NOT TO EXCEED \$187,100.00 AS FURTHER DESCRIBED IN EXHIBIT "A"

WHEREAS: The City of Rocky River has determined a need to contract for professional consulting engineering services for the Rocky River WWTP; and

WHEREAS: the Mayor, the WWTP Management Committee, and the WWTP Superintendent, have determined that it is in the best interest of the participating Cities to continue to use the unique and specialized services of Hazen and Sawyer as described in the agreement attached as Exhibit "A"; and

WHEREAS: for the two (2) year period of January 1, 2022 to December 31, 2023 for the total cost of One Hundred Eighty Seven Thousand One Hundred Dollars and 00/100 (\$187,100.00), itemized as follows:

Retainer Services in an amount not to exceed Thirty Four Thousand Three Hundred Dollars and 00/100 (\$34,300.00)

A categorical rate structure for Miscellaneous Engineering Services, which will be utilized for such services in an amount not to exceed Fifty Two Thousand Eight Hundred Dollars and 00/100 (\$52,800.00)

A categorical rate structure for Additional Services for Identified Projects, which will be utilized for such services in an amount not to exceed One Hundred Thousand Dollars and 00/100 (\$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 an Agreement for Professional Consulting Sanitary Engineering Services with Hazen and Sawyer, 6133 Rockside Road, Suite 203, Independence, OH 44131, in an amount not to exceed One Hundred Eighty Seven Thousand One Hundred Dollars and 00/100 (\$187,100.00) as further described in Exhibit "A".

SECTION 2. That funds for consulting sanitary engineering services for Retainer Services shall be paid from the Wastewater Treatment Plant Utility Fund.

SECTION 3. That funds for consulting sanitary engineering services for Miscellaneous Engineering Services shall be paid from the Wastewater Treatment Plant Capital Fund.

SECTION 4. That funds for consulting sanitary engineering services for Additional Services for Identified Projects shall be paid from the Wastewater Treatment Plant Capital Fund.

PASSED: November 22, 2021

PRESENTED

TO THE MAYOR: November 22, 2021

WITNESSED:

Angela G. Pease
ANGEL G. PEASE
Clerk of Council

Pamela E. Bobst
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 22nd day of November, 20 21.

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

Nakonek/S/Ordinances & Resolutions/2021 Ordinances/RRWWTP Hazen Sawyer Agreement

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. 112-21 ADOPTED BY THE COUNCIL OF SAID CITY
ON THE 23rd DAY OF November, 2021 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. 112-21

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 23rd DAY OF
November, 2021.

Andrew G. Pittman
CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO

**AGREEMENT
FOR PROFESSIONAL SERVICES**

Between

**City of Rocky River, City of Westlake,
City of Bay Village, City of Fairview Park
(COLLECTIVELY "OWNER")
c/o City of Rocky River
21012 Hilliard Boulevard
Rocky River, OH 44116**

And

**Hazen and Sawyer

FOR

22-23 Consulting Engineer**

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OWNER: [City of Rocky River, City of Westlake, City of Bay Village,
City of Fairview Park]
PROJECT: 22-23 Consulting Engineer]

**AGREEMENT BETWEEN ROCKY RIVER AND HAZEN AND SAWYER
FOR PROFESSIONAL SERVICES**

This Agreement, dated the ____ day of January, 2022 is made and entered into between
City of Rocky River, City of Westlake, City of Bay Village, City of Fairview Park
(Owner, hereinafter "**OWNER**")
c/o City of Rocky River
21012 Hilliard Boulevard
Rocky River, Ohio 44116.

and

Hazen and Sawyer (hereinafter "**ENGINEER**")
6133 Rockside Road, Suite 203
Independence, Ohio 44131.

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

(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's** 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's** 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

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- 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: Nicholas Barille
22303 Lake Road
Rocky River, Ohio 44116

- 4.3 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.

- 4.4 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.

- 4.5 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.

- 4.6 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

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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; and (3) 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**.

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 **fourteen days** written notice if the other party fails to perform its obligations under this Agreement and fails to cure within such **fourteen day** period.
- 9.2 Termination for Cause by ENGINEER. Upon fourteen days written notice if **OWNER** demands that **ENGINEER** furnish or perform services contrary to **ENGINEER**' responsibilities as a licensed professional; or upon fourteen 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.

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: Nicholas Barille
22303 Lake Road
Rocky River, Ohio 44116;

or

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

Hazen and Sawyer
Attention: Rosalyn Matthews
6133 Rockside Road, Suite 203
Independence, Ohio 44131.

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. 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. 19. 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. 20. PERMITS, LICENSES, NOTICES AND COMPLIANCE WITH LAWS

- 20.1 **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.
- 20.2 **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.

20.3 **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.

20.4 **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.

20.5 **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. 21. 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. 22. 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. 23. 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. 24. PROJECT SPECIFIC TERMS

The following additional PROJECT specific terms and conditions are:

N/A

Art. 25. COUNTERPARTS

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

Art. 26. 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.

OWNER: CITY OF ROCKY RIVER, CITY
OF WESTLAKE, CITY OF BAY VILLAGE,
CITY OF FAIRVIEW PARK

HAZEN AND SAWYER

By City of Rocky River:

By:

Pamela Bobst Date
Mayor

W. James Gellner Date
Vice President

Witnessed By:

Nicholas Barille Date
WWTP Superintendent

Rosalyn Matthews Date
Associate

Andrew Bemer Date
Law Director, City of Rocky River

David Matty, Esq. Date
Legal Counsel, Rocky River WWTP

Schedule A - Attached

A-1
ROCKY RIVER AGREEMENT CONSULTING ENGINEERING CONTRACT DRAFT 22-23.docx

Schedule A

SCHEDULE A

SCOPE OF SERVICES

City of Rocky River

22-23 Consulting Engineer

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

Subject to the Contract for Professional Engineering for 22-23 Consulting Engineer Services between the City of Rocky River (OWNER) and Hazen and Sawyer (ENGINEER), the ENGINEER will perform professional engineering services, to serve as OWNER's retained professional engineering representative, and to provide professional engineering consultation and advice on a time and material basis as herein provided.

Section 1. Retainer Services

ENGINEER shall maintain staff of knowledgeable and trained personnel in readiness to serve OWNER with reasonable dispatch. ENGINEER shall provide the following service:

1. Attend a regular monthly work session or conference call, for a total of twenty-four (24) meetings for the two-year period of this Contract.
2. Perform PTI reviews. This is expected to be 5-6 reviews per year.
3. Provide telephone consultation, coordination and assistance as required by the OWNER. It is assumed that the ENGINEER will host two (2) conference calls per month for one (1) hour duration each. Such services shall not include detailed investigation or the extensive involvement of the ENGINEER's staff.
4. ENGINEER will attend two (2) Management Committee Meetings per year as requested by the OWNER
5. ENGINEER shall inform the OWNER of changes and impending changes in regulatory and engineering requirements and in grant programs they are aware of related to OWNER's operations.
6. ENGINEER will notify the OWNER in advance in writing when the scope of work will be beyond the services covered by the time and materials retainer fee.

All services by ENGINEER shall be provided in accordance with this agreement.

Section 2. Miscellaneous Engineering Services

In addition to items listed in Section 1 upon the authorization of the OWNER, the ENGINEER shall perform miscellaneous engineering assignments at the request of the OWNER.

In response to each request for Miscellaneous Engineering Services, ENGINEER shall provide to OWNER an estimate of the cost of completion of the task prior to initiating any work. ENGINEER shall commence work following authorization from OWNER. OWNER and ENGINEER agree that such estimates and

authorizations can be completed verbally when available time and conditions require that procedure. Such verbal authorizations shall be confirmed in writing by ENGINEER subsequent to receipt. Miscellaneous Engineering Services performed under this task will have a not to exceed limit for the two-year period as defined in Schedule B.

Section 3. Additional Services of the Engineer

In addition to items listed in Section 1 and 2 upon the authorization of the OWNER, the ENGINEER shall perform specific assignments including, but not limited to, the following:

1. Perform investigations, studies, and reports relating to engineering matters including fiscal operation and planning studies.
2. Represent the OWNER as its ENGINEER in special meetings with the public, municipal boards and agencies, and other local, state and agencies.
3. Provide field survey services, design services and construction contract administration services.
4. Provide resident project representation services.
5. Serve as an expert witness or testify in any legal proceeding involving the OWNER.

In response to each request for Additional Services, ENGINEER shall provide to OWNER an estimate of the cost of completion of the task prior to initiating any work. ENGINEER shall commence work following authorization from OWNER. OWNER and ENGINEER agree that such estimates and authorizations can be completed verbally when available time and conditions require that procedure. Such verbal authorizations shall be confirmed in writing by ENGINEER subsequent to receipt.

Section 4. Additional Services for Identified Projects

Under this section the OWNER will authorize the ENGINEER on a as-needed basis for the following engineering services that may need to be addressed during the contract period:

- Bidding and Construction Phase Activities for the Thickener Rehabilitation, 21/22 Pump Replacement and/or Auxiliary Lake Road PS Bypass Modifications.
- Design of the repair of Manhole 7
- Evaluation of hydraulics of effluent outfalls
- Design of effluent outfall hydraulic improvements

In response to each request for engineering services to the listed item(s), ENGINEER shall provide to OWNER an estimate of the cost of completion of the task prior to initiating any work. ENGINEER shall commence work following authorization from OWNER. OWNER and ENGINEER agree that such estimates and authorizations can be completed verbally when available time and conditions require that procedure. Such verbal authorizations shall be confirmed in writing by ENGINEER subsequent to receipt. Services performed under this task will have a not to exceed limit for the two-year period as defined in Schedule B.

Section 5. Responsibilities of the OWNER

The OWNER shall provide the following assistance in completion of the services of ENGINEER:

1. Provide access to all existing studies, reports, and other available data pertinent to any particular assignment.
2. Arrange for access to and make all provision for the ENGINEER to enter upon public and private property as required for ENGINEER to perform services.
3. Bear all costs incurred incidental to the Agreement.

Section 6. Term of the Agreement

ENGINEER shall provide services for a period from the Notice To Proceed through December 2021. The OWNER may choose to renew this agreement for an additional two (2) year period under the provisions set forth herein, excluding revisions to the ENGINEER's standard Fee Schedule which shall be adjusted annually to reflect ENGINEER's revised annual cost. The ENGINEER shall provide copies of the current Fee Schedule to the OWNER.

Section 7: Miscellaneous

The following provisions shall apply to all services provided by ENGINEER under this contract:

Conflict of Interest: In order to avoid the appearance of or any actual conflict of interest, ENGINEER agrees not to serve any client in the OWNER's service area without the OWNER's knowledge and agreement.

Other Agreements: This agreement does not prevent the execution of other agreements between the OWNER and ENGINEER on specific assignments.

Preparation of RFPs: If the ENGINEER assists in the development of an RFP, it is understood that the ENGINEER will not submit a response for that RFP.

Time of Completion: ENGINEER shall provide services for a period from the Notice To Proceed through December 2021. The OWNER may choose to renew this agreement for an additional two (2) year period. Targeted duration for completion of specific tasks will be coordinated with Owner as tasks are assigned.

SCHEDULE B
COMPENSATION
City of Rocky River
22-23 Consulting Engineer

OWNER shall pay **ENGINEER** as full compensation for the services identified under Schedule A the amount(s) listed below. Compensation shall be on a not to exceed basis based on the Categorical Rate Schedule and direct expenses with no markup. If subconsultants are used, costs for subconsultants will be billed with a markup of 5% to represent additional liability of **ENGINEER** for those services.

1. For the Basic Retainer Services outlined in Section 1 of Schedule A, there will be a not to exceed fee of seventeen thousand one hundred fifty dollars (\$17,150 per year). The total not to exceed for retainer services for the base contract period will be thirty-four thousand three hundred dollars (\$34,300).
2. For Miscellaneous Engineering Services performed pursuant to Section 2, there will be a not to exceed fee of fifty-two thousand eight hundred dollars (\$52,800) for the two (2) year period of the agreement.
3. For Additional Services of the Engineer performed pursuant to Section 3, a fee will be based upon the **ENGINEER's** Categorical Rate Schedule and estimated fee proposal or a mutually agreeable Lump Sum Fee.
4. For Additional Services for Identified Projects under Section 4, there will be a not to exceed fee of one hundred thousand dollars (\$100,000) for the two (2) year period of the agreement.
5. The Engineers Categorical Rate schedule is attached.
6. In accordance with this agreement and payable with 30 days after invoice.

Hazen and Sawyer Labor Classifications		Categorical Hourly Rate
Project Principal/Quality Control		\$255
Senior Associate and Technical Advisor		\$225
Associate and Project Manager		\$215
Senior Principal Engineer		\$157
Project Engineer		\$125
Administrative		\$75
CAD Designer		\$142

Notes:

1. Rates assume no change in rate structure over 2-year life of contract
2. Additional classifications may be added, depending on the nature of the work performed. If additional classifications are needed, Hazen will request approval of the new classification and associated rate prior to incorporation into project.