

FIRST READING: 10.25.21

ORDINANCE NO. 80-21 SECOND READING: 11.8.21

THIRD READING: 11.22.21

BY: DAVID W. FURRY

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CUYAHOGA COUNTY BOARD OF HEALTH AND THE CITY OF ROCKY RIVER FOR PHASE II STORMWATER SERVICES FOR 2022 AND 2023, AS FURTHER DESCRIBED IN EXHIBIT "A"

WHEREAS: the Cuyahoga County Board of Health is committed to improving the water quality in Cuyahoga County and protecting the health of residents within its jurisdiction; and,

WHEREAS: in response to the implementation of the US EPA's Phase II Stormwater Regulations (updated on March 10, 2013) the Cuyahoga County Board of Health has developed its Stormwater Management Program to assist municipalities in Cuyahoga County and Northeast Ohio in fulfilling their storm water management requirements and goals; and

WHEREAS: the City of Rocky River's Municipal Separate Storm Sewer Systems (MS4) permit from the Ohio EPA requires specific functions related to inspection and monitoring stormwater within the municipality; and

WHEREAS: the Board of Health will continue to provide communities' Phase II stormwater services in support of the community's compliance with the Ohio EPA NPDES General Permit for Municipal Separate Storm Sewer Systems (MS4); and

WHEREAS: the Cuyahoga County Board of Health will provide services to the City for two years (2022 & 2023) at a cost to the City not to exceed \$2,685.00 per year, as further described in Exhibit "A".

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 is hereby authorized to enter into an agreement between the Cuyahoga County Board of Health and the City of Rocky River for two years (2022 & 2023) at a cost of \$2,685.00 per year, as further described in Exhibit "A".

SECTION 2. That the \$5,370.00 shall be paid from the Sanitary Sewer Fund.

PASSED: November 22, 2021

PRESENTED

TO MAYOR: November 22, 2021

APPROVED, November 22, 2021

ATTEST:

Susan G. Pease

SUSAN G. PEASE

Clerk of Council

James W. Moran

JAMES W. MORAN

President 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.

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

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.

City of Rocky River
County of Cuyahoga } ss

Michael Thomas
MICHAEL THOMAS, CPA,
Director of Finance

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. 80-21 ADOPTED BY THE COUNCIL OF SAID CITY ON THE 22nd DAY OF November, 20 21 THAT THE PUBLICATION OF SUCH ORDINANCE HAS BEEN MADE AND CERTIFIED OF RECORD ACCORDING TO LAW; THAT NO PROCEEDINGS LOOKING TO A REFERENCE UPON SUCH ORDINANCE HAVE BEEN TAKEN; THAT SUCH ORDINANCE AND THE CERTIFICATE OF PUBLICATION THEREOF, ARE OF RECORD IN ORDINANCE RECORD NO. 80-21

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 22nd DAY OF November, 20 21.

Susan G. Pease
CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO

PHASE II STORMWATER SERVICES AGREEMENT

This Agreement is entered into on the 1st day of January, 2022 ("Effective Date") by and between the **Cuyahoga County Board of Health** (the "Board"), a separate political subdivision of the State of Ohio organized under the Constitution and Laws of the State of Ohio, and the **City of Rocky River**, a political subdivision of the State of Ohio organized under the Constitution and Laws of the State of Ohio ("Community"), for and in consideration of the promises, covenants, and conditions hereinafter set forth.

WHEREAS: The Cuyahoga County Board of Health is committed to improving the water quality in Cuyahoga County and protecting the health of the residents within its jurisdiction; and

WHEREAS: In response to the implementation of the US EPA's Phase II Stormwater Regulations on March 10, 2003, the Board has developed its Stormwater Management Program to assist municipalities in Cuyahoga County and Northeast Ohio in creating their stormwater management plans and meeting their required stormwater management goals; and

WHEREAS: Each municipality within Northeast Ohio has been issued a Municipal Separate Storm Sewer Systems (MS4) permit by the Ohio EPA which requires each municipality to perform specific functions related to inspecting and monitoring stormwater within the municipality; and

WHEREAS: The Board will continue to provide communities Phase II Stormwater services in support of the community's compliance with the Ohio EPA NPDES General Permit for Municipal Separate Storm Sewer Systems (MS4); and

WHEREAS: The Board will continue to provide Phase II Stormwater services to communities whose service areas are located partially or completely outside of the Northeast Ohio Regional Sewer District's ("District") Regional Stormwater Management Program area in support of Ohio EPA's General Permit for Municipal Separate Storm Sewer Systems for Minimum Control Measure (MCM) #3: Illicit Discharge Detection and Elimination (IDDE) programming and MCM #6: Pollution Prevention/Good Housekeeping for Municipal Operations; and

WHEREAS: Community has the authority to grant consent and authorizes the Board to perform the services outlined herein; and

WHEREAS: Both parties desire to enter this Agreement for the purposes outlined herein.

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. EFFECTIVE DATE, TERM AND TERMINATION.

- (a) **Effective Date, Term.** This Agreement shall commence on the Effective Date first stated above and shall continue through **December 31, 2023**, unless earlier terminated pursuant to Section 1(b).

- (b) **Termination.** This Agreement may be terminated upon the occurrence of one of the following events:
- (i) Failure for any reason of the either party to fulfill its obligations under this Agreement, after written notice is provided by the non-breaching party of such failure providing at least ninety (90) days for the breaching party to correct any such failure, and if such failure is not corrected within said period, the non-breaching party may give written notice of immediate termination;
 - (ii) Upon nine (9) months written notice, or on or before April 1 of the year prior to termination by either party for any reason.

2. THE SERVICES.

- (a) **Scope of Services.** Subject to the terms and conditions contained in this Agreement and its exhibits, the Board will provide to the Community and, as applicable, to all persons receiving the direct services provided for herein, the Services that are set forth and described in the Scope of Work (SOW) attached as **Exhibit A**, which Exhibit is incorporated herein.
- (b) Unless otherwise agreed by the Parties in writing, all transactions for Services through Board will be provided in accordance with the provisions of Ohio law and/or this Agreement, including any revisions of the same, as both Parties may from time to time execute to document the addition, revision, or enhancement of Services.

3. CONSENT STATEMENT

Being in the public interest, The Community hereby grants consent and authority to the Board to complete the services and work described herein.

4. COOPERATION STATEMENT

The Community shall cooperate with the Board in the above described project as follows:

- (a) Provide the Board any maps, assistance, and/or direction to aid in obtaining access and/or collecting samples for testing purposes;
- (b) Provide the Board aid in accessing and opening storm sewer manholes where and when needed.

5. PAYMENT.

- (a) **Compensation.** In consideration for the Phase II Stormwater services described in Exhibit A, which will be provided by the Board to and within the Community, the Community shall pay to the Board the total annual sum of two thousand six hundred eighty-five dollars and no cents (\$2,685.00) for calendar year 2022 and the total annual sum of two thousand six hundred eighty-five dollars and no cents (\$2,685.00) for calendar year 2023 for a total compensation of \$5,370.00. The Board shall submit an invoice to the Community for the payment due hereunder.

6. RECORDS.

- (a) The Board shall maintain copies of all records created or received by the Board in the performance of the work under this Agreement as required by Ohio's public records law. Any records created or received as a part of this Agreement shall be made available to the Community upon request subject to exceptions listed below.
- (b) Any non-private health information in confidential records or information in the records created by the Board or that come into the possession of the Board under this Agreement shall, if provided to the Community, be kept confidential by the Community.
- (c) The Board is prohibited by State and Federal law from sharing protected health information and said records will not be shared with the Community unless there is compliance with the proper method for release of said information.

7. REPORTS.

The Board shall provide reports as specified in the Scope of Work, Exhibit A.

8. NO ASSIGNMENT, TRANSFER, OR SUBAGREEMENT.

In performing the services specified under the terms of this Agreement, the Board shall not assign, transfer, or delegate any of the work or services, nor subcontract the work out to any other entity, nor shall any subcontractor commence performance of any part of the work or services included in this Agreement, unless such subcontracting is specified in this Agreement or its Exhibits, or unless prior written consent is provided by the Community.

9. INDEPENDENT CONTRACTOR.

- (a) The Board hereby acknowledges that it is an independent contractor and neither it nor its employees or agents are employees of the Community. The Board shall be responsible for the payment or withholding of any federal, state or local taxes, including, but not limited to, income, unemployment, and workers' compensation for its employees, and the Community will not provide, or contribute to any plan which provides for benefits, including but not limited to unemployment insurance, workers' compensation, retirement benefits, liability insurance or health insurance. All individuals employed by the Board provide personal services to the Community are not public employees of the Community under Ohio state law.

- (b) No agency, employment, joint venture or partnership has been or will be created between the parties pursuant to the terms and conditions of this Agreement. Inasmuch as the Community is interested in the Board's end product, the Community does not control the manner in which the Board performs this Agreement.

10. NOTICES.

All notices, invoices and correspondence which may be necessary or proper for either party shall be addressed as follows:

TO THE BOARD:

Cuyahoga County District Board of Health
Attention: Terry Allan, Health Commissioner
5550 Venture Drive
Parma Ohio 44130

TO THE COMMUNITY:

Community of Rocky River
Attention: Mayor Pamela E. Bobst
21012 Hilliard Blvd.
Rocky River, Ohio 44116

And

Community of Rocky River
Attention: Director of Law
21012 Hilliard Blvd.
Rocky River, Ohio 44116

11. EFFECT OF ELECTRONIC SIGNATURE

By entering into this Agreement, the parties agree that this transaction may be conducted by electronic means, including, without limitation, that all documents requiring signatures by the parties may be executed by electronic means, and that the electronic signatures affixed by the authorized representatives of the parties shall have the same legal effect as if the signatures were manually affixed to a paper version of the documents. The parties also agree to be bound by the provisions of Chapter 1306 of the Ohio Revised Code as it pertains to electronic transactions.

12. APPLICABLE LAW AND VENUE

Any and all matters of dispute between the Parties to this Agreement whether arising from the Agreement itself or arising from alleged extra contractual facts prior to, during, or subsequent to the Agreement, including without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the Agreement, will be governed by, construed, and enforced in accordance with the Laws of the State of Ohio, without regard to the conflict of laws or the legal theory upon which such matter is asserted.

13. SEVERABILITY.

If any provision hereof shall be determined to be invalid or unenforceable, such determination shall not affect the validity of the other provisions of this Agreement. Moreover, any provisions that should survive the expiration or termination will survive the expiration or termination of this Agreement.

14. AMENDMENT

This Agreement shall not be modified except by the express written consent by both parties hereto.

15. WAIVER.

Waiver by either party or the failure by either party to claim a breach of any provision of this Agreement shall not be deemed to constitute a waiver or estoppel with respect to any subsequent breach of any provision hereof.

16. FORCE MAJEURE.

Neither party shall be liable for any delay or failure to perform any duty or obligation it may have pursuant to this Agreement where such delay or failure has been occasioned by any act of God, fire, strike, inevitable accident, war or any cause outside the party's reasonable control.

17. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one Agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

18. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements, representations or understandings, whether written or oral, as to the same.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representative to be effective as of the Effective Date as specified in Section 1 of this Agreement.

FOR THE BOARD:

Approved as to form.
Cuyahoga County Board of Health
Office of General Counsel

Terry Allan
Health Commissioner

By: _____

Date: _____

Date: _____

FOR THE COMMUNITY:

Approved as to form.

Mayor

By: _____

Director of Law

Date: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

1. PROJECT DESCRIPTION

The Board and the Community have identified the need for the following described project:

- The implementation of Minimum Control Measure (MCM) #3: Illicit Discharge Detection and Elimination (IDDE) programming:

2. BOARD SERVICES

1. The Board will need to verify the Community's previously identified Municipal Separate Stormwater System outfall locations and update any outfall information that has changed, during the 2022 and 2023 report periods.
2. The Board will monitor the Community's designated Municipal Separate Stormwater System outfall locations during a dry weather period (a minimum of 72 hours with no rain event) and sample all of the flowing outfall locations that are outside of the Northeast Ohio Regional Sewer District's Regional Stormwater Management Program area during the 2022 and 2023 report periods. The samples collected will be analyzed for the presence of E. coli bacteria.
3. The Board will provide the Community an annual summary of the work performed as it relates to Minimum Control Measure (MCM) #3: Illicit Discharge Detection and Elimination, which can then be included in the Community's Phase II Stormwater Annual Report to the Ohio EPA.
4. The Board may request the Community to provide assistance in gaining access to and opening storm sewer manholes where and when deemed necessary for the purpose of sample collections.