

ORDINANCE NO. 47-23

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO
AN AGREEMENT WITH HAZEN AND SAWYER TO PERFORM
WATER AND SANITARY SEWER SYSTEM
DYNAMIC RATE ANALYSIS MODELING
AND DECLARING AN EMERGENCY**

WHEREAS, the City of Avon desires to review its water and sanitary sewer user fees to determine if they are sufficient to provide for debt service, utility operation and maintenance costs, and future capital improvements to these systems in years to come; and

WHEREAS, on February 3, 2023, a request for qualifications was issued for Water and Sanitary Sewer System Dynamic Rate Analysis Modeling to select a firm to provide the City with a consolidated financial baseline model on which to establish utility rates that can be updated by the City in the future to ensure the continued collection of sufficient utility revenues; and

WHEREAS, the City Engineer and the Administration, after conducting a thorough review of the responses received on February 28, 2023 from the professional service firms of Hazen and Sawyer and Raftelis, made a recommendation to enter into agreement with Hazen and Sawyer as the most qualified firm to provide the requested professional services; and

WHEREAS, Council, having reviewed the proposal for professional services submitted by Hazen and Sawyer, finds their proposal to be best suited to perform the water and sanitary sewer system dynamic rate analysis modeling being contemplated and considers adoption of their proposal by the Administration to be in the best interests of the health, safety and welfare of the citizens of Avon.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - That the City is hereby authorized to enter into a contract/accept the proposal of Hazen and Sawyer for professional engineering services to perform the Water and Sanitary Sewer Dynamic Rate Analysis Modeling for the City of Avon, in substantially the form set forth in Exhibit A and incorporated herein by reference.

Section 2 - The Finance Director is hereby authorized to advance funds in the amount of Twenty-Five Thousand Seven Hundred Dollars and no cents (\$25,700.00) from the Water Fund No. 611 and Twenty-Five Thousand Seven Hundred Dollars and no cents (\$25,700.00) from the Sanitary Sewer #2 Fund No. 631 to meet the obligations incurred under the terms of this contract and to cover other costs incurred for legal and engineering services associated with this project. This Ordinance shall authorize said funds to be appropriated and encumbered by the Finance Director and paid pursuant to his directives.

Section 3 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open

meeting of the Council of the City of Avon and that all deliberations of this City's Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public health, safety, and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to complete the Water and Sanitary Sewer System Dynamic Rate Analysis Modeling prior to the annual rate adjustments of those rates; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: April 10, 2023

DATE SIGNED: April 10, 2023

By: Brian Fischer
Brian Fischer, President of Council

DATE APPROVED BY THE MAYOR April 11, 2023

[Signature]
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks
Clerk of Council

POSTED: April 12, 2023
Electronically and at City Hall
As Provided by Council

Prepared by:
John A. Gasior, Esq.
Law Director

EXHIBIT A TO ORDINANCE NO. 47-23

**AGREEMENT
FOR PROFESSIONAL SERVICES**

Between

City of Avon, Ohio

And

Hazen and Sawyer

FOR

**Water and Sanitary Sewer Dynamic
Rate Analysis Modeling**

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OWNER: [City of Avon, Ohio]

PROJECT: [Water and Sanitary Sewer Rate Analysis Model]

**AGREEMENT BETWEEN NAME OF OWNER AND HAZEN AND SAWYER
FOR PROFESSIONAL SERVICES**

This Agreement, dated the 11th day of April, 2023 is made and entered into between

City of Avon< Ohio (Owner, hereinafter "**OWNER**")

36080 Chester Road

Avon, Ohio 44011.

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:

Water and Sanitary Sewer Dynamic Rate Analysis Modeling,
(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

- 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 Avon, Ohio
Attention: Brian Bruce, Superintendent of Utilities
36080 Chester Road
Avon, Ohio 44011

- 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) **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's** 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 Avon, Ohio
Attention: Brian Bruce, Superintendent of Utilities
36080 Chester Road
Avon, Ohio 44011;

or

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

Hazen and Sawyer
Attention: Scott Ankrom
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 at the City of Avon, Ohio.
- 12.2 Dispute Resolution Procedure. 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 at the City of Avon, Ohio.
- 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:
N/A
-
- 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

- 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. 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.

City of Avon, Ohio

HAZEN AND SAWYER

By: B. Bruce 4/11/23
Brian Bruce Date
Superintendent of Utilities

By: W. James Gellner 4/11/2023
W. James Gellner Date
Vice President

Witnessed By:

Print Name of Person Signing Date
Title of Person Signing

Edward H. Brown 4/11/2023
ED BROWN Date
Scott Ankrom
Associate

SCHEDULE A
SCOPE OF SERVICES

City of Avon, Ohio

Water and Sanitary Sewer Dynamic Rate Analysis Modeling

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

See attached Schedule A

TIME OF COMPLETION

See attached Schedule A

SCHEDULE B
COMPENSATION
City of Avon, Ohio

Water and Sanitary Sewer Dynamic Rate Analysis Modeling

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.

See attached Schedule B for a breakdown by Task.

TASK NAME	AMOUNT
Water and Sanitary Sewer Dynamic Rate Analysis Modeling	\$ 51,400
TOTAL	\$ 51,400

Schedule A

SCOPE OF SERVICES

Avon, Ohio

Water and Sanitary Sewer Dynamic Rate Analysis Modeling

Subject to the Contract for Professional Engineering Services for Water and Sanitary Sewer Dynamic Rate Analysis Modeling between the Avon, Ohio (OWNER) and Hazen and Sawyer, P.C., (ENGINEER), the ENGINEER will provide the following services to the OWNER. This project includes the development of a Dynamic Water and Sanitary Sewer Dynamic Rate Analysis Model(s) in support of the OWNER'S current rate structure, proposed capital improvement projects and future Capital Improvement Plan (CIP) planned by the city. The tasks are described in more detail below:

- A. Description of Project:** The OWNER, receives water from Avon Lake Regional Water but owns and operates their own distribution system, for nearly 25,000 residents that consist of 132 miles of water main, 2 elevated water towers, 1 ground storage tank, 2 booster stations, 1,961 fire hydrants, 3,724 valves and 12,500 water meters. The city's wastewater is treated by a combination of French Creek Wastewater Treatment Plant and Avon Lake Wastewater Treatment Plant, the collection system is owned and operated by the city of Avon and consist of 105 miles of sewer mains, 3 lift stations and over 2,596 manholes.
- B.** Capital and operating expenses required to maintain the water and wastewater systems are funded by revenues generated from Avon. Capital and operating expenses required to maintain the wastewater collection and water distribution systems are funded by revenues generated from water and wastewater rates. The OWNER is requesting the ENGINEER develop Dynamic Rate Analysis Models for water and wastewater to support the OWNER'S operating, maintenance, and Capital Improvement Plan (CIP) and long-range Capital Plan and to evaluate the rate structure with a focus on its fairness to the users.
- C. Scope of Services:**
1. Dynamic Rate Analysis: ENGINEER will develop a schedule of water and wastewater rates via a Dynamic Rate Analysis Model (Model) to support the OWNER's expenditures. The Model will be developed to meet the OWNER'S specific conditions and needs.
 - a. The ENGINEER will provide the OWNER with a detailed data request list for input into the Model. It is requested that required information will be provided by the OWNER in electronic format. Any debt service payments on existing loans will need to be provided and the year each existing loan will sunset.
 - b. The ENGINEER will schedule a kick-off meeting with the OWNER to discuss the input data received and kick-off the initial Model(s) development.
 - c. The ENGINEER will build a Microsoft PowerBI Dynamic Rate Analysis Model for water and wastewater services using data inputs from the OWNER regarding water and wastewater expenses and revenues including financial and billing records.
 - d. The Models for the OWNER will reflect changing labor, consumables and

operation and maintenance (O&M) costs, when combined with budgeting for current debt service, any proposed future capital improvements (e.g., CIP), repair and replacement, and other stipulated costs.

- e. The ENGINEER will develop a plan description and schedule to adjust water and wastewater rates/fees to fund projected debt service, operation, and maintenance expenses. Various model scenarios will be run to evaluate the impact and effectiveness of the magnitude and schedule of rate increases to meet these needs. The ENGINEER will consult with the OWNER to determine the most appropriate schedule and changes in rates and/or rate structure to support the associated cost.
- f. The ENGINEER will build into the Models different cost categories for expenditures in the overall water and wastewater system. The Models will also include dashboard interfaces to indicate relative cost allocations and provide a summary report for management use.
- g. The Models, dashboards and charts will illustrate the average percent usage between the user classes based on water meter readings or classifications, such as industrial or commercial. The Models will also include an evaluation of the average bill paid per user in each user class. This will help to determine if the OWNER's rates are as equitable and fair as possible between user classes. Estimates on the annual growth or increase in flow will be incorporated into the models based on assumed areas of growth and expansion.
- h. ENGINEER shall perform an analysis of fees being charged by the OWNER for new connections to the water and wastewater systems in accordance with industry standard methods.
- i. The Models will provide a ten (10) year financial projection which will help the OWNER safeguard and plan for the future of the system. The ENGINEER will develop data inputs on an annual basis to allow the rates to adjust for changing consumables and/or projected estimates.
- j. The accuracy of the Models will depend greatly on the input from the OWNER's staff regarding expenditures or statement of accounts for the most recent complete calendar year or fiscal year for water and wastewater, water meter readings (usage), and budget line items along with input from finance on the structure of reserves and funds for water and wastewater. User charge ordinances including minimum and unit charge rates will need to be provided for water and wastewater as well as any future rate changes which are planned.

2. Documentation of Dynamic Rate Analysis and Findings: The Dynamic Rate Analysis will include written narratives in a Technical Memorandum format summarizing the Model output outlining the water and wastewater rates required to fund the existing debt service, operation and maintenance and cost associated with the water and wastewater system over the developed planning period.

- a. The ENGINEER will review the Draft Final Dynamic Rate Analysis Models with the OWNER. The ENGINEER will incorporate comments, modifications, and changes to the analysis.
- b. The ENGINEER will meet with OWNER's key personnel to finalize and review the Final Dynamic Rate Analysis Models and narrative summaries.
- c. The ENGINEER will provide the OWNER with a status update and a presentation overview of the Water and Wastewater Dynamic Rate Analysis findings and conclusions.

- d. The ENGINEER will meet with OWNER's Council and staff to present the findings of the Final Water and Wastewater Dynamic Rate Analysis.
- e. Electronic format and hard copies of the Final Water and Wastewater Dynamic Rate Analysis Models and Narrative Summaries will be provided to the OWNER.

3. Rate Model Training: The ENGINEER will conduct a one-day training session, including a tutorial of the Models, to train OWNER staff on how to use the models and change data inputs.

4. Additional Services. Additional services are not included in the scope of services for the Project. Additional services will be provided only upon specific written direction and authorization by the OWNER. Additional services may include:

- a. Updates to the Dynamic Rate Study Models after the Final Models are delivered to the OWNER.
- b. Additional presentations and meetings to the OWNER.
- c. Development of a revised CIP for input into the models.

Anticipated Project Schedule *pending NTP in April 2023*

Data Request	April 2023
Kickoff and Data Collection Meeting	April 2023
Remaining Data Collection	April/May 2023
Development of Rate Model	April/May 2023
Review of Draft Rate Model with Avon	June 2023
Final Rate Model and Report	July 2023
Presentation of Final Rate Model and Training to Avon	July 2023
Rate Model Training	August 2023

3/20/2023

\$ 51,400