

EMERGENCY RESOLUTION NO. 01-2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND FISHBECK TO UPDATE THE STORMWATER ORDINANCE TO COMPLY WITH THE UNITED STATES AND OHIO ENVIRONMENTAL PROTECTION AGENCIES AND DECLARING AN EMERGENCY.

WHEREAS, the United States and Ohio Environmental Protection Agencies require the City of Monroe to update the existing stormwater ordinance by April 22, 2022; and

WHEREAS, to remain in compliance with the regulations and provide strict enforcement measures, Council deems it in the best interest of the City to proceed with the update to the existing stormwater ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into an agreement by and between the City of Monroe and Fishbeck to update the stormwater ordinance. The terms and conditions of this agreement shall be as set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires proceed with the update of the stormwater ordinance at the earliest possible date for completion on or before the deadline of April 22, 2022. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: January 11, 2022

ATTEST:



Clerk of Council

APPROVED:



Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.



**Clerk of Council
City of Monroe, Ohio**

Exhibit "A" E Res No. 01-2022

December 15, 2021

Gary Morton
Public Works Director
City of Monroe
233 S. Main Street
Monroe, OH 45050

Proposal for Professional Services – Stormwater Ordinance Update

Dear Gary:

Fishbeck is pleased to provide this proposal for professional services to develop updated stormwater ordinances for the City of Monroe (City). This will include an Erosion and Sediment Control Ordinance as well as a Comprehensive Stormwater Management Ordinance. These ordinances will be updated to meet Ohio EPA's Phase II Stormwater Management requirements for erosion and sediment control and post-construction stormwater management under Minimum Control Measure 5. The updated ordinance will be based on the *Model Ordinance for Comprehensive Stormwater Management* published by the Chagrin River Watershed Partners and published in July 2021 and the *Model Ordinance for Erosion and Sediment Control* published by the same in November 2020.

This proposal includes four meetings total. Three virtual meetings will be between Fishbeck and City of Monroe staff, one of which will include representatives from the Ohio EPA. One in-person meeting will be for Fishbeck to present the final ordinance to City Council.

Scope of Services

Task 1: Ordinance Review

Fishbeck will review the Chagrin River Watershed Partners model ordinances, the existing City of Monroe stormwater ordinances, and the Ohio EPA Phase II Stormwater Management Requirements to identify items in the model ordinance that the City may want to modify in their adopted ordinance. This may include items in the model ordinance that go above and beyond EPA requirements, areas where the City desires additional requirements, or other factors. Fishbeck will prepare a technical memo which summarizes our findings and recommendations from this review.

This task will include two meetings. At the start of this task, Fishbeck, City staff, and representatives from the Ohio EPA will meet to develop an acceptable timeline for adoption, identify any items of note for the Ohio EPA, and to discuss preliminary modifications that the City may desire. At the conclusion of this task, Fishbeck will meet with City staff to review the preliminary memo and discuss our recommendations before proceeding with draft ordinance development.

Task 2: Draft City of Monroe Stormwater Ordinances

Fishbeck will draft two stormwater ordinances for the City of Monroe. These are an Erosion and Sediment Control Ordinance and a Comprehensive Stormwater Management Ordinance, which will handle construction phase stormwater and post-construction stormwater respectively. These ordinances will be based on the model

ordinances developed by the Chagrin River Watershed Partners and incorporate the City's feedback and conclusions from Task 1.

Upon completion of the preliminary draft, Fishbeck will have a virtual meeting with City staff to present the draft which will be updated based on their feedback. Once the changes from staff have been incorporated a review draft will be prepared for the City's Legal Counsel to review.

Once the Legal Counsel has completed their review, their changes will be incorporated and a final version will be prepared for adoption by City Council.

This task will include two meetings. A virtual meeting with City staff to present the preliminary draft, and an in-person meeting with City Council to present the final version.

Schedule

It is our understanding that the City is required to adopt the new ordinance by April 2022 which requires presentation to and approval by City Council no later than March 22, 2022. Given the necessary scope of work, meeting this timeline will be challenging. Therefore, possible extensions to the timeline will be discussed in the first meeting with Ohio EPA. If an extension is permitted, our anticipated completion date is June 2022.

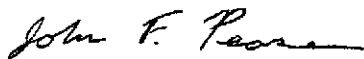
Professional Services Fees

We propose to complete the above Scope of Services for a lump sum amount of Twenty Seven Thousand Dollars (\$27,000).

Attached is our Professional Services Agreement. If you concur with our Scope of Services, please sign in the space provided and return the executed contract to the attention of Dawn M. Smith (dmsmith@fishbeck.com). This proposal is made subject to the attached Terms and Conditions for Professional Services. Invoices will be submitted every four weeks and payment is due upon receipt.

Thank you for the opportunity to present this proposal for your consideration; If you have any questions or require additional information, please contact me at 513.247.8577 or jpease@fishbeck.com.

Sincerely,



John F. Pease, PE
Water & Wastewater Engineer



Brian L. McKissen, PE, CFM
Senior Civil Engineer

By email

Copy: Al Aspacher, Project Manager, Fishbeck

Professional Services Agreement

PROJECT NAME Monroe, OH / Stormwater Ordinance Update
FISHBECK CONTACT John Pease, PE
CLIENT City of Monroe
CLIENT CONTACT Gary Morton
ADDRESS 233 S. Main Street, Monroe, OH 45050

Client hereby requests and authorizes Fishbeck to perform the following:

SCOPE OF SERVICES: In accordance with proposal dated December 15, 2021.

AGREEMENT. The Agreement consists of this page and the documents that are checked:

- Terms and Conditions for Professional Services, attached.
- Proposal dated December 15, 2021.
- Other:

METHOD OF COMPENSATION:

- Lump Sum for Defined Scope of Services
- Hourly Billing Rates plus Reimbursable Expenses
- Other:

Budget for Above Scope of Services: Twenty Seven Thousand Dollars (\$27,000).

ADDITIONAL PROVISIONS (IF ANY): None.

APPROVED FOR:

City of Monroe

BY: _____

TITLE: _____

DATE: _____

ACCEPTED FOR:

Fishbeck

BY:  _____

TITLE: Vice President

DATE: December 15, 2021

1. **METHOD OF AUTHORIZATION.** Client may authorize Fishbeck to proceed with work either by signing a Professional Services Agreement or by issuance of an acknowledgment, confirmation, purchase order, or other communication. Regardless of the method used, these Terms and Conditions shall prevail as the basis of Client's authorization to Fishbeck. Any Client document or communication in addition to or in conflict with these Terms and Conditions is rejected.
2. **CLIENT RESPONSIBILITIES.** Client shall provide all criteria and full information as to requirements for the Project and designate in writing a person with authority to act on Client's behalf on all matters concerning the Project. If Fishbeck's services under this Agreement do not include full-time construction observation or review of Contractor's performance, Client shall assume responsibility for interpretation of contract documents and for construction observation, and shall waive all claims against Fishbeck that may be in any way connected thereto.
3. **HOURLY BILLING RATES.** Unless stipulated otherwise, Client shall compensate Fishbeck at hourly billing rates in effect when services are provided by Fishbeck employees of various classifications.
4. **REIMBURSABLE EXPENSES.** Those costs incurred on or directly for Client's Project. Reimbursement shall be at Fishbeck's current rate for mileage for service vehicles and automobiles, special equipment, and copying, printing, and binding. Reimbursement for commercial transportation, meals, lodging, special fees, licenses, permits, insurances, etc., and outside technical or professional services shall be on the basis of actual charges plus 10 percent.
5. **OPINIONS OF COST.** Any opinions of probable construction cost and/or total project cost provided by Fishbeck will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures, Fishbeck cannot warrant that bids or ultimate construction or total project costs will not vary from such estimates.
6. **PROFESSIONAL STANDARDS; WARRANTY.** The standard of care for services performed or furnished by Fishbeck will be the care and skill ordinarily used by members of Fishbeck's profession practicing under similar circumstances at the same time and in the same locality. Fishbeck makes no warranties, express or implied, under this Agreement or otherwise, in connection with Fishbeck's services.
7. **TERMINATION.** Either Client or Fishbeck may terminate this Agreement by giving ten days' written notice to the other party. In such event, Client shall pay Fishbeck in full for all work previously authorized and performed prior to the effective date of termination, plus (at the discretion of Fishbeck) a termination charge to cover finalization work necessary to bring ongoing work to a logical conclusion. Such charge shall not exceed 30 percent of all charges previously incurred. Upon receipt of such payment, Fishbeck will return to Client all documents and information which are the property of Client.
8. **SUBCONTRACTORS.** Fishbeck may engage subcontractors on behalf of Client to perform any portion of the services to be provided by Fishbeck hereunder.
9. **PAYMENT TO FISHBECK.** Invoices will be issued every four weeks, payable upon receipt, unless otherwise agreed. Interest of 1 percent per four-week period will be payable on all amounts not paid within 28 days from date of invoice, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by Client.

Client agrees to pay on a current basis, in addition to any proposal or contract fee understandings, all taxes including, but not limited to, sales taxes on services or related expenses which may be imposed on Fishbeck by any governmental entity.

If Client directs Fishbeck to invoice another, Fishbeck will do so, but Client agrees to be ultimately responsible for Fishbeck's compensation until Client provides Fishbeck with that third party's written acceptance of all terms of this Agreement and until Fishbeck agrees to the substitution.

In addition to any other remedies Fishbeck may have, Fishbeck shall have the absolute right to cease performing any basic or additional services in the event payment has not been made on a current basis.

10. **HAZARDOUS WASTE.** Fishbeck has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at any site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposure to such substances or conditions. Fishbeck shall not be responsible for any alleged contamination, whether such contamination occurred in the past, is occurring presently, or will occur in the future, and the performance of services hereunder does not imply risk-sharing on the part of Fishbeck.
11. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, Fishbeck's total liability to Client for any cause or combination of causes, which arise out of claims based upon professional liability errors or omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the greater of \$250,000 or the amount of the fee earned under this Agreement.

To the fullest extent permitted by law, Fishbeck's total liability to Client for any cause or combination of causes, which arise out of claims for which Fishbeck is covered by insurance other than professional liability errors and omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the total insurance proceeds paid on behalf of or to Fishbeck by Fishbeck's insurers in settlement or satisfaction of Client's claims under the terms and conditions of Fishbeck's insurance policies applicable thereto.

Higher limits of liability may be considered upon Client's written request, prior to commencement of services, and agreement to pay an additional fee.

12. **DELEGATED DESIGN.** Client recognizes and holds Fishbeck harmless for the performance of certain components of the Project which are traditionally specified to be designed by the Contractor.
13. **INSURANCE.** Client shall cause Fishbeck and Fishbeck's consultants, employees, and agents to be listed as additional insureds on all commercial general liability and property insurance policies carried by Client which are applicable to the Project. Client shall also provide workers' compensation insurance for Client's employees. Client agrees to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.

Upon request, Client and Fishbeck shall each deliver to the other certificates of insurance evidencing their coverages.

Client shall require Contractor to purchase and maintain commercial general liability and other insurance as specified in the contract documents and to cause Fishbeck and Fishbeck's consultants, employees, and agents to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project. Contractor must agree to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.

14. **INDEMNIFICATION.** Fishbeck will defend, indemnify, and hold Client harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures to the extent caused by Fishbeck's negligence or willful misconduct. Client agrees to defend, indemnify, and hold Fishbeck harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures allegedly caused by Fishbeck's performance of services hereunder, except for injury or loss to the extent caused by the negligence or willful misconduct of Fishbeck. These indemnities are subject to specific limitations provided for in this Agreement.
15. **CONSEQUENTIAL DAMAGES.** Client and Fishbeck waive consequential damages for claims, disputes, or other matters in question relating to this Agreement including, but not limited to, loss of business.
16. **LEGAL EXPENSES.** If either Client or Fishbeck makes a claim against the other as to issues arising out of the performance of this Agreement, the prevailing party will be entitled to recover its reasonable expenses of litigation, including reasonable attorney's fees. If Fishbeck brings a lawsuit against Client to collect invoiced fees and expenses, Client agrees to pay Fishbeck's reasonable collection expenses including attorney fees.
17. **OWNERSHIP OF WORK PRODUCT.** Fishbeck shall remain the owner of all drawings, reports, and other material provided to Client, whether in hard copy or electronic media form. Client shall be authorized to use the copies provided by Fishbeck only in connection with the Project. Any other use or reuse by Client or others for any purpose whatsoever shall be at Client's risk and full legal responsibility, without liability to Fishbeck. Client shall defend, indemnify, and hold harmless Fishbeck from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting therefrom.
18. **ELECTRONIC MEDIA.** Data, reports, drawings, specifications, and other material and deliverables may be transmitted to Client in either hard copy, digital, or both formats. If transmitted electronically, and a discrepancy or conflict with the electronically transmitted version occurs, the hard copy in Fishbeck's files used to create the digital version shall govern. If a hard copy does not exist, the version of the material or document residing on Fishbeck's computer network shall govern. Fishbeck cannot guarantee the longevity of any material transmitted electronically nor can Fishbeck guarantee the ability of the Client to open and use the digital versions of the documents in the future.
19. **GENERAL CONSIDERATIONS.** Client and Fishbeck each are hereby bound and the partners, successors, executors, administrators, and legal representatives of Client and Fishbeck are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor Fishbeck shall assign this Agreement without the written consent of the other.

Neither Client nor Fishbeck will have any liability for nonperformance caused in whole or in part by causes beyond Fishbeck's reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.

This Agreement shall be governed by the law of the principal place of business of Fishbeck.

This Agreement constitutes the entire agreement between Client and Fishbeck and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

End of Terms and Conditions for Professional Services