

RESOLUTION NO. 03-2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL ENGINEERING AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND JONES-WARNER CONSULTANTS, INC. FOR THE DESIGN OF A TWELVE-INCH WATER MAIN ALONG SOUTH MAIN STREET FROM CARSON ROAD TO MASON AVENUE.

WHEREAS, following review of the submission of five engineering firms for the design of the water main described herein, the Department of Public Works is recommending proceeding with Jones-Warner Consultants, Inc.; and

WHEREAS, Council desires to accept said recommendation and authorize an agreement for the design services.


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 a professional engineering agreement by and between the City of Monroe and Jones-Warner Consultants, Inc. for the design of a twelve-inch water main along South Main Street from Carson Road to Mason Avenue. The terms and conditions of said agreement are marked Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure shall take effect and be in full force from and after its passage pursuant to Section 7.08(C) of the Charter.

ATTEST:

APPROVED:



Clerk of Council




Mayor

First Reading: January 10, 2023

Passed: January 10, 2023

"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.

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



Clerk of Council
City of Monroe, Ohio

**AGREEMENT
BETWEEN THE CITY OF MONROE, OHIO AS OWNER
AND JWCI-JONES WARNER CONSULTANTS, INC. AS ENGINEER
FOR PROFESSIONAL SERVICES**

WHEREAS OWNER intends to-hire an engineering firm for the Services it needs.

WHEREAS "Services" or "Work" shall mean taking the activities described in the ENGINEER'S proposal letter attached to this agreement.

WHEREAS OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

NOW THEREFORE THIS AGREEMENT IS MADE as of _____ by and between the City of Monroe, Ohio (hereafter called "OWNER") and Jones Warner Consultants, Inc. (JWCI) hereafter called ("ENGINEER").

GENERAL

ENGINEER shall perform for OWNER professional engineering services for the Work to which this Agreement applies as provided in Exhibit A. These services will include serving as OWNER'S professional engineering representative, providing professional engineering and consultation and advice, and furnishing customary civil engineering service incidental thereto, as well as providing additional services requested by the OWNER. The terms of ENGINEER'S basic services agreement remain applicable to the extent it is not inconsistent with the terms of this Agreement.

SCOPE OF SERVICES – South Main Street Water Main Replacement Survey & Design Project

1. Basic Services: For a lump sum fee of **\$26,500.00**, ENGINEER shall perform the WORK set forth in Exhibit A (attached) described in the ENGINEER'S proposal letter attached to this agreement.
2. Additional Services: Services not included in the Scope of Services are considered additional services and will be negotiated in advance, either by lump sum agreement at the ENGINEER's normal hourly rate schedule. Any easements necessary will be provided in Butler County, Ohio recordable format for a fee of \$1,200.00 each.

OWNERS RESPONSIBILITY

The OWNER will:

1. Assign a project coordinator who will be the duly authorized representative of the OWNER for the purpose of coordinating, issuing instructions, giving approvals and to generally facilitate the work.

2. Assist the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform its work.
3. Cooperate with the ENGINEER in the preparation of design drawings.
4. Coordinate the design with community leaders and the public as needed.

ENGINEERS'S STANDARD OF PERFORMANCE

ENGINEER shall perform all Services and the Work with the degree of skill and care observed by Ohio firms performing the same or similar services. Work shall be provided in compliance with all statutes, acts, ordinances, laws, rules, regulations, codes, and standards.

Upon notice of substandard Work, ENGINEER shall, as a minimum, reperform the Work at no cost to OWNER and shall reimburse OWNER for any additional costs that may be incurred by OWNER because of reliance by OWNER or any of its contractors or subcontractors on such Work. If ENGINEER should fail to reperform the Work, or its OWNER determines that ENGINEER will be unable to correct substandard services before the time specified for completion or in the Schedule of Work, if any, OWNER may correct such unsatisfactory Work itself or by the use of third parties and charge ENGINEER for the costs incurred.

BILLING FOR SERVICES

1. OWNER shall also pay ENGINEER reasonable expenses (without any markup) incurred by ENGINEER relative to the performance of Services pursuant to this Agreement. Reasonable expenses are defined as follows:

- a. All air travel is to be "tourist" or "coach" class accommodations.
- b. Hotel or motel accommodations are to be at the standard "commercial" rate subject to approval by the OWNER.
- c. Rental cars are to be compact or mid-size.

ENGINEER shall submit substantiating documentation for other expenses invoiced to OWNER.

ENGINEER agrees to invoice OWNER for allowable expenses monthly.

A list of ENGINEER'S reimbursable expenses, if any, is set forth in Exhibit B.

2. Statements for Additional Services will be supported by ENGINEER'S documentation showing the total hourly services for OWNER completed at the time of billing and the nature of the services provided. OWNER shall make prompt payment of all properly documented services provided. OWNER shall make prompt payment of all properly documented services to OWNER within thirty (30) days of each ENGINEER statement.

3. ENGINEER shall submit monthly statements for Services rendered and for Reimbursable Expenses incurred. The statements will be based upon ENGINEER's estimate of the proportion of the total services completed at the time of the billing. OWNER shall make prompt monthly payments in, response to ENGINEER's monthly statements.

OPINIONS OF COST

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of Construction Cost provides for herein 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 engineer familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER.

TERMINATION

Notwithstanding anything to the contrary contained herein, the obligation of ENGINEER to provide Basic and Additional Services and the OWNER'S duty to compensate ENGINEER under this Agreement may be terminated by either party upon thirty (30) days written notice. Upon termination ENGINEER shall be entitled to compensation for work properly completed and provided to OWNER up to and including any date of termination and OWNER shall be entitled to the work for hire ENGINEER has completed to date of termination.

OWNERSHIP OF DOCUMENTS: WORK FOR HIRE

All materials prepared or assembled by ENGINEER under this Agreement for OWNER, regardless of form, constitute work for hire and shall be delivered to OWNER for OWNER's use and said materials become the property of OWNER without need for further compensation to ENGINEER than that set forth in this Agreement. OWNER understands and agrees to that.

Materials prepared or assembled by ENGINEER under the terms of this Agreement are not intended for any other projects or uses and ENGINEER has not represented or warranted to OWNER that they are either useful or suitable in any situation other than that for which it was originally prepared or assembled by ENGINEER. OWNER's use of materials prepared or assembled by ENGINEER in any other context than that for which they were prepared is at OWNER's sole risk. ENGINEER may retain in its files all original drawings, specifications and changes made to the drawings, specifications, and other documents by persons other than ENGINEER. If any changes are made, OWNER shall require that any such change(s) be identified and sealed by the ENGINEER making that change and shall be appropriately marked to reflect what was changed or modified.

RIGHT TO INSPECT RECORDS

ENGINEER agrees that OWNER and auditors of OWNER's record and books shall have access to and the right to examine any directly pertinent books, documents, papers and records of ENGINEER involving transactions relating to this Agreement. This provision shall survive termination of this Agreement. ENGINEER agrees that OWNER shall have access during normal working hours to all necessary Engineering facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. OWNER shall give ENGINEER reasonable advance notice of intended audits.

ENGINEER'S LIABILITY

Acceptance of the final design by OWNER shall not constitute nor be deemed a release of the responsibility and liability of the ENGINEER, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by OWNER for any defect in the designs, working drawings, specifications, or other documents and work. ENGINEERS' liability shall not exceed the total amount of the contract with the Owner.

ENGINEER'S REPRESENTATIONS AND WARRANTIES TO OWNER

Engineer' represents and warrants to OWNER in the performance of any services and Work under this Agreement that:

1. OWNER can reasonably rely on the expert quality of all materials provided by ENGINEER under this Agreement; and
2. It will assign and utilize only competent personnel possessed of the necessary expertise to perform Services and the Work under this Agreement; and
3. It is not subject to and will not enter into any agreements or arrangements which preclude compliance with the provisions of this contract; and
4. Its invoice charges under this contract will not exceed comparable rates it charges other customers in substantially similar transactions; and
5. It shall use sound and professional principles and practices in accordance with normally accepted industry standards in the performance of Services and Work hereunder and that performance of its personnel shall reflect their best professional knowledge, skill, and judgment; and
6. It will complete Services and Work under this Agreement in a reasonable, professional, ethical, complete, prudent, accurate and timely fashion; and
7. It is in and will during the term of this Agreement remain in compliance with all applicable laws, regulations, and orders with respect to equal employment opportunity and wither has heretofore provided or will provide to OWNER the certifications and representations regarding equal employment opportunity that OWNER may require under such laws, regulations, and orders.

INSURANCE

ENGINEER shall procure and maintain insurance for protection from claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of all employees. ENGINEER presently maintains professional liability coverage of \$2,000,000.00. OWNER shall be listed as an Additional Insured on such policies to prevent such insurers from exercising any right of subrogation against the OWNER.

GOVERNING LAW

This Agreement is to be governed by the law of Ohio.

PARTIES BOUND BY THIS AGREEMENT

OWNER and ENGINEER each is hereby bound, and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representative of such other party, in respect of all covenants, agreements and obligations of this Agreement.

ASSIGNMENT, SUBCONTRACTING, AND TRANSFER OF RIGHTS PROHIBITED

Neither OWNER nor engineer shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law, or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants, as ENGINEER may deem appropriate to assist in the performance of services hereunder. However, any such independent professions hired or consulted by ENGINEER shall be agents or employees of ENGINEER for all purposes of this Agreement, even if such hire or consultation was disclosed in advance to OWNER.

NO THIRD-PARTY BENEFICIARIES INTENDED

Nothing under this Agreement shall be construed to give any rights, entitlement or special benefit(s) in this Agreement or the products or services of this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

INDEPENDENT CONTRACTOR

The relationship of OWNER to ENGINEER shall be that of employer and independent contractor. ENGINEER shall supervise the performance of its own services and shall have control of the manner and means by which its services are performed, subject to compliance with this Agreement and any plans, specifications, schedules, or other items approved by the OWNER. Any other amounts OWNER pays ENGINEER under this Agreement shall not be considered salary for pension purposes, and ENGINEER nor its employees or contractors will not be entitled to any of the other fringe and supplemental benefits of OWNER, nor will OWNER withhold any Social Security (FICA) or similar contributions from ENGINEER's fee; and OWNER shall have no liability whatsoever to the ENGINEER on account of this Agreement except payment of the amounts provided herein. ENGINEER shall be responsible for, pay when due, and the compensation for the work shall include all local, municipal, state, and federal sales, use, excise, and personal property taxes, including but not limited to unemployment, social security, and other payroll taxes for its employees, including any related assessments for contribution required by law, and including but not limited to, the Federal Insurance Contribution act (Sections 3101-3126), of the Internal Revenue Code of 1954, as amended; the Federal

Unemployment Tax Act (Sections 3401-3405), and all other governmental fees, taxes, or other governmental charges applicable to the Work.

BEHAVIOR OF ENGINEER'S EMPLOYEES

Engineer acknowledges OWNER has a policy against sexual harassment and hereby agrees that any of its employees provided to OWNER under this Agreement will also specifically acknowledge that policy and agree to abide by it. ENGINEER shall indemnify OWNER against any liability if any of its employees engage in sexual harassment. In the event that the Work requires ENGINEER to perform Services on OWNER's property, ENGINEER acknowledges and agrees to advise its employees, agents, and subcontractors that it is the policy of OWNER: (1) to prohibit the use, possession, sale, and distribution of alcohol, illegal drugs, or other controlled substances on its premises; and (2) to prohibit the presence on OWNER's property or employees of a contractor, or subcontractor, or agent who has such substances in his/her body for non-medical reasons. Entry onto OWNER's property constitutes consent to an inspection of the employees of the consultant, subcontractor, or agent, including vehicles and personal effects when entering, while on, or upon leaving OWNER's property. Any ENGINEER, employee, subcontractor, or agent who is found in violation of this policy will be removed and barred from OWNER's property.

AMENDMENTS

All changes, request for performance of extra Work, or amendments to this Agreement or to Services or Work already authorized to be performed pursuant to this agreement must be authorized in writing by OWNER'S COUNCIL AND MAYOR in advance. Any unauthorized Work performed shall be at the sole risk of ENGINEER. ENGINEER shall have no claim for payment for unauthorized work, and ENGINEER specifically disclaims any claim or right to *quantum meruit* recovery as this Agreement constitutes the sole and exclusive basis for ENGINEER's compensation from OWNER. In case of any amendment to this Agreement, so much of the Agreement as is not necessarily thereby changed shall remain in full force and effect. No act or conduct of either party or any employee or employees or agents thereof shall be held to operate as a waiver of any term, condition, or provision of this Agreement unless made with the authority of the Mayor and Council of New Miami and reduced to writing in the form of a change order. In case any change should result in a decrease of the Work to be performed, no allowance shall be made to ENGINEER for loss of anticipated profits, but if ENGINEER, before receiving OWNER's notice of intention to make such a change, shall have incurred expenses rendered unnecessary by such change or alteration, allowance shall be made to ENGINEER as is fair and reasonable. ENGINEER's acceptance of final payment on the Contract shall constitute a waiver of all claims against OWNER.

ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement between OWNER and ENGINEER and supersedes all prior negotiations, representations, or Agreements, either written or oral. This agreement may be amended only by written instrument signed by both OWNER and ENGINEER.

SEVERABILITY

Should any provision of this Agreement be held to be void or unenforceable, the remaining provisions shall remain in full force and effect, to be read and construed as if the void or unenforceable provisions were originally deleted.

INDEMNIFICATION

A. Professional Liability

Regarding professional liability claims, to the fullest extent permitted by law the ENGINEER agrees to indemnify and hold the OWNER, its officers, officials, and employees harmless from and against losses and damages to the extent arising from a negligent act, error or omission by the Consultant or its employees or anyone for whom the Consultant is legally liable.

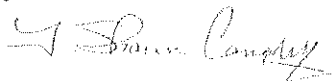
B. Non-Professional Liability (General Liability)

With regard to general liability claims, to the fullest extent permitted by law, the ENGINEER shall indemnify, defend and hold harmless the OWNER from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of the acts or omissions of the ENGINEER, provided that such claim, damage loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the acts or omissions of the ENGINEER, any subconsultant(s) of the ENGINEER, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

IN WITNESS THEREOF, OWNER AND ENGINEER acting herein by their duly authorized representatives have executed this Agreement on the date as shown on the first page of this Agreement.

ENGINEER
Jones-Warner Consultants Inc.

By:



T. Shawn Campbell, President-CEO

December 16, 2022

OWNER
City of Monroe, Ohio

William Brock, City Manager

Date: _____

Corporate Headquarters

8401 Claude Thomas Road, Suite 51
Franklin, OH 45005
P: 937.704.9868
F: 937.704.9949



JONES-WARNER CONSULTANTS, INC.
CIVIL ENGINEERING, SURVEYING, AND CONSULTING SERVICES

Toll-Free: 1-855-704-5924
JWCI@JonesWarner.com
JonesWarner.com

December 16, 2022

Ms. Constance Kepner, MPM
Civil Engineer- Project Manager
City of Monroe, Department of Public Works
1000 Holman Avenue, P.O. Box 330
Monroe, Ohio 45050-0330

Re: South Main Street Water Main Replacement Project, Mason Avenue to Carson Road,
approximately 1,700 linear feet – **Survey & Design Fee Proposal**

Dear Ms. Kepner:

Jones Warner Consultants, Inc. (JWCI), a local, pre-qualified consultant, is happy to provide you with this fee proposal for approximately 1,700 linear feet of water replacement as outlined above, from the intersection of S. Main St. and Mason Ave. to the intersection of S. Main St. and Carson Rd. We have visited the project location, previously provided design in the area site together and have prepared our routine scope of services and agreement to move forward.

South Main St. Water Main Replacement Project-

We understand the scope of this project to include the necessary survey and design for water main replacement in the City of Monroe. We will be replacing and upsizing the current water main from an 8" main to a 12" Class 53, Ductile Iron main. The scope will include all necessary property research and use of Butler County and City of Monroe GIS data, with a topographical survey of the project area. The water main design will include all new service connections from the main to the right of way along the replacement area. The entire design will conform to both the City of Monroe and AWWA standards.

During the survey and base mapping process, JWCI will provide the city with a proposed conceptual design alignment in plan view only with a planning level cost estimate. Upon acceptance by the city of an approved alignment, JWCI will commence with preliminary design.

A 50% plan submittal will be made that will include detailed features necessary for review, the water main design drawings in both plan and profile view to include both new and replacement water services, and a 50% level cost estimate.

From the 50% review, JWCI will address all city comments, and proceed with a 95% submittal phase. The 95 % submittal phase will include complete, detailed construction plans, general notes, details, a general summary of quantities, and necessary technical specifications.

specifications. A final cost estimate will be developed and submitted with the 95% submittal. The 95% submittal shall be completed and submitted in advance of your March 31, 2023, deadline.

As with most water main replacement projects, JWCI intends for this design to be completely within the public right of way with no easements anticipated. However, should easements be necessary, they can be provided in Butler County Recordable format at a fee of \$1,200 per easement.

As previously mentioned, our design will conform to City of Monroe, and AWWA standards. A permit to install (PTI) from the OEPA is not necessary as we are not increasing more than two sizes and as long as the city of Monroe submits an annual replacement and extension report, data to the OEPA. Since this is a replacement project and shallow in nature, a geotechnical investigation is not recommended.

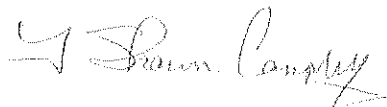
The fee amount provided is for JWCI survey and design fees only. They do not include any fees that may be required by permitting agencies (if required) or any geotechnical investigations authorized by the City of Monroe.

Based on the scope of services requested for the project our lump sum fee for the project area is \$26,500.00. JWCI is prepared to begin immediately upon the city's acceptance of this proposal. I have a JWCI-Monroe Professional Services Agreement for approval.

We anticipate a turnaround schedule for final deliverables well in advance of your March 31, 2023, deadline.

We appreciate this opportunity and look forward to working with you on this project. Should you have any questions, please feel free to call.

Sincerely,



T. Shawn Campbell, President- CEO
Jones Warner Consultants, Inc.