

**RESOLUTION NO. 25-2023**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL ENGINEERING AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND FISHBECK FOR A HYDROLOGY STUDY AT MONROE COMMUNITY PARK.

WHEREAS, the Park and Recreation Board recommended that City Council approve a hydrology study at Monroe Community Park to determine the drainage needs.

WHEREAS, Council desires to accept said recommendation and authorize an agreement for the hydrology study.

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 Fishbeck for a hydrology study at Monroe Community Park. 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.

PASSED: March 28, 2023

ATTEST:

APPROVED:

  
\_\_\_\_\_  
Clerk of Council

  
\_\_\_\_\_  
Mayor

"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 Law, Section 121.22 of the Ohio Revised Code.

  
\_\_\_\_\_  
Clerk of Council  
City of Monroe, Ohio

January 13, 2023

Exhibit "1" Res No. 25-2023

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

**Proposal for Professional Services  
Monroe Community Park Drainage Improvements Evaluation**

Dear Gary:

Fishbeck is pleased to provide this proposal for professional services to assist the City of Monroe (City) with an investigation and evaluation of alternatives for potential stormwater drainage improvements at the Monroe Community Park (Park). This proposal includes a statement of understanding, scope of services, schedule, and professional fees.

**Statement of Understanding**

Monroe Community Park is a 55-acre park centrally located at 500 South Main Street (Cincinnati-Dayton Road) at the intersection with Mason Street and Old Street in Monroe. The Park is bounded to the north and east by woods, to the south by Mound Cemetery and Ernst Concrete, and to the west by South Main Street and businesses.

The Park consists of playgrounds, baseball/softball diamonds, basketball courts, concessions, disc golf, grills, a playground, restrooms, shelters, and a historic log cabin. Events such as movie nights, baseball tournaments, and Fourth of July celebrations have been held at the Park in the past.

In 2018, the City produced the *Community Park Master Plan* (June 12, 2018), to evaluate potential improvements for the Park. That plan states that several drainage problems begin in the woodland area of the Park where there is a disc golf course. City personnel have also reported drainage issues at several of the ballfields, which lead to cancelled games during the busy spring sports season.

The Park entrance is at Old Street on the west side of the park. A paved access road and parking lots exist along the north and east sides of the Park. The Park drainage system consists of a mix of storm sewers with inlets and open ditches. The Park predominately drains to the southwest to a tributary of Coldwater Creek, however some of the wooded areas along the eastern portion of the Park drain to the woods along the east side.

In addition to existing and potential uses of the Park, vehicle parking should be considered as part of any Park improvements. There is a green space near the Park entrance that has been used for overflow parking. Any drainage improvements should consider the possibility of future expansion of the parking areas and/or improved drainage of any temporary/overflow parking areas.

## Scope of Services

Fishbeck offers the following scope of services to evaluate stormwater drainage improvement options for the continued development of the Park.

### Site Investigation

Fishbeck will utilize existing site information to consider drainage and development alternatives for further investigation. The City recently had an aerial survey conducted that added detailed topographic, inundation, and impervious area information to the City's Geographic Information System (GIS). Fishbeck will utilize this GIS data as well as existing records, as-built drawings (if available), the Butler County GIS, and the Ohio Geographically Reference Information Program (OGRIP) to study the existing drainage patterns and identify potential solutions. Fishbeck will also conduct a site visit to verify existing drainage patterns, size of existing drainage features, and readily apparent problem areas.

### Collaboration Meetings

Fishbeck will meet with City personnel to discuss potential solutions to the drainage issues at the Park.

### Deliverables

Fishbeck will prepare a Technical Memorandum (Memo) to document the tasks completed during this evaluation. Graphics and figures will be included to illustrate the improvement alternatives and support the text of the Memo. A draft version will be submitted to the City for review prior to submission of an updated, final version.

## Schedule

Fishbeck will begin scheduling work immediately upon receiving a notice to proceed. We anticipate completion of the conceptual planning services described in this proposal within three months of receiving a notice to proceed.

## Professional Services Fees

We propose to complete the above Scope of Services on an hourly basis, not-to-exceed fee of Fourteen Thousand Nine Hundred Dollars (\$14,900), including expenses.

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](mailto: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](mailto:jpease@fishbeck.com).

Sincerely,



**John F. Pease, PE**  
Water & Wastewater Engineer



**Allen J. Aspacher, PE**  
Vice President/Senior Project Manager

Attachments  
By email

# Professional Services Agreement

**PROJECT NAME** Monroe Community Park Drainage Improvements Evaluation  
**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 letter proposal dated January 13, 2023.

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

- Terms and Conditions for Professional Services, attached.
- Proposal dated January 13, 2023, attached.
- Other:

**METHOD OF COMPENSATION:**

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

**Budget for Above Scope of Services:** Not-to-exceed Fourteen Thousand Nine Hundred Dollars (\$14,900).

**ADDITIONAL PROVISIONS (IF ANY):** None.

**APPROVED FOR:**

City of Monroe

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ACCEPTED FOR:**

Fishbeck

BY:  \_\_\_\_\_

TITLE: Vice President

DATE: January 13, 2023

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**