

EMERGENCY RESOLUTION NO. 48-2020

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND FISHBECK FOR PROFESSIONAL ENGINEERING SERVICES FOR THE ROSEMONT PARK NATURE PRESERVE STORM WATER DRAINAGE PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, trails were created at Rosemont Park causing water drainage patterns to shift creating an increase of flow on properties that were not designed to handle the runoff; and

WHEREAS, Council desires to have a drainage study prepared to determine the best way to correct the issue.

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

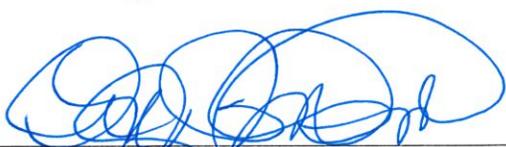
SECTION 1: The City Manager is hereby authorized to enter into an agreement by and between the City of Monroe and Fishbeck for professional engineering services for the Rosemont Park Nature Preserve Storm Water Drainage Project. The terms and conditions of said agreement are marked Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to have the study completed at the earliest possible date to avoid further unnecessary water flow on certain properties. Therefore, this measure shall take effect and be in full force from and after its passage.

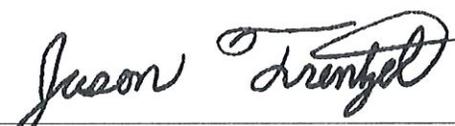
PASSED: July 14, 2020

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.



Clerk of Council
City of Monroe, Ohio

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.

July 1, 2020

Bill Brock, PE
City Manager
City of Monroe
233 S Main Street
Monroe, OH 45050

**Proposal for Professional Engineering Services
Monroe, OH – Rosemont Park Nature Preserve Storm Water Drainage Project**

Dear Bill:

Fishbeck is pleased to submit this proposal to provide Professional Engineering Services to the City of Monroe (City) for the Rosemont Park Nature Preserve Storm Water Drainage Project. Our understanding of the project is based on our site visit by the City (Bill Brock and Gary Morton) and Fishbeck (Al Aspacher and Peter Soltys) on June 17, 2020.

Background

The Rosemont Park Nature Preserve is located at 6388 Hamilton Middletown Road (State Route 4) on the east side of the road and north of the intersection with State Route 63 in the City of Monroe. The approximately 13-acre site was acquired from Metroparks of Butler County. The park is bounded to the north by a home at 6440 Hamilton Middletown Road, to the east by the Todds Glen Reserve subdivision, to the south by the Berean Baptist Church, and to the west by Hamilton Middletown Road (State Route 4). The park consists of wooded land with a gravel entrance road and parking lot and several trails. The trails are covered with wood mulch and were prepared by Butler Technology and Career Development Schools (Butler Tech). There are also three wooden footbridges on the trail system that span over storm water drainage courses.

On the north side of the park, a trail begins at the parking lot and extends in a northerly direction to an east-west tee in the trail system. The east branch of the trail at this tee proceeds along a moderately steep downward sloping path almost to the east park boundary and then turns south where a footbridge is located. Along this path, gravel has been placed to contain storm water flow along the path. The gravel extends beneath the footbridge in the direction of the east park boundary. At this location, storm water has been flowing onto the property at 2034 Kelsey Trail in the Todds Glen Reserve subdivision. The storm water proceeds across the backyard at 2034 Kelsey Trail and between the house and the neighboring house at 2041 Kelsey Trail. The homeowners have complained to the city about possible damage to their properties caused by the storm water flow, which they had no previously encountered when the park land was owned by Metroparks of Butler County.

Scope of Services

Fishbeck proposes to complete the following scope of services to evaluate and develop alternatives to mitigate the storm water issue at the east side of the park and Kelsey Lane. Our understanding of the storm water issue is based on a site visit to the park on June 17, 2020, attended by Bill Brock – City Manager, Gary Morton – City Public Works Director, and Al Aspacher and Peter Soltys of Fishbeck.

Fishbeck will complete the following tasks to determine the storm water runoff characteristics of the north side of the park and develop alternatives to control the flow onto the neighboring properties on Kelsey Trail to the east.

1. We will obtain topographic mapping of the project site from the Butler County Geographic Information System (GIS).
2. A ground survey of the trail and footbridge area in the northeast quadrant of the park will be conducted to develop a base map upon which storm water management alternatives can be evaluated. The ground survey will extend parallel to the east boundary of the park to tie in the existing drain within the park and near the southwest corner of the property at 2034 Kelsey Trail. The extent of the survey will be marked in the field by the project engineer accompanying the surveyor.
3. Hydrologic analysis of the watershed draining to the area of concern will be performed to determine the peak discharge and volume of the 0.10 frequency of occurrence (10-year) and 0.04 frequency of occurrence (24-year) storm water runoff. This analysis will be performed using the Natural Resources Conservation Service WinTR-55 Urban Hydrology for Small Watersheds program.
4. We will develop a maximum of three alternatives to mitigate the storm water runoff problem. Alternatives that may be considered include:
 - a. Detention basin in the area of the footbridge with an outlet to the existing drain.
 - b. Rain garden/infiltration basin in the area of the existing footbridge.
 - c. Diversion of storm water runoff from the gravel channel to several small trailside rain gardens or infiltration trenches/basins.

A conceptual design drawing of each alternative will be prepared along with an engineer's opinion of construction cost.

5. Upon completion of our evaluation of the alternatives, we will prepare a summary report of our analysis and evaluation of alternatives and provide recommendations for the city as to which is the preferred storm water management alternative. Note that we will also consider the use of city equipment and equipment operators and the resources of Butler Tech in our evaluation and recommendations.
6. We will meet with the city to discuss our report and recommendations.

Professional Services Fees

Fishbeck is ready to immediately begin this project. Once we receive a notice to proceed, we anticipate that it will take approximately five weeks to complete the scope of services presented in this proposal for a lump sum fee of Sixteen Thousand Five Hundred Dollars (\$16,500).

Authorization

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.

If you have any questions or require additional information, please contact me at 513.247.8576 or ajaspacher@fishbeck.com.

Sincerely,



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



Peter W. Soltys, PE, PH
Senior Project Manager

Attachments
By email

Peter W. Soltys, PE, PH
Senior Project Manager

Professional Services Agreement

PROJECT NAME Monroe, OH – Rosemont Park Nature Preserve Storm Water Drainage Project
FISHBECK CONTACT Peter W. Soltys, PE, PH
CLIENT City of Monroe
CLIENT CONTACT Bill Brock, PE
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 July 1, 2020.

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

- Terms and Conditions for Professional Services, attached.
- Proposal dated July 1, 2020.
- Other:

METHOD OF COMPENSATION:

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

Budget for Above Scope of Services: Lump sum fee of Sixteen Thousand Five Hundred Dollars (\$16,500).

ADDITIONAL PROVISIONS (IF ANY): None.

APPROVED FOR:

City of Monroe

BY: _____

TITLE: _____

DATE: _____

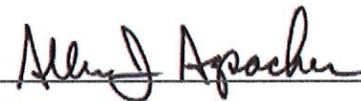
ACCEPTED FOR:

Fishbeck

BY: _____

TITLE: _____

DATE: _____



Vice President

July 1, 2020

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