

RESOLUTION NO. 63-2020

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND FISHBECK FOR PROFESSIONAL ENGINEERING SERVICES TO PERFORM A RISK AND RESILIENCY ASSESSMENT FOR THE CITY'S PUBLIC WAER SYSTEM.

WHEREAS, the United States Environmental Protection Agency (USEPA) requires that a Risk and resiliency assessment be filed no later than June 30, 2021.

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 to perform a Risk and Resiliency Assessment for the City's public water system. The terms and conditions of said agreement are set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: September 22, 2020

ATTEST:


Clerk of Council

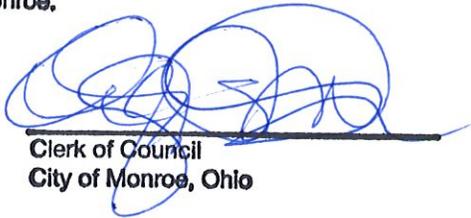
APPROVED:


Mayor

First Reading: September 8, 2020

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



July 9, 2020

Gary Morton
Director of Public Works
City of Monroe
1000 Holman Avenue
Monroe, OH 45050

**Proposal for Professional Engineering Services
Public Water System Risk and Resiliency Assessment**

Dear Mr. Morton:

Fishbeck is pleased to provide our proposal to perform a Risk and Resiliency Assessment (RRA) for the City of Monroe Public Water System (PWS). The assessment will bring the City into compliance with Section 2013 of America’s Water Infrastructure Act of 2018 (AWIA). In this proposal, we also provide information and an approach for completion of an update to the City’s Emergency Response Plan (ERP), as this will be included as a second phase of regulatory compliance.

Regulatory Framework

In 2002 the Public Health Security and Bioterrorism Response Act was signed into law. Title IV of the Act added Section 1433 to the Safe Drinking Water Act. Section 1433 focused on ensuring the safety and security of the nation’s drinking water supplies. It required a PWS that serves more than 3,300 customers to perform a Vulnerability Assessment (VA) and prepare an Emergency Response Plan (ERP) that incorporates the results of the VA.

The AWIA was promulgated in 2018. The AWIA replaces Section 1433 of the Safe Drinking Water Act. It provides for water infrastructure improvements throughout the nation by requiring every PWS to:

- Complete an RRA demonstrating that the PWS has implemented reasonable controls to secure against natural disasters, cyber security threats, and threats to financial infrastructure.
- Prepare an ERP or update its existing ERP.
- Submit statements to the U.S. Environmental Protection Agency (USEPA) certifying the RRA was performed and the ERP prepared or updated.
- Review its RRA and ERP at least every five years and update them, if necessary.

Deadlines for submitting the certification statements depend on the number of customers the PWS serves, including customer communities, if any, according to the following schedule:

Population Served	RRA Certification Deadline	ERP Certification Deadline
≥100,000	March 31, 2020	September 30, 2020
50,000 to 99,999	December 31, 2020	June 30, 2021
3,301 to 49,999	June 30, 2021	December 30, 2021

These are deadlines for submitting the statements which, if not met, could lead to enforcement action being taken by the USEPA. The statements may be submitted at any time before the deadlines. Fishbeck believes they should be submitted as soon as possible.

The City should note that there is a fundamental difference between the focus of a PWS's Water Asset Management Plan and the focus of the RRA and ERP update required by the AWIA. The asset management plan focuses on the condition and criticality of individual equipment assets. The RRA and ERP Update focus on malevolent acts and natural disasters to which a PWS facility, system, or process critical to the mission of providing safe drinking water may reasonably be expected to be exposed to, and against which it can reasonably be expected to protect against through the use of institutional controls.

Project Understanding

The City's PWS services fewer than 50,000 customers. Thus, the deadline for certifying completion of the City's PWS RRA is June 30, 2021. The corresponding deadline for certification of the ERP is December 30, 2021. We anticipate completion of the work well in advance of these deadlines.

It is also our understanding that the City's prior VA is unavailable.

Fishbeck will bring the City's PWS into compliance with the first part of the AWIA by completing an RRA. We will use a spreadsheet-based process which will allow the City to self-perform the required 5-year RRA updates in the future. The required forms for certification to USEPA will be provided for the City's use.

Fishbeck understands the documents that will be used and prepared during the course of the project contain confidential information. We will manage the documents and information accordingly:

- We will minimize the number of our staff who participate in the project and limit access to confidential information to only those staff.
- We will limit access to confidential information by storing it on our secured server.
- The secured server will be able to be accessed only by the project team members.
- We will transmit deliverables in a format approved by the City.

By completing the RRA (and future ERP Update), Fishbeck will provide the City with the means to submit its certification statements to the USEPA; the AWIA specifies the City must submit the statements itself. The City is not required to make any hard-copy or other submittals to the USEPA besides the certification statements. The information that is generated pursuant to making the certification statements is protected from disclosure.

Scope of Services

Risk and Resiliency Assessment

Fishbeck will work with the City to develop a list of mission critical facilities for the RRA. Preliminarily we have identified the following:

- Britton Lane Standpipe.
- North Main Street Water Tower.
- Cemetery Water Tower.
- M.A.D.E. Industrial Park Water Tower.
- The four Butler County Connections.

To optimize our efforts and minimize the City's time, we will arrange to visit these locations on the same day as our project kickoff meeting.

Once the mission critical facility list is established, we will discuss reasonable threats that can be assigned to each facility. This process is referred to as asset/threat pairing.

The overarching threat to the City's PWS is the loss of source water from Butler County. Other potential threats include:

- Physical damage.
- Accidental Contamination.
- Intentional Contamination.

The method used to perform the RRA is not mandated by the USEPA. Three methods are commonly used, each of which is based upon the following American Water Works Association (AWWA) standards:

- AWWA J-100 Risk and Resilience Management of Water and Wastewater Systems.
- AWWA G430 Security Practices for Operation and Management.
- Cybersecurity Risk & Responsibility in the Water Sector.
- AWWA G300 Source Water Protection.

The three typical methods commonly used are the USEPA Vulnerability Self-Assessment Tool (VSAT) Program, the Risk Analysis and Management for Critical Asset Protection (RAMCAP) method, and preparation of an Engineering Report. Fishbeck has experience performing these analyses using all of these methods therefore, we can customize the process to suit the Township's needs. The VSAT Program is web-based, very slow and requires significant information to provide useful results. It is intended for use by utilities so they can self-perform the work. Our experience shows that few PWS's have the available time or personnel to self-perform this work. The RAMCAP method is very thorough, detailed, and is the basis of AWWA J-100. Fishbeck has also developed a spreadsheet-based analysis that combines the VSAT methodology with established asset management style scoring.

Based on the size and complexity of the system, we propose to use the spreadsheet-based analysis.

ERP Update (if authorized at a later date)

The City has a 2017 Water Contingency document. Our preliminary review of this document has determined that it is very comprehensive and contains many of the items required for compliance with AWIA. Certification of the City's ERP is not due until 6 months after the certification of the RRA. Therefore, we recommend proceeding with just the RRA at this time. As part of the RRA we will evaluate the level of effort needed to perform the ERP Update. Upon completion of the RRA, if desired by the City, Fishbeck can provide a Professional Services Fee for the ERP Update.

Typically, to perform an ERP Update, our scope of work is structured to address the following items:

- Review the existing documents.
- Identify items that require general updating – updates performed by the City.
- Identify items that must be included based upon the RRA.
- Assist with the preparation new sections required by the RRA.

New sections required by the RRA will be prepared as individual documents for the City to incorporate into the existing Contingency Plan.

Professional Services Fees

Fishbeck proposes to implement the scope of services presented in this proposal for a lump sum fee of Eighteen Thousand Seven Hundred Dollars (\$18,700) for the RRA. If requested by the City in the future, Fishbeck will prepare a separate proposal for performing the ERP Update.

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 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

Attachments
By hand delivery

Professional Services Agreement

PROJECT NAME Monroe, OH – Public Water System Risk and Resiliency Assessment
FISHBECK CONTACT Allen J. Aspacher, PE
CLIENT City of Monroe
CLIENT CONTACT Gary Morton
ADDRESS 1000 Holman Avenue, Monroe, OH 45050

Client hereby requests and authorizes Fishbeck to perform the following:

SCOPE OF SERVICES: In accordance with proposal dated July 9, 2020.

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

- Terms and Conditions for Professional Services, attached.
- Proposal dated July 9, 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: Fishbeck proposes to implement the scope of services presented in this proposal for a lump sum fee of Eighteen Thousand Seven Hundred Dollars (\$18,700) for the RRA. If requested by the City in the future, Fishbeck will prepare a separate proposal for performing the ERP Update.

ADDITIONAL PROVISIONS (IF ANY): None.

APPROVED FOR:

City of Monroe

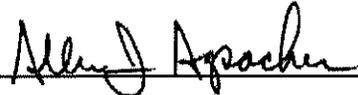
BY: _____

TITLE: _____

DATE: _____

ACCEPTED FOR:

Fishbeck

BY:  _____

TITLE: Vice President

DATE: July 9, 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