EMERGENCY RESOLUTION NO. 10-2018

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND FISHBECK, THOMPSON, CARR & HUBER, INC. FOR PROFESSIONAL DESIGN SERVICES FOR THE SAFETY PEDESTRIAN CROSSINGS ON MAIN STREET AT MASON AVENUE AND CHURCH STREET, AND DECLARING AN EMERGENCY.

WHEREAS, Council desires to provide a safe crossing for pedestrians on Main Street at Mason Avenue and Church Street.

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, Thompson, Carr & Huber, Inc. for professional design services for the safety pedestrian crossings on Main Street at Mason Avenue and Church Street pursuant to the terms and conditions set forth on Exhibit "A" attached hereto and made a part hereof in the amount not to exceed $38,000.

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 grant funds are available for this project and Council desires to apply for said funds and complete the project at the earliest possible date. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: January 23, 2018

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. 10

November 21, 2017

Mr. Daniel Arthur
Public Works Director
City of Monroe, Ohio
1000 Holman Avenue
Monroe, Ohio 45050

Re: Proposal for Professional Services
Mason Avenue at Main Street Intersection Safety Improvements

Dear Mr. Arthur:

Fishbeck, Thompson, Carr & Huber, Inc. (FTCH) is pleased to submit for your consideration our proposal to provide professional engineering services to prepare design construction plans for the intersections of Mason Avenue & Main Street and Church Street & Main Street (Cincinnati-Dayton Road).

Background

The Monroe Community Park is located along the east side of Main Street, with its entrance opposite of the Mason Avenue T-intersection with Main Street. Recent developments have occurred along Mason Avenue, leading to an increase in traffic, both vehicular and pedestrian, at this intersection. The intersection serves as a stop-control for the Mason Avenue and Monroe Community Park access drive. These recent developments have led to an increase in pedestrian crossings at this intersection. Main Street is a busy city street with free flow vehicular movement which introduces safety issues for those pedestrians seeking to cross from Mason Avenue to the Park. A traffic study was conducted at this intersection, compiling a 72-hour vehicular count as well as AM and PM peak hour intersection counts during a weekday and Saturday. This study resulted in a recommendation to install crosswalks and additional pedestrian safety measures to cross Main Street.

The Monroe City Hall resides on the southwest corner of the Main Street and Church Street intersection with a U.S. Post Office immediately south of the building. These two facilities generate pedestrian traffic at this intersection; the intersection currently has crosswalks on the southern, western, and eastern legs of the intersection, however these movements are not protected. The volume of vehicular traffic along Main Street during AM and PM peak hours present a safety issue for pedestrians crossing Main Street. The amount of vehicles traversing through the intersection limits the available gap time for pedestrians to cross the street between vehicles.

Scope of Services

FTCH will acquire existing utility and topographic survey information to help develop construction plans for the safety improvements at each intersection. Safety improvements at each intersection shall include new sidewalk extensions, curb ramps, striped crosswalks, rectangular rapid flashing beacons (RRFBs), advanced traffic control signage, and include necessary final grading and seeding. FTCH will take this acquired data to complete a three-phase submittal process with ODOT District 8.

The submittal process will follow a Stage 2 (55%), Stage 3 (85%), and Tracings (100%) submittal review process. Stage 2 will be a submittal to ODOT and the City for review of the preliminary layout of sidewalk, curb ramps, crosswalks, traffic control and RRFBs as well as a preliminary cost estimate. Upon receipt of ODOT and City comments, we will proceed to Stage 3 plans making any necessary changes and developing the final quantity list and any necessary specifications to include in the construction plans. Upon ODOT and City review and approval of the Stage 3 plans, we will complete the plan development process with Final Tracings and prepare any necessary bidding documents for the City.

FTCH services will include all aspects of project management, design such as utility coordination and agency coordination. Coordination with ODOT District 8 and the Office of Highway Safety for approval of the safety funding application is included.

Professional Services Fees

Based on our experience and understanding of the project requirements, FTCH proposes to perform the described scope of services for a lump sum fee of Thirty-Eight Thousand Dollars ($38,000).

FTCH is ready to begin work immediately on this project upon receipt of a Notice to Proceed from the City of Monroe Public Works Department. FTCH anticipates that completion of the scope of services will take approximately four months.

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@ftch.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.

Sincerely,

FISHBECK, THOMPSON, CARR & HUBER, INC.

Allen J. Aspacher, PE

Kamran Qadeer, PE

ds6
Attachment
By email

PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME	Main Street Intersection Safety Improvements
FTCH CONTACT	Allen J. Aspacher, PE
CLIENT	City of Monroe, Public Works Department
CLIENT CONTACT	Mr. Daniel Arthur
ADDRESS	1000 Holman Avenue, Monroe, OH 45050

hereby requests and authorizes Fishbeck, Thompson, Carr & Huber, Inc. (FTCH) to perform the following:

SCOPE OF SERVICES:

Engineering services for the design of pedestrian safety facilities for the intersections of Church Street and Mason Avenue at Main Street (Cincinnati-Dayton Road) intersection as described in FTCH proposal dated November 21, 2017. Scope of Services to include topographic survey of both intersections and a three phase (Stage 2, Stage 3, and Tracings) design submittal process following ODOT guidelines and standards.

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

☒ **Terms and Conditions for Professional Services, attached.**

☒ **Proposal dated** November 21, 2017.

☐ **Other:**

METHOD OF COMPENSATION:

☒ **Lump Sum for Defined Scope of Services**

☐ **Hourly Billing Rates plus Reimbursable Expenses**

☐ **Other:**

Budget for above Scope of Services:

Thirty-Eight Thousand Dollars ($38,000).

ADDITIONAL PROVISIONS (IF ANY):

N/A

APPROVED FOR:		**ACCEPTED FOR:**	
City of Monroe, Ohio		**Fishbeck, Thompson, Carr & Huber, Inc.**	
BY:	_____	**BY:**	_____
TITLE:	_____	**TITLE:**	_____
DATE:	_____	**DATE:**	_____

Terms and Conditions for Professional Services

1. **METHOD OF AUTHORIZATION.** CLIENT may authorize FTCH 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 FTCH. 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 FTCH'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 FTCH that may be in any way connected thereto.

3. **HOURLY BILLING RATES.** Unless stipulated otherwise, CLIENT shall compensate FTCH at hourly billing rates in effect when services are provided by FTCH employees of various classifications.

4. **REIMBURSABLE EXPENSES.** Those costs incurred on or directly for CLIENT's Project. Reimbursement shall be at FTCH'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 FTCH will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures, FTCH 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 FTCH will be the care and skill ordinarily used by members of FTCH's profession practicing under similar circumstances at the same time and in the same locality. FTCH makes no warranties, express or implied, under this Agreement or otherwise, in connection with FTCH's services.

7. **TERMINATION.** Either CLIENT or FTCH may terminate this Agreement by giving ten days' written notice to the other party. In such event, CLIENT shall pay FTCH in full for all work previously authorized and performed prior to the effective date of termination, plus (at the discretion of FTCH) 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, FTCH will return to CLIENT all documents and information which are the property of CLIENT.

8. **SUBCONTRACTORS.** FTCH may engage subcontractors on behalf of CLIENT to perform any portion of the services to be provided by FTCH hereunder.

9. **PAYMENT TO FTCH.** 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 FTCH by any governmental entity.

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

   In addition to any other remedies FTCH may have, FTCH 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.** FTCH 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. FTCH 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 FTCH.

11. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, FTCH'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, FTCH's total liability to CLIENT for any cause or combination of causes, which arise out of claims for which FTCH 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 FTCH by FTCH's insurers in settlement or satisfaction of CLIENT's claims under the terms and conditions of FTCH'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 FTCH 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 FTCH and FTCH'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 FTCH.

    Upon request, CLIENT and FTCH 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 FTCH and FTCH'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 FTCH.
14. **INDEMNIFICATION.** FTCH 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 FTCH's negligence or willful misconduct. CLIENT agrees to defend, indemnify, and hold FTCH harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures allegedly caused by FTCH's performance of services hereunder, except for injury or loss to the extent caused by the negligence or willful misconduct of FTCH. These indemnities are subject to specific limitations provided for in this Agreement.
15. **CONSEQUENTIAL DAMAGES.** CLIENT and FTCH 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 FTCH 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 FTCH brings a lawsuit against CLIENT to collect invoiced fees and expenses, CLIENT agrees to pay FTCH's reasonable collection expenses including attorney fees.
17. **OWNERSHIP OF WORK PRODUCT.** FTCH 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 FTCH 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 FTCH. CLIENT shall defend, indemnify, and hold harmless FTCH 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 FTCH'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 FTCH's computer network shall govern. FTCH cannot guarantee the longevity of any material transmitted electronically nor can FTCH guarantee the ability of the CLIENT to open and use the digital versions of the documents in the future.
19. **GENERAL CONSIDERATIONS.** CLIENT and FTCH each are hereby bound and the partners, successors, executors, administrators, and legal representatives of CLIENT and FTCH 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 FTCH shall assign this Agreement without the written consent of the other.

    Neither CLIENT nor FTCH will have any liability for nonperformance caused in whole or in part by causes beyond FTCH'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 FTCH.

    This Agreement constitutes the entire agreement between CLIENT and FTCH 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