

EMERGENCY RESOLUTION NO. 33-2019

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE PROPOSAL FROM FTCH TO PROVIDE PROFESSIONAL SERVICES FOR THE REVIEW AND UPDATE OF MONROE'S STORM WATER ORDINANCE AND DECLARING AN EMERGENCY.

WHEREAS, FTCH has served as the City's consultant in the area of storm water permitting; and

WHEREAS, the Ohio Environmental Protection Agency will be revising requirements to ensure that the City remains in compliance.

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 accept the proposal from FTCH to provide professional services for the review and update of Monroe's storm water ordinance pursuant to the terms and conditions set forth on 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 proceed with the review and necessary updates to remain in compliance with the State regulations. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: July 9, 2019

ATTEST: 

Clerk of Council

APPROVED: 

Mayor

I, 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.



June 20, 2019

Mr. William J. Brock
City Manager
City of Monroe
Municipal Building
233 S. Main Street
Monroe, OH 45050

Re: Proposal for Professional Services - Ordinance Review for Ohio Storm Water General Permits

Dear Mr. Brock:

Fishbeck, Thompson, Carr & Huber, Inc. (FTCH) is pleased to provide professional services for the review of the City of Monroe's (City) Code of Ordinances for compliance with the Ohio Environmental Protection Agency (OEPA) storm water general permits. The OEPA issued a renewal of the General Permit for Discharges of Storm Water Associated with Construction Activity on April 23, 2018, and is expected to issue a revision to the General Permit for Small Municipal Separate Storm Sewer Systems (MS4s) in September 2019.

In public presentations about the upcoming renewal of the General Permit for Small MS4s, OEPA staff have advised communities to review their ordinances now with respect to the renewed general permit for storm water discharges from construction activity in anticipation of the upcoming renewal of the General Permit for Small MS4s. The municipal ordinances for communities that fall under the small MS4 designation will need to comply with both the general permits for construction activity and small MS4s. OEPA has advised that the required time-frame for submitting updated storm water management plans that comply with the General Permit for Small MS4s will be short (months) in comparison with past year renewals (years).

This proposal covers the review of the City's ordinances for both the current renewed General Permit for Discharges of Storm Water Associated with Construction Activity and the upcoming renewal of the General Permit for Small MS4s.

Scope of Services

FTCH will review the City's Code of Ordinances for compliance with the General Permit for Discharges of Storm Water Associated with Construction Activity. The review will include the following ordinance sections:

- Chapter 1028 – Comprehensive Storm Water Management
- Chapter 1208 – Subdivision Design Standards
- Chapter 1209 – General Development Standards

Our review will identify specific ordinance language that must be revised to comply with the general permit. Where ordinance language is not available to comply with the provisions in the general permit, we will propose new ordinance language to be considered by the City Council. At the completion of our review, we will prepare a letter report that identifies each ordinance section that requires revision and new ordinance language where necessary to comply with the OEPA general permit. The report will identify the reason for each proposed ordinance change with specific reference to the general permit requirements.



Once the OEPA renewal of the General Permit for Small MS4s is published in September 2019, FTCH will return to the ordinance sections identified above to identify the ordinances that need to be revised or if new ordinances are needed to comply with the renewed general permit. We will prepare a letter report that identifies the revised ordinance or new ordinance language including specific reference to the renewed general permit requirements. We will also identify the schedule required by OEPA for the City's ordinances to comply with the general permit requirements.

Additional Services

Because of the renewal of the General Permit for Small MS4s, the City will be required to update their storm water management plan. FTCH cannot anticipate at this time what changes to the City's storm water management plan will be required. Once the permit renewal is published, we will prepare a proposal to the City to update the storm water management plan.

Professional Services Fees

FTCH will provide the Scope of Services described above for a lump sum fee of Eleven Thousand Nine Hundred Dollars (\$11,900). We are ready to start immediately on this project and anticipate that the review of the City ordinances with respect to the General Permit for Discharges of Storm Water Associated with Construction Activity will take approximately two weeks to complete. Once the General Permit for Small MS4s is published in September 2019, we anticipate that it will take another two weeks to complete the ordinance review.

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.

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

Sincerely,

FISHBECK, THOMPSON, CARR & HUBER, INC.

A handwritten signature in black ink that reads "Allen J. Aspacher". The signature is written in a cursive, flowing style.

Allen J. Aspacher, PE

ds6
Attachment
By email



PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME City of Monroe, Ordinance Review for Ohio Storm Water General Permits
 FTCH CONTACT Allen J. Aspacher, PE
 CLIENT City of Monroe
 CLIENT CONTACT Mr. William J. Brock
 ADDRESS 233 S. Main Street, Monroe, OH 45050

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

SCOPE OF SERVICES:

In accordance with proposal dated June 20, 2019.

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

- Terms and Conditions for Professional Services, attached.
- Proposal dated June 20, 2019.
- Other:

METHOD OF COMPENSATION:

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

Budget for above Scope of Services:

Eleven Thousand Nine Hundred Dollars (\$11,900).

ADDITIONAL PROVISIONS (IF ANY):

None.

APPROVED FOR:

City of Monroe

BY: _____
 TITLE: _____
 DATE: _____

ACCEPTED FOR:

Fishbeck, Thompson, Carr & Huber, Inc.

BY: Jeffrey J. Brown
 TITLE: Sr. Vice President
 DATE: June 20, 2019



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.



Terms and Conditions for Professional Services (continued)

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