CITY OF MONROE OHIO

Monroe Council Agenda
Regular Meeting of Council
March 28, 2023 – 6:30 PM
233 South Main Street, Monroe, Ohio

Pledge of Allegiance

Roll Call

Approval of the Minutes

Council Minutes of March 14, 2023

Visitors

Committee Reports

Public Works Committee

Finance Committee

Administrative Liaison Committee

Technology Committee

Public Involvement Committee

Public Safety Committee

Old Business

New Business

Resolution No. 23-2023. A Resolution approving a Then-and-Now Certificate in the amount of $32,500.00 to Clearcreek Coating, LTD

Strategic Priority: Well Managed Services and Infrastructure

Background: The City received a proposal dated 9/22/2022 from Clearcreek Coatings, LTD for the replacement of the existing expansion joint with a new expansion joint and replacement of existing foam insulation with new 12"x2" urethane pipe insulation. Purchase Order 20220309 in the amount of $14,000 was created on 11/18/2022 in order to complete this work. After this work began, it was discovered that the expansion fill tube was in critical need of replacement. Due to the criticalality of the failed equipment, the City Manager authorized the emergency repair. Please refer to supplementary report 23-05 for previous information provided with pictures of the pipe.

Resolution No. 24-2023. A Resolution determining the bid submitted by Majors Enterprises Inc. for the Mason Road Water Main Replacement Project to be the lowest and/or best bid and authorizing the City Manager to enter into an agreement for said project.

Strategic Priority: Well Managed Services and Infrastructure

Background: The Mason Road Water Main Replacement Project was approved and designed in 2019. Due to failed attempts at right-of-way procurement, the project has been on hold due to having to go through a re-design to allow for the water main to be installed in the current right-of-way. The re-design has the water main running down the edge of the east-bound lane from Gallaher Road to the intersection of Pierson Sayer Boulevard.

The original design of the project was to procure right-of-way for the future re-alignment on Mason Road. The intent was to install the new water main within the newly acquired right-of-way so it was in the correct position when the future road re-alignment project was carried out. Due to unreasonable property values, the City was unable to secure the right-of-way necessary. With the current alignment of the new watermain, the City will require the future developer of the Bishop property to dedicate any necessary easements where the new water main may be outside the re-aligned right-of-way.

The existing six-inch water main on Mason was installed during the completion of interstate 75. Records indicate that the water main was installed in December of 1962 or before, making it a minimum of sixty-two years old. Records of this installation are not highly accurate. There has been an increase in the number of water main breaks on this line over the past several years and the line is no longer large enough to service that area of the city.

The new water main will be a twelve-inch ductile iron pipe. Our staff has reviewed the plans and placed fire hydrants and valves in locations that will allow greater control of the distribution system than we have currently. This will also give our water distribution system a third feed under I-75 going west to east. This is a necessity. The 12" feed that comes under I-75 from Garver Rd to the north of the exit was installed in 1970, making it 53 years old. Our 8" feed that is just to the south of the south-bound exit ramp to I-75 was installed in 2006 making it 17 years old. At times, it has been a struggle to provide water east of I-75 when we have had large watermain breaks just west of I-75. Adding this third feed under I-75 will stabilize our water distribution system greatly.

As we strive to upgrade and stabilize our water distribution system, this project is a large hurdle to cross. It gives us greater confidence in our ability to provide a much more stable supply of water to all of our customers east of I-75.

Bids were opened and read aloud on Friday March 10,2023. Major's Enterprises was the lowest and best bid. Five total bids were received. Attached is the bid tabulation sheet. There you will find all five bids.

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.

Strategic Priority: Well Managed Services and Infrastructure

Background: Monroe Sports Association (MSA) has made a request to the Park Board that drainage improvements be made to Community Park. MSA states that they lose many dates per year due to wet fields caused by the lack of drainage within the park. In the past, Public Works has completed tasks such as installing the concrete curb and catch- basins along the parking lot as well as cleaning out the drainage ditches. These items alone have not been enough to alleviate all of the issues with the overall drainage.

Public Works has provided the Park Board with a quote from Fishbeck for a small-scale hydrology study that will look at the topography of the park land and necessary items that it would take to drain the park land more effectively. Using the City's imagery and lidar as well as historical data, Fishbeck will give us a report on options that could improve the drainage of the park through further investigation and design. Many factors will need to be considered in the study of drainage. The topography is very flat from the park to Cinn-Day Rd., which is challenging. Once the water leaves the park and enters Coldwater Creek, it flows west through the City and exits the City limits just west of sands ave. in-between Ethel Dr. and Lena Dr... We experience many complaints from the homeowners of Lena Dr. and Ethel Dr. about flooding of Coldwater Creek during moderate to heavy rain events. There are several limitations that may exist outside of the City of Monroe Corp. limits on Cldwater Creek. Once the creek leaves the city limits, we have no legal authority to clear or aid in the cleaning of a ditch. This issue could possibly be worsened by adding additional drainage from the park land. This data will be researched with this study.

Resolution No. 26-2023. 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 Bicentennial Commons.

Strategic Priority: Well Managed Services and Infrastructure

Background: During the construction of phase 1A &1B, large amounts of concrete were encountered underground. It made installation of the underground utilities very difficult. Large sections of old building footings and concrete walkways had to be removed in order to construct the first two phases. The remaining areas of concrete underground are causing the ground to be impervious in these areas. Water is not draining in certain areas of the park due to this underground blockage.

In May of 2022, this proposal was brought before Council for approval on the recommendation of the Park and Recreation Board. After much discussion, the item was tabled. In March of 2023, the Park and Recreation Board made another recommendation to take this study back to Council in its original form for approval. In March 2023, public works proposed a second option to the Park and Recreation Board for the drainage study within the park. This study was more of a high level study to try to figure out a way to break apart the original proposed study in a manner that made sense. The Park and Recreation Board determined that this method would not be enough to determine any type of need for the park's drainage issues.

The Park and Recreation Board feels that the original study is appropriate to determine what the overall needs of drainage assessments are within Monroe Bicentennial Commons. This study will reveal the areas where these solid underground surfaces exist and we can better plan future phases of the park based on this data. The study will also look at drainage patterns in the park and what it takes to drain these areas to a pre-determined outlet. We can look to drain to the Great Miami River as well as the existing lake. By exploring these options, we can better determine what type of drainage we need throughout the park. This study will work hand in hand with the park master plan. As the Park and

Recreation Board and Council work together to continue the development of this park, having this knowledge will allow data-driven decisions to be made and assure that we will eliminate future drainage issues within the park in future phases of construction.

The study is comprised of four sections:

Field Survey
Soil Borings and Subsurface geophysical Investigation
Hydrology Analysis and Stormwater Plan
Stormwater System Conceptual Analysis
With this data, the City would be in a position to move forward with construction design of a stormwater system that could be incorporated into future phases of the park.

Resolution No. 27-2023. A Resolution approving and authorizing the City Manager to sign an Income Tax Administration Agreement with the Turtlecreek-Monroe 2022 Joint Economic Development District.

Strategic Priority: Strategic Growth and Development

Background: This legislation is the final step in implementing the Turtlecreek-Monroe 2022 JEDD (Joint Economic Development District). The JEDD, which covers Encore Logistics Center near the racino, was approved by City Council in December 2022 and is expected to be fully implemented by April 2023. Now that the JEDD Board has had it's first meeting and approved income tax collection, this authorization allows the City Manager to enter into a contract with the Board for the the purposes of administering the income tax provisions that were anticipated by Monroe and Turtlecreek Township when the district was created.

Resolution No. 28-2023. A Resolution authorizing the City Manager to enter into an amended agreement by and between the City of Monroe and the SouthWest Ohio Computer Association for the extension of fiber.

Strategic Priority: Well Managed Services and Infrastructure

Background: The City of Monroe entered into an agreement in 2020 to share fiber assets with the South West Ohio Computer Association (SWOCA). The agreement also contracts with SWOCA to maintain the city's fiber assets. SWOCA is a Council of governments that owns and maintains technology for school districts in southwest Ohio. The state has increased the ability of the organization to extend services to local governments. Thus, the City partnered with the agency to expand its fiber network to meet the goals its strategic priority. The amendment to the agreement expands that partnership to extend our fiber backbone and considers a new rate for the maintenance of that backbone for the City by SWOCA. A map of the proposed fiber backbone is attached.

The fiber backbone was reviewed by the Technology Committee at a meeting. The first phase of the backbone will extend to the east to connect the SWOCA/City system to an ISP (internet Service

Provider) and also serve the Encore Park as a part of our JEDD initiative with Turtlecreek Township. As we move forward with other sections of the backbone, the City and SWOCA will need to consider costs for maintenance of those other sections.

Ordinance No. 2023-08. An Ordinance imposing a moratorium for a period of 180 days on the granting of any new permits allowing retail dispensaries for medical marijuana within the City of Monroe.

Strategic Priority: Strategic Growth and Development

Background: During the March 14, 2023, Council meeting a motion was made directing that legislation be prepared to impose a moratorium for 180 days for new permits allowing retail dispensaries for medical marijuana.

Administrative Reports

Executive Session: Consider the purchase of property for public purposes and discuss confidential information related to marketing plans, specific business strategy, production techniques, trade secrets, or personal finance statements of an application for economic development assistance.

Adjournment

Monroe City Council Minutes
March 14, 2023 – 6:30 p.m.
233 South Main Street, Monroe, Ohio

Pledge of Allegiance

Mayor Funk opened the regular meeting of Council at 6:30 p.m. with the Presentation of Colors and Pledge of Allegiance led by the Monroe Fire Department Honor Guard.

Roll Call

Council members present: Marc Bellapianta, Jason Frentzel, Keith Funk, Michael Graves, Christina McElfresh, and Ben Wagner.

Mrs. McElfresh moved to excuse Dr. Clark; seconded by Mr. Bellapianta. Voice vote. Motion carried.

Approval of the Minutes

Mrs. McElfresh moved to approve the Finance Committee Minutes of February 28, 2023; Council Minutes of February 28, 2023; and Public Involvement Committee Minutes of March 2, 2023; seconded by Mr. Frentzel. Voice vote. Motion carried.

Visitors

Mr. Brock thanked Chief John Centers for his service for the City of Monroe. Mayor Funk presented Chief John Centers a proclamation in honor of Chief Centers' retirement.

Mrs. McElfresh moved to approve the appointment of David Leverage as Fire Chief effective March 15, 2023; seconded by Mr. Bellapianta. Voice vote. Motion carried.

Law Director Callahan administered the Oath of Office to David Leverage as Fire Chief.

Paul Gabbard, Branch Manager of MidPointe Library Monroe presented the annual report of the MidPointe Library System.

Committee Reports

Mr. Wagner reported that the Park and Recreation Board met last Wednesday and spoke with the Baseball Association about some of their needs. The Association would like to install batting cages at Monroe Community Park that could be used by the public and they would like the City to address some of the maintenance items for the concession stand. In addition, the Board reviewed the survey results and the biggest parks are Monroe Bicentennial Commons and Monroe Community Park, according to the survey. The Board recommended a hydrology study for

Monroe Community Park and for Monroe Bicentennial Commons, both of which will be on the next agenda. Mr. Wagner noted that the Board discussed revisiting the master plans.

Mrs. McElfresh reported that the Public Involvement Committee recommended that the City fund the fireworks for the same amount as last year.

Mrs. McElfresh moved to authorize the City Manager to enter into a contract with Rozzi Fireworks in the amount of not to exceed $11,000 for the 2023 Fourth of July Fireworks; seconded by Mr. Wagner. Voice vote. Motion carried.

Old Business

Mrs. McElfresh moved to remove Ordinance No. 2023-05 from the table; seconded by Mr. Frentzel. Voice vote. Motion carried.

The Clerk of Council read Ordinance No. 2023-05 by title only.

Mrs. McElfresh moved to suspend the rule requiring the reading of Ordinance No. 2023-05 on two separate days and authorize its adoption on the second reading; seconded by Mr. Frentzel. Roll call vote: six ayes. Motion carried.

New Business

Resolution No. 18-2023. A Resolution approving a Then-and-Now Certificate in the amount of $5,977.92 to Butler County Emergency Management Agency.

Mr. Brock reported this is an annual payment and paid from the wrong purchase order.

The Clerk of Council read Resolution No. 18-2023 by title only.

Mrs. McElfresh moved to adopt Resolution No. 18-2023; seconded by Mr. Wagner. Roll call vote: six ayes. Motion carried.

Resolution No. 19-2023. A Resolution approving a Then-and-Now Certificate in the amount of $3,900.43 to Air Force One.

Mr. Brock advised this is for work performed on the bay heaters and would have been paid with a purchase card; however, the company charges a three percent fee for that form of payment.

The Clerk of Council read Resolution No. 19-2023 by title only.

Mrs. McElfresh moved to adopt Resolution No. 19-2023; seconded by Mr. Graves. Roll call vote: six ayes. Motion carried.

Resolution No. 20-2023. A Resolution authorizing the City Manager to accept grant funds in the amount of $6,636 from the Ohio Bureau of Workers' Compensation Trench Safety Grant (TSG) program to allow for the purchase of a Smartshore System to assist with repairs to water mains and service lines.

Mr. Brock advised this system will allow repairs to be made more safely. The cost of the system is $8,295, but with the grant it will only cost the City $1,659.

The Clerk of Council read Resolution No. 20-2023 by title only.

Mrs. McElfresh moved to adopt Resolution No. 20-2023; seconded by Mr. Bellapianta. Roll call vote: six ayes. Motion carried.

Resolution No. 21-2023. A Resolution amendment and supplementing the Investment and Deposit Policy set forth in Resolution No. 49-2013.

Mr. Burton reported this Resolution amends the current Investment and Deposit Policy as it has been 10 years since it was updated. This will also align the policy with the Ohio Revised Code.

The Clerk of Council read Resolution No. 21-2023 by title only.

Mrs. McElfresh moved to adopt Resolution No. 21-2023; seconded by Mr. Wagner. Roll call vote: six ayes. Motion carried.

Resolution No. 22-2023. A Resolution to opt-in to participate in the opioid settlement agreements with Teva, Allergan, Walgreens, Walmart, and CVS and authorizing the City Manager and/or Law Director to execute any all documents related to these settlement agreements.

Mr. Brock explained this Resolution relates to another opioid settlement that is separate from the previously approved OneOhio settlement.

The Clerk of Council read Resolution No. 22-2023 by title only.

Mrs. McElfresh moved to adopt Resolution No. 22-2023; seconded by Mr. Frentzel. Roll call vote: six ayes. Motion carried.

Consideration of Motion to authorize the expenditure of $38,050.00 to Team EJP for 10 fire hydrants.

Mr. Brock informed Council that due to the shortage we previously were able to purchase fire hydrants as we needed them. However, Mr. Morton is recommending that these be purchased in bulk.

In response to Mrs. McElfresh's question, Mr. Morton advised that these hydrants will be used to replace the 10 fire hydrants that are out of service.

Mrs. McElfresh moved to authorize the expenditure of $38,050.00 to Team EJP for 10 fire hydrants; seconded by Mr. Bellapianta. Voice vote. Motion carried.

Consideration of Motion accepting the December 2022 and January 2023 Finance Reports as submitted.

Mrs. McElfresh moved to accept the December 2022 and January 2023 Finance Reports as submitted; seconded by Mr. Frentzel. Voice vote. Motion carried.

Consideration of Motion appointing members to the Historic Preservation Commission.

Mrs. McElfresh moved to appoint Anna Hale and Danielle Johnson to three-year terms, Patricia Lovell and Tracy Mitchell to two-year terms, and Kathy Smith and Scott Koenig as ad hoc members to the Historic Preservation Commission; seconded by Mr. Bellapianta. Voice vote. Motion carried.

Administrative Reports

Referring to the strategic priorities, Mr. Brock asked Council where they felt a community center would fall under these priorities. The other item brought up was working more closely with the small businesses in the community.

Mrs. McElfresh moved to include a community center as an action item under Strategic Growth and Development in the action area of a community hub; seconded by Mr. Bellapianta. Voice vote. Motion carried.

Mr. Graves advised he has met with a lot of people and one item that continues to come up is how many medical marijuana dispensaries does Monroe need.

Mr. Graves moved to direct that legislation be prepared to implement a moratorium on medical marijuana dispensaries for 180 days; seconded by Mr. Bellapianta. Roll call vote: six ayes. Motion carried.

Mr. Frentzel questioned if new applications would be submitted and not interfere with those already in the process. Mr. Brock advised it would prevent new applications during the 180 days, but would not interfere with the one currently in operation or the three under construction.

Mr. Wagner requested an economic impact. Mrs. McElfresh requested more facts such as, how you obtain a license. Mr. Brock will provide the requested information prior to the next Council meeting.

CITY OF MONROE OHIO

Adjournment

Mrs. McElfresh moved to adjourn; seconded by Mr. Wagner. Voice vote. Motion carried.

The regular meeting of Council adjourned at 7:43 p.m.

Respectfully submitted,

Angela S. Wasson, MMC
Clerk of Council

RESOLUTION NO. 23-2023

A RESOLUTION APPROVING A THEN-AND-NOW CERTIFICATE IN THE AMOUNT OF $32,500.00 TO CLEARCREEK COATING, LTD.

WHEREAS, emergency repairs were necessary for the Mound water tank; and

WHEREAS, due to the unexpected emergency repairs necessary there was not sufficient time to request a purchase order prior to the services performed.

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

SECTION 1: A Then-and-Now Certificate in the amount of $32,500.00 to Clearcreek Coating, LTD is hereby approved.

SECTION 2: This measure shall take effect immediately upon passage pursuant to Section 7.08 (C) of the Charter

PASSED: _________________

ATTEST: APPROVED:

_______________________________________ Clerk of Council

_______________________________________ Mayor

RESOLUTION NO. 24-2023

A RESOLUTION DETERMINING THE BID SUBMITTED BY MAJORS ENTERPRISES INC. FOR THE MASON ROAD WATER MAIN REPLACEMENT PROJECT TO BE THE LOWEST AND/OR BEST BID AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR SAID PROJECT.

WHEREAS, after advertising and receiving bids according to law, it has been determined that Majors Enterprises Inc. is the lowest and/or best bid submitted for the Mason Road Water Main Replacement Project.

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

SECTION 1: The bid submitted by Majors Enterprises Inc. for the Mason Road Water Main Replacement Project is hereby determined to be the lowest and/or best bid according to law.

SECTION 2: The City Manager is hereby authorized to enter into an agreement with Majors Enterprises Inc. for the Mason Road Water Main project pursuant to the terms and conditions set forth in the bidding documents received on March 10, 2023.

SECTION 3: 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:____________________

ATTEST: APPROVED:

______________________________ ______________________________

Clerk of Council Mayor

MASON ROAD WATER MAIN IMPROVEMENT
W-01-2023
3/10/2023

	Description	Quantity	Unit	Unit Price	Total
1	Mobilization	1	LS	$15,000.00	$15,000.00
2	Clearing and Grubbing	1	LS	$1.00	$1.00
3	Furnishing & laying 12" Ductile Iron Pipe & Fittings	2650	LF	$190.00	$503,500.00
4	Furnishing & laying 8" Ductile Iron Pipe & Fittings	5	LF	$300.00	$1,500.00
5	Furnishing & laying 6" Ductile Iron Pipe & Fittings	128	LF	$165.00	$21,120.00
6	1-1/2" Copper Service Pipe	26	LF	$175.00	$4,550.00
7	2" Copper Service Pipe	38	LF	$200.00	$7,600.00
8	Remove Fire Hydrant	5	EA	$500.00	$2,500.00
9	12" Gate Valve	5	EA	$4,500.00	$22,500.00
10	8" Gate Valve	1	EA	$3,500.00	$3,500.00
11	6" Gate Valve	1	EA	$2,000.00	$2,000.00
12	8" Hydro-Stop	1	EA	$20,000.00	$20,000.00
13	6" Fire Hydrant Complete	7	EA	$8,000.00	$56,000.00
14	Pavement Milling	2,716	SY	$4.00	$10,864.00
15	Asphalt Surface Course, Type 1, (449) PG64-22	113	CY	$295.00	$33,335.00
16	30" Conduit, Type B	6	LF	$350.00	$2,100.00
17	Maintenance of Traffic	1	LS	$6,000.00	$6,000.00

Sub-Total	$712,070.00
15% Contingency	$106,810.50
Grand Total	$818,880.50

Mason Road Water Main Replacement Project

	Company *Name*	Location	Bid
1	Majors Enterprises	Monroe, OH	$818,880.50
2	KT Holden Construction	Lebanon, OH	$893,663.85
3	Smith and Brown Constructors	Harrison, OH	$946,591.45
4	WG Stang	Hamilton, OH	$948,812.10
5	Ford Development	Cincinnati, OH	$1,003,203.65

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:

<u>SECTION 1</u>: 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.

<u>SECTION 2</u>: This measure shall take effect and be in full force from and after its passage pursuant to Section 7.08(C) of the Charter.

ATTEST: APPROVED:

______________________________ Clerk of Council

______________________________ Mayor

Engineers | Architects | Scientists | Constructors

10856 Reed Hartman Highway, Suite 175
Cincinnati, Ohio 45242

513.469.2370 | fishbeck.com

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). 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.

Sincerely,

John F. Pease

John F. Pease, PE
Water & Wastewater Engineer

Allen J. Aspacher

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

Attachments
By email

fishbeck
Engineers | Architects | Scientists | Constructors

10856 Reed Hartman Highway, Suite 175
Cincinnati, Ohio 45242

513.469.2370 | fishbeck.com

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:		ACCEPTED FOR:	
City of Monroe		Fishbeck	
BY:		BY:	Allen J Jopaula
TITLE:		TITLE:	Vice President
DATE:		DATE:	January 13, 2023

\\CORP.FTCH.COM\UNIVERSALSHARES\PROPOSALS\MONROE, CITY OF (OH)\COMMUNITY PARK DRAINAGE STUDY\PSA_MONROE COMMUNITY PARK_2023_0113.DOCX

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

RESOLUTION NO. 26-2023

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 BICENTENNIAL COMMONS.

WHEREAS, the Park and Recreation Board recommended that City Council approve a hydrology study at Monroe Bicentennial Commons 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 Bicentennial Commons. 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.

ATTEST:	APPROVED:
______________________________	______________________________
Clerk of Council	Mayor

fishbeck
Engineers | Architects | Scientists | Constructors

10856 Reed Hartman Highway, Suite 175
Cincinnati, Ohio 45242

513.469.2370 | fishbeck.com

May 3, 2022

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

Proposal for Professional Services
Bicentennial Commons Park Stormwater Plan

Dear Gary:

Fishbeck is pleased to provide this proposal for professional services to assist the City of Monroe (City) with development of a Stormwater Plan for the Bicentennial Commons Park in the City of Monroe. This proposal includes a statement of understanding, scope of services, schedule, and professional fees.

Statement of Understanding

The City is constructing the Bicentennial Commons Park on the grounds of an amusement park formerly known as Americana, and prior to that LeSourdsville Lake. The park property consists of approximately 40 acres and is bordered by the Great Miami River to the north and west; Gregory Creek to the south and the CSX railroad along the eastern boundary. Access to the site requires crossing of the single railroad track. We understand that the City has evaluated site access and has implemented procedures for entry to the park. Additional consideration for park access is therefore not a part of Fishbeck's scope of services.

Much of the site has been cleared and portions of the lake have been filled. A few buildings remain, which may be repurposed for the new park.

Development on the site began in 1828 with the arrival of the Miami-Erie Canal, which followed the eastern edge of the site. Around 1855, ponds were added to the site that were used for the production of ice blocks until the late 1800s. In the early 1900s, the canal was abandoned and was eventually filled with soil. After briefly being used for farming, an 18-acre recreational lake with picnic areas was built on the site in the 1920s. In the 1930s, the park evolved into an amusement park with rides.

In 2018, the City produced the *Bicentennial Commons Park Master Plan* for the development of the park. It is our understanding that many of the features of that plan have been approved by stakeholders and may be implemented in the final design with modifications to several areas based on recent evaluations. It is also our understanding that only the top layer of dirt and concrete walkways have been removed during the development thus far, and that there remains the potential for concrete foundations and utilities buried deeper below the surface.

It is our understanding that prior to the City acquiring the property, fill material was brought to the site to fill in some of the low-lying areas. This material has been spread and covered with topsoil and grass to provide an attractive lawn in the vicinity of the carousel area that has already been redeveloped. Recent rain events have resulted in ponding water that the City would like to correct prior to proceeding with the redevelopment of the park.

The City would also like to include green infrastructure such as bio-retention, rain gardens, and infiltration basins to help improve water quality. Educational signage may also be placed at these features in support of the City-wide stormwater management program.

Scope of Services

Fishbeck will complete the following tasks to develop a stormwater plan for the park.

Task 1: Field Survey

Fishbeck will begin the project by researching existing records, as-built drawings (if available), and historic aerials to determine possible locations of existing storm sewers and other utilities.

Fishbeck will then conduct a topographic survey to determine existing drainage patterns of the site. Data from the Butler County Geographic Information System (GIS) would be incorporated, however, contour data from this source and the Ohio Geographically Reference Information Program (OGRIP) are at 2-foot intervals, which is not of sufficient detail for this project. In addition, this data predates some of the recent construction at the site.

Fishbeck will contact Ohio Utilities Protection Service (OUPS / Ohio811) to have existing utilities marked prior to the survey. Subsequent to the field survey, a base map in AutoCAD Civil3D format will be developed that will provide a basis for drainage design as well as other future projects on the site.

A detailed topographic survey will be conducted in the vicinity of the carousel plaza. The remainder of the park will be surveyed only at sufficient intervals to establish contours for the hydrology analysis. Existing structures, finish floor elevations, driveways, sidewalks and utilities will be located. Tree lines and water edge will be identified, however individual trees will not be marked. A permanent control network and benchmarks will be established for the site, for use on this project and future design and construction.

Task 2: Soil Borings and Subsurface Geophysical Investigation

The native soils for this site consist of fine sandy loam (St), which are typically well-drained. However, these soils were disturbed due to the development of the lake and park that occupied the site. Thus, an investigation is necessary to determine the drainage characteristics of the native soils and backfill materials. In addition, investigation is needed to determine whether there is a concrete or clay layer lining the bottom of the former lake which may affect stormwater infiltration. Additional concerns include concrete slabs and other demolition debris or other built features that may be present at depth. Finally, there is a potential for at least one deeper foundation related to a former water tower. There are two specific areas of interest, known from historical photographs, where former pool bottom concrete slabs may still be present. There may be other such areas not known to us.

Fishbeck will arrange for sixteen borings, the majority of which will be between 11 and 19 feet in depth or refusal. The soil borings will be analyzed to understand the subsurface conditions as they pertain to the hydrogeology of the site. Piezometers will be installed in three of the boring locations to allow groundwater measurements to be taken over a three week period after installation. It should be noted that additional borings may be necessary for park structures as the park plans are finalized.

A geophysical investigation will also be conducted to provide additional subsurface information, in particular the areas between soil borings. A Multichannel Analysis of Surface Waves (MASW) investigation would help define the subsurface profile and the seismic site classification. This information may reduce the number of future borings needed. Ground-Penetrating Radar (GPR) will also be used to locate foundations that may be left from previous structures on the site.

Finally, given the amusement park history of the site, soil samples will be taken from the geotechnical borings and tested for contaminants. Water samples would also be checked for contamination. Some additional drilling and piezometers are included in this step. This would not be a complete Phase I/II Environmental Site Assessment. Rather it would indicate whether stormwater infiltration practices are appropriate for the site, or if additional investigation is necessary. If contaminated materials were discovered, additional investigation would be recommended.

Task 3: Hydrology Analysis and Stormwater Plan

Fishbeck will perform a hydrologic analysis to develop and refine a stormwater plan for the Bicentennial Commons Park site. First, Fishbeck will utilize the survey data collected in Task 1 to divide the site into sub-watersheds based on existing natural drainage patterns. Then, based on the proposed site plan for Bicentennial Commons Park and the existing sub-watersheds, Fishbeck will develop preliminary proposed sub-watersheds for the site. Once these existing and proposed sub-watersheds have been delineated, Fishbeck will develop a hydrologic model of the site that incorporates *NOAA Atlas 14* rainfall data, soils data collected in Task 2 and through desktop research, and existing and proposed land cover.

Based on the preliminary hydrologic model and FEMA flood insurance studies for the Great Miami River, Fishbeck will develop a preliminary stormwater plan which includes a conceptual storm sewer network, green infrastructure practices, and site outfall locations. Fishbeck will also consult with the Miami Conservancy District to ensure that their facilities are not negatively impacted by the project. This stormwater plan will meet the stormwater management criteria in the updated *Monroe Comprehensive Stormwater Management Ordinance* and create green infrastructure demonstration sites in accordance with the *Monroe MS4 Stormwater Management Program (SWMP).* The Bicentennial Commons stormwater plan will focus on runoff reduction and water quality treatment. The green infrastructure practices, such as bioretention and/or permeable pavements will serve to improve water quality, provide runoff reduction, and benefit the natural aesthetic of the park. Fishbeck will present this preliminary stormwater plan and alternatives analysis to the City for review and approval before incorporating their feedback to develop a final stormwater plan.

As part of this task, Fishbeck will identify required permits from the City as well as from outside agencies such as the U.S. Army Corps of Engineers (USACE) and Ohio Environmental Protection Agency (OEPA) for discharges to the Great Miami River or work within the floodplain.

Task 4: Stormwater System Conceptual Design

Utilizing the stormwater management plan and hydrologic model developed in Task 3, Fishbeck will complete a conceptual design of the stormwater system for the Bicentennial Commons Park site. This will include sizing and routing calculations for the storm sewer network, sizing and layout of proposed green infrastructure source controls, and a preliminary engineer’s estimate of probable construction cost.

The stormwater system will be designed to be constructed in phases, with the trunk system and downstream facilities designed first along with green infrastructure source controls in the already developed portions of the park. Designs for future phases will include sizing and layout for trunk lines and sizing and layout for runoff controls.

Fishbeck will also research grant opportunities that may be available for the construction of green infrastructure as it pertains to the stormwater management system. A summary of our findings will be included in a design memorandum. An electronic version of the design memorandum will be presented to the City for review and any questions or comments will be address prior to delivery of a final version.

Future Task: Construction Documents & Permitting

Once the stormwater plan in Tasks 1-4 is complete, a future task will be the preparation of construction documents; preparation and submittal of permitting materials; and preparation of a long-term operations, inspections, and maintenance plans for the stormwater system. Due to the number of uncertainties regarding site conditions and development plans, the scope of services and engineering fee will need to be determined at the completion of Tasks 1-4.

Schedule

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

Professional Services Fees

We propose to complete the above Scope of Services for an hourly not-to-exceed basis, with the estimated fees shown below, including expenses.

Task	Description	Fee
1	Records Research and Survey	$32,000
2	Geophysical Investigation and Soil Borings	$69,000
3	Hydrology Analysis	$39,000
4	Stormwater Management Conceptual Design	$52,000
	Total	$192,000

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.

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.

Sincerely,

John F. Pease, PE
Water & Wastewater Engineer

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

Attachments
By email

fishbeck
Engineers | Architects | Scientists | Constructors

10856 Reed Hartman Highway, Suite 175
Cincinnati, Ohio 45242

513.469.2370 | fishbeck.com

Professional Services Agreement

PROJECT NAME	Bicentennial Commons Park Stormwater Plan
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 Fishbeck's proposal dated May 3, 2022.

AGREEMENT. The Agreement consists of this page and the documents that are checked:
☒ Terms and Conditions for Professional Services, attached.
☒ Proposal dated May 3, 2022.
☐ Other:

METHOD OF COMPENSATION:
☐ Lump Sum for Defined Scope of Services
☒ Hourly Billing Rates plus Reimbursable Expenses
☐ Other:

Budget for Above Scope of Services: Hourly not-to-exceed fee of One Hundred Ninety-Two Thousand Dollars ($192,000).

ADDITIONAL PROVISIONS (IF ANY): None.

APPROVED FOR:		ACCEPTED FOR:	
City of Monroe		Fishbeck	
BY:		BY:	[signature]
TITLE:		TITLE:	Vice President
DATE:		DATE:	May 3, 2022

U:\PROPOSALS\MONROE, CITY OF (OH)\BICENTENNIAL COMMONS PARK\PSA_CITY OF MONROE_BICENTENNIAL COMMONS PARK STORMWATER STUDY_2022_0503.DOCX

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.
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   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.
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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.

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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.

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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

RESOLUTION NO. 27-2023

A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN AN INCOME TAX ADMINISTRATION AGREEMENT WITH THE TURTLECREEK-MONROE 2022 JOINT ECONOMIC DEVELOPMENT DISTRICT.

WHEREAS, Section 10 of the Turtlecreek-Monroe 2022 Joint Economic Development District Contract (the “Contract”) requires the Board of Directors (the “Board”) to levy an income tax to be used to encourage and promote economic development within the Turtlecreek-Monroe 2022 Joint Economic Development District (the “District”); and

WHEREAS, the Board has adopted a resolution levying an income tax in the District of at a rate of 2.00% in accordance with Section 10 of the Contract; and

WHEREAS, the income tax levied in the District is to be administered, collected, and enforced by the City of Monroe in accordance with Section 10 of the Contract.

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

SECTION 1: This Council hereby approves the Income Tax Administration Agreement (the “Tax Agreement”), attached hereto as Exhibit “A” and made a part hereof, entering into a contract with the Turtlecreek-Monroe 2022 Joint Economic Development District to govern the collection and distribution of the District income tax imposed by the Board.

SECTION 2: This Council authorizes the City Manager to execute such Tax Agreement with such changes as are not adverse to the City and are approved by the City Manager.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the rules for notification of meetings to the public and news media.

SECTION 4: 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:________________

ATTEST: APPROVED:

______________________________ ______________________________
Clerk of Council Mayor

Exhibit A Res No. 27-2023

INCOME TAX ADMINISTRATION AGREEMENT

By and Between

TURTLECREEK-MONROE 2022 JOINT ECONOMIC DEVELOPMENT DISTRICT

and

THE CITY OF MONROE, OHIO

Dated _________, 2023

This **Income Tax Administration Agreement** (the "Agreement") is entered into by and between the Board of Directors (the "Board") of the **Turtlecreek-Monroe 2022 Joint Economic Development District** (the "District") and the **City of Monore,** Butler and Warren Counties, Ohio (the "City") to govern the collection and distribution of the JEDD income tax imposed by the Board pursuant to the Turtlecreek-Monroe 2022 Joint Economic Development District Contract (the "Contract") entered into by and between Turtlecreek Township, Warren County, Ohio (the "Township") and the City of Monroe, Ohio (the "City"), dated __________, 2022.

RECITALS

Pursuant to Section 10 of the Contract, the Board adopted a resolution levying an income tax at a rate of two percent (2.00%) in the District, Resolution No. ________.

Pursuant to Section 10 of the Contract and Resolution No. _________ the income tax shall be levied on: a) income earned by individuals working or residing in the District to be collected via payroll withholding; and b) net profits from business operations within the District.

Pursuant to Section 10 of the Contract the City of Monroe, or its designee shall administer, collect and enforce the income tax on behalf of the District.

NOW, THEREFORE, in consideration of the mutual premise and covenants set forth in this Agreement, the parties hereto agree and bind themselves, their agents, employees and successors, as follows:

SECTION 1. The City of Monroe shall administer, collect and enforce the income tax on behalf of the District consistent with the terms of the Contract and Resolution ________ of the Board.

The City of Monroe's Tax Administrator shall serve as the Administrator of the income tax derived from the District and shall be responsible for the receipt, safekeeping, accounting, and investment of income tax revenues pending disbursement.

All receipts shall be deposited to a separate District account which shall not be mingled with revenue from other sources. The Board shall set up the District income tax account on or before the effective date of the income tax, ________, 2023. All receipts shall be deposited within 24 hours of receipt. Earnings on the District account and investments related thereto shall be added to the account.

The Administrator shall invest the accounts in accordance with Chapter 135 of the Ohio Revised Code and written direction of the Board.

The Administrator or designee has authority to grant refunds and compromise claims for taxes, penalties, and interest. The Administrator or designee has authority to commence legal proceedings pertaining to delinquent tax collection and enforcement, and declaratory judgment regarding disputed interpretation and applicability of the income tax. The Administrator or designee is authorized to investigate and audit taxpayer returns and to issue subpoenas in furtherance of duties. The Administrator is designated to be an interested party and is authorized to commence and defend legal proceedings in the name of the District in any way pertaining to the income taxation within the District.

The Monroe Board of Tax Review, as set forth in Section 887.18 of the Monroe Income Tax Code, will hear all taxpayer appeals regarding the District income tax.

SECTION 2. The Board shall be responsible for obtaining a federal employer identification number for the District and shall use its best efforts to obtain such number as soon as possible.

SECTION 3. The Board shall use its best efforts to notify the Administrator that a business has located within the District.

Upon notification by the Board of a business locating within the District or otherwise being apprised thereof, the Administrator shall begin collecting the applicable income tax on the business and its employees within the period as defined in Section 887.041 of the Monroe Income Tax Code.

SECTION 4. The Administrator shall report quarterly to the Board and Contracting Parties regarding receipt and distribution of income tax revenue including amounts retained in escrow. The Administrator shall report quarterly regarding District operating income and expenses for the preceding quarter. If requested the Administrator shall provide monthly reports to the Contracting Parties regarding all revenue generated within the District, and shall provide such other information or reports as requested if necessary for reporting or informational purposes. The Administrator shall assist the Board in creating and organizing all necessary reports and documents required by the Board's By-laws, the State of Ohio or other agencies to whom the Board has a duty to report.

Upon request of a Contracting Party, the Administrator shall provide a report regarding the receipt and distribution of the income tax of the District and the operating income and expenses of the District for the preceding six months, a copy of which shall be provided to all Contracting Parties and shall provide other information as requested.

All reports and information shall be in written form and a copy thereof shall be delivered to each Board member. Reports or information delivered to Contracting Parties shall be delivered to each Contracting Party's Administrator, Manager or Fiscal Officer.

SECTION 5. In consideration of its services pertaining to income tax administration and collection, Monroe shall receive annually a service fee equal to three and one half (3.50%) percent of gross income tax revenues collected. The Administrator shall transfer said service fee to the City on a monthly basis. The service fee may be applied to administrative costs at Monroe's discretion, but shall also be applied specifically to costs of collection and litigation including for example, attorney fees, court costs, expert fees, court reporter fees, and so forth.

SECTION 6.

(a) On or before the 10th day following the end of each year, the Administrator shall transfer an amount equal to the annual District Administration costs, as defined in the Contract, from gross income tax revenues to the Board to be used for long-term maintenance of the District.

(b) On or before the 10th day following the end of each quarter the Administrator shall place the percentage amount determined from time to time by the Board of the gross annual income tax revenue into an escrow fund. Escrow proceeds may be utilized to pay refunds, and in general to balance accounts. In the event of an escrow deficiency, the Administrator may invoice the Contracting Parties according to their Distributable Revenue percentage set forth below to satisfy the deficiency. Invoices for deficiency are due and payable within thirty (30) days from invoice. Annually, thirty (30) days after the end of the fiscal year, any escrow surplus shall be distributed to the Contracting Parties based on the Distributable Revenue percentages set forth in the Contract. Earnings achieved on any surplus escrow shall be added to the escrow fund.

(c) Any costs incurred and paid by the Contracting Parties in assisting in the establishment of the District shall be reimbursed to the Contracting Parties, respectively, from revenues of the District income tax prior to the distributions of such revenues as set forth in Section 6(d) hereof.

(d) Distributable Revenue from the prior quarter shall be paid to the Contracting Parties as follows: 77% to Turtlecreek Township; and 23% to the City of Monroe.

"Distributable Revenue" shall be annual gross income tax revenue minus the sum of (the 3.50% annual service fee, and the annual escrow fee, and the annual amount for long term maintenance).

SECTION 7. The Administrator shall administer the collection of the income tax pursuant to the provisions, except as specifically set forth in the Contract and Resolution No ______, of the City of Monroe, Ohio, Income Tax Code, including all rules and regulations promulgated thereunder, as such laws were in effect on the date that the income tax was adopted by the Board (the "Monroe Income Tax Ordinance"). A copy of Resolution No. _____ is attached hereto as **Exhibit A**.

SECTION 8. The District territory shall have primacy over residential status relating to the collection of the income tax derived from individual earnings within the District notwithstanding the provisions of the Monroe Income Tax Ordinance which may provide to the contrary.

SECTION 9. The Administrator shall maintain all District income tax records pursuant to applicable legal limitations and all disposal of such records shall be governed by the Ohio Historical Society's guidelines and schedules. District income tax records will be listed separately from the City's income tax records on the Schedule of Retention and Records Disposition.

SECTION 10. The Administrator shall maintain a copy of the District income tax rules and all ordinances governing the District income tax, as well as all forms pertaining to the filing of and payment of the District income tax, which may be a paper copy of an electronic version.

SECTION 11. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio.

SECTION 12. In the event that any section, paragraph or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

(a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof and will not invalidate any preceding actions of the Board or the Administrator, and

(c) each section, paragraph, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

SECTION 14. If this Agreement contains any inconsistencies with the terms of the Contract, then the terms of the Contract shall prevail and be applied over the terms of this Agreement.

IN WITNESS WHEREOF, the Board and the City have caused this Agreement to be duly signed in their respective names by their duly authorized officers as of the date hereinbefore written.

BOARD OF DIRECTORS
TURTLECREEK-MONROE 2022 JOINT
ECONOMIC DEVELOPMENT DISTRICT

By:____________________________________
Chairman

CITY OF MONROE

By:____________________________________
City Manager

RESOLUTION NO. 28-2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDED AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND THE SOUTHWEST OHIO COMPUTER ASSOCIATION FOR THE EXTENSION OF FIBER.

WHEREAS, Council authorized an agreement in 2020 with the SouthWest Ohio Computer Association (SWOCA) to share fiber assets; and

WHEREAS, amending said agreement allows for the extension of the original fiber area and a new rate for the maintenance.

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 amended agreement by and between the City of Monroe and the SouthWest Ohio Computer Association for the extension of fiber pursuant to the terms and conditions set forth on 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:___________________

ATTEST: APPROVED:

____ ____________________________________

Clerk of Council Mayor

Exhibit “1” Res No. 28-2023

SOUTHWEST OHIO COMPUTER ASSOCIATION
INDEFEASIBLE RIGHT-TO-USE AMENDMENT

This agreement amends the INDEFEASIBLE RIGHT-TO-USE Agreement dated 24 July, 2020, (“IRU”) and is entered on the _____ day of _________, 2023 between the SouthWest Ohio Computer Association also known as “SWOCA” (hereinafter referred to as “**OWNER**") having an office at 3611 Hamilton-Middletown Road Hamilton, Ohio 45011 and the City of Monroe, Ohio, an Ohio municipal corporation (hereinafter referred to as the "**USER**" or “**City**”), having an office at 233 South Main Street Monroe, OH 45050. OWNER and USER are (referred to individually as "**Party**" and collectively as "**Parties**").

WHEREAS, The Parties have an existing INDEFEASIBLE RIGHT-TO-USE AGREEMENT granting the USER the right to use certain fibers on the OWNER’s fiber system; and

WHEREAS, The OWNER wishes to offer additional excess fibers in the Fiber System to the USER (“Additional Fiber System”); and

WHEREAS, The USER wishes to secure the use of fibers within the Fiber System; and whereas the parties wish to amend the existing IRU. The Parties hereto do hereby agree to amend the IRU as follows:

1. DEFINITIONS.

1.1 Is amended to add:

c. Additional Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by OWNER and located throughout the SWOCA regional footprint and Rights of Way of the City of Monroe, Ohio (a general depiction of which is attached hereto as Exhibit "C")

2. GRANT.

2.1 Is amended to add:

b. Seventy-Two (72) strands of fiber optic cable in the Additional Fiber System along the path designated in Exhibit “C”

3. TERM.

3.1 There are no changes to the term.

4. CONSIDERATION.

4.1 Is amended to add:

d. USER shall pay OWNER a one-time fee of Two Hundred Seventy-Nine Thousand Eight Hundred Forty Dollars and Thirty Cents (US $279,840.30) Thirty (30) days after the completion of the construction necessary to create the Additional Fiber System described in Exhibit C ("one-time fee"). Upon USER'S acceptance of completion, OWNER shall invoice USER and USER shall pay the one-time fee within Thirty (30) days of the invoice date. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance per month unless expressly waived by the OWNER in writing.

e. USER will pay OWNER Four Hundred Dollars and No Cents (US $400.00) monthly for maintenance of the Additional Fiber System.

f. Beginning on July 1, 2025 and continuing once annually on every July 1 thereafter through the term of the agreement, the Monthly Maintenance Fee in section 4.1(e) herein shall be adjusted in the same percentage as the change in the Consumer Price Index, All Urban Consumers, Cincinnati-Hamilton, OH-KY-IN area, All Items, Base Period 1982-84=100, published by the U.S. Department of Labor, Bureau of Labor Statistics for the calendar year ending December 31 immediately preceding the date of such annual adjustment.

5. OWNER'S OBLIGATIONS.

5.1 There are no changes.

6. USER OBLIGATIONS.

6.1 There are no changes.

7. JOINT OBLIGATIONS.

7.1 There are no changes.

8. MAINTENANCE OBLIGATIONS.

8.1 There are no changes.

9. USE OF USER SYSTEM.

9.1 There are no changes.

10. INDEMNIFICATION.

10.1 There are no changes.

11. INSURANCE.

11.1 There are no changes.

12. DEFAULT.

12.1 There are no changes.

13. FORCE MAJEURE.

13.1 There are no changes.

14. ASSIGNMENT.

14.1 There are no changes.

15. WAIVER OF TERMS OR CONSENT TO BREACH.

15.1 There are no changes.

16. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

16.1 There are no changes.

17. NO THIRD-PARTY BENEFICIARIES.

17.1 There are no changes.

18. EFFECT OF SECTION HEADINGS.

18.1 There are no changes.

19. NOTICES.

19.1 There are no changes.

20. SEVERABILITY.

20.1 There are no changes.

21. COMPLIANCE WITH LAW.

21.1 There are no changes.

22. GOVERNING LAW AND VENUE.

22.1 There are no changes.

23. ENTIRE AGREEMENT.

23.1 There are no changes.

IN WITNESS HEREOF the parties have executed and delivered this Agreement effective the day and year first above written:

OWNER:

____
By: Todd Yohey
Its: Executive Director
Date: ______________________

USER:
City of Monroe, Ohio
an Ohio municipal corporation.

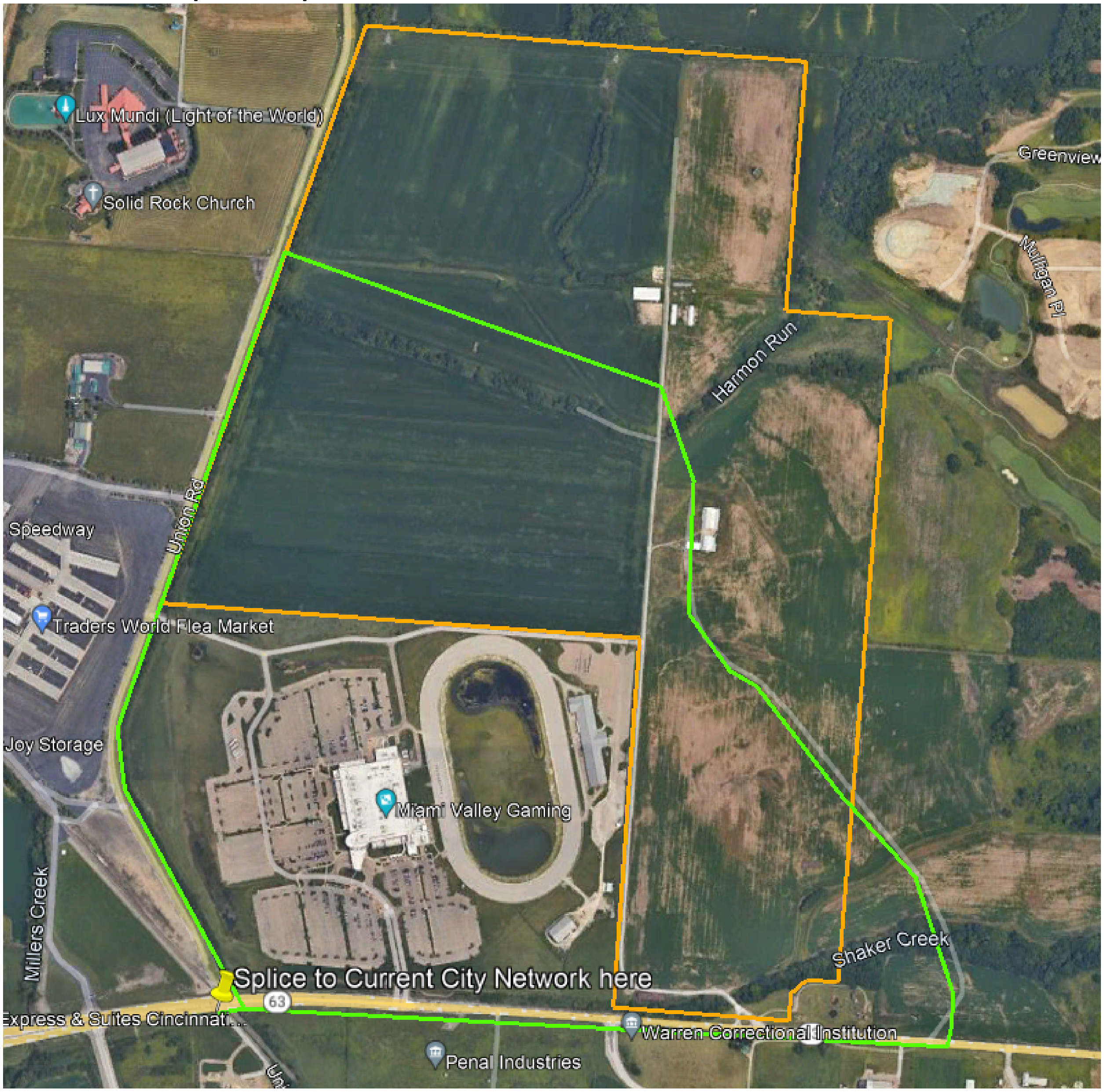
____
By: William J. Brock
Its: City Manager
Date: ______________________

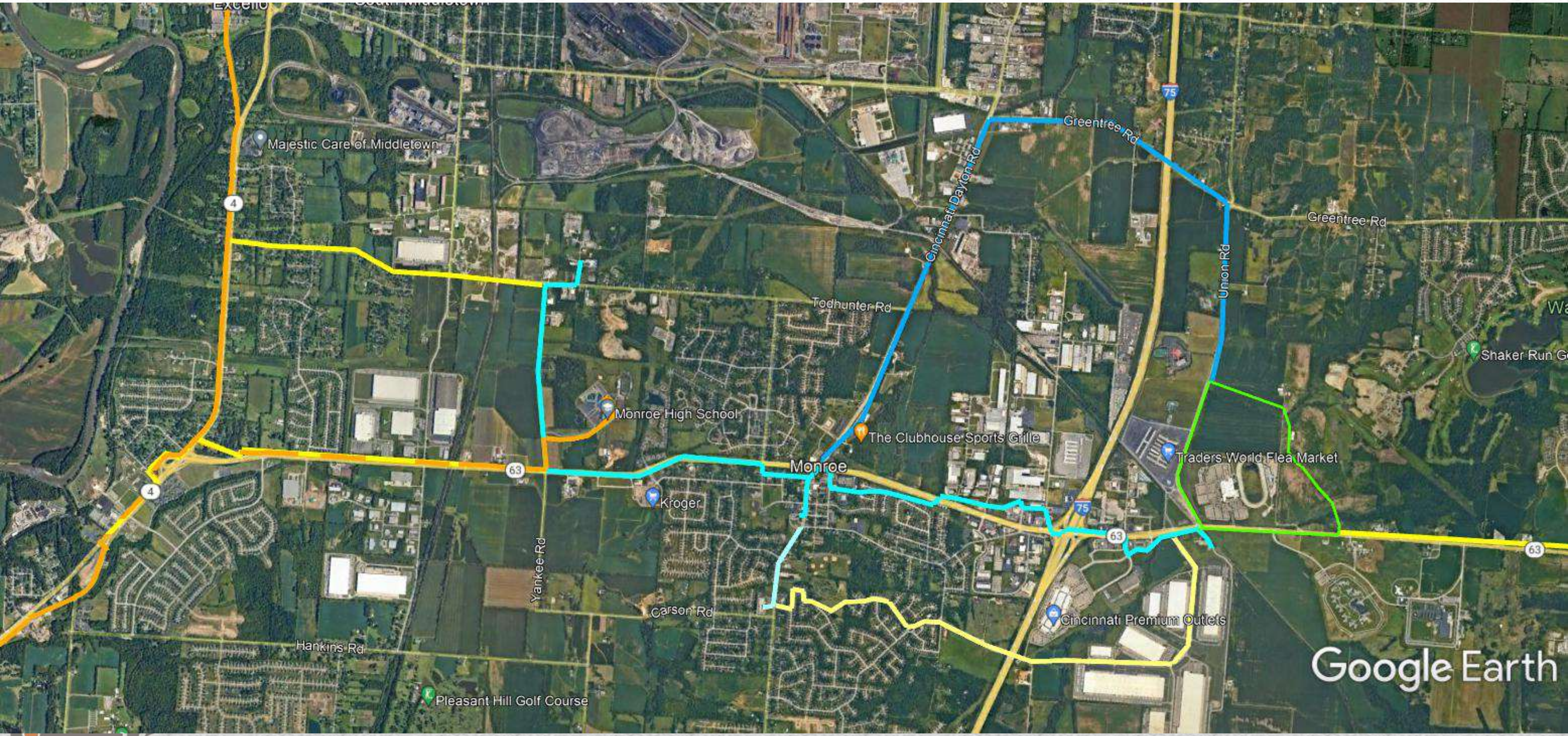
Approved As To Form:

____
Law Director, City of Monroe, Ohio

Exhibit C: Network Diagram: US Route 63 at Union Road, Monroe, Ohio

Estimated Fiber path is represented in Green




Majestic Care of Middletown
Todhunter Rd
Cincinnati Dayton Rd
Greentree Rd
Greentree Rd
Union Rd
Shaker Run G
Monroe High School
The Clubhouse Sports Grille
Monroe
Traders World Flea Market
Kroger
Yankee Rd
Carson Rd
Hankins Rd
Cincinnati Premium Outlets
Pleasant Hill Golf Course
Google Earth

Encore Park

- Constructed by GSP Networks
  - Estimated cost $235,000

  - Additional Potential Costs
  - - Traffic Control Costs
  - - Concrete R&R
  - - Asphalt R&R
  - - Rock drilling / digging
  - - Hydro Excavation Costs (if required)
  - - RR Flagger Costs

  - Construction Complete by May 2023*

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SOUTHWEST OHIO COMPUTER ASSOCIATION
INDEFEASIBLE RIGHT-TO-USE AGREEMENT

THIS INDEFEASABLE RIGHT-TO-USE AGREEMENT is made and entered into as of the 24 day of July, 2020, between the SouthWest Ohio Computer Association also known as "SWOCA" (hereinafter referred to as Owner") having an office at 3611 Hamilton-Middletown Road Hamilton, Ohio 45011 and the City of Monroe, Ohio, an Ohio municipal corporation (hereinafter referred to as the "User"), having an office at 233 South Main Street Monroe, OH 45050. Owner and User referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, Owner has an existing optical fiber system (hereinafter referred to as the "Fiber System" or "Owner Fiber System") throughout the SWOCA regional footprint and in the City of Monroe, Ohio; and

WHEREAS, Owner has excess fibers in the Fiber System and is willing, to provide such fibers to User and to grant User an Indefeasible Right to Use or IRU (hereinafter referred to as "IRU") in and to such fibers for the purpose of providing telecommunications, video, data, and/or information services; and

WHEREAS, in connection with the grant to User of an IRU in and to such fibers, Owner is willing to allow User to use certain other property owned by Owner, including, but not limited to, innerduct, conduit, building entrance facilities and associated appurtenances; and

WHEREAS, User has obtained any and all permits or approvals required to engage in its intended purpose and for the use and occupancy of space in the Rights of Way and further agrees to adhere to any and all requirements of federal, state and local laws, rules or regulations (specifically inclusive of, but not limited to, Chapter 1020 of the Codified Ordinances of the City of Monroe, Ohio); and

WHEREAS, the Parties have agreed to enter into this Agreement which embodies the mutual covenants and agreements between the Parties hereto; and

WHEREAS, the Parties may in the future agree to enter into additional separate agreement(s) for additional and/or separate optical fiber uses which will incorporate the covenants and agreements of this Agreement and which will also set forth the terms and provisions unique to each additional or different specific project.

NOW, THEREFORE, pursuant to the terms of any Right of Way occupancy requirement and/or Construction Permit required by Chapter 1020 of the Codified Ordinances of the City of Monroe, Ohio or any similar requirements promulgated by jurisdictions in the SWOCA regional footprint where User might be granted access to and use of the Fiber System, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties hereto do hereby agree as follows:

1. DEFINITIONS.

1.1 The following terms, whether in the singular or in the plural, when used in this Agreement and initially capitalized, shall have the meaning specified:

a. Agreement: This Indefeasible Right to Use Agreement between Owner and User which identifies the specific optical fiber strands and facilities to be as provided to User by Owner and which sets forth the associated fees/compensation, terms and conditions for User's use of such optical fiber strands and facilities.

b. Fiber System: The optical fiber strands, innerduct, conduit, building entrance facilities, associated appurtenances, and capacity owned by Owner and located throughout the SWOCA regional footprint and Rights of Way of the City of Monroe, Ohio (a general depiction of which is attached hereto as Exhibit "A")

2. GRANT.

2.1 Owner hereby grants to User an IRU of the following Fiber System components. Owner warrants that it has all rights necessary to make such a grant to User.

a. Four (4) strands (two pair) of fiber optic cable in the Fiber System along a 2.63 mile path for a total of 10.52 strand miles, all as may further be described in Exhibit A attached hereto (the "User System"). User will work with Owner to define connections to facilities within the Fiber System.

3. TERM.

3.1 Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement is for ten (10) years (one hundred and twenty (120) months) (hereinafter referred to as the "Initial Term"). After the Initial Term, User and Owner shall have the right to renew this Agreement for an additional mutually acceptable period of time at then mutually agreed upon pricing and terms ("Extended Term"). Such Extended Term shall be memorialized in writing from User to Owner at least one hundred and eighty (180) days prior to termination of the Initial Term. In the event that the Parties do not renew this Agreement, this Agreement shall terminate. The entire duration this Agreement is in full force and effect (Initial Term and any Renewal Term) is referred to herein as the "Term".

4. CONSIDERATION.

4.1 As consideration for, as inducement to, and as a required condition of Owner granting User the specific rights to use portions of the Fiber System (the "User System") as described herein, User hereby agrees:

a. To compensate Owner in the annual recurring amounts as provided for in Exhibit A attached hereto, which shall also include all non-recurring costs as listed or otherwise negotiated by the Parties.

b. To perform all User obligations and pay any reasonable additional fees or costs to Owner as may be defined herein.

c. That any failure of User to satisfy the terms and conditions of this Agreement shall be considered a material breach of this Agreement and Owner may then terminate this Agreement upon giving sixty (60) days written notice to User.

5. OWNER'S OBLIGATIONS.

5.1 Owner shall:

a. Provide the User System for User's use in accordance with the terms of this Agreement.

b. Provide and/or control maintenance and repair functions on the User System and all facilities in the Fiber System through which the User System passes, including, but not limited to, conduit, innerduct, poles and equipment, shall be performed under the direction of Owner.

c. Maintain the User System to User's reasonable specifications.

6. USER OBLIGATIONS.

6.1 User shall:

a. When lateral connectivity is not provided by Owner, provide and pay for lateral connectivity from necessary termination points of User's proprietary fiber and equipment to the necessary demarcation points of Owner's Fiber System. In this event User shall own the lateral.

b. Pay for any building or external network service connection and disconnection charges for each building service added or deleted before, during or after the initial establishment and cutover of a User System fiber segment. User shall be responsible for any and all costs associated with lateral connectivity to the Fiber System and shall pay for the costs of all splicing, distribution segment, service connections, and any ring or concentrator operations.

c. Pay all necessary costs if User requires installation of a new distribution ring or concentrator in an already established Fiber System or User System distribution segment, rearrangement of existing service connections, and rearrangement of a ring or concentrator operation.

d. Agree that it shall not sublease or subdivide the User System unless otherwise agreed to in writing by Owner. Reasonable Use of the User System by User and User's elected officials, officers, employees, agents, or volunteers shall be allowed and not be considered an improper sublease or subdivision of the User System. "Reasonable Use" shall be defined as the lawful and responsible use of the User System by User and User's elected officials, officers, employees, agents, or volunteers in furtherance of and in accordance with User's non-profit business operations and purposes. User further agrees that any use of the User System, either by User, its elected officials, officers, employees, agents, or volunteers, shall continually meet the requirements of this Agreement. In the event of any breach of the provisions contained in this Section, Owner has the right to terminate this Agreement upon giving thirty (30) days written notice to User.

e. Agree to pay any and all maintenance costs as may be required to be paid by User pursuant to the requirements of Section 8.1(a-c) below.

7. JOINT OBLIGATIONS.

7.1 Owner and User jointly:

a. Agree that within thirty (30) days of final execution of this Agreement the Parties will agree upon an Acceptance Plan for User's initial activation and the "go-live" of User's System.

b. Shall provide each other a twenty-four (24) hour a day, three hundred sixty-five (365) days per year, coordination telephone number.

8. MAINTENANCE.

8.1 All maintenance and repair functions on the User System and all facilities through which the User System passes, including, but not limited to, conduit, innerduct, poles, and equipment, but specifically excluding all User owned and controlled opto-electronics, shall be performed by or at the direction of Owner or Owner's appointed agent(s) with reasonable notice to User. Except as otherwise may be agreed to by the parties, User is prohibited from performing any maintenance, repair or splicing on the Fiber System or User System. User shall have the right to have an employee or representative available to assist Owner in any maintenance or repair of the User System. Owner shall maintain User System in accordance with the technical specifications (hereinafter referred to as the "Specifications") attached hereto in Exhibit B.

a. Regular Maintenance: Owner may from time to time undertake and provide for Regular Maintenance activities in an attempt to keep the Fiber System and/or User System in good working order and repair so that it performs to a standard equal to that which is then commonly believed to be acceptable for systems of similar construction, location, use and type. Such Regular Maintenance shall be performed at Owner's sole cost, and expense.

b. Scheduled Maintenance: Owner from time to time may schedule and perform specific periodic maintenance to protect the integrity of the Fiber System and/or User System and perform changes or modifications to the Fiber System and/or User System (including but not limited to fiber slicing, etc.) at User's request. Such User requested Scheduled Maintenance shall be performed at User's sole cost and expense. User may request such Scheduled Maintenance by delivering to Owner a Statement of Work detailing the service User desires to be performed, including the time schedule for such services. Upon receipt of such a Statement of Work, Owner will provide an estimate of the price and timing of such Scheduled Maintenance. Following User's acceptance of such estimate, Owner will schedule and have such Scheduled Maintenance performed. Owner will have such Scheduled Maintenance performed on a time-and-materials basis at the standard rates then in effect at the time services are performed.

c. Emergency Maintenance: Owner may undertake and provide for Emergency Maintenance and repair activities for the Fiber System and/or User System. Where necessary, Owner shall attempt to respond to any failure, interruption or impairment in the operation of the User System within Twenty-Four (24) hours after receiving a report of any such failure, interruption or impairment. Owner shall use its best efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of the User System when reported by User in accordance with the procedures set forth in this Agreement. User shall be responsible for the costs and expenses associated with such Emergency Maintenance as it relates to User's actual use of the User System and/or Fiber System requiring such Emergency Maintenance. Owner will have such Emergency Maintenance performed on a time-and-materials basis at the emergency maintenance rates then in effect at the time services are performed

8.2 In the event Owner, or others acting in Owner's behalf, at any time during the Term of this Agreement, discontinues maintenance and/or repair of the User Systems, User, or others acting in User's behalf, shall have the right, but not the obligation, to thereafter provide for the previous Owner provided maintenance and repair of the User System, at User's sole cost and expense. Any such discontinuance shall be upon not less than six (6) months prior written notice to User. In the event of such discontinuance, Owner shall obtain for User, or others acting in User's behalf, approval for adequate access to the Rights of Way in, on, across, along or through which the User System is located, for the purpose of permitting User, or others acting in User's behalf, to undertake such maintenance and repair of the User System. As an alternate remedy, User may elect to terminate this Agreement should Owner discontinue maintenance and/or repair of the User System.

8.3 In the event any failure, interruption or impairment adversely affects both Owner's Fiber System and User System, restoration of the User System shall at all times be subordinate to restoration of Owner's Fiber System with the exception of special priority for Users's public safety and municipal infrastructure functions carried over the Fiber System, unless otherwise agreed to in advance by the parties hereto. In such event or in the event Owner is unable to provide timely repair service to the User System, Owner may, following written request, permit User to make repairs to restore the User System as long as such restoration efforts do not interfere with Owner's restoration activities.

8.4 Any User subcontractors or employees who undertake repair or maintenance work on the User System shall first be approved by Owner to work on Owner's Fiber System. Prior to User's undertaking Emergency Maintenance or entering an Owner's facility for repair, User shall first notify Owner of the contemplated action and receive Owner's concurrence decision, a decision that Owner shall provide to User no later than twelve (12) hours from User's notification to Owner of contemplated action. When User undertakes Emergency Maintenance of the User System, User shall have an Owner employee or representative available to assist User in any repair of the User System.

9. USE OF USER SYSTEM.

9.1 User shall have exclusive control over its provision of telecommunications, video, data, and/or information services.

9.2 User hereby certifies that it is authorized or will be authorized, where required, on the effective date of this Agreement to provide telecommunications, video, data, and/or information services within the State of Ohio, the City of Monroe, Ohio and in such other jurisdictions as the User System may exist, and that such services can be provided on the Fiber optic cable systems such as the Fiber System owned and operated by Owner.

9.3 User understands and acknowledges that its use of the Fiber System and the User System are subject to all applicable local, state and federal laws, rules and regulations, as enacted, either currently or in the future, in the jurisdictions in which the Fiber System and the User System are located. User represents and warrants that it shall operate on the Fiber System and the User System subject to, and in accordance with, all laws, rules and regulations and shall secure all permits, approvals, and authorizations from all such jurisdictional entities as may be necessary.

10. INDEMNIFICATION.

10.1 The User, to the extent allowable under Ohio law, shall indemnify, protect, defend, and hold harmless the Owner and its affiliates, officers, elected officials, directors, employees, partners and agents from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or severable, expenses of any nature (including reasonable attorneys', accountants' and experts' fees and disbursements), judgments, fines, settlements and other amounts (collectively, "Damages") arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (collectively "Claims") relating to or arising out of:

a. User or its elected officials, officers and employees, agents, or volunteers use of the Fiber System or User System, except to the extent such Damages are caused by Owner or its affiliates, officers, directors, employees, partners, clients, customers, or agents;

b. Any breach by User or its elected officials, officers and employees, agents, or volunteers of any material obligation or covenant under this Agreement;

c. Any claim of any third party resulting from the negligence or willful misconduct of User or its elected officials, officers, employees, agents, or volunteers.

11. INSURANCE.

11.1 INTENTIONALLY RESERVED/DELETED.

12. DEFAULT.

12.1 Unless otherwise specified in this Agreement, User shall not be in default under this Agreement, or in breach of any provision hereof unless and until Owner shall have given User written notice of a breach and User shall have failed to cure the same within thirty (30) days after receipt of a notice; provided, however, that where such breach cannot reasonably be cured within such thirty (30) day period, if User shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by User to timely cure any such breach after notice thereof from Owner, Owner shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue such other remedies as may be provided at law or in equity.

12.2 Unless otherwise specified in this Agreement, Owner shall not be in default under this Agreement or in breach of any provision hereof unless and until User shall have given Owner written notice of such breach and Owner shall have failed to cure the same within thirty (30) days after receipt of such notice;

provided, however, that where such breach cannot be reasonably be cured within such thirty (30) day period, if Owner shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such breach shall be extended for a reasonable period of time to complete such curing. Upon the failure by Owner to timely cure any such breach after notice thereof from User, User shall have the right to take such action as it may determine, in its sole discretion, to be necessary to cure the breach or terminate this Agreement or pursue other remedies as may be provided at law or in equity.

12.3 If User, shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of User, as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of all or substantially all of the assets of User shall be appointed then Owner may, at its sole option, immediately terminate this Agreement.

13. FORCE MAJEURE.

13.1 Neither Party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; adverse weather conditions; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore; lack of transportation; national, state or local emergencies; insurrections; riots; public health crisis; wars; or strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events").

14. ASSIGNMENT.

14.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns; provided, however, that no assignment hereof or sublease, assignment or licensing (hereinafter collectively referred to as a "Transfer") of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each Party hereto. Said consent shall not be unreasonably withheld.

15. WAIVER OF TERMS OR CONSENT TO BREACH.

15.1 No term or provision of this Agreement shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver of or consent to any subsequent or different breach of this Agreement by the other Party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

16. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY.

16.1 The relationship between User and Owner shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency Agreement between the Parties hereto.

17. NO THIRD-PARTY BENEFICIARIES.

17.1 This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and shall not be construed as granting rights to any person or entity other than the Parties or imposing on either Party obligations to any person or entity other than a Party.

18. EFFECT OF SECTION HEADINGS.

18.1 Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

19. NOTICES.

19.1 Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Agreement:

If to Owner:	If to User:
SouthWest Ohio Computer Association 3611 Hamilton-Middletown Rd Hamilton, OH 45011 Phone: (513) 867-1028 Facsimile: (513) 867-0754	City Manager City of Monroe, Ohio 233 South Main Street Monroe, OH 45050 Phone: (513) 539-7374 Facsimile: (513) 539-6460
	With a Copy to: Law Director City of Monroe, Ohio

233 South Main Street
Monroe, OH 45050

And :
Christopher L. Miller
Ice Miller, LLP.
250 West Street
Columbus, OH 43215

19.2 Either Party may, by written notice to the other Party, change the name or address of the person to receive notices pursuant to this Agreement.

20. SEVERABILITY.

20.1 In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Agreement.

21. COMPLIANCE WITH LAW.

21.1 Each Party hereto agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable laws, rules and regulations.

22. GOVERNING LAW AND VENUE.

22.1 This Agreement shall be interpreted in accordance with the Charter and Codified Ordinances of the City of Monroe, as amended, the laws of the State of Ohio, and all applicable federal laws, rules and regulations as if this Agreement were executed and performed wholly within the State of Ohio. No conflict of law provisions shall be invoked so as to use the laws of any other jurisdiction. The exclusive venue for all cases or disputes related to or arising out of this Agreement shall be the state and federal courts in Butler County, Ohio

23. ENTIRE AGREEMENT.

23.1 This Agreement, including any Exhibit attached hereto, all constitute the entire agreement between the parties with respect to the subject matter. This Agreement cannot be modified except in writing signed by both parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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IN WITNESS HEREOF the parties have executed and delivered this Agreement effective the day and year first above written:

OWNER:

D. Davis Norris
By: Donna Davis Norris
Its: Executive Director
Date: 6.09.20

USER:
City of Monroe, Ohio
an Ohio municipal corporation.

By: William J. Brock
Its: City Manager
Date: 7.13.20

Approved As To Form:

Law Director
City of Monroe, Ohio.

Exhibit A

OWNER FIBER SYSTEM AND COSTS

User System Fiber Route and Path

Four (4) total fibers (2 Pair) along a 2.63 mile path, for a total of 10.52 strand miles. The path originates at a mid-span meet point located at the north-east corner of the intersection of Hamilton-Lebanon Road (US 63) and Yankee Road, with an approximate GPS location of 39°26'41"N and 84°23'17"W, proceeding west along Hamilton-Lebanon Road, and then southwest along Hamilton-Middletown Road, to the Western corner of the intersection of Hamilton-Middletown Road and Roden Park Drive, with an approximate GPS location of 39°26'28"N and 84°25'49". User System shall not include any Owner provided premise based equipment, internet service, or other network services not otherwise described in this Agreement.

Route Map:

Annual Consideration for Owner Provision of User System

User will compensate Owner $225.36 monthly ($2,704.32 annually) for the User System during the term of this Agreement. For convenience, Owner will bill User for monthly charges on a quarterly basis. Each quarterly invoice shall be for $676.08. Invoices shall be remitted to User by Owner in August, October, January and April. These billings may be partially in advance. User, unless otherwise reasonably disputing an invoice, shall pay Owner's quarterly invoices within forty-five (45) days of receipt.

Additional Installation Work by Owner and Construction Costs

As part of this Agreement and for the costs as detailed immediately below, Owner will construct certain necessary fiber interconnects from Owner's existing fiber path into three (3) existing traffic cabinets, and interconnects with the User's existing proprietary network. Costs below are initial third-party budgetary estimates, and may vary based on third-party costs. Any variance from this budget shall be submitted to the customer for written approval in advance, and considered an addendum to this agreement once mutually agreed to in writing by the Parties. Such constructed fiber interconnects will be managed by Owner throughout the term of this Agreement, but for that avoidance of doubt, such interconnects upon termination shall be considered property of User.

Roden Park & Canal	
Handhole By Traffic Cabinet	$600.00
Splice Capsule	$250.00
100 FG 48 Count Fiber	$50.00
Splicing	$1,500.00
	$2,400.00
Holly Tree / Clark	
Trenching - Cabinet to Pole (165 Ft)	$600.00
200 Ft 48 Count Fiber	$100.00
Splicing	$1,500.00
	$2,200.00
Salzman Rd	
100' Fiber on Traffic Pole	$50.00
Splicing	$1,500.00
	$1,550.00
Yankee Rd MSMP	
100' of Fiber on Traffic Pole	$50.00
Splicing	$1,500.00
	$1,550.00
Total	**$7,700.00**

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Exhibit B

FIBER SYSTEM SPECIFICATIONS

I. General

Owner shall install, provide and maintain the User System within Owner's Fiber System in accordance with the Agreement and the criteria and specifications that follows:

II. Design Criteria

Owner will endeavor to keep the number of splices in a span to a minimum.

III. Optical Fiber Specifications

Owner agrees that the Fiber System and any Owner provided fiber in the User System will meet or exceed local industry standard regarding optical specifications and performance for systems of a similar nature and architecture. Owner will work with User to ensure that fiber reasonably meets User's needs for User's intended use throughout the term of the Agreement.

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ORDINANCE NO. 2023-08

AN ORDINANCE IMPOSING A MORATORIUM FOR A PERIOD OF 180 DAYS ON THE GRANTING OF ANY NEW PERMITS ALLOWING RETAIL DISPENSARIES FOR MEDICAL MARIJUANA WITHIN THE CITY OF MONROE.

WHEREAS, the City of Monroe desires to coordinate regulations regarding the location and operation of businesses within the City, including retail dispensaries for medical marijuana; and

WHEREAS, for the purposes of this Ordinance, "retail dispensaries" have the same meaning as defined in Chapter 3796 of the Ohio Revised Code; and

WHEREAS, the State of Ohio previously enacted laws concerning medical marijuana; and

WHEREAS, Ohio Revised Code Section 3796.29 allows municipalities to prohibit and/or limit the location of retail dispensaries for medical marijuana within corporate limits; and

WHEREAS, the State of Ohio Board of Pharmacy recently adopted regulations allowing for additional medical marijuana dispensary licenses in the State of Ohio; and

WHEREAS, it is recommended that the City Administration review and make recommendations on the issue to conform to the City's goal of providing adequate regulations to ensure the public peace, health, safety and welfare of its citizens; and

WHEREAS, a moratorium on the granting of permits within the City of Monroe will allow the City time to accomplish these goals.

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

<u>SECTION 1</u>: The Monroe City Council seeks a moratorium on permits for the establishing and/or relocation of retail dispensaries for medical marijuana to preserve the public peace, health, safety, and welfare of the citizens of Monroe, Ohio.

<u>SECTION 2</u>: The Monroe City Council seeks to limit the duration of the moratorium and to request immediate investigation and review of proposed comprehensive regulations on the establishment of retail dispensaries for medical marijuana within the 180 day period of the moratorium.

<u>SECTION 3</u>: That Monroe City Council hereby imposes a moratorium on permits for the establishment of retail dispensaries for medical marijuana for a period of 180 days from the effective date of this Ordinance and directs that no permits shall be issued for these facilities during the 180 day period of the moratorium.

SECTION 4: That Monroe City Council further finds that a moratorium for 180 days is reasonable and will allow a study for comprehensive regulations.

SECTION 5: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED:____________________

ATTEST: APPROVED:

____________________________________ ____________________________________

Clerk of Council Mayor

First Reading:_______________