

**CITY OF HURON UTILITIES COMMITTEE**  
**Minutes of the Meeting**  
**February 2, 2021 – 5:00pm**

The Huron Utilities Committee was called to order by Committee Chair, Joel Hagy, on Tuesday, February 2, 2021 at 5:00pm in Council Chambers at Huron City Hall, 417 Main Street Huron, Ohio.

**MEMBERS PRESENT:** Christine Crawford and Joel Hagy. Also in attendance: Interim City Manager Mike Spafford, Finance Director Cory Swaisgood, Water Superintendent Jason Gibboney, City Engineer Doug Green, Utilities Consultant Mike Spacek.

**New Business**

**Scope of Committee.**

Mr. Hagy said that we had discussed the committee's scope would be water, sewer, power, broadband, refuse, cable and stormwater. There was some discussion about the rate impact of the sale of the HPP transmission assets on Mucci's rate. Mr. Spafford said this discussion will happen in both the Finance and Utilities Committees at the same time.

**AMP-T Sale/Mucci Rate Structure**

Mr. Swaisgood said the City received the \$2.1 Million sale proceeds from AMP-T on Monday, which is probably the largest transaction to ever come into the City's bank account. Mr. Swaisgood said that bond counsel has advised that the proceeds of the transmission asset sale must be used to pay down the existing debt for the HPP substation. Mr. Hagy asked, if we have a rate change with Mucci, can that rate go beyond Mucci – can that rate go to the next company that we sign on? Mr. Spafford said the way it is structured now is that Mucci has its own special rate. HPP was created as an economic development tool, and to not have to renegotiate these things every single time, we are considering a general service rate and a general service primary rate. The general service primary rate would be for higher tier or larger scale customers that is a little more economical/cost effective rate. Mucci would be eligible for this higher tier rate, as would any other customer who crosses a certain usage threshold. The City would like to make this something that future larger customers are eligible for. Strategy would be discussed at the Utilities Committee, and the financial impact would be discussed at the Finance Committee level, followed by legislation considered by Council. Mr. Spafford discussed in general terms the ongoing discussions and proposed rate structure with Mucci Farms. The basic premise is that Mucci's rate is based on the cost of power purchased from AMP, which would be fixed, plus the City of Huron's distribution revenue. While things have worked out to date, both parties would feel more comfortable at this time to fix the rate. Mr. Spafford said that they do not need any action from the Utilities Committee, but wanted to give the Committee an update.

**Republic Services Contract**

Mr. Hagy said there are a lot of complaints about Republic – leaving trash on the street, missing pickups, etc. The current contract goes through June of 2022. In 2022, the City will become upside-down on revenue. When Ms. Crawford asked if a resident could contract directly with another company, such as Cyclone, Mr. Spafford said they cannot, but the next step may be to offer an "opt in" program. The City does what it does to obtain a guaranteed rate through the best bid. What we don't have is the opportunity to opt out and contract your own. He thinks that would help significantly in that if you have complaints about service, you have the opportunity to use another hauler. Ms. Crawford said that she sees Cyclone trucks on Mondays, as well. Mr. Spafford said Cyclone does not offer recycling. Republic is the only company that offer full curbside service. In terms of the level of services that we provide, especially for a community of our size, for the cost we provide it for is nonexistent if we didn't have this contract. People who contract with Republic just outside of our jurisdiction, they regularly pay \$95-\$150 a quarter, usually

just for trash, and maybe recycling. For \$65/quarter we offer monthly bulk pickup, unlimited curbside yard waste year-round, recycling and garbage. The service isn't always perfect, but the alternative is a lot more expensive for less service. Ms. Crawford said with those extra services, there will be brush piles, refrigerators on front porches, etc. Mr. Hagy said he doesn't have a problem with Republic – they make mistakes, but everyone makes mistakes. He wondered if we should show our residents what it would cost if they went with one of the two other companies – without recycling, or bulk pickup or yard waste, etc. Ms. Crawford said a newsletter article might be helpful. Mr. Hagy said staff just needs to stay on them, because he does see a lot of trash in the street – he wonders if there is a communications solution to this. Mr. Swaisgood said we do have an email contact now. Ms. Crawford said the one time her trash was missed, she called and it was picked up the next day. Mr. Spafford said we did go out to bid for the Republic deal (they were the only bidder). There are very few providers because Republic has bought all of them. There are few companies that have the capacity to provide the services we require. We require the City to be picked up in one day – that's not insignificant. If we didn't the impact would be that you would have 7 or 8 different haulers with trash trucks throughout the City every date of the week. Not only is our service one day a week, but is on, arguably, the most desirable day. Ms. Crawford thought that if the City decided to offer an "opt in" to its residents, that would provide enough incentive for Republic to pick up their game. Mr. Hagy said that he wants public discussions about why we are going to have to increase garbage pickup fees. He would rather increase the rate with people feeling like they are getting a pretty good deal as opposed to thinking Republic is terrible and they don't want to pay more. Mr. Spafford said that even with a \$5 increase, they is still 30% lower than everyone else around us.

#### New Projects

Mr. Hagy said we have a lot of great ideas regarding the water plant and HPP upgrades and broadband, but his question is, "How do we get going on one?" Mr. Hagy thought we should prioritize them. His frustration is we talk about, he gets jazzed about them – what's step 2? Mr. Spafford said we could vet those ideas out in this group and then one of the two Council members on the committee works with the Clerk and the Law Director to draw up legislation or a motion to direct the administration to move on it. The list on projects includes: expand HPP, broadband, water for Vermilion and Northern Ohio Rural Water (monetizing the water plant expansion). Mr. Gibboney said he does not know when their existing contracts expire – they purchase from Elyria and several others – it is a timing game, as well. Ms. Crawford said that it would be helpful to have those dates so that we know that we have work several months out. Ms. Crawford asked about the storm water issue at Grand Forest Beach. Mr. Spafford said that is a private street. Unfortunately, that is one of the lowest properties in the City, and it actually ramps back before it goes into the lake, which is then exacerbated by high lake levels. To put in drainage infrastructure, you would have to justify the use of public funds on private property, you would need many easements and then you have to make a cost analysis of how effective the infrastructure given you have so much working against you (lift stations may be necessary). When we don't have high lake levels, the issue not as bad. There are certain areas – Pittsburgh Avenue probably gets the worst of it – that still have issues. Ms. Crawford said she empathizes with them; they want the autonomy of being private, but then... that's a complicated one.

With regard to monetization of the water plant expansion, Ms. Crawford said Council needs to put in blanket legislation to authorize Jason and his team to pursue any avenues that are out there when they are ready to do so. Mr. Gibboney said some of the discussions would be better at a roundtable, and might be something where we need Poggemeyer to refresh some numbers on some of the studies, as it has been a number of years. Overall, our rate has not changed since the study was conducted – Vermilion has gone up considerably. The expansion is slated to be done by the end of the year. The county would be involved in any deal because we would be using their pipes. Mr. Spafford said staff doesn't necessarily need authorization to have these conversations, but it would be a good idea to bring it up during the meeting to let Council know we will be looking into the next steps. Mr. Spafford said there may be some upfront cost, such as a feasibility study, as well. Mr. Gibboney said they used a grant to fund the entire study the

first time around, and there is still money available from the EPA. It is likely that we would be able to get some funding. In any event, updating the existing study would be minimal. If we want to do a similar study with a different community in northern Ohio, we could likely get that funded without much issue. Mr. Gibboney said we are predicting peak water usage at around of 4 Million/day. If we are rated at 5.8 Million, you should have a 1.5 Million excess. Vermilion would consume less than 1 Million gallons per day. The increase over the last year is primarily due to usage at Mucci Farms (approximately 300,000 gallons/day), which adds up pretty quickly. The County's consumption has gone up roughly 30 Million gallons. Mr. Gibboney expects an uptick in Mucci usage for 2021 due to Phase 2. One possibility is looking at raising the ceiling on the County's contract. They are currently capped at 1.5 Million gallons/year – we can certainly look at raising that up to 2 Million. There may be more usage due to the COVID-19 pandemic with more people staying at home during the day. If we are able to secure a new large customer, Mr. Gibboney said the overall rate should be adjusted to take care of repairs to infrastructure. Our water rates have not been adjusted for 13 years.

### Broadband

Mr. Spafford said staff first explored the idea of broadband in 2018, which didn't have much traction with Council at the time. The full proposal is for a feasibility study for a city-wide broadband initiative, which would include complete fiber install, creation of an ISP and the City would either farm out or create its own internet utility department. The cost for the study in 2018 would have been \$95,000, which included community outreach, very preliminary engineering to get cost estimates, general survey to see what a subscription base might look like and building 20-30 year financing projections to see how that would look. In following up, several cities that have rolled this out had very good success, acknowledging the fact that this is a massive undertaking with a hefty price tag. The feasibility study may be a good way to test the water. This new proposal is for a small-scale study that would look at creation of a smaller-scale broadband utility that might be targeted to certain areas that have high commercial use, etc. He is not advocating for that – his general opinion is that based on the cost differences between the two studies is that he thinks it would be worthwhile to do the city-wide study. The reduced scale may be the outcome of that study, but at least we are looking at all options without looking at certain corridors. Internet is now an essential utility to exist in today's economy. It is an economic development tool – this is something that could really put us on the map in terms of bigger conversations beyond our other competitive advantages.

Ms. Crawford asked if we have funds available for the study. Mr. Swaisgood answered that we do with the funds that landed in the Economic Development Fund from the AMP-T transmission assets sale. Mr. Swaisgood feels pretty good that we could do this this year if Council desires. If Council decides to go forward with the project, the City will most likely be taking on debt to do the construction, at which time that debt could be used to reimburse ourselves for the \$95,000 study. That puts money back into that fund for the next project. Mr. Spafford said this effort is to put forth a plan. It is not to put forth a fully city-owned, city-operated system. This study will evaluate ways in which the City can participate and provide fiber optic network or internet. The study will undertake the mechanics to get that done. The study will hopefully help us to decide if we should go with a smaller scale. The other component is operational – they are going to explore there are private utilities that would come in and lease the infrastructure back from the City – in that case all the City's involvement is to back the financing and do the infrastructure and we lease it to a private company, even if that private company ends up being Buckeye. If nothing else, everyone's service will be upgraded. In Fairlawn, if you have an internet issue, a city official comes out to your house and does all of the technical work. Fairlawn's all-in cost back in 2016/2016 was approximately \$14 Million to build the whole thing. That is a combination of aerial lines, underground lines, the data center, etc. When they did their initial feasibility study, they never envisioned having an internal department. They contracted with a communications company that operated on lease and provided all customer service and support. Their subscription based blew the projections out of the water so quickly that they pulled everything internally and now operate it themselves. They had all three providers already in their City, so they were assuming a 35% subscription base. They hit 75% in 3 years.

Their residential rates are around \$60/month for 100 up/down. We have to hire the professionals to do the study, and the onus is on them. People are more used to the study concept because that is how it gets started. It would be ideal to have messaging throughout this proposal, and Mr. Spafford thinks we can do that without some of the data this is going to provide. Ultimately, the data points that come out of the study are what are going to sell the big project of actually putting the fiber in. \$100,000 as the initial hurdle is not insignificant, but knowing how the \$14 Million of debt will be structured is going to be necessary to move forward. The small study is more of an economic development tool, putting in a robust internet service as one more thing we offer to the business community. The all-inclusive study is for city-wide broadband. The difference in cost is \$20,000, and Mr. Hagy said that you are significantly handicapped in your knowledge after it is done with the smaller study. Ms. Crawford said the small study won't address the citizen's complaints. It is a great economic development tool, but this this last year taught us that communication is essential and it's going to go nowhere but further this way. Mr. Hagy said a primary focus is looking at what we can do for school students to get access to this broadband – we have to come up with programs to help these kids.

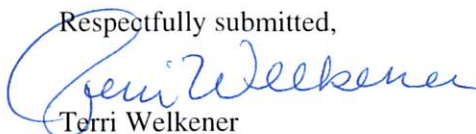
Mr. Spafford suggested that since the schools and BGSU Firelands would both benefit from internet, we are also not limited by jurisdictional bounds. This does not, necessarily, have to be a city-only project, and can serve customers outside of the jurisdiction, as well. Agreement to utilize rights-of-way or Ohio Edison poles can be used to get to outside areas. The question would be, is the City comfortable using City funds to serve customers outside of the boundaries of its jurisdiction.

As was done in Fairlawn, Mr. Spafford said free hotspots for citizens and visitors would be implement at the boat basin, etc., as part of the program. All of our service vehicles have systems that are run digitally through the internet, so they are constantly connecting to the City's internet. Police are in the jurisdiction at all times, but fire has a complication with the need for a backup system because they are constantly running to the hospital and back – that is another added benefit. Other cities have put repeaters on all of their street signs.

The franchise agreement we currently have with Buckeye Cable is now considered to be unconstitutional as of 2007, but because it was already existing, it is enforceable until expiration. This agreement expires in 2022. There is a subsequent structure that Mr. Spafford and the Law Director are researching called a video service authorization. It is very similar, but the concern is that as the use of cable for video services goes down, the ability to monetize cable will decrease. The licensing agreement bring \$120,000-\$130,000 revenue generation piece to the General Fund now. 5% of all gross revenues for video services by Buckeye would be subject to the video service agreement (does not include internet). Fairlawn does not do any video, only broadband. Fairlawn does a lot to educate the population how streaming works, and they offer rebates for devices as well. Ms. Crawford said that this is a quality-of-life issue. For a community our size, it's almost like a give-back to our citizens. They are going to pay, but at a greatly reduced rate, and the economic development tool is huge. Mr. Spafford said the bulk of our City is 40' wide lots; that itself is an economy of scale. To go overhead, we would agreements to use the poles with Frontier or Ohio Edison. Buckeye is mostly underground, although they do use a few poles.

Mr. Hagy made a motion to adjourn, all in favor. The meeting of the Utilities Committee was adjourned at 6:19pm.

Respectfully submitted,



Terri Welkener

Executive Administrative Assistant/Clerk of Council  
(minutes were prepared from digital recording)





February 5, 2021

Mr. Matthew Lasko  
City of Huron  
417 Main Street  
Huron, Ohio 44839

ATTN: Mr. Mike Spafford  
Assistant to the City Manager

RE: **Broadband Feasibility Study - Phase I**  
**Environmental Design Group No. 18-00321-01P**

**CORPORATE**

450 Grant Street / Akron, OH 44311  
P 330.375.1390 / F 330.375.1590  
TF 800.835.1390

**CLEVELAND OFFICE**

2800 Euclid Avenue, Suite 509  
Cleveland, Ohio 44115

**COLUMBUS OFFICE**

88 East Broad Street, Suite 880  
Columbus, Ohio 43215

[envdesigngroup.com](http://envdesigngroup.com)

Dear Mr. Spafford,

Environmental Design Group is submitting the following proposal to the City of Huron (Client) for the referenced project in response to the City's interest to study the potential economic benefits and improved services of a proposed fiber-optic broadband utility service.

Based on our recent meetings, we understand that the City of Huron is interested in pursuing the initial feasibility study for the development of a city-wide municipal broadband utility for use by its residents and businesses. The City would like to understand the feasibility of 1) the implementation of a municipal broadband utility; and 2) the financial impact the addition of this infrastructure would have on the City.

High-speed broadband accessibility has grown in popularity and is considered superior to the DSL, cable, and wireless broadband systems that may be available. The goal of this project is to address the questions raised by City personnel at our recent meeting relative to the development of a fiber-optic broadband (FOB) network to support the municipal broadband utility.

## **SCOPE OF SERVICES**

The services to be performed by Environmental Design Group are as follows:

### **Part 1: Data Collection and Research**

- A. Obtain GIS mapping of the County, plus drawings and other information from the City pertaining to zoning, right-of-ways and easements, as well as city-owned utility infrastructure, particularly the City's electric system, water system, and existing fiber optic cable.
- B. Develop a base map to be used for analysis.
- C. Contact existing broadband providers currently serving the businesses and residents within the City and obtain the location of existing fiber installed and owned by them. Add this information to the base map as needed.
- D. Perform field review to confirm data collection.

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- E. Review existing City zoning map and population density to gain an understanding of the ratio of potential business and residential customers.
- F. Gather data and interview City staff with respect to existing City personnel and maintenance equipment, and their availability to support a new municipal broadband utility department.
- G. Provide review and analyze City municipal charter, codified ordinances, and existing Franchise Service Agreement (Ordinance No. 2002-27) and provide legal guidance. Prepare a written memorandum that analyzes the legal issues and outlines recommendations.
- H. Develop and provide the City with a municipal broadband survey. City will solicit community input to gauge interest in signing up for municipal broadband utility services via survey, collect results, and provide to Environmental Design Group.

#### **Part 2: Project Budget Development and Feasibility Report**

- A. Determine boundary and limits of the initial municipal broadband utility service area.
- B. Perform a needs assessment based on the determination of infrastructure needed and existing conditions based on desired municipal broadband services.
- C. Determine feasible connections to provide redundant high-speed internet connectivity.
- D. Perform planning level analysis to estimate costs for design and construction for project to provide fiber to the home and or premise through the City. The analysis will include a comparison of City vs. concessionaire for operation and maintenance of broadband utility infrastructure.
- E. Submit a report with a recommendation of feasibility. Attend one (1) meeting.

### **PROJECT QUOTATION**

Environmental Design Group proposes to complete the tasks described in the above Scope of Services for a **total lump sum fee of Eighty-five Thousand Two Hundred Seven Dollars and Four Cents (\$85,207.04)** and as broken out as follows:

<b>Part 1: Data Collection and Research</b>	<b>\$34,289.94</b>
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<b>Part 2: Project Budget Development and Feasibility Report</b>	<b>\$50,917.10</b>
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### **PROJECT SCHEDULE**

Environmental Design Group will complete the tasks defined in the above Scope of Services within one hundred twenty (120) days of receiving written authorization to proceed.

### **ASSUMPTIONS AND EXCLUSIONS**

Below is a list of assumptions and exclusions that apply to this proposal for technical services. These items were considered while defining the scope and fee for Environmental

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Design Group's services and further explain the responsibilities of Client and Environmental Design Group.

1. Unless the Client designates an alternate in writing, the person signing the agreement will be considered the Client's only official representative with respect to this agreement.
2. Client will provide engineering and surveying data and other existing information in the client's possession to Environmental Design Group that may be useful in the performance of the professional services described in the proposal. These items include Environmental Site Assessments, Wetland Delineations, Boundary Surveys, Topographic Surveys, ALTA Surveys, plans and specifications of existing facilities and similar documents.
3. Client will make all provisions for Environmental Design Group personnel to enter upon public and private lands as required to perform the described services.
4. This proposal outlines the agreed upon scope of services. It supersedes any other previous requests, discussions, or versions including request for proposals or other owner initiated scope documents.
5. This proposal is based upon the current regulations of the applicable local, county and state regulatory agencies. While Environmental Design Group does not anticipate major changes in these regulations, changes in rules adopted by the agencies during the project process may affect the fees quoted herein and Environmental Design Group reserves the right to renegotiate such fees accordingly.
6. Fees for Permits or Plan Reviews or any other fees to governmental agencies are not included in this proposal. It is the responsibility of the Client to pay these fees at the time of submittal if any such fee is encountered.
7. Environmental Design Group offers professional services and will work to accomplish the client's goals, but the fees established herein shall be paid regardless of the outcome. Environmental Design Group will advise the Client on the likely approvability of the project, but cannot guarantee that the desired approvals by regulatory agencies will be granted. Unfortunately, such approvability is not certain until the project has gone through the entire regulatory processes.
8. Environmental Design Group has included normal review durations by the public agencies, based on our experience, in the project schedule contained herein. However, the actual duration of such reviews is beyond the control of Environmental Design Group and extended review periods may impact and/or delay project completion.
9. If Environmental Design Group identifies an event or condition which under applicable law requires a report or notification to a government agency, the Client will report or notify the appropriate agency. Any additional costs associated with reporting or documentation to a government agency, will be the responsibility of the Client.
10. This proposal has been based on a continuous project development process from start to finish. After the project is authorized, should the project be put on hold by the Client, or otherwise be pursued in a start-stop-resume manner, Environmental Design Group reserves the right to renegotiate the fees established herein to account for the extra costs resulting therefrom.
11. Opinions of construction cost or estimates of construction cost prepared by Environmental Design Group under this agreement are just that. Environmental Design Group does not warrant or guarantee that the project can be constructed for those amounts and the Client agrees that Environmental Design Group cannot be held liable for any discrepancies between bid costs and our opinions or estimates.
12. In the event the proposal indicates that survey data, including a topographic survey performed by others, is to be provided by the Client, the Client is responsible for the accuracy of the data provided to Environmental Design Group for use in the design process. If any discrepancies, or inaccuracies are identified in the provided information, the Client will be responsible for providing revised data or any additional data required. Any review or coordination time required on the part of Environmental Design

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Group to obtain such adequate information will be considered an additional service under the terms of the agreement. Environmental Design Group will not be responsible for any costs associated with redesign or construction change orders caused by inaccurate and/or missing data.

13. The Economic Market Study utilizes qualitative and quantitative methods. Accuracy of governmental and third-party numbers are limited to the precision of these surveys and data harvesting methods.
14. Detailed retail and office real estate data (e.g. total square footage, lease/sale prices points, occupancy and vacancy rates) is not available for all jurisdictions.
15. Projected economic impacts are estimates. These projections area meant to serve as a baseline understanding of potential performances based on suggested development plans. We make no implications, warranties, promises, suggestions, representations or guarantees whatsoever about prospects or future economic performance.

## **LIMITATION OF LIABILITY**

Environmental Design Group warrants that it has adequate workers' compensation coverage, errors and omissions insurance and professional liability and such coverage under public liability and property damage insurance policies as it deems to be adequate. Certificates of all such policies of insurance shall be provided to you upon request in writing. To the extent that it is lawful to do so, the Client hereby expressly waives and releases any cause of action or right of recovery which you may have hereafter against Environmental Design Group for any loss or damage to subject premises caused by fire, explosion or any other risk which may arise during our performance of services hereunder and which is covered by insurance.

Environmental Design Group's work being performed and Environmental Design Group's findings and conclusions are for the benefit of the Client and appropriate regulatory agencies and are not to be relied upon by any other parties. A party's failure or delay to require strict performance on any provision of this agreement shall not be considered a waiver or deprive such party of the right to insist upon strict adherence to that term or other terms of this agreement.

## **STANDARD OF CARE**

Services performed by Environmental Design Group under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by firms similar to Environmental Design Group which are currently providing similar services in the same geographical area. Client recognizes that subsurface conditions or other field conditions may vary from those encountered at locations where borings, surveys or other observations are made by Environmental Design Group and that the data interpretations and recommendations by Environmental Design Group are based solely on information available to Environmental Design Group.

Environmental Design Group will be responsible for those data interpretations and recommendations, but shall not be responsible for any interpretations by others of the information developed.

## **INVOICING PROCEDURES AND TERMS**

Invoices will be submitted monthly based on the percentage of work completed. If the client fails to make any payment due Environmental Design Group within thirty (30) days after receipt of Environmental Design Group's invoice, the amounts due Environmental Design Group will include a charge at the rate of 1% per month from said thirtieth day. In addition,

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Mr. Matthew Lasko  
City of Huron  
February 5, 2021  
Page 5

Environmental Design Group may suspend services under this Agreement until all outstanding invoices have been paid in full plus accrued interest.

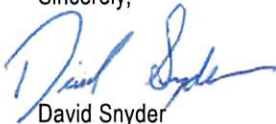
The attached Exhibit A – Standard Provisions of Agreement – is a part of this agreement and is binding on the Client.

## PROJECT INITIATION PROCEDURES

If this proposal is satisfactory, you may authorize Environmental Design Group to proceed by signing below and returning a copy of this letter to us. If there is a need for clarification or if changes in contractual arrangements are desired, please contact me at (330) 375-1390.

We look forward to working with you.

Sincerely,



David Snyder  
Construction Project Manager, CQM, AC

ACCEPTED: **City of Huron**

By \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

Clients Designated Representative: \_\_\_\_\_

Special Instructions: \_\_\_\_\_

### Invoicing Procedures:

In an effort to continue to provide an easy and effective method for communicating, we will be sending invoices and payment reminders via e-mail. By sending these documents via email, we can ensure each includes the information you require. Please provide the following information:

AP Contact \_\_\_\_\_

AP Email \_\_\_\_\_

AP Phone \_\_\_\_\_

Email an additional copy of the Invoice to:

1. \_\_\_\_\_

2. \_\_\_\_\_

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## **EXHIBIT A STANDARD PROVISIONS OF AGREEMENT FISCAL YEAR 2021**

Client and Environmental Design Group, LLC (Consultant) agree that the following provisions shall be part of their agreement:

1. This Agreement will be binding upon the heirs, executors, administrators, successors and assignees of Client and Consultant and will not be assigned by either Client or Consultant without the prior written consent of the other.
2. This Agreement contains the entire agreement between Client and Consultant relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations that are not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement will be in writing and signed by both Client and Consultant. The Client may use purchase orders as an administrative convenience, however, any terms and conditions contained in such purchase orders are not to be considered terms and conditions of this Agreement and will not be binding upon Consultant unless expressly agreed to in writing by Consultant.
3. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.
4. Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, will not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
5. If any term, condition, or covenant, of this Agreement is held by a court of competent jurisdiction to be invalid, void or not enforceable, the remaining provisions of this agreement will be valid and binding on Client and Consultant.
6. Consultant will only act as an advisor in all governmental relations. Obtaining government approvals is not a term of this agreement unless expressly set forth herein.
7. Consultant is not responsible for delay or damages caused by activities or factors beyond Consultant's reasonable control, including but not limited to, delays or damages by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of Client or his agents to furnish timely information or approve or disapprove Consultant's work promptly, faulty performance by Client or other contractors, or the actions or inactions of governmental agencies including, but not limited to permit processing, changes in policy, environmental impact reports, dedications, general plans and amendments hereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant will not be deemed to be in default of this agreement.
8. The following will be considered as additional services to be performed for an additional fee: a) Changes to plans, specifications or other documents and/or field work required by one or more governmental agency, as a result of changes or official interpretations in its ordinances, policies, procedures or requirements after the date of this Agreement; b) Any and all increase in costs and expenses contemplated by this Agreement due to the granting of wage increases and/or other employee benefits to field or office employees as a result of the terms of any labor agreement, or rise in the cost of living, during the

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lifetime of this agreement. Client will be billed for the additional, percentage increase applied to all remaining compensation due with respect to services performed pursuant to this Agreement; c) Incidental services as required by Client not specified in writing within the scope of work on the front hereof; d) Cost of replacing any staking destroyed, damaged, or disturbed by an act of God or parties other than Consultant; e) The costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.

9. Consultant makes no representations and does not guarantee expressly or implicitly: a) The estimated quantities made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and Consultant shall not be responsible for interpretational differences or fluctuations. Estimates of areas provided under this agreement are not to be considered precise unless Consultant specifically agrees to provide the precise determination of such areas. b) The completion or quality of performance of Contractor or the completion or quality of performance of agreements by the construction contractor or contractors, or other third parties, nor is it responsible for their acts or omissions. c) Its findings, recommendations, specifications, or professional advice except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance. d) Soil conditions unless specifically included in writing in this Agreement, and it is further not liable for any damages arising out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.
10. What may be referred to as a *cost estimate* or *engineer's estimate* as made by Consultant herein or in other correspondence regarding the Project shall be deemed an opinion of probable construction cost. In providing opinions of probable construction cost, it is recognized that neither Client nor Consultant has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding, or over market conditions. The opinion of probable construction costs is based on Consultant's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work will not vary from the Client's budget or from any opinion of probable cost prepared by Consultant. If Client wishes greater assurances as to Total Project or Construction Costs, Client may employ an independent cost estimator.
11. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to Client are only for convenience of Client. In the event there is a discrepancy between the electronic files and the hard copies, the hard copies govern. When transferring documents in electronic media format, Consultant makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of this Project.
12. All original papers, documents, drawings and other work product of Consultant, and copies thereof, produced by Consultant pursuant to this Agreement, except documents which are to become permanent public record, will remain the property of the Consultant and may be used by Consultant without the consent of Client. Consultant retains all rights of copyright on work performed pursuant to this Agreement. All services provided pursuant to this Agreement may be used by Client only for the project described on the face hereof. Client agrees not to use or permit any other person to use plans, drawings,



or other documents prepared by Consultant, which are not signed by Consultant and permitting agencies. Client agrees to be liable and responsible for any such use of unsigned plans, drawings, or other documents not signed by Consultant and agencies and will indemnify, hold harmless, and defend Consultant for any liability or damage incurred by Consultant as a result of such use.

13. Client acknowledges that all certifications of Consultant that appear on drawings shall be limited to the original purpose for which the respective drawings were to be used; that such certification and drawings are not intended to embrace any changes or modifications to such drawings regardless of their nature or scope; and that any obligations of Consultants attaching to such drawings shall be subject to the foregoing qualifications.
14. This agreement may be terminated by either party by thirty (30) days' written notice if the other party has substantially failed to perform in accordance with the terms herein through no fault of the terminating party. Otherwise, Consultant has a right to complete all services agreed to be rendered pursuant to this agreement. In the event this Agreement is terminated before the completion of all services, Client agrees to release Consultant from all liability for work performed. In the event all or any portion of the work prepared or partially prepared by Consultant is suspended, abandoned, or terminated by any party or for any reason, Client will pay Consultant for all fees, charges, and services provided for the project.
15. In the event that changes are made in the plans and specifications by Client or by any other person other than Consultant, any and all liability arising out of or resulting from such changes is waived by Client against Consultant, and Client assumes full responsibility and liability for such changes unless Client gives Consultant prior written notice of such changes and Consultant consents in writing to such changes. Client agrees to indemnify Consultant against any and all liability, loss, costs, damages, fees of attorneys and other expenses which Consultant may sustain or incur as a result of such unconsented changes.
16. Client agrees that Consultant will not perform on-site construction review for this project unless specifically provided for in this agreement, that such services will be performed by others, and that the Client will defend, indemnify, and hold Consultant harmless from any and all liability arising from or resulting from the performance of construction review by other persons. Any review of shop drawings and/or submittals is solely for general conformance with the design concept and contract documents and shall not form the basis of any liability of Consultant. Reviews of shop drawings and/or submittals by Consultant shall not alter the terms of this Agreement and shall not be construed to relieve any construction contractor of its obligations.
17. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and Client further agrees to defend, indemnify and hold Consultant harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting liability arising from the sole negligence of Consultant.
18. All fees and other charges will be billed monthly and will be due at the time of billing unless otherwise specified in this Agreement. Client agrees that the periodic billings from Consultant to Client are correct, conclusive, and binding on Client unless Client within

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twenty (20) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in the billing. Client agrees to pay a late payment charge which will be computed at the periodic rate specified on the front hereof and will be applied to any unpaid balance commencing thirty (30) days after the date of the original billing.

19. If client fails to pay Consultant within thirty (30) days after invoices are rendered, Client agrees Consultant will have the right to consider such default in payment a material breach of this Agreement. Consultant may, upon written notice to Client, immediately terminate this Agreement. In such event, Client will immediately pay Consultant for all fees, charges and services provided through the date of termination. Alternately, the Consultant may choose at its sole discretion not to terminate this Agreement but to suspend work until the account is brought current including accrued interest. In such event, the Client will bear any and all additional costs resulting from suspension of work including but not limited to increases to the stated fee as a result of inflation, promotions or other causes and/or additional fees incurred by Consultant as a result of changes necessitated by governmental agencies or other approving authorities.
20. In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law and notwithstanding anything to the contrary in this Agreement, to limit the liability of the Consultant to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant to the Client shall not exceed \$50,000, or the Consultant's total fee for services rendered on this Project and paid to Consultant, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
21. Client and Consultant agree that they will first try to resolve any claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement via good faith negotiations. If negotiations prove unsuccessful, Client and Consultant further agree to submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this agreement.
22. Under no circumstances will any legal action in any way connected with this Agreement or services performed hereunder be initiated by either party after five (5) years from the date of Substantial Completion, unless this Agreement is terminated prior to substantial completion, in which case the date of termination of this Agreement will be the date on which such period will commence.
23. The work is being conducted and the report prepared for the sole use of the Client and represents a professional opinion based on the information available to Consultant at the time of the investigation and report.

Assignment of reliance to third-parties can be made, however this will be considered an additional service. Such letters of reliance may be provided on a case-by-case basis as requested. It is further understood that the scope, terms and conditions under which this report was originally prepared apply to any and all third-party recipients.