

RESOLUTION NO. 25-05

ADOPTED ON: 4-14-2025

A RESOLUTION AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO EXECUTE AN AGREEMENT WITH ENVIRONMENTAL DESIGN GROUP TO PREPARE A WATER AUDIT REPORT AND DECLARING AN EMERGENCY

WHEREAS, founded in 1984, Environmental Design Group's professional services include civil engineering, landscape architecture, planning, surveying, environmental sciences, transportation, and construction management; and

WHEREAS, the Village of Thornville needs a Water Audit Report that:

- a. Highlights the overall water consumption in the system
- b. Outlines the following components:
 1. Water Produced
 2. Water Billed
 3. Water losses
 4. Revenue Water
 5. Non-revenue water
- c. Prepares a long-term plan for water loss detection and prevention
- d. Provides the Water Department with an Excel spreadsheet for long-term accounting of water loss; and

WHEREAS, Environmental Design Group agreed to prepare the Water Audit Report for a cost of \$20,000.00; and

WHEREAS, the Ohio EPA recently awarded the Village a (reimbursable) Water Loss Control Program Grant not to exceed \$20,000.00 to complete the Water Audit Report.

NOW, **THEREFORE, BE IT RESOLVED** by the Council of the Village of Thornville, County of Perry, State of Ohio:

SECTION 1: Council for the Village of Thornville hereby authorizes and directs the Village Administrator and Fiscal Officer to execute an agreement with Environmental Design Group to prepare a Water Audit Report at a cost not to exceed \$20,000.00.

SECTION 2: All prior legislation, or any parts thereof, which is/are inconsistent with this Resolution is/are hereby repealed as to the inconsistent parts thereof.

SECTION 3: It is hereby 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 and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

SECTION 4: Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of the Village and the further reason that the Village needs to enter into this Agreement as soon as possible so Environmental Design Group can begin work on this Report. Wherefore, provided this Resolution receives the required affirmative votes of Council, this Resolution shall take effect and be in force immediately upon passage by Council.

Passed in Council this 14th day of April 2025.


Amanda Lackey, Mayor

APPROVED:

Approved as to form this 24th day of March 2025.

ATTEST:


Clerk of Council


Brian M. Zets, Esq.
Village Solicitor

PROJECT UNDERSTANDING

The project involves developing a Water Audit Report for the Village of Thornville. The audit will utilize the AWWA water software. Our proposed scope of services is outlined below, and we have also included a list of assumptions and exclusions that will help clarify the intended scope of work, both for you and for the Environmental Design Group.

SCOPE OF SERVICES

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

TASK 1 – WATER AUDIT REPORT

Environmental Design Group will complete a water audit report, which will consist of the following:

- A. Research
 - a. Request information to examine the cost of water.
 - b. Request information to determine the uses of billed and unbilled water within the system.
 - c. Review existing billed and produced flows and determine unbilled consumption and apparent losses.
 - d. Review existing water AMP for age, condition, and material of existing infrastructure.
 - e. Consulting with utility personnel regarding existing water loss accountability methods and procedures.

- B. Report Preparation
 - a. Prepare a report that will highlight the overall water consumption in the system.
 - b. Outline of the following components:
 - i. Water Produced
 - ii. Water Billed
 - iii. Unbilled Water
 - iv. Water losses
 - v. Revenue water
 - vi. Non-revenue water
 - c. Prepare a long-term plan for water-loss detection and prevention.
 - d. Provide the water department with an Excel document tool for long-term accounting of water loss for reporting to the Council.

PROJECT QUOTATION

For and in consideration of the above-referenced services, Environmental Design Group will invoice the Client on a **Lump Sum basis** as follows:

Task 1 – Water Audit Report	\$ 20,000.00	Lump Sum
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Village of Thornville
Water Audit Report
24-00754-01P
December 19, 2024
REVISED March 24, 2025
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ACCEPTANCE BY CLIENT

I / We hereby authorize Environmental Design Group to perform the services as outlined above and accept the terms listed. Please sign, fill out the AP information, and return one (1) copy to our office via email.

Melissa Brofford
Signature

Melissa Brofford
Print

4/16/2025
Date

Special Instructions: _____

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 Taylor Bennett

AP Email fiscal.officer@thornville.gov

AP Phone 740-246-6000 x 3

Email an additional copy of the Invoice to:

1. administrator@thornville.gov
2. _____

We accept all major credit cards for payment of services. A 4% service charge will be applied at the time of payment. Payments can be submitted directly over the phone by calling 330-375-1390 or securely through our payment portal on our website (envdesigngroup.com). Please have the following information readily available when processing payment: Client Name, Invoice Number, Project Number, Total Amount, and credit card information.

The community impact people.

ASSUMPTIONS AND EXCLUSIONS

Below is a list of assumptions and exclusions that apply to our proposal for technical services for this project. These items were considered while defining the scope and cost of our services. These assumptions and exclusions also describe the responsibilities of both the Environmental Design Group and the Client, in the event there is a need for work outside the defined scope of services.

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. The 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. The 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 on 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 process.
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 the 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 the Environmental Design 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. Environmental Design Group will indicate the locations of subterranean structures (pipes, tanks, telephone cables, field tiles, etc.) on the project plans only to the accuracy and extent provided by the owners of the facilities, either by plans or markings in the field. Environmental Design Group is not responsible for such structures that are not called to the Environmental Design Group's attention or correctly shown on plans of affected utilities provided to Environmental Design Group by the owners of such utilities.

Should actual locations or depths of such subterranean structures be required, the costs of physically locating or exposing such structures are the responsibility of the Client.

14. Consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and the Consultant, in order to observe the general progress and quality of the Work completed by the Contractor. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Consultant, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, the Consultant shall keep the Client informed about the general progress of the project. If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by the Consultant as Additional Services in accordance with the terms of this Agreement.
15. The Consultant shall not supervise, direct, or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences, or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.
16. The Consultant shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules, or regulations.
17. **SHOP DRAWING REVIEW** The Consultant shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples, and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include a review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades, or construction safety precautions, all of which are the sole responsibility of the Contractor. The Consultant's review shall be conducted with reasonable promptness while allowing sufficient time in the Consultant's judgment to permit adequate review. Review of a specific item shall not indicate that the Consultant has reviewed the entire assembly of which the item is a component. The Consultant shall not be responsible for any deviations from the Construction Documents not brought to the attention of the Consultant in writing by the Contractor. The Consultant shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

STANDARD PROVISIONS OF AGREEMENT (CONTRACT)

This Contract between **Village of Thornville** (Client) and **Environmental Design Group**, an **Ohio** limited liability company ("CONSULTANT"), is effective as of **December 19, 2024 (REVISED March 24, 2025)**. The parties agree as follows:

1. Consultant shall perform the services set forth in EXHIBIT A ("Contracted Services"), attached and incorporated herein by reference.
2. 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.
3. This Agreement contains the entire agreement between the 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.
4. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. Any legal proceedings related to this Agreement must be brought in a court of competent jurisdiction venue in Summit County, Ohio.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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 lifetime of this agreement. The 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 the 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.

10. 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 the 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.
11. 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 the 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 the Client wishes greater assurances as to Total Project or Construction Costs, the Client may employ an independent cost estimator.
12. 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 the Consultant to the Client are only for the convenience of the 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.
13. 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.
14. 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.
15. 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, the 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.
16. 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.

17. 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 the Consultant. Reviews of shop drawings and/or submittals by the Consultant shall not alter the terms of this Agreement and shall not be construed to relieve any construction contractor of its obligations.
18. Client agrees that in accordance with generally accepted construction practices, the 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.
19. 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 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. After ninety (90) days, Environmental Design Group will stop working on the project until such invoices are paid in full. Invoices not paid within ninety (90) days of the date rendered may be referred for collection. You will be responsible for any and all expenses incurred by Environmental Design Group in the collection of any unpaid invoice, including actual fees and related costs incurred by legal counsel.
20. Limits of Liability shall be as specified below:

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 the Consultant at the time of the investigation and report.
24. 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.

25. Insurance: Environmental Design Group warrants that it has workers' compensation coverage, professional liability, and such coverage under public liability and properties 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.
26. Environmental Design Group's work is 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.
27. 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. Notwithstanding anything to the contrary herein, nothing in this Agreement shall require Environmental Design Group to perform professional services to a standard that exceeds the Standard of Care. Environmental Design Group makes no express or implied warranty of any sort, including, but not limited to, a warranty of merchantability or warranty of fitness for a particular purpose.
28. 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.

29. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Environmental Design Group nor the Client, their respective officers, directors, partners, employees, contractors, or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both Environmental Design Group and the Client shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the project.

30. SPECIAL TERMS AND CONDITIONS

The following articles are hereby modified and shall take precedence over the corresponding articles within the agreement:

Modification #	Modification Description