

2022-326 EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE THRASHER GROUP, INC.

AND

COUNTY OF SUMMIT, OHIO

FOR DESIGN AND ENGINEERING OF THE

**SUMMIT COUNTY PUBLIC SAFETY
FIBER AND COMMUNICATIONS NETWORK**

Professional Services Agreement

This Professional Services Agreement ("Agreement") is entered into between the County of Summit, an Ohio charter county, with its principal place of business located at 175 South Main Street, Eighth Floor, Akron, Ohio 44308, executed by Ilene Shapiro, Executive ("County") and The Thrasher Group, Inc. ("Company"), with its principal place of business located at 400 3rd SE, Suite 309, Canton, Ohio 44702.

INTRODUCTION

A. After conducting an analysis of needs and available high-speed broad band resources in the Summit County Community, including analyzing the needs of underserved portions of the County and the lack of appropriate high-speed broad band resources in those areas, the County determined that it was necessary and appropriate to design and construct the Summit County Public Safety Fiber and Communications Network ("SCPSFCN").

B. The County desires to engage Company to provide professional engineering services to design the SCPSFCN, and Company agrees to provide the professional services, on the terms and conditions below.

C. The Board of Control under Directive No. _____ has approved the procurement of these services from Company by County.

D. The Council of the County of Summit has approved this Agreement in Resolution No. _____.

E. The County will pay for these professional services with funds made available through the American Rescue Plan Act of 2021, Public Law No: 117-2 (03/11/2021).

In consideration of the mutual covenants contained in this Agreement, County and Company agree as follows:

SECTION 1: SERVICES

1.1 Engagement. County engages and authorizes Company to, and Company will provide County the professional services more fully described in Exhibit A, Scope of Services (collectively the "Services"). Exhibit A is deemed to be part of this Agreement as if fully rewritten in it.

1.2 Term. The term of this Agreement will commence effective as of the date signed by the County Executive and continue until completion of the design services or December 31, 2024. There will be no modification of this term without the express, written consent of County.

1.3 Deliverables. County will purchase and Company will deliver its performance of services in accordance the scope of services set forth in Exhibit A, which includes a proposed timeline for the completion of the services. Both parties understand that adherence to this time line is essential as the funding for this project has a deadline for expenditure.

1.4 Monitoring and Evaluation. Both County and Company must monitor the manner in which the terms of the Agreement are being carried out. Measurable objectives have been designed on Exhibit A together with timelines to evaluate the extent to which the objectives are being achieved. Monitoring on behalf of the County will be conducted by its Criteria Engineer and Project Manager, MCM Consulting Services as well as County project management staff.

1.5 No Further Subcontracting. This Agreement is a contract for services to be performed personally by one or more employees of Company and Company's approved Subcontractors as set forth in Exhibit A. Company may not subcontract or delegate performance of Services to any other persons or entities without the express written consent of County.

1.5.1 If the Company needs to enter into additional subcontracts in order to provide the services that it has contracted with County to provide, the Company will obtain written permission from County prior to entering into such an agreement.

1.5.2 Company will enter into a written subcontracting agreement with the approved Subcontractors, which must contain the same terms, conditions, and covenants contained in this Agreement between the Company and County, including but not limited to, adherence with 2 CFR 200, 2 CFR 200.201, 45 CFR 75.352, 2 CFR 400.1, 45 CFR 75, and 2 CFR 400, as applicable, as well as federal and state law(s). Company acknowledges that County Ordinances may require approval of any additional subcontract by County Council.

1.6 Independent Contractor. Company and its Subcontractors will perform Services under this Agreement as independent contractors, and not as an employees of County. Company will be responsible for the payment of all federal, state, and local taxes arising out of Company's performance of the Services. Company acknowledges that all employees of Company are not "public employees" for the purpose of membership in the Ohio Public Employees Retirement System. Company shall inform all its employees who do any work under this Agreement that they are not "public employees" for the purpose of membership in the Ohio Public Employees Retirement System. If Company has 4 or less employees, all employees must complete the "OPERS Independent Contractor Acknowledgement" ("PEDACKN") referencing the Company name under theirs, and return the PEDACKN form to the County and deliver a copy to the Ohio Public Employees Retirement System.

1.7 Approval of Employees. County may approve individual employees of Company or approved Subcontractors to work on any project assigned under this Agreement and may approve or reject the work of any such employee. If County rejects any such employee during the term, Company, or its Subcontractor must promptly remove the employee from the project and, if requested by County, offer a replacement employee if available.

SECTION 2: COMPENSATION

2.1 Compensation. Unless otherwise agreed to in writing by both parties, County agrees to pay Company compensation for all Services satisfactorily performed under this Agreement and approved by County equal to an amount not to exceed \$2,499,999.00, which includes the initial approved amount of \$100,000.00 for work on the fiber run from Dan Street to the consolidated dispatch center.

2.2 Invoicing. Company must invoice County on a monthly basis for Services rendered. Invoices

must show the number of hours worked by specific personnel and the nature of Services rendered. Invoices must be accompanied by documentation supporting all claimed expenses.

2.3 Payment. County agrees to pay proper, documented invoices within 45 days of receipt.

2.4 Sole Consideration. Company acknowledges and agrees that it is not entitled to any compensation, commissions, bonuses, benefits, reimbursement, leave, severance or termination pay, cancellation fees, or other consideration under this Agreement or for services rendered, except as expressly provided in this Section 2.

SECTION 3: COMPANY WARRANTIES

3.1 Independent, Licensed Business. Company represents and warrants that it:

- 3.1.1. is a separate, independent, licensed business entity;
- 3.1.2. is duly licensed and authorized to perform Services under this Agreement; and,
- 3.1.3. makes its professional services generally available to a wide variety of other companies on a regular basis.

3.2 Standards. Company represents and warrants that it will perform Services in accordance with the highest ethical and professional standards and any general standards of its industry and all on-site rules, security procedures, and other standards specified by County.

3.3 Qualified Employees. Company represents and warrants that all employees of Company are properly trained, licensed, sufficiently experienced and otherwise qualified and capable of performing the Services assigned them.

3.4 Debarment and Suspension. Company certifies that neither Company nor any of its principals or subcontractor(s) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any Federal department or agency, as set forth in 29 C.F.R. 98, 2 CFR 200, 2 CFR 200.205, 45 CFR 75.212, and 2 CFR 400.1, as applicable. Additionally, Company nor any of its principals or subcontractor(s) shall make any award or permit any award at any time to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. Company also affirms that within three (3) years preceding this Agreement neither Company nor any of its principals or subcontractor(s):

- A. Have been convicted of, or had a civil judgment rendered against them for commission of fraud or other criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; for violation of federal or state antitrust statutes; for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements; or for receiving stolen property;
- B. Are presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) for the commission of any of the offenses listed in this paragraph and have not had any public transactions (Federal, State, or local) terminated for cause or default.

Company will, upon notification by any Federal, State, or Local government agency, immediately notify the County of any debarment or suspension of the Company or any of its Subcontractors being imposed or contemplated by the Federal, State, or Local government agency.

3.4 Originality. Company represents and warrants that all materials prepared or provided by Company under this Agreement will be original and created by Company.

3.5 Clear Title. Company represents and warrants it has the legal power to convey, and will convey to County, clear title and all other rights in all materials prepared or provided by Company under this Agreement, free of any liens, encumbrances, licenses, royalties, or other third party rights.

3.6 Third Party Rights. Company represents and warrants that no materials prepared or provided, and no Services rendered, by Company under this Agreement will violate or infringe on any patent, copyright, trademark, trade secret, contract, privacy, publicity, or other right of any third party, nor contain defamatory matter or injurious instruction.

3.7 Lawful Use. Company represents and warrants that all materials prepared or provided by Company under this Agreement will be suitable for the use proposed by County as expressed in this Agreement or statement of work without violating any statute, ordinance, or governmental regulation.

3.8 Privacy. Company represents and warrants that it will not divulge the details or findings of this study to anyone or any organization other than the County without the express written consent of the County.

SECTION 4: CONFIDENTIAL INFORMATION

4.1 Confidential Information. The term "Confidential Information" means information of any kind not generally known to competitors or the public which becomes known to Company (whether or not developed by Company) at any time as a consequence of or through Company's performance under this Agreement or relationship with County by Company. Confidential Information includes but is not limited to computer program codes, software and database technologies, computer architectures, technical methods, financial information, customer information, cost and pricing information, and business and marketing plans. Confidential Information includes Confidential Information belonging to County.

4.2 Ownership. Company acknowledges and agrees that any Confidential Information disclosed to Company or developed by Company in the course of performing Services under this Agreement does not belong to Company, but is and will remain the property of County.

4.3 Preservation of Secrecy. Company must take all reasonable measures to preserve the secrecy of all Confidential Information at all times, including at a minimum the measures Company takes to protect its own trade secrets.

4.4 Limits on Use, Disclosure, and Copying. Company must not at any time, during or after the commencement of this Agreement by Company, make use of, disclose to a third party, or make copies of any Confidential Information, except as necessary to perform Services or as authorized in writing by the party owning the Confidential Information.

4.5 Return of Materials. Upon termination of any project, and at any other time upon request, Company must immediately return to County all documents and other materials which contain, embody, summarize, discuss, reveal, or are derived from any Confidential Information.

SECTION 5: NO CONFLICT OF INTEREST

5.1 No Conflict of Interest. Company represents and warrants that no elected official, officer, employee, or agent of Summit County who has any responsibility in connection with this Agreement has any personal financial interest, direct or indirect, in this Agreement. Company represents and warrants that it is not a party to any contract or subject to any other obligation which precludes Company from performing Services for County.

5.2 Third Party Proprietary Materials. Unless otherwise authorized, Company must not disclose to County, nor use in connection with Company's providing of the Services to County, any confidential or proprietary information, technology, works, inventions, or other materials belonging to any third party.

5.3 Property. Promptly upon termination of Company's Agreement with County, Company must return to County all of County's property including, but not limited to all computer disks, files, records, sketches, renderings, drawings, blueprints, notes, correspondence, reports, and other tangible media containing information prepared by Company or received by Company in connection with or by virtue of its retention by County, and all copies, reproductions or summaries.

SECTION 6: REPORTS AND RECORDS

6.1 Maintenance of Records and Reports. Company shall maintain records, documents, reports and other evidence directly pertinent to the performance of work under this Agreement in accordance with acceptable professional practice and appropriate accounting procedures. COUNTY or any of its duly authorized representatives shall have access to such records, documents, reports and other evidence for purposes of inspection, auditing and copying upon reasonable notice to Company. Company agrees to maintain and provide COUNTY access to the following records:

1. Accounting and fiscal records adequate to enable the County and/or the State of Ohio the Auditor of State, the Inspector General, the Comptroller General of the United States, or any of their duly appointed law enforcement officials and agencies of the United States government to audit and otherwise verify claims for reimbursement, including, but not limited to, books, documents, papers and records of the Company which are directly pertinent to this specific contract.
2. Other records and reports as required by the County needed to enable the County to comply with local, state and federal statutes and regulations applicable.

B. Providing Data to County. Company shall submit data, reports and records as requested by the County to enable it to comply with its obligations under any federal, state, and local law including but not limited to the American Rescue Plan Act of 2021, Public Law No: 117-2 (03/11/2021) as well as 2 CFR Part 200 et seq.

C. Five (5) Year Retention. Company shall maintain all records related to this Agreement for five (5) years after the County makes final payment hereunder and all other pending matters are closed.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five (5) year period, the Company shall retain the records until completion of the action and all issues which arise from it or until the end of the five (5) year period, whichever is later.

SECTION 7: EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION

7.1 Equal Opportunity Employment/Non-Discrimination. Company agrees that in the hiring of employees for the performance of work under this Agreement, the Company, its subcontractors, or any person acting on a Company's or its subcontractor's behalf, shall not discriminate against any citizen of the state in the employment of a person qualified and available to perform the work to which the employment relates by reason of race, creed, sex, disability, military status as defined in section 4112.01 of the Ohio Revised Code, color, gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit and sexual orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit . Company further agrees that Company, its subcontractors, or any person on Company's or its subcontractor's behalf, shall not discriminate in any manner, against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, sex, disability, military status as defined in section 4112.01 of the Ohio Revised Code, color, gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit and sexual orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit. Company certifies it does not maintain and it will not permit its employees to perform services at any segregated facilities. Company agrees to comply with all applicable federal, state and local laws, orders, rules, and regulations regarding equal employment opportunity.

SECTION 8: TERMINATION

8.1 Termination. The County may terminate this Agreement immediately upon written notice to Company. Upon termination of this Agreement, Company must immediately cease all activities relating to the Agreement and immediately deliver to County all work in progress, all property of County, and all information and other materials received or developed under this Agreement. At the County's request, Company must also assist County in efficiently transitioning the project to the new contractor who will continue with the project. County must pay Company for all Services satisfactorily rendered prior to and up to the date of notice of termination.

SECTION 9: GENERAL

9.1 Indemnification. Company agrees to defend and indemnify County and its elected officials, agents, and employees, against all claims, actions, demands, judgments, settlements, damages, liabilities, losses, and costs of any kind, including but not limited to reasonable fees of attorneys and experts, arising from or related to any of the following by Company or its officers, employees, contractors, or agents: (1) negligence, willful, or malicious act or omission; (2) willful violation or infringement of any patent, trademark, copyright, trade secret, contract, or other right of any third party; (3) unauthorized use or disclosure of Confidential Information; or (4) any breach of this Agreement.

9.2 Insurance. Company shall carry complete and adequate worker's compensation insurance for any employee who performs services under this Agreement. Company shall procure and keep in force and effect during the term of this Agreement; Commercial Comprehensive General Liability

Insurance with liability limits in an amount of not less than One Million Dollars (\$1,000,000.00); Professional Liability Coverage in the minimum of One Million Dollars (\$1,000,000.00) (including contractual liability coverage) covering personal injury, bodily injury and property damage, said coverage to be maintained for a period of three (3) years after the date of final payment hereunder; and Comprehensive Automobile Liability Insurance, including owned, hired, and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000.00) covering personal injury, bodily injury and property damage.

9.3 Employee Compliance. Company must ensure that all employees of Company all Subcontractors are informed of and agree in writing to abide by all applicable terms of this Agreement applicable to them prior to performing any Services.

9.4 No Authority to Bind. Neither party has the power or authority to bind the other party to contracts or other obligations.

9.5 Injunctive Relief. Company acknowledges that a material breach of this Agreement would cause immediate and irreparable damage to County which could not be compensated adequately by monetary damages. Accordingly, Company consents to the entry of appropriate injunctive relief, in addition to any damages that may be awarded, to prevent, stop, or cure any actual or threatened breach of this Agreement.

9.6 Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the State of Ohio.

9.7 Forum. The parties agree that the forum for any claim, action, arbitration, mediation, or litigation arising from this Agreement will be Summit County, Ohio. The parties agree that jurisdiction and venue for any matter involving any parties to this Agreement is proper in the Akron Municipal Court and/or the Summit County Court of Common Pleas and/or the U.S. District Court for the Northern District of Ohio, Eastern Division, Akron.

9.8 Publicity. Company will not use the name of County for any commercial purpose without prior written consent of County.

9.9 Assignment. Neither party may assign rights or delegate any obligations created by this Agreement without the prior written consent of the other party, which consent must not be unreasonably withheld. Any assignment in violation of this Agreement is void. This Agreement must be binding upon the heirs, successors, legal representatives and permitted assigns of the parties.

9.10 Force Majeure. Neither party must be considered in default in the performance of any obligation hereunder, except the obligation to make payment, to the extent that the performance of such obligation is prevented or delayed by fire, flood, explosion, strike, war, insurrection, embargo, government requirement, civil or military authority, act of God, or any other event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party. The parties must take all reasonable action to minimize the effects of any such event, occurrence or condition.

9.11 Severability. If any provision of this Agreement is found invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, the remainder of this Agreement must continue

in full force and effect.

9.12 Reservation of Rights. A delay or failure in enforcing any right or remedy afforded hereunder or by law must not prejudice or operate to waive that right or remedy or any other right or remedy, including any remedy for a future breach of this Agreement, whether of a like or different character.

9.13 Review by Legal Counsel. Each party has had the opportunity to review this Agreement with the assistance of legal counsel. Accordingly, the rule of construction that any ambiguity in this Agreement is to be construed against the drafting party is not applicable.

9.14 Notices. Every notice and demand required under the terms of this Agreement must be in writing and must be sent by certified mail, return receipt requested, or by other means of delivery requiring a signed receipt, to the other party's address first set forth above. All notices are effective upon receipt. A party may change its address by giving written notice to the other party in accordance with this Article.

9.15 Enforcement Costs. Company must reimburse County all attorney's fees and other costs that the County reasonably incurred in any successful action to stop, cure, prevent, or obtain recovery for any actual or threatened breach of this Agreement.

9.16 Amendment and Waiver. This Agreement may not be amended, supplemented, or waived except by a writing signed by the parties. The waiver of any particular right or claim must not constitute a waiver of any other right or claim. This Agreement may be extended to achieve additional goals of the County with the written consent of both parties.

9.17 Entire Agreement. This Agreement, including Exhibit A, states the complete, final, and exclusive agreement of the parties concerning the subject hereof and supersede all prior oral or written agreements, representations, promises, negotiations, and other communications between the parties.

9.18 Unresolved Findings of Recovery. Pursuant to Ohio Revised Code §9.24, Company represents and warrants that no unresolved findings of recovery have been issued against Company by the Auditor of the State of Ohio.

End of text, signatures appear on the next page.

Intending to be legally bound, the parties have signed this Professional Services Agreement effective as of the date signed by the County's Executive.

THE TRASHER GROUP, INC.

COUNTY OF SUMMIT, OHIO

By:

By:

(signature)

Ilene Shapiro, Executive

(printed name)

Date: _____

Title: _____

Date: _____

Approved as to form:

Deborah S. Matz
Director, Department of Law and
Risk Management

Exhibit A
Proposal