

**RESOLUTION NO. 58-2017**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND THE KLEINGERS GROUP FOR PROFESSIONAL SURVEYING SERVICES TO PROCEED WITH THE GREAT MIAMI TRAIL ALIGNMENT.

WHEREAS, construction drawings have been prepared reflecting the best and most efficient route for the Great Miami Trail Alignment; and

WHEREAS, the intent of the trail is to stay on public property as much as possible to avoid increased costs associated with property acquisition; and

WHEREAS, due to the uncertain property lines adjacent to the former Miami & Erie Canal, B & O Railroad, Texas Eastern Pipeline, and other individual property owners a survey is necessary to determine the actual property lines.

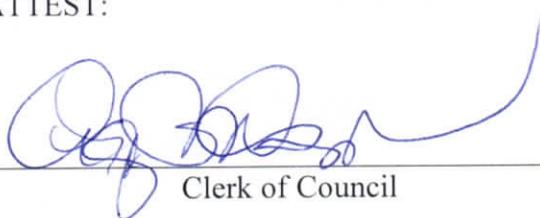
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO THAT:

SECTION 1: The City Manager is authorized to enter into an agreement by and between the City of Monroe and The Kleingers Group for professional surveying services to proceed with the Great Miami Trail Alignment in an amount not to exceed \$25,900 pursuant to the terms and conditions substantially similar to Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure shall take effect on the earliest date allowed by law.

PASSED: November 28, 2017

ATTEST:

  
Clerk of Council

APPROVED:



Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Ohio Revised Code, Section 121.22 of the Ohio Revised Code.

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.



Clerk of Council  
City of Monroe, Ohio



# Exhibit "A" Res No. 58-2017

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COLUMBUS  
DAYTON

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May 1, 2017

**Mr. Kevin Chesar**  
**City of Monroe**  
233 South Main Street  
Monroe, OH 45050

**Re: Great Miami River Trail**

Dear Kevin:

Thank you for the opportunity to meet last week and to discuss the surveying needs for the above referenced project. Per our discussions, I understand that Brandstetter Carroll has developed a preliminary alignment for the proposed Great Miami River Trail. The alignment begins at the former Americana / Couch property and proceeds north to a potential termination near the former Harding-Jones Paper Mill. The proposed alignment generally follows an existing trail and would ideally be located through lands owned by the City of Monroe (formerly Couch), Butler County Park District, and the Miami Conservancy District.

Due to the uncertain and inaccurate location of GIS based parcel mapping, the existing trail appears to be located on or uncomfortably near other properties including those owned by Trimble, Frey, Kristin, Texas Eastern, Avonce, and Crystal Tissue. The precise determination of the existing trail location, relative to the actual parcel lines, can only be determined by a current boundary survey. Complicating the survey requirements is the fact that the lands involved are along or adjacent to lands of the former Miami & Erie Canal and sections of the B&O Railroad, both of which are known to have very vague property descriptions and are difficult to retrace.

We recommend that a boundary survey be performed to clarify the uncertain locations prior to any additional planning or design. The survey should be based on Ohio State Plane Coordinates (NAD '83 horizontal and NAVD '88 vertical), allowing a convenient overlay of existing Butler County GIS data and in agreement with prior work of Brandstetter Carroll. Specifically, we propose to provide the following services:

- Research the public records at the appropriate Butler County offices and obtain copies of pertinent deeds, plats, and surveys for the affected parcels. Easements affecting the subject property, discovered during the normal course of our research, will be identified. **Please note that we do not provide "title examination" services and make no warranty or guarantee that any or all easements, restrictions, encumbrances or other conditions affecting the property will be discovered.** At the client's request, and for an additional fee to be determined, we may contract with a title examination professional and coordinate an expanded level of research.
- Contact and coordinate with the Miami Conservancy District and obtain copies of any plats, surveys, or field notes which may be helpful in determining property lines of the MCD.
- Contact and coordinate with CSX Transportation (successor to the B&O Railroad) and obtain copies of Valuation Maps which may be helpful in determining property lines along or near said railroad.
- Establish horizontal and vertical site control based on Ohio State Plane Coordinates (NAD '83 horizontal and NAVD '88 vertical). The control will consist of semi-permanent marks (iron pins, stakes, etc.) to provide reference points for future planning, design, and construction activities.
- Coordinate with Brandstetter Carroll to obtain and incorporate existing trail locations.



- Perform field reconnaissance and locate evidence (monumentation, fences, etc.) of existing boundary lines and corners.
- Resolve the location of the affected property lines through analysis of the recovered record and field data. Specific emphasis will be placed on the parcels and areas illustrated below.
- Generate a limited boundary base map, depicting the subject parcel lines and existing trail at an appropriate scale, in AutoCAD format. (Properties will not be surveyed in their entirety. Surveys will extend only far enough to accurately establish the affected lines and corners.)
- Property corner monumentation, individual property maps, descriptions, easement exhibits, etc. can be provided for an additional fee if required, but are not part of this proposed scope of work.

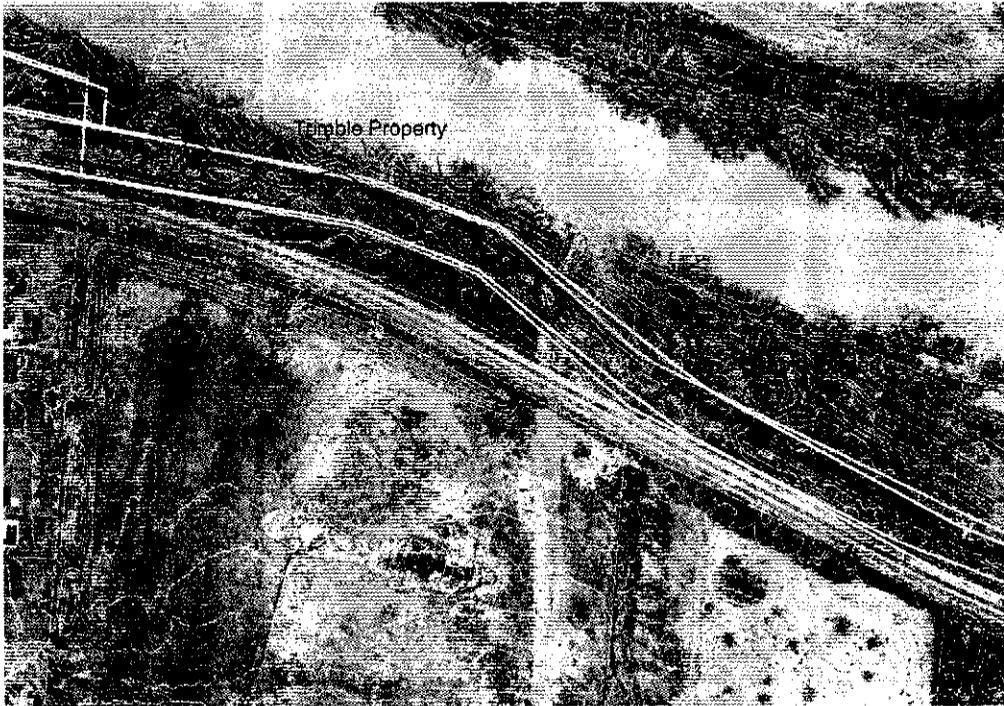


Exhibit 1: Potential Trail Encroachment on Trimble Property

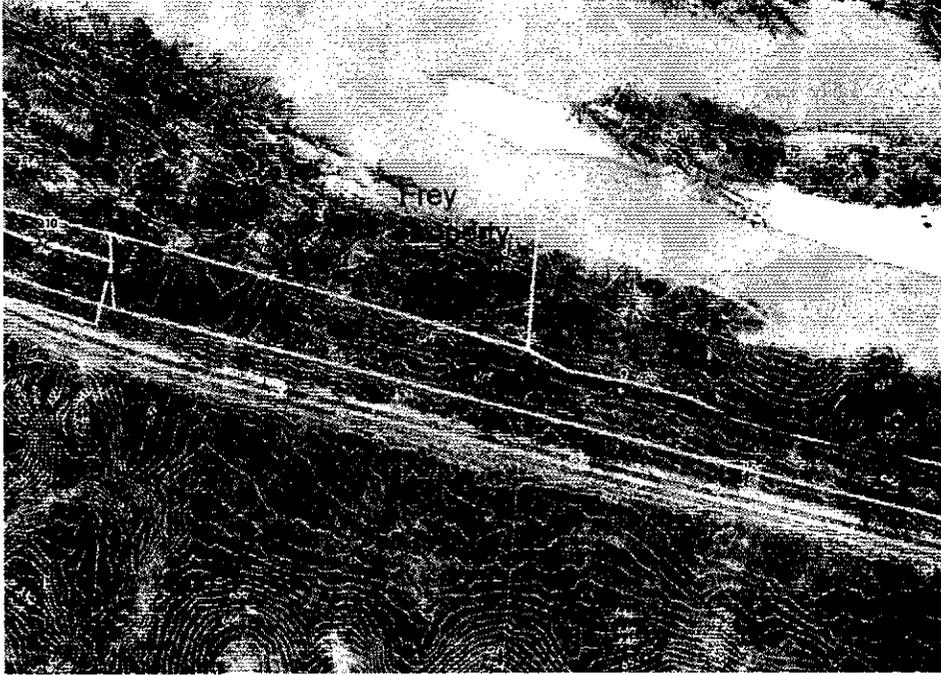


Exhibit 2: Trail shown on Butler County Parks parcel but in close proximity to Frey parcel



Exhibit 3: Trail shown along Kristin and Avonce property lines

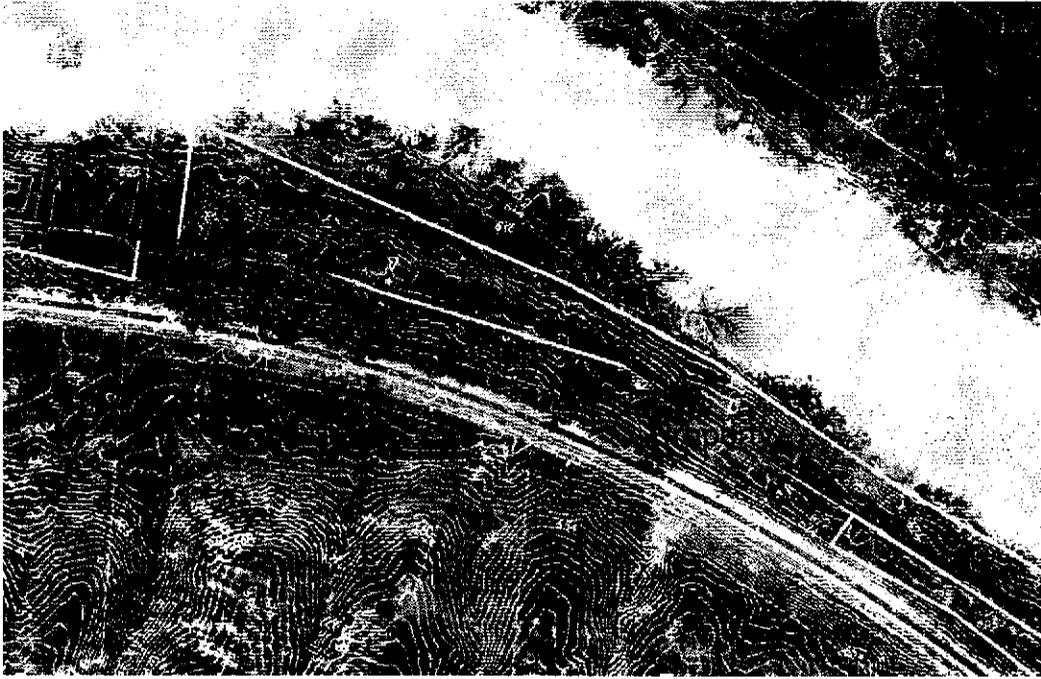


Exhibit 4: Trail shown along Texas Eastern property line

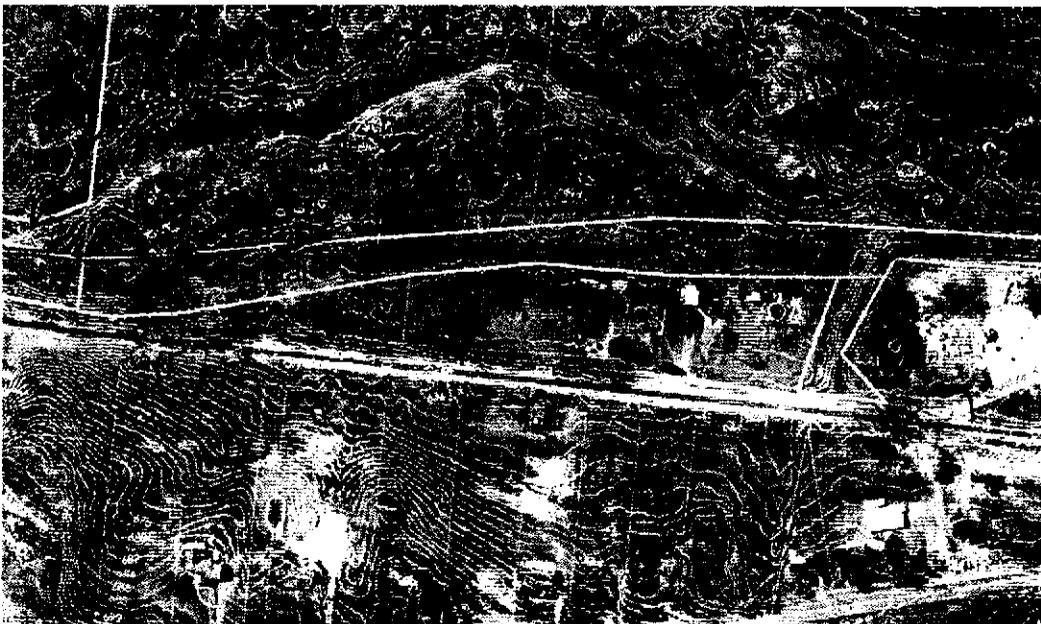


Exhibit 5: Trail shown along Avonce and Crystal Tissue property lines



Our proposed fee for the scope of services outlined herein is a lump sum amount of \$25,900.00 and includes all labor, overhead, equipment, supplies and normal expenses. Please allow up to thirty days after receipt of "authorization to proceed" for the work to commence. Completion of the work is expected to take thirty to sixty days after commencement. If the Crystal Tissue property (which lies immediately north of the Monroe Corporate limits) is excluded, the total fee can be reduced to \$23,900.00. This proposal is valid for a period of 60 days.

Again, thank you for the opportunity to submit this proposal. Please don't hesitate to contact me if you have any questions.

Sincerely,  
**The Kleingers Group, Inc.**

**David L. Cox, P.S.**  
Director of Geospatial Services

**AUTHORIZATION TO PROCEED**

Please proceed with the work outlined above in accordance with this proposal. I agree to the attached terms and conditions.

By: \_\_\_\_\_  
(signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_



### Terms and Conditions

**Services Provided.** The Kleingers Group, Inc., the Consultant, agrees to perform the professional services outlined in the preceding paragraphs for the City of Monroe, the Client. Client agrees to:

1. Provide full information as to requirements for the Project prior to commencement of work on the Project;
2. Assist Consultant by placing at his disposal all available information pertinent to the Project;
3. Authorize and guarantee access to and make all provisions for Consultant to enter upon private property as required to perform his services under this Agreement;
4. Provide and pay for all legal, accounting, and insurance counseling services, soil reports, laboratory tests and governmental permits necessary for the Project;
5. Give prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any defect or problem in the Project or other event that may substantially affect Consultant performance of services under this Agreement;
6. Promptly compensate Consultant for services rendered under this Agreement as set forth in the General Provisions outlined in the subsequent paragraphs; and
7. Client will promptly review and act on all submissions made by Consultant.

**Time of Completion.** Consultant agrees to perform the outlined Scope of Services within the periods specified, exclusive of review time and time to complete review responses, from receipt of Authorization to Proceed. Since neither Consultant nor Client have any control over reviews by third parties, the completion deadlines will be extended to accommodate reviews.

**Compensation.** For the Scope of Services outlined in the preceding paragraphs, Client agrees to pay Consultant the compensation stated in this Agreement. Clients will be invoiced each month for any work performed during the period. For hourly services, invoices will be based on the number of hours expended by the Consultant's personnel in the period multiplied by the hourly rates specified in the agreement. For fixed fee services, invoices will be based on the percentage of the scope of work completed in the period multiplied by the project fee for that scope of work. Payment is due within 30 days of receipt of invoice. Accounts outstanding past 30 days every month thereafter will be subject to a 1.5% service charge on the unpaid balance monthly.

**Standard of Care.** Consultant agrees to provide professional services to a standard of care that would be reasonably and professionally exercised by reputable professionals practicing in the same or similar locality and under similar circumstances. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

**Limitations of Services.** All application, review, and permit fees are to be paid by others. Any necessary environmental, geotechnical or archaeological site assessments are excluded from this scope of work.

**Additional Services.** Changes made by Client after the start of the work will be considered extra work and may negatively impact the stated project timeline. Consultant will notify Client in writing of any changes to the scope of work requiring additional fees and will provide Client with an estimate of those fees prior to proceeding with the work.

**Indemnification and Limitation of Liability.** The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees, and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

In addition, the Client agrees that to the fullest extent permitted by law, no shareholder, officer, director, principal or employee of the Consultant shall have personal liability under this Agreement, or for any matter in connection with the professional services provided with the Project.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

Notwithstanding the forgoing, 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, 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 attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant to the Client shall be the remainder of the Consultants insurance proceeds up to the greater of: **\$100,000.00** or the Consultant's total fee for services rendered under this agreement. 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.

**Consequential Damages.** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, 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 or 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 the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

**Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence, such as natural disasters and "Acts of God."

**Termination of Contract.** In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement. The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days written notice. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach an agreement on the compensation and schedule adjustments necessitated by such changes;

In the event of any termination that is not the fault of the Consultant, the Client shall pay the Consultant, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

**Dispute Resolution.** In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or in relation to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution.

If mediation fails, Client and Consultant agree that they shall submit any unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, effective as of the date of this agreement. If a dispute is not resolved after arbitration, the judgment may be entered into any court having jurisdiction thereof. Should litigation or arbitration occur between the two parties relating to the provisions of the Agreement, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in the defense/prosecution of the claim, including staff time, court costs, attorney fees and other claim related expenses.

**Ownership and Copyright of Documents.** All drawings and documents prepared or furnished by Consultant pursuant to this Agreement are the instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a revocable license to use instruments of Consultant's professional service for the purpose of constructing, maintaining, or operating the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorney's fees, arising out of such reuse by Client or by others acting through Client.

**Free Publicity.** Consultant has the right to photograph the Project and to use the photos in the promotion of the professional practice through advertising, public relations, brochures or other marketing materials.