

EMERGENCY RESOLUTION NO. 21-2016

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND THE KLEINGERS GROUP FOR PROFESSIONAL SERVICES TO COMPLETE A BOUNDARY SURVEY AND DECLARING AN EMERGENCY.

WHEREAS, in anticipation of an exchange of real property a boundary survey is required; and

WHEREAS, Council deems it necessary to proceed with the boundary survey to proceed with the anticipated exchange of real property.

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

SECTION 1: The City Manager is hereby authorized to enter into an agreement by and between the City of Monroe and The Kleingers Group for professional services to complete a boundary survey in an amount not to exceed \$13,900.00 pursuant to the terms and conditions set forth on Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to proceed with the boundary survey at the earliest possible date to avoid any delays in the anticipated exchange of real property. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: April 26, 2016

ATTEST:


Clerk of Council

APPROVED:


Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, 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



AGREEMENT FOR LIMITED PROFESSIONAL SERVICES

Prepared By Randy C. Wolfe, P.S. Date 4-15-16

Project Information

Project Name Americana
 Project # _____
 General Location State Route 4 - City of Monroe
 General Description Boundary Survey

Client Information

Contact Name Jennifer Patterson
 Firm / Agency City of Monroe
 Address 233 South Main Street
Monroe Ohio 45050
 Phone 513-539-7374 x 1023
 E-mail pattersonj@monroeohio.org

Scope of Services

- | | | | | |
|--|---|---|---|---|
| <input type="checkbox"/> Consultation | <input type="checkbox"/> Location Plan | <input type="checkbox"/> Traffic Counts | <input type="checkbox"/> Topographic Survey | <input type="checkbox"/> Easement Documents |
| <input type="checkbox"/> Feasibility / Due Diligence | <input type="checkbox"/> Grading Plan | <input type="checkbox"/> Traffic Analyses | <input checked="" type="checkbox"/> Boundary Survey | <input type="checkbox"/> Survey Plat |
| <input type="checkbox"/> Concept Plan | <input type="checkbox"/> Utility Plan | <input type="checkbox"/> Drainage Study | <input type="checkbox"/> Construction Layout | <input type="checkbox"/> Plot Plan |
| <input type="checkbox"/> Construction Drawings | <input type="checkbox"/> Landscape Plan | <input type="checkbox"/> Permitting | <input type="checkbox"/> Other _____ | |

Additional Information

See attached Exhibit A

Fee Arrangement

- BASE FEE** Hourly - Services will be invoiced each period for time expended at our standard hourly rates.
 The estimated fee (amount or range) for this project is: _____
This figure is provided for your general reference. The total amount invoiced may exceed this amount, depending on the total effort actually required to complete the scope of services.
 The maximum (Not To Exceed) fee for this project is: _____
- Fixed Fee - The amount invoiced each period for services will be a portion of the base fee equivalent to the percent of work completed during that period.
 The base fee for this project is: See Attached Exhibit A

EXPENSES In addition to the Base Fee, Client agrees to reimburse The Kleingers Group the amount advanced for reproductions, delivery charges, mileage, and/or any other direct expense incurred on behalf of the project.
 Costs for reproductions, delivery charges, mileage, and/or similar expenses are included within the Base Fee amount unless otherwise specified. Permit fees, if any, are not included within the Base Fee and will be paid by the Client.

- SCHEDULE** Work will commence: Immediately, based on your verbal / email authorization. Please notify us immediately if this proposal does not match your understanding of the project. Return a signed copy of the agreement for our records.
 Upon receipt of a signed copy of this Agreement.
 Upon receipt of a retainer in the amount of: \$ _____
 Within _____ days of _____

Expected duration of Services: approximately 3 weeks from commencement of field work

AUTHORIZATION Your signature on the last page of this document or other direction to proceed with the outlined Scope of Services Indicates you understand and agree with the above information as well as the Terms and Conditions on the following pages.

Terms and Conditions

SERVICES PROVIDED

The Kleingers Group, Inc., the "Consultant", agrees to perform the professional services (the "Project") as described in the preceding paragraphs and referenced documents for the "Client",

City of Monroe

The Client agrees to:

- Provide full information as to his requirements for the Project prior to commencement of work on the Project;
- Assist Consultant by placing at his disposal all available information pertinent to the Project;
- Authorize and guarantee access to the project location and make all provisions for Consultant to enter upon private property, if required, to perform his services under this Agreement;
- Provide and pay for any and all legal, accounting, and insurance counseling services, technical reports, laboratory tests, and governmental permits that may be necessary for the Project;
- 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;
- Promptly compensate Consultant for services rendered under this Agreement as outlined in the preceding and subsequent paragraphs; and
- Promptly review and act on all submissions made to him by Consultant.

TIME OF COMPLETION

Consultant agrees to perform the outlined Scope of Services within the periods specified from receipt of Authorization to Proceed – exclusive of review time and time to complete review responses. 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 outlined in this Agreement. Client will be invoiced each month for any work performed during the period. Payment is due within 30 days of the invoice date. Accounts outstanding past the due date 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 design 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.

INDEMNIFICATION / 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 sub-consultants 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 foregoing, in recognition of the relative risks and benefits of the Project to both Client and 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 Consultant's insurance proceeds up to the greater of:

\$ 50,000.00 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, 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 instrument of Consultant's professional service by Client or any other third party entity or individual, without Consultant's written permission, shall be at Client's sole risk. Client agrees to indemnify and hold Consultant harmless from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized reuse by Client or third party entity or individual acting under the direction of the Client. In no event will the Consultant be responsible for the consequences of any such unauthorized modification or reuse of the instruments of Consultant's professional service.

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. Should additional photos be needed in the future, Client agrees to provide reasonable access to the facility. Client also agrees to cite the name of Consultant as the provider of the professional services outlined in this Agreement in all publicity, presentations, and public relations activities that mention the name or depict the facility. Client permits Consultant to place temporary jobsite signs on the site that advertise the consultant's brand and involvement in the project.

USE OF ELECTRONIC MEDIA

Copies of documents that may be relied upon by Client are limited to printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic, or other types that are furnished by Consultant to Client are only for the convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. 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 in use by Consultant at the beginning of this assignment.

Authorization

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representations, effective as of the Effective Date listed below.

The Kleingers Group, Inc.

OPINIONS OF COST

When included in Consultant's scope of services, opinions or estimates of probable construction cost are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the industry. However, since the Consultant has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot or does not guarantee that proposals, bids, or actual construction costs will not vary from Consultant's opinions of probable construction cost.

JOBSITE SAFETY DISCLAIMER

Neither the professional activities of the Consultant, nor the presence of the Consultant or its employees and subconsultants at a project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the Client, the Consultant and the Consultant's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies or general liability insurance.

GOVERNING LAW

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

SEVERABILITY

If any term or provision hereof is illegal or invalid for any reason whatever, such illegality or invalidity shall not affect the validity of the remaining terms of this Agreement.

ASSIGNMENT OF AGREEMENT

Neither Client nor Consultant shall transfer, sublet, or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this agreement.

EEO

The Kleingers Group supports an Affirmative Action Program. During the performance of this contract, the Consultant intends to comply with all Federal, state and local laws respecting discrimination in employment and non-segregation of facilities including, but not limited to, requirements set out at 41 CFR 60 - 1.4, and 60 - 741.5(a) 4, which equal opportunity clauses are hereby incorporated by reference and 60 - 250.45 and 29 CFR Part 471, if applicable.

Client: City of Monroe

SIGNED
Randy C. Wolfe, P.S.

PRINTED
Survey Office Operations Manager

TITLE
4-15-16

DATE SIGNED

SIGNED
Jennifer Patterson

PRINTED
Assistant to the City Manager/Economic Development

TITLE

DATE SIGNED / AGREEMENT "EFFECTIVE DATE":



CINCINNATI
COLUMBUS
DAYTON

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Exhibit A

Boundary Survey

- Research the public records at the Butler County offices and obtain copies of pertinent deeds, plats, and surveys for the properties outlined on attached sketch in Blue.
- Perform field reconnaissance and locate evidence (monumentation, fences, etc.) of existing boundary lines and corners.
- Resolve the location of the subject boundary lines and corners through analysis of the recovered record and field data.
- Monument the corners of the subject property in accordance with Ohio Administrative Code 4733-37 (Minimum Standards for Boundary Surveys).
- Generate a "plat of survey" depicting the above items at an appropriate scale, in AutoCAD format. The survey will be provided in PDF format.
- Locate improvements within an 80 foot swath running through Pink Area from right of way of State Route 4 to railroad parcels straight across from intersection of State Route 4 and Roden Park Drive.
- Prepare a road/utility/bike trail easement through the area in Pink defined by locations above.
- Establish right of way of State Route 4 and west line of Pink area

Fees:

- | | |
|---|---------|
| • Survey for the Blue Area (approximately 35 acres) | \$9,900 |
| • Consolidation Plat of Blue Area: (approximately 35 acres) | \$1,500 |
| • Locations and easement preparation through Pink Area | \$2,500 |