

CITY OF CLAYTON, OHIO

RESOLUTION NO. R - 02 - 23 - 18

A RESOLUTION AUTHORIZING MUTUAL WAIVER OF 30-DAY NOTICE OF TERMINATION PROVISION AND FURTHER AUTHORIZING THE CITY MANAGER TO PROVIDE WRITTEN NOTICE OF IMMEDIATE TERMINATION OF AGREEMENT WITH BRANDSTETTER CARROLL, INC. FOR PROFESSIONAL ENGINEERING CONSULTING SERVICES AND TO TAKE SUCH FURTHER ACTIONS NECESSARY TO TERMINATE SAID AGREEMENT

WHEREAS, Charter Section 8.02 provides that the City Manager shall be the contracting officer of the City and shall award and execute all contracts on behalf of the City; and

WHEREAS, via enactment of Resolution No. R-05-21-31 on May 20, 2021, Council authorized the City Manager to enter into an Agreement for professional engineering consulting services with Brandstetter Carroll, Inc. and the City Manager did enter into said Agreement on behalf of the City of Clayton, Ohio (*Exhibit A*); and

WHEREAS, Section VI, Paragraph 1 of the Agreement referenced herein, provides, “This Agreement will continue in effect until terminated by either party upon thirty days (30) written notice to the other party.”; and

WHEREAS, the City and Brandstetter Carroll, Inc. mutually agree to waive the 30-day notice of termination provision found at Section VI, Paragraph 1 of the Agreement referenced herein such that termination of said Agreement can become immediately effective upon adoption of this Resolution No. R-02-23-18; and

WHEREAS, Council desires to authorize the City Manager to provide written notice to Brandstetter Carroll, Inc. of the termination of the Agreement referenced above.

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

1. That Council hereby authorizes the mutual agreement of the parties to waive the 30 day notice of termination provision found at Section VI, Paragraph 1 of the Agreement referenced herein (*Exhibit A*) and the City Manager is hereby authorized to provide written notice to Brandstetter Carroll, Inc. of the immediate termination of the Agreement referenced herein and to take such further necessary actions to consummate termination of said Agreement.

ADOPTED BY COUNCIL ON FEBRUARY 2, 2023.

AUTHENTICATION:

Mike Spurns
Mayor (Presiding Officer of Council)

Barbara Seir
Clerk of Council

APPROVED AS TO FORM:

[Signature]
Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper Brookville Star Date of publication Feb 15, 2023

Barbara Seir
CLERK

CITY OF CLAYTON, OHIO

RESOLUTION NO. R – 05 –21 - 31

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BRANDSTETTER CARROLL, INC. FOR PROFESSIONAL ENGINEERING CONSULTING SERVICES AND AT A COST NOT TO EXCEED \$150,000.00

WHEREAS, Charter Section 8.02(C)(3)(g) exempts professional services not to exceed \$150,000.00 from competitive bidding; and

WHEREAS, City staff has recommended entering into an agreement with Brandstetter Carroll, Inc. for professional engineering consulting services.

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

1. That the City Manager is authorized to enter into an agreement with Brandstetter Carroll, Inc. in a form substantially similar to the agreement appended hereto for professional engineering consulting services at a cost not to exceed \$150,000.00.

ADOPTED BY COUNCIL ON MAY 20, 2021.

AUTHENTICATION:


 Mayor (Presiding Officer of Council)


 Clerk of Council

APPROVED AS TO FORM:

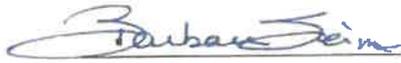

 Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper
Brookville Star

Date of publication
May 26, 2021


 CLERK

RESOLUTION NO. R-05-21-31
EXHIBIT "A"

AGREEMENT

This agreement made on May 20, 2021 between the City of Clayton, Ohio (Owner) and Brandstetter Carroll, Inc. (Engineer) whereby the Engineer proposes to provide consulting engineering services with respect to consulting assignments and improvement projects as directed by the Owner.

The Engineer's services consist of the following types:

1. Periodic Consulting Services
2. Project Design Services (including)
 - Field Surveying
 - Preliminary Design
 - Final Design
 - Bidding Negotiation
 - Construction Administration

I. PERIODIC CONSULTING SERVICES

The Engineer will:

- A. Review proposed site plans for proper engineering drainage, traffic and general construction/operational concerns, and compliance with City standards.
- B. Meet and work with the public in resolving engineering/construction related matters of a municipal nature.
- C. Assist in the compilation of engineering/construction related information for federal and state grant applications.
- D. Confer with and assist (to varying degrees) governmental agencies as well as private enterprises on engineering/construction related activities within or which may impact the City of Clayton.
- E. Advise and confer with department heads and city employees on questions of an engineering/construction nature, particularly with respect to operation/maintenance of facilities which the respective department may inhabit or oversee.
- F. Survey and compile legal descriptions of properties, provide technical support to settle disputes regarding property ownership, rights of way, property line locations, and so forth.
- G. Monitor reconstruction of existing and installation of new infrastructure by city work force.
- H. Compile and budget, on a cost-effective basis, a capital improvements strategy; paying particular attention to implementation plan priorities.
- I. Provide other technical services as requested by the Owner.

II. PROJECT DESIGN SERVICES

Upon authorization by the Owner, the Engineer will:

- A. Topographic Survey/Base Map
 1. Prepare base map information including spot and invert elevation and bench marks as required.

2. Include on site drawings additional site information including trees, vegetation, water courses and pavements as required.
 3. Include on drawings control data to be used during the construction process.
 4. Include on drawings utility company information.
- B. Preliminary Design Phase
1. Review the existing requirements with the Owners including previous planning with respect to the project, and confirm such requirements to the Owners.
 2. Visit the site making sketches, photographs and minor field measurements as required.
 3. Review alternative methodologies for improvements and prepare corresponding cost estimates.
 4. Recommend the most appropriate design alternative, consult with the owner and prepare cost estimates of the selected design alternative.
 5. Upon the authorized approval of the Owner, the Engineer will proceed into the Final Design Phase.
- C. Final Design Phase
1. On the basis of the approved Preliminary Drawings, prepare for the Owner, and incorporate into the Contract Documents, detailed drawings and specifications setting forth in detail the requirements for the construction of the Project.
 2. Meet with the Owner during the progress of this Design Phase to review the work to ensure that it meets with the Owner's approval.
 3. Secure the required approvals from the governmental authorities having jurisdiction over the design criteria applicable to the project.
 4. Advise the Owner as to any adjustments to the previous cost estimates indicated by changes in requirements or market conditions.
 5. Prepare bidding information as required.
 6. Furnish copies of the completed Contract Documents to the Owner, and additional copies to governmental authorities.
 7. Upon authorized approval of the Final Design by the Owner, the Engineer will proceed into the Bidding and Contracting Phase.
- D. Bidding and Contracting Phase
1. Assist the Owner in obtaining bids or proposals.
 2. Consult with and advise the Owner as to the acceptability of contractors.
 3. Provide the necessary documents to prospective bidders. However, the Owner shall reimburse the Engineer at cost for reproduction expenses.
 4. Prepare contracts between owner and contractors.
 5. Upon authorized approval of the construction contracts by the Owner, the Engineer will proceed into the Construction Administration Phase.
- E. Construction Administration Phase
1. As the Owner's representative provide periodic inspection on the site to determine if the project is proceeding according to the contract documents. The Engineer will keep the Owner informed of the progress of the work and disapprove or reject work that does not conform to the contract documents.

2. The Engineer's services during this phase of the work may include periodic on-site observation, and the clarification of contract documents.
3. The Engineer will review shop drawings, material samples, and other such submission of the Contractor for conformance with the design concept of the project, and for compliance with the information giving in the contract documents.
4. Prepare routine change orders as required.
5. Based upon on-site observations and other information provided, the Engineer will review the Contractor's application for payment, determine the amount owing the Contractor, and approve in writing payment for said amounts.
6. Conduct an inspection to determine if the project is substantially complete and conduct a final inspection with the Owner to determine if the project has been completed in accordance with the contract documents. If each Contractor has completed all of their obligations, hereunder, the Engineer will approve in writing, the final payments of the Contractors.
7. The Engineer's responsibilities during the retainer period shall be to conduct an inspection at the end of the retainer period to assure the Owner that all work under guarantee is in proper working order.

III. FEES

A. Periodic Consulting Services

1. Fees shall be based upon standard hourly rates as follows:

| | |
|-------------------------------|----------|
| Principal Engineer | \$175.00 |
| Senior PM/PE | \$150.00 |
| Professional Engineer/PM | \$120.00 |
| Project Engineer (EIT) | \$100.00 |
| Senior Engineering Technician | \$95.00 |
| Registered Architect | \$100.00 |
| Surveyor | \$100.00 |
| Inspector | \$75.00 |
| Administration | \$50.00 |
| Survey Crew (Robotic/GPS) | \$135.00 |

B. Project Design Services (projects publicly bid)

1. Fees shall be negotiated at the time the project is authorized by the construction cost depending upon the scope of services required and as determined by the City Manager.

- C. The hourly rates for engineering and inspection services, other than plan review, related to private developments and projects within the City shall be authorized under separate agreement and fee structure consistent with estimates previously provided to the developer.

IV. GENERAL

- A. No deductions are to be made from the Engineer's compensation on account of penalty, liquidation damages, or other amounts withheld from the Contractor.

- B. The Engineer shall be entitled to additional compensation for extended services made necessary by:
 - 1. Significant changes in the general scope of the design of the project after the construction documents have begun, which changes were not made necessary through any fault of the Engineer. Significant changes may include but not be limited to increased length of a street or utility project, design criteria (Year storm, level of service, change in funding source).
 - 2. Work damaged by fire or other caused during project construction, which damage was not the fault of the Engineer.
- C. The Engineer will provide an estimate of cost for any additional services as requested by the Owner, for all services not listed in this agreement.
- D. Billing and payment shall be monthly.

V. INSURANCE

The Engineer shall be required to procure and maintain during the life of this Agreement the insurance listed below:

- 1. Compensation and Employees General Liability Insurance: The Engineer shall procure and maintain during the life of this Agreement, Workers' Compensation coverage for all of its employees to be engaged in work under this Agreement; and in case any such work is subcontracted, the Engineer shall require the subcontractor similarly to provide Workers' Compensation coverage for all of their employees to be engaged in such work, unless such employees are covered by the Engineer's Workers' Compensation policy. The Engineer's liability limit shall be as provided by statutory requirements of the State. In case any class of employee is engaged in hazardous work protected under the Workers' Compensation statute, the Engineer shall provide and shall cause each subcontractor to provide Employer's General Liability Insurance for the protection of its employees not otherwise protected.
- 2. (Comprehensive) Automobile Insurance: Engineer shall procure and maintain this type of insurance and shall require any of its subcontractors performing work covered by the Agreement to do the same in order to protect themselves from claims for damage to property which may arise from vehicular accidents that occur while performing work under this Agreement, whether such work be performed by the Engineer or by any subcontractor or by anyone directly or indirectly employed by either of them, with the following minimum coverages: (a) Bodily Injury including wrongful death in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for each person and One Million Dollars (\$1,000,000.00) for each accident; and (b) Property Damage in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for each accident.
- 3. General Liability Insurance: Following minimum coverages: (a) Bodily Injury including wrongful death in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for each person and one Million Dollars (1,000,000.00) for each accident; and (b) Property Damage, including blasting and underground damage, in an amount not less than one Hundred Thousand Dollars (\$100,000.00) for each accident and aggregate liability of Two Hundred Fifty Thousand Dollars (\$250,000.00).
- 4. Scope of Insurance and Special Hazards The insurance required above shall provide adequate protection for the Owner and Engineer against damage claims which may arise from work

performed under this Agreement, whether such work is performed by the insured or by anyone directly or indirectly employed by the insured, and also against any of the special hazards which may be encountered in the performance of the Agreement. Each of the aforesaid policies shall include the Owner as an additional named insured and will provide that such policy will not be canceled until after the Owner shall have been given twenty (20) days written notice of the proposed cancellation. Prior to performing any work under this Agreement, Engineer shall provide written proof to Owner that all insurance required hereunder has been procured.

VI. CONDITIONS

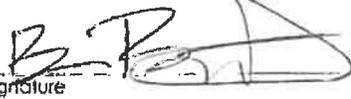
1. Termination: This Agreement will continue in effect until terminated by either party upon thirty days (30) written notice to the other party.
2. Independent Agent: Each party shall be an independent agent with respect to the work performed under this Agreement, and shall not be deemed to be the servants, employees, or agents of the other.
3. Governing Law: This Agreement and any disputes thereunder as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Ohio.
4. Severability: If any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof.
5. Entire Agreement: This Agreement supersedes any and all other agreements, either verbal or in writing, between the parties relating to the subject matter of this Agreement and is the entire understanding and agreement related hereto. This Agreement may be amended only by mutual consent of the parties in writing to be attached hereto and incorporated herein.
6. Public Records: Engineer understands the Owner is a political subdivision subject to the Ohio Public Records Act, O.R.C. 149.43 et seq. Therefore, all documents and records created, sent, received, or maintained by Engineer under this Agreement will not be destroyed without first obtaining written permission of the Owner.
7. Subcontracting: No work to be performed by Engineer under this Agreement shall be subcontracted without the express written consent of the Owner.

This agreement is accepted by:

Witness:

Steve Bostu

BRANDSTETTER CARROLL INC.


Signature

Benjamin E. Brandstetter
Printed Name

President
Title

5/27/2021
Date

CITY OF CLAYTON, OHIO


Signature

Mayor
Printed Name

City Manager
Title

5/25/2021
Date



February 3, 2023

Brandstetter Carroll, Inc.
Benjamin E. Brandstetter, President
308 E. 8th Street
Cincinnati, Ohio 45202

Re: City of Clayton, Ohio Thirty Day Notice of Termination of Agreement

Dear Mr. Brandstetter:

As City Manager of the City of Clayton, Ohio, I have been authorized by City Council to provide notice of termination of the *Agreement* dated May 27, 2021, appended to the attached Resolution No. R-02-23-18, adopted by Clayton City Council on February 2, 2023.

This 30-day notice of termination is given pursuant to Section VI, Paragraph 1 of the attached *Agreement*.

Should you have questions, please feel free to contact me.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda Zimmerlin", is written over the typed name and title.

Amanda Zimmerlin
Clayton City Manager

Cc:
City of Clayton City Council
Martina Dillion, Law Director