

# CITY OF CLAYTON, OHIO

## RESOLUTION NO. R – 02 –23 - 20

### A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE KLEINGERS GROUP 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 The Kleingers Group for professional engineering consulting services.

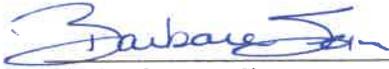
### NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City Manager is authorized to enter into an agreement with The Kleingers Group in a form substantially similar to the agreement appended hereto as *Exhibit A* for professional engineering consulting services, with such agreed upon modifications thereto as authorized by the Law Director and at a cost not to exceed \$150,000.00.

ADOPTED BY COUNCIL ON FEBRUARY 2, 2023.

#### AUTHENTICATION:

  
\_\_\_\_\_  
Mayor (Presiding Officer of Council)

  
\_\_\_\_\_  
Clerk of Council

#### APPROVED AS TO FORM:

  
\_\_\_\_\_  
Law Director

#### CERTIFICATION OF PUBLICATION

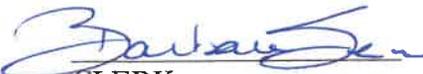
This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Brookville Star

Date of publication

Feb 15, 2023

  
\_\_\_\_\_  
CLERK

THE KLEINGERS GROUP  
**CONTRACT**

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement made on February 2, 2023 between the City of Clayton, Ohio (Owner) and The Kleingers Group Inc. (Consultant) whereby the Consultant proposes to provide consulting engineering services with respect to consulting assignments and improvement projects as directed by the Owner.

**PART A**

At the request of the City Manager, the Consultant shall perform the following services as well as others as directed:

**General Municipal Consultation:**

1. Meet and work with the City Manager in resolving engineering/construction related matters of public works, stormwater management, pavement repairs, and other municipal matters;
2. Assist the Owner in preparation of applications and supporting documents for government grants, loans, or advancements as needed;
3. Advise and confer with department heads and city employees on questions of an engineering/construction nature;
4. Survey and compile legal descriptions of properties, review disputes regarding right-of-ways, property line locations;
5. Compile and budget capital improvement plans;
6. Review proposed site plans for engineering drainage, traffic, and general construction/operation concerns;
7. Attend Council meetings, Planning Commission and other meetings as requested;
8. Attend monthly staff meetings as requested;
9. Prepare and develop maps, programs, procedures, rules, and regulations for Work to be done or performed on Owner property or within the public right-of-way; and
10. Utility Coordination.

**Project Design Services:**

1. Prepare base map information as required;
2. Visit the site making sketches, photographs, and field measurements as required;
3. Review alternative methods for improvement projects and prepare construction cost estimates;
4. Make recommendations for a preferred alternative;
5. Prepare detailed drawings, contract documents, and specifications for the construction of improvement projects;
6. Prepare the Notice to Bidders for Owner's projects per Owner's and project requirements;
7. Furnish copies of the necessary documents to the prospective bidders;
8. Assist the Owner in obtaining, evaluating, negotiating, and recommending bidder proposals and awarding contracts;
9. Make periodic visits to the construction site to determine the progress of the scheduled Work. The Consultant will not be responsible for the construction means, methods, techniques, procedures, nor the safety precautions;
10. Review the Contractor's application for payment, determine the amount owed to the Contractor, and recommend payment;
11. Conduct a field review in the company of the Contractor and Owner and prepare a final list of items that, as determined by the Owner, need to be corrected; and
12. Verify all items on the final list have been corrected.

# THE KLEINGERS GROUP CONTRACT

## PART B

The Owner shall perform the following:

1. Provide full information as to his requirements for the Project prior to commencement of Work;
2. Assist Consultant by placing at his disposal all available information pertinent to the Work;
3. Authorize and provide access to and make all provisions for Consultant to enter upon private property as required to perform his services under this Agreement;
4. Give prompt written notice to Consultant whenever the Owner observes or otherwise becomes aware of any defect or problem or other event that may substantially affect Consultant performance of services under this Agreement;
5. Promptly compensate Consultant for services rendered under this Agreement as set forth in the General Provisions outlined in the subsequent paragraphs; and
6. Promptly review and act on all submissions made to him by the Consultant.

## PART C

For the services performed by the Consultant, the Owner shall pay the Consultant as set forth in Exhibit A.

Owner 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 the invoice. Accounts outstanding past 30 days every month thereafter will be subject to a 1.5% service charge on the unpaid balance monthly.

If it becomes necessary to make any major revisions to the plans or specifications after a majority of the plan development has taken place, either as directed by the Owner or at the direction of any appropriate regulatory agency, the Consultant shall be reimbursed for such revisions at a reasonable rate agreed upon in writing by both parties prior to making such revisions and based upon the extent of the revisions.

## PART D

### General Terms and Conditions

**Ownership and Copyright of Documents.** The Client acknowledges the Consultant's documents, including electronic files, as the instruments of professional service. The final documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full for all monies due to the Consultant. Client shall not reuse or make any modification to the construction documents without the prior written authorization of the Consultant. Under no circumstances shall the transfer of ownership of the Consultant's drawings, specifications, electronic files, or other instruments of service be deemed a sale by the Consultant, and the Consultant makes no warranties, either expressed or implied.

**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. Owner 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.



**Use of Electronic Media.** Copies of documents that may be relied upon by Owner 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 Owner are only for the convenience of Owner. 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.

**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 construction/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 Owner agrees that the General Contractor shall be solely responsible for jobsite safety and warrants that this intent shall be carried out in the Owner's contract with the General Contractor.

**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 party to this Agreement 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.

**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.

**Limitations of Services.** All application, review, and permit fees are to be paid by others. Any necessary testing, environmental, geotechnical, or archaeological site assessments shall be paid for by the Owner.

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

**Asbestos, Hazardous Waste, Pollutions, & Mold.** The Consultant will not perform Work in areas if asbestos, hazardous waste, pollutions, or mold problem is identified on the Owner's site. A qualified consultant will be required to provide service for asbestos, hazardous waste, pollutions, or mold problems. The Owner agrees to bring no claim for negligence or breach of contract against the Consultant for claims arising out of the performance of or failure to perform professional services related to asbestos, hazardous waste, pollutions, or mold.

**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."

**Limitation of Liability.** In recognition of the relative risks and benefits of the Project to both the Owner and the Consultant, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Consultant to the Owner 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 Owner shall be the remainder of the Consultants insurance proceeds up to the greater of: \$ 3,000,000.00 or the Consultant's total fee for services rendered under this Agreement. It is intended that this limitation applies to any and all liability or cause of action, however, alleged or arising, unless otherwise prohibited by law.

**Contract Period.** Owner is authorized to enter into a contract with Consultant for a period of one (1) year from the date of contract execution.

**Termination of Contract.** In the event of termination of this Agreement by either party, the Owner 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 Owner may terminate this Agreement for the Owner's convenience and without cause upon giving the Consultant not less than thirty (30) calendar days written notice. Either party may terminate this Agreement for cause upon giving the other party not less than fifteen (15) calendar days written notice for any of the following reasons:

1. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
2. 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;
3. Suspension of the Project or the Consultant's services by the Owner for more than ninety (90) calendar days, consecutive or in the aggregate;
4. 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;

**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 Owner 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 Owner and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and

THE KLEINGERS GROUP  
**CONTRACT**

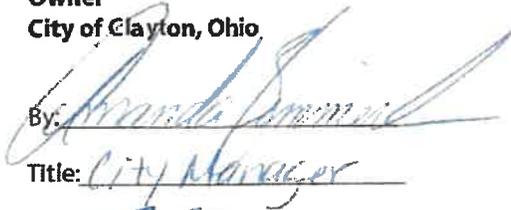
to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers, and fabricators, thereby providing for mediation as the primary method for dispute resolution.

If mediation fails, Owner 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.

**Signatures.** Any agent signing on behalf of the Owner represents he/it has full authority to sign on behalf of said Owner.

**Validity Limitation.** This proposal is valid for 30 days unless formally extended by Consultant.

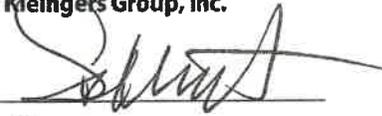
**Owner**  
City of Clayton, Ohio

By: 

Title: City Manager

Date: 2/2/23

**Consultant**  
The Kleingers Group, Inc.

By: 

Title: Project Manager

Date: 2/7/23



THE KLEINGERS GROUP

# CONTRACT

CATEGORY	RATE
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## ENGINEERING

Principal - Tim Casto, PE	\$155
City Engineer - Sam Morton, PE	\$125
Lead Traffic Engineer - Mark Nolt, PE, PTOE	\$145
Lead Roadway Engineer - Greg Urasek, PE	\$130
Subdivision Review - Troy Messer, PE	\$130
Construction Administration - Bob Hartz Project Manager	\$110 \$125
Assistant Project Manager	\$105
Senior Engineer	\$130
Project Engineer	\$120
Engineer	\$100
Floodplain Specialist / Floodplain Manager	\$135
Senior Designer	\$105
Designer	\$95
Project Coordinator	\$90
Technician	\$75
Clerical / Administrative Support	\$55

CATEGORY	RATE
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## LAND SURVEYING

Survey Manager - Matt Habedank, PS	\$125
Project Surveyor	\$105
Surveyor	\$95
1-Person Survey Crew	\$115
2-Person Survey Crew	\$140

## LANDSCAPE ARCHITECTURE

Principal Lynne Nischwitz, PLA, ASL, CLARB	\$155
Senior Planner	\$135
Senior Landscape Architect (RLA)	\$125
Landscape Architect	\$105
Landscape Designer	\$90

