

CITY OF CLAYTON, OHIO

RESOLUTION NO. R – 06 –23 - 40

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE KLEINGERS GROUP FOR PROFESSIONAL CITY-WIDE THOROUGHFARE PLAN SERVICES AT A COST OF \$49,600.00

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

WHEREAS, via City Charter Section 8.02(C)(1) and enactment of Ordinance No. 01-21-01 on February 18, 2021, the current minimum competitive bid threshold is \$64,498.00; and

WHEREAS, City staff has recommended entering into an agreement with The Kleingers Group for professional City-wide thoroughfare plan 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 City-wide thoroughfare plan services (with such agreed upon modifications thereto as authorized by the Law Director) and at a cost of \$49,600.00.

ADOPTED BY COUNCIL ON JUNE 15, 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 Date of publication

Register Herald June 21, 2023


CLERK



CINCINNATI
COLUMBUS
DAYTON
LOUISVILLE

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West Chester, OH 45069
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www.kleingers.com

May 24, 2023

City of Clayton
P.O. Box 280
Clayton, OH 45315

ATTN: Seth Dorman
City Planner / Zoning Administrator

RE: Proposal for Professional Services
Transportation Planning Services
City of Clayton Thoroughfare Plan

Dear Seth:

We are excited about the opportunity to assist the City with the preparation of a city-wide thoroughfare plan. Based on our coordination with you and with Jack Kuntz, it is our understanding that the Clayton area has previously been included in Montgomery County's thoroughfare plan and that this will be the City's first stand-alone thoroughfare plan.

This letter is intended to communicate our understanding and expectations for the project based on previous discussions and email correspondence we have had with you. Further, this letter outlines our proposed approach for completing the work and any assumptions we have needed to make while preparing the proposal. The following sections provide a summary of the project, proposed scope of services, corresponding fee structure, timing, and other related project information. Also, for your convenience, this document includes Terms and Conditions and a section for authorizing signatures, allowing this document to serve both parties as the agreement for The Kleingers Group to perform the outlined services. Should you have any questions or concerns, please feel free to contact us so we can discuss and refine the proposal to better suit your needs.

We look forward to working with you on this project. Thank you and have a great day!

Sincerely,

THE KLEINGERS GROUP

Mark W. Nolt, PE, PTOE
Project Manager

Sam Morton, PE
City Engineer

cc: FILE

JOB #: 230047.009
REF# 1.0



Project Summary

SUMMARY OF QUALIFICATIONS AND RELEVANT EXPERIENCE

The Kleingers Group has provided transportation planning studies and transportation design services in coordination with public jurisdictions throughout the state of Ohio. Those services have included the collection of various types of traffic data and performing analyses to determine the adequacy of existing transportation infrastructure and to determine improvements needed to accommodate the anticipated growth. Our roadway design services have provided designs for projects of various levels of complexity with a focus on minimizing impacts to surrounding properties and utilities. Kleingers has also had the opportunity to provide planning and design services for bicycle and pedestrian improvements for both local jurisdictions and for the Ohio Department of Transportation via four bicycle / pedestrian task order contracts we have held with them. We are excited about the opportunity to assist the City with the preparation of this thoroughfare plan.

PROJECT DESCRIPTION

This project will provide a city-wide thoroughfare plan for the City of Clayton. Based on our coordination with City staff, it is our understanding that the Clayton area has previously been included in Montgomery County's thoroughfare plan and that this will be the City's first stand-alone thoroughfare plan. The plan will be prepared to be in alignment with the City's PLAN Clayton comprehensive plan and will provide information on existing conditions of Clayton's transportation system, for both motorized and non-motorized modes of travel. The plan will also consider future growth in and near the City for the purpose of identifying potential right of way needs along key transportation corridors as development continues to occur. It is anticipated that the City will also use the plan to identify potential improvement projects to meet the City's goals.

PROJECT APPROACH

Upon receiving authorization to proceed, we will set up a kick-off meeting with City staff to establish expectations for the project, to discuss existing City GIS mapping data that will be needed for the thoroughfare plan, and to discuss the overall timeline for the project. Significant project milestones will be discussed so that interim coordination meetings can be held between City staff and Kleingers to ensure that the plan is progressing as expected and addresses the needed issues.

The PLAN Clayton comprehensive plan outlines the following goals:

1. Create walkable neighborhoods
2. Around central cores
3. With connected parks
4. Linked by great streets and infrastructure

As we proceed through the process of preparing the thoroughfare plan, we will reference these goals and the recommendations of the PLAN Clayton Implementation committee in the identification of recommendations in the thoroughfare plan.

This proposal assumes that all traffic counts needed for the preparation of this plan will be obtained from existing online sources. No new data collection is included in this scope of services. If additional traffic count data is needed, we will provide you with a proposal for the additional work.

The following page(s) outline the specific scope of services included with this proposal.



Scope of Services

The following outlines the scope of services for the preparation of the City of Clayton thoroughfare plan:

- Attend kick-off meeting with City staff to discuss expectations, data needs, and overall project schedule.
- Gather existing GIS data sets from the City of Clayton, Montgomery County, and ODOT for use in thoroughfare plan mapping.
- Gather existing infrastructure data via online mapping and field verification. The following types of information will be gathered:
 - Number of Travel Lanes
 - Speed Limits
 - Crosswalk Locations
 - Signalized Intersections
- Coordinate with MVRPC on applicable growth rates for collector roadways and above based on MVRPC traffic modeling.
- Apply MVRPC growth rates to traffic counts obtained from online sources to estimate the design year traffic volumes. This will be performed for collector roadways and above.
- Using projected design year traffic volumes and considering the proposed function of the roadway, estimate the number of travel lanes needed for collector roadways and above based on accepted thresholds.
- Identify typical roadway sections that would be applicable to various roadway types. The sections shown in the PLAN Clayton comprehensive plan will be used as a baseline.
- Coordinate with City staff to identify potential new roadway and bike / ped connections that may be needed.
- Prepare mapping for presentation in the plan. It is assumed that maps showing the following data will be included in the plan:
 - Functional Classification
 - Existing Number of Travel Lanes
 - Speed Limits
 - Existing Traffic Counts (From existing online sources such as MVRPC and ODOT)
 - Crosswalk Locations
 - Signalized Intersections
 - Clayton Zoning (from PLAN Clayton)
 - Clayton Regulating Plan (from PLAN Clayton)
 - Proposed Neighborhood Plan (from PLAN Clayton)
 - Proposed Parks Plan (from PLAN Clayton)
 - Planned Roadway and Bike / Ped Facility Projects

Proposal for Professional Services
Transportation Planning Services
City of Clayton
May 24, 2023

THE
KLEINGERS
GROUP



- Proposed Street Plan (from PLAN Clayton) – to be adjusted if needed
- Proposed Sidewalk, Bikeway, and Bus Plan (from PLAN Clayton) – to be adjusted if needed
- Estimated Future Traffic Volumes
- Estimated Future Travel Lanes
- Meet with City staff throughout the plan preparation process. This scope of services includes eight (8) meetings.
- Prepare thoroughfare plan report, summarizing the collected data and recommendations / conclusions.
- Present thoroughfare plan in up to two (2) meetings with City Council.

Proposed Fee\$49,600



Expenses

- Routine non-labor expenses are included in the proposed fees outlined in the Scope of Services.
- Routine non-labor expenses will be billed to the Client as reimbursable costs in addition to the proposed fees outlined in the Scope of Services at a rate equal to 110% of the actual direct cost.

Routine non-labor expenses include printing of deliverables outlined in the Scope of Service, typical client meeting materials, routine copies, mileage to and from project sites and Client's office(s), normal field supplies, and other similar consumables used during regular business activities.

If special, project-specific consumables or tools are needed to complete this project, we reserve the right to charge those costs to the Client as reimbursable costs at a rate equal to 110% of the actual direct cost. Before any such costs are incurred by Consultant, Client will be advised in writing of the total cost(s) and Consultant will not incur said cost(s) without first obtaining written approval of Client.

Schedule

It is anticipated a presentation of preliminary data and findings will be made to City Council by the end of 2023. The completed thoroughfare plan is expected to be completed within one year of receiving authorization to proceed.

If there are specific milestones or timeframe requirements about which we are unaware, please contact us so that we can discuss accommodating those requirements.

Please understand that the schedule / anticipated timeframe is based on a presumed authorization date and also the presumption that jurisdictional, client, and other needed third-party review times will be typical. A delay in authorization to proceed, extended review times, or excessive agency comments may affect the schedule negatively. Scheduling of some services is dependent on weather and conditions not conducive to performing those services may also affect the schedule negatively.

We reserve the right to adjust these fees and prices for work done in future years by the Consumer Price Index rate for the previous year. Before any such adjustment of fees or prices, Client will be advised in writing of the adjustment(s).

This proposal is valid for 60 days, unless formally extended by Consultant.



Clarifications and Assumptions

Upfront communication about project requirements and goals with you, our Client, is very important to us.

Often times, some aspects of the project requirements and conditions are not fully known prior to us providing a scope and fee proposal. Stating assumptions within the Proposal helps us refine the Scope of Services and better associate appropriate and reasonable fees for the Project. The assumptions may or may not match the actual project requirements and conditions which may only become apparent throughout the course of the project or even after the project is complete; however identifying the conditions for which this Proposal is valid helps to provide a shared understanding about the conditions for which this Scope of Services and associated fees are valid. Please let us know if you feel any of the Clarifications or Assumptions do not match your expectations so we may revise the Proposal to better suit your needs.

We recognize that minor revisions to drawings and other project documents are normal and to be expected in the production of any project. Should major revisions or out of scope conditions arise, you will be notified of the need for additional services and anticipated additional fees. Before we proceed forward with additional work, written approval of Client for additional work must be obtained.

For the purposes of this proposal, we are making the following assumptions:

- It is assumed that existing GIS data for zoning and other data included in the PLAN Clayton document will be provided by the City of Clayton.
- This scope of services does not include the collection of new traffic count data. If new traffic count data is determined to be needed for the thoroughfare plan, we will provide you with a separate scope and fee for those services. Said services will not begin until written approval of Client is received.
- Other than the outlined presentations to council, this scope of services does not include participation in public input meetings.

Associated Services

The Kleingers Group offers a wide variety of related professional civil engineering, transportation engineering, landscape architecture, planning, land surveying services, and reality capture (laser scanning) services. Although not included in this Proposal unless specifically itemized in the Scope of Services, we would be pleased to assist you with other aspects of your project needs. Please visit www.kleingers.com or contact us directly to learn more about our various service offerings and how we can help you achieve your project goals.



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 Clayton

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 and make all provisions for Consultant to enter upon private property as required to perform his services under this Agreement;
- Provide and pay for all legal, accounting, and insurance counseling services, soil reports, laboratory tests and governmental permits 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 set forth in the General Provisions outlined in the 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 stated in this Agreement. Client 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 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.

LIMITATIONS OF SERVICES

Exclusions and limitations outlined in the Agreement are not to be considered all inclusive. Unless expressly outlined as included with the Scope of Services, related services are not included under this Agreement.

ADDITIONAL SERVICES

Changes made by Client after the start of work will be considered extra and may negatively impact the stated project timeline. Consultant will notify Client in writing of 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. Consultant will obtain written approval of Client before proceeding with the work.

INDEMNIFICATION / LIMITATION OF LIABILITY

Each party shall be responsible for its own acts or omissions and for any and all claims, liabilities, injuries, suits, demands and expense which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party or its employees or representatives in the performance or omission of any act or responsibility of that party under this Agreement.

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. This payment shall not exceed the fees for the contracted scope of services.

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.

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 resolved after arbitration, the judgment may be entered into any court having jurisdiction thereof.

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. The parties agree that any such indemnification shall not exceed \$49,600.00.

FREE PUBLICITY

Upon written approval of the client, 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.

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.

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.

LEED CERTIFICATION

The LEED Green Building Rating System and other similar environmental guidelines (collectively "LEED") utilize certain design and usability recommendations on a project in order to



promote an environmentally friendly and energy efficient facility. The Client understands, however, that LEED is subject to various and possibly contradictory interpretations. Further, compliance may involve factors beyond the control of the Consultant including, but not limited to, the Client's or Owner's use and operation of the completed project. The Consultant does not warrant or represent the project will actually achieve LEED certification.

The signing of the declaration/affirmation is for the purposes of applying for LEED certification only and is considered an owner/client service benefit and as used herein the words certify, affirm and declare shall mean an expression of the Consultant's professional opinion to the best of its information, knowledge, and belief and does not constitute a warranty or guarantee by the Consultant.

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.

SIGNATURES

Should Client be a corporation or governmental entity, the person signing this Agreement represents that he or she is duly authorized to execute the Agreement on behalf of the corporation for the payment of the amounts specified herein. Any agent signing on behalf of a Client represents he has full authority to sign on behalf of said Client.

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.



Authorization

This Agreement (total page count listed below, together with Attachments and Exhibits identified within) constitutes the entire agreement between Consultant and Client and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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.

Further, Client's signature below represents Authorization to Proceed with the work outlined above in accordance with this proposal including the Terms and Conditions.

The Kleingers Group, Inc.

SIGNED

Sam Morton, PE

PRINTED

City Engineer

TITLE

May 24, 2023

DATE SIGNED

City of Clayton

SIGNED

AMANDA ZIMMERLIN

PRINTED

CITY MANAGER

TITLE

June 15, 2023

DATE SIGNED / AGREEMENT "EFFECTIVE DATE":

Primary Project Contact

Mark W. Nolt, PE, PTOE

PRINTED

Project Manager

TITLE

513-779-7851

PHONE NUMBER

Mark.nolt@kleingers.com

E-MAIL ADDRESS

Primary Project Contact

JACK KUNTZ

PRINTED

DIR. OF DEV.

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937-572-4937

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E-MAIL ADDRESS