

RECORD OF RESOLUTIONS

Resolution No. 2023-R-11

April 24, 2023

City of Bellbrook State of Ohio

Resolution No. 2023-R-11

AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH LJB ENGINEERING TO PROVIDE SURVEYING AND ENGINEERING SERVICES FOR THE DOWNTOWN BELLBROOK STREETScape IMPROVEMENT PROJECT AND WAIVING THE COMPETITIVE BIDDING REQUIREMENTS

WHEREAS, the City Council approved a study to identify certain desired improvements for the Downtown Bellbrook Streetscape; and

WHEREAS, the results of that study has provided an overall plan of action to make certain infrastructure and streetscape improvements for walkability, safety and appeal in the Downtown area; and

WHEREAS, the City has applied for and has been accepted to receive significant funding for repaving and safety improvements to intersections Downtown; and

WHEREAS, the next step forward are to complete engineering and survey work to create and develop bid packets for the specific project work; and

WHEREAS, the 2023 Budget has funds appropriated for these estimated expenses; and

WHEREAS, Section 240.03(b) of the Code of Ordinances of Bellbrook allows contracts for professional services be entered into by the City Manager without use of formal or informal competitive procedures

NOW, THEREFORE, THE CITY OF BELLBROOK HEREBY RESOLVES:

Section 1. After due deliberation, City Council authorizes the City Manager to enter into professional services agreements with LJB Engineering for surveying and engineering services for the Downtown Bellbrook Streetscape Improvement Project as substantially described in the proposal marked Exhibit A.

Section 2. In accordance with Chapter 240 of the Code of Ordinances of Bellbrook, the procurement of these services is through a contract for professional services entered into by the City Manager; therefore, the competitive bidding requirements are hereby waived.

Section 2. That it is found and determined that all formal actions of the City Council relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including §121.22 of the Revised Code of the State of Ohio.

Section 3. That this resolution shall take effect and be in force forthwith.

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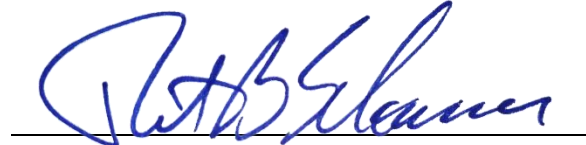
PASSED BY City Council this 24th day of April, 2023.

6 Yeas; 0 Nays.

AUTHENTICATION:



Michael W. Schweller, Mayor



Robert Schommer, Clerk of Council

Resolution 2023-R-11 Exhibit A



2500 Newmark Drive Miamisburg, OH 45342 | (866) 552-3536 | LJBinc.com

April 11, 2023

Mr. Rob Schommer
City Manager
City of Bellbrook
15 E. Franklin Street
Bellbrook, Ohio 45305

Re: Fee Proposal for Franklin and Main Street Resurfacing and Pedestrian Improvements Project

Dear Rob:

Thank you for the opportunity to submit our proposal for surveying and engineering services for the resurfacing of Franklin Street and Main Street within the city's downtown core. The limits on Franklin Street include from the eastern limit of the upcoming GRE-725 bridge and sidewalk project (near the alley west of West Street) to the eastern city limit, a length of approximately 2,400 feet. Additionally, the project will resurface Main Street within the city's corporation limits, a length of approximately 4,500 feet. Existing curb ramps within the resurfacing limits will be reviewed and improved, to meet ADA requirements, if necessary. The project will also construct enhanced crosswalks, consistent with the Bellbrook Streetscape Enhancement Plan at the Library/Dairy Shed midblock crossing of Franklin, as well as the Walnut/Main Street intersection.

We have based our fees upon our experience with similar projects, meetings with the city, review of the Bellbrook Streetscape Enhancements plan, site visits, and the development of OPWC and Greene County Community Development Grant applications. The lump sum fee to complete this work is **\$97,250**, with an additional If-Authorized contract amount of up to **\$24,320**, as detailed in the Project Narrative.

Included is the following information:

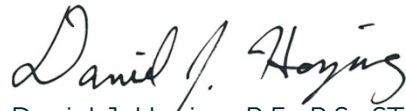
- > Project Schedule
- > Listing of Subconsultants
- > Appendix A – Scope of Services Documents (blue divider)
- > Project Narrative
- > Appendix B – Subconsultant Scope of Services Documents (yellow divider)



If you have any questions or require additional information, please contact our Project Manager, Matt Gardner at (937) 259-5075 or MGardner@LJBinc.com, Lead Engineer Brant Gressel at (937)259-5110 or BGressel@LJBinc.com, or me at (937) 259-5795 or DHoying@LJBinc.com. We look forward to working with you to achieve a successful completion of this project.

Sincerely,

LJB Inc.



Daniel J. Hoying, P.E., P.S., STP
Project Development, Infrastructure



STRUCTURAL



FALL PROTECTION
SAFETY



TRANSPORTATION



SITE DESIGN



SURVEY



WATER
RESOURCES



TECHNOLOGY
& INNOVATION

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List of Subconsultants

SUBCONSULTANT	WORK CATEGORY	TOTAL AMOUNT PROPOSED
The Kleingers Group	Landscape Architecture consistent with the Enhancement Plan	\$16,900



Project Schedule

The following schedule is based on an April 14, 2023 authorization to proceed.

STAGE REVIEW SUBMITTALS	DURATION	SCHEDULED SUBMITTAL	REVIEW TIME
Authorization to Proceed		04/14/2023	
Kickoff Meeting		Week of 04/17/2023	
Preliminary Design Submittal	5 weeks	05/19/2023	7 days
Preliminary Design Review Meeting		Week of 05/22/2023	1 day
Final Design Submittal	4 weeks	06/23/2023	7 days
Final Design Review Meeting		Week of 06/26/2023	1 day
Construction Documents Submittal	2 weeks	07/14/2023	14 days
City Announces Bid Opening	14 days after construction documents submittal	07/28/2023	

Key Dates

Kick-off meeting – Week of 04/17/2023

Project Review Meetings

- Schedule assumes one week for City review and comments discussed at design review meetings:
 - Preliminary Design Review – Week of 05/22/2023
 - Final Design Review – Week of 06/26/2023

Appendix A – Scope of Services

Project Narrative

Project name: Franklin & Main Resurfacing and Pedestrian Improvements

Client name: City of Bellbrook

Date: April 11, 2023

LJB Inc. has developed a detailed scope of services including project understanding, deliverables, exclusions, assumptions and project constraints. This document is based on the information known on the date of preparation and may be modified to reflect additional data received throughout the project process, if required.

Project Scope of Services

Our understanding of the project is based on our meetings with the city, review of the Bellbrook Streetscape Enhancement Plan, site visits, development of OPWC and Greene County Community Development Grant applications and experience with similar projects. The purpose of this project is to resurface Franklin Street from the eastern limit of the upcoming GRE-725 Bridge project near the alley west of West Street to the eastern city limit, a length of approximately 2,400 feet. The project will also resurface Main Street within the City's corporation limits, a length of approximately 4,500 feet. The project will construct enhanced crosswalks, consistent with the Bellbrook Streetscape Enhancement Plan at the Library / Dairy Shed midblock crossing location on Franklin and at the Walnut Street intersection at Main Street. Non-compliant curb ramps within the project limits will be reconstructed within the right of way to meet ADA requirements. The project will involve preparation of construction plans, technical specifications and project quantities to be used in the bidding process. The LJB team will prepare the city's bid package and facilitate the bid opening and pre-construction meeting. Construction administration and observation is anticipated to be completed by the city and has been excluded from this scope of services. These services may be provided by LJB, if required, through existing on-going services contracts with the City. A description of the phases and tasks anticipated to complete the project is included below.

Preliminary Design

- **Project management** – A project kickoff meeting will be held with the city to confirm project parameters and critical success factors, with two LJB team members attending. A project kickoff meeting will also be held with project design team members to communicate the parameters and success factors. Project meetings will be held with the design team to ensure that the project is progressing on schedule. Monthly project progress report emails will be submitted to communicate project status to the city. A site visit with the city staff is included to identify areas of curb and curb ramp replacements, full depth pavement replacements, and other areas to be collected in the field survey. A site visit with the City is included to determine applicable areas of curb, curb ramp and pavement replacement, with two LJB team members attending.

Utility coordination – LJB will contact OUPS and utility markings will be collected through field survey and initial letters will be sent to utility companies to notify them of the project and request as-built drawings of their facilities. Copies of the preliminary plans will be submitted to the utility companies. A utility coordination meeting is not anticipated with this phase.

- **Collect and process field survey** – A property notification letter will be drafted and submitted to the City to be placed on city letterhead and mailed, by City staff, to residents and businesses along the corridors. Topographic survey of curb ramp replacement and enhanced pedestrian crossings will be completed. Edge of pavement limits will be collected for the entire length of the corridor to be used to determine resurfacing quantities. Topographic survey data will be collected at sidewalk crossings of public roadways to be used in the evaluation of curb ramps. Boundary survey information will not be collected with the potential exception of centerline monuments to be used in the development of baselines of construction. GIS information will be collected from the city and combined with the field survey to form the project basemap. Proposed right of way is not anticipated with this project.
- **Title sheet** – A title sheet will be prepared with location map, index of sheets and project description.
- **Typical sections** – A typical section sheet will be prepared to indicate pavement treatments and composition for any areas requiring full depth replacement. Two (2) preliminary typical sections are anticipated.
- **Plan sheets** – Plan sheets will be developed to depict resurfacing limits and areas of full depth pavement, curb, curb ramp and sidewalk replacement. Pavement marking details will also be included on these plan sheets. 14 plan sheets are anticipated (five (5) for Franklin Street and nine (9) for Main Street).
- **Intersection details** – Plan sheets will be used to depict curb ramp replacement locations in the detail required to determine construction limits. Approximately 16 intersection details are anticipated, two (2) per sheet, for a total of eight (8) sheets.
- **Landscape design** – Preliminary landscape details (as described in the attached Kleingers proposal) including materials locations will be developed for review and coordination with the city.
- **Construction cost estimate** – A preliminary construction cost estimate will be developed for the preliminary design including inflation and design contingencies to evaluate the scope of work against budgeting funding levels.
- **Public information** – Exhibits to include no more than 2 boards and a roll plot of the project limits and a brief powerpoint presentation will be prepared. The LJB project manager will attend a 1-hour open house meeting and deliver a presentation to council to support the city in informing the public of the project plan. This meeting will be held at the conclusion of the preliminary design phase.

Deliverables for this phase of the project include the 11x17 preliminary design plans (approximately 30 sheets), public information materials, and a construction cost estimate in .pdf format.

Final Design

- **Project management** – A design review meeting to review the Preliminary Design plan comments is included, with two LJB team members attending. Project meetings will be held with the design team to ensure that the project is progressing on schedule. Monthly project progress reports will be submitted to communicate project status to the city.
- **Title sheet** – The title sheet will be updated to include the revised index of sheets and standard construction drawings to be referenced.
- **Schematic / site plan** – A schematic plan will be developed to be used for centerline layout and to be used by the contractor as the site plan for the SWPPP. 1 sheet is anticipated.
- **Typical sections** – The pavement legend, subgrade stabilization, and details will be added to the anticipated 2 typical sections.
- **General notes** – 2 sheets of general notes including utility contact information, specifications and pay item clarifications are anticipated. Contingency quantities will be included for driveways and miscellaneous removals and construction to allow the city the ability to negotiate work limits with individual property owners.
- **Maintenance of Traffic** – Maintenance of traffic notes and details will be developed to depict shoulder closures for areas of curb ramp and full depth pavement replacements. Resurfacing will be completed under traffic using referenced ODOT Standard Construction Drawings.
- **Plan sheets** – Additional detail will be added to the plan sheets to provide layout information and the tie-ins to existing streets, driveways and walks will be detailed. Work limits will be included.
- **Intersection details** – Intersection details including curb elevations and curb ramp types and locations will be prepared for the locations of curb ramp replacements and the enhanced crosswalks.
- **Miscellaneous details** – City of Bellbrook standard details will be included in the plans by reference or copy and other details required to communicate the intent of the plans will be developed. 2 detail sheets are anticipated.
- **Traffic control** – The 14 plan sheets will be updated to detail the pavement markings along the corridor.
- **Landscaping plans** – Plans, details and estimated quantities will be provided as detailed in the attached Kleingers proposal for implementation of the Downtown Enhancement Plan for the Library / Dairy Shed and Walnut Street crossings.
- **Construction cost estimate** – A revised construction cost estimate will be developed.

- **Utility coordination** – Final Design plans will be sent to utility owners and, if necessary, a utility coordination meeting will be held with the utility companies to review anticipated crossings and conflicts with their facilities. A process for their development and submittal of relocation plans will be reviewed to keep the project on schedule.

Deliverables for this phase of the project include 11x17 final design plans (approximately 35 sheets) in .pdf format and construction cost estimate.

Construction Documents

- **Project management** – A design review meeting to review the Final Design plan comments is included, with two LJB team members attending. Project meetings will be held with the design team to ensure that the project is progressing on schedule. Monthly project progress reports will be submitted to communicate project status to the city.
- **General summary** – A general summary will be prepared to itemize the project quantities and a spreadsheet form of the bid tab will be developed to be used by the city in the bidding process.
- **Construction plans** – Final revisions will be made to the construction plans to prepare the documents for bidding.
- **Engineer's estimate** – A final construction cost estimate will be developed using the ODOT Estimator software and supplemented with local bid history to refine the estimates.
- **Construction permits** – LJB will assist the city in collecting information required for their preparation of construction permit applications.

Deliverables for this phase of the project include a .pdf set of construction plans, engineer's estimate and Excel file of the project quantities to be used by the city in combination with the contract, bid tab and proposal documents to be prepared by the city in the bidding of the project.

Construction Engineering

- **Preconstruction meeting** – LJB will facilitate a meeting with the city, selected contractor and affected utility companies to begin the coordination of the project's construction. Two LJB team members will attend.
- **Record drawings** – following completion of the construction, LJB will use city and/or contractor provided redline drawings to identify modifications to the plans that were made in the field. The construction plan sheets will be revised to reflect the record information.

Deliverables for this phase of the project include the agenda and meeting minutes from the preconstruction meeting as well as electronic and mylar record plans.

If Authorized

- **Pre-bid questions** – An estimated 12 hours have been provided to support the city in answering contractor questions throughout the bidding process and assist in the development of addenda if required. These hours will be used and billed on an as-needed basis at the employee's hourly rate not-to-exceed a total of 12 hours.
- **Post design services** – An estimated 12 hours have been provided to support the city in answering contractor or utility company questions during construction. These hours will be used and billed on an as-needed basis at the employee's hourly rate not-to-exceed a total of 12 hours.
- **Right of way documents** – An estimated four parcels have been included at 32 hours each. Proposed right-of-way document hours include preparation of one legal description and the development of right of way plan exhibits to be used in the acquisition process by the city for permanent takes or easement for the four parcels. Temporary easements to be obtained for restoration of property or connection to existing driveways will be secured by the city through work agreements based on the construction plans. Setting monuments or lath for proposed takes or easements is also included.

Exclusions

LJB has excluded the following items in our scope of services:

- Cost of permits
- Property resolution beyond the parcels specifically identified in the scope of services above.
- Bid document preparation, advertising the project, attending a pre-bid meeting and attending the bid opening.
- Construction observation

Appendix B – Subconsultant Proposal



CINCINNATI
COLUMBUS
DAYTON
LOUISVILLE

6219 Centre Park Drive
West Chester, OH 45069
phone ▶ 513.779.7851
fax ▶ 513.779.7852
www.kleingers.com

January 6, 2022

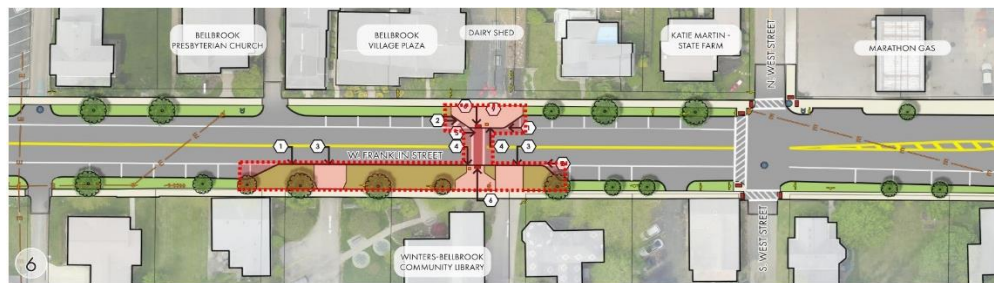
ATTN: Mr. Dan Hoying, PE, PS, STP
LJB Engineering
Project Development, Infrastructure
Via email: DHoying@LJBinc.com

RE: Bellbrook Streetscape
▪ Main Street + Walnut Street
▪ Library Crossing

Dear Dan,

Thank you for providing The Kleingers Group with the opportunity to provide this proposal for Professional Landscape Architecture services for the design of Phase 1 Streetscape Improvements within Bellbrook, Ohio.

We understand the two project areas include the streetscape in front of the Community Library and the streetscape/intersection at Bellbrook Park (areas depicted in the images below). It is our assumption that LJB will be leading the effort and providing survey base-mapping, designing the transportation and civil engineering components of the project to include, but are not limited to, grading and drainage, utilities, rapid flashing beacons, curb and curb ramps, lighting, etc. The Kleingers Group will provide landscape design, site furnishings, and specialty pavements / crosswalk striping for the project. We understand that the Bellbrook Park entrance plaza improvements are not included within the scope of this project.



Community Library Pedestrian Area along Franklin



Main Street + Walnut Street at Bellbrook Park

We therefore propose the following scope of services for the project:

January 6, 2023

Construction Documentation

Pre-Design / Coordination / Meetings:

- Review the Streetscape Master Plan.
- Attend progress review meetings with the design team throughout the process as required. (anticipate up to four (4) meetings).
- Attend progress review meetings with the City of Bellbrook. (anticipate up to four (4) meetings).

Hardscape + Landscape Plan:

- Provide a Landscape Plan depicting proposed landscape improvements within Phase 1 areas at the Community Library mid-block crosswalk and Bellbrook Park Intersection (see attached project limits exhibit).
- Landscape Plan to indicate the layout and locations of trees, shrubs, and plantings.
- Planting schedule depicting the types of plantings that are proposed for the project, including genus, species size and type of plant.
- Planting details and notes.
- Select, locate, and provide details for site furnishings within the project limits. Site furnishings to include benches, planters, and trash receptacles.
- Select, locate, and detail specialty pavements along the streetscape within project limits and striping at proposed crosswalks.
- Submit imagery sheet, in 11x17 format, of proposed plant material, pavement treatments, and site furnishings to ensure aesthetic agreement between the Client/Owner.

Cost Estimate:

- Prepare an opinion on probable construction cost estimate based on the proposed streetscape improvements.

Specifications:

- Provide technical specifications as necessary and in support of the above-documented site development. We anticipate site furnishing, turf and grasses, planting, and planting soils.

Revisions + Submittals:

- Submit Permit Drawings for review and approval by governing agencies.
- Anticipate one (1) round of revisions to the drawings.
- Submit 100% Construction Documentation Plans and Specifications, in digital PDF format, to the LJB/the Owner for compilation and bidding.

Construction Administration

- Answer and address contractor RFI's.
- Review substitution requests.
- Issue addendums as necessary to clarify design intent.
- Review contractor shop drawings/submittals.
- Perform one (1) site walkthrough and punch list at Substantial Completion.



January 6, 2023

Landscape Architecture Fee Schedule:

Construction Documentation Plans \$15,400.00

Construction Administration \$1,500.00

Total Fee: \$16,900.00

Assumptions:

- Public meetings have been excluded from this proposal.
- This proposal does not include irrigation. Irrigation design and details can be provided for an additional fee.
- Hardscape design is limited to specialty sidewalk treatments and decorative treatments at roadway crosswalks. It is assumed the LJB will be designing and detailing all other hardscape treatments, curbs, etc.
- Grading and drainage, utility design, and roadway design are excluded from this proposal.
- It is assumed design of rapid flashing beacons and any vehicular charging stations will be by the Civil Engineer.

Again, thank you for giving us the opportunity to submit this proposal. Please feel free to call me at 779-7851 should you have any questions.

Sincerely,

THE KLEINGERS GROUP



January 6, 2023

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”,

LJB Engineering

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.



January 6, 2023

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.

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 forgoing, 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:

\$200,000 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."



January 6, 2023

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 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

January 6, 2023

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. 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.

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.

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



January 6, 2023

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.

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.

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



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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

Lynne Nischwitz, PLA, ASLA, CLARB

PRINTED

Director of Landscape Architecture

TITLE

January 6, 2023

DATE SIGNED

LJB, Engineering

SIGNED

PRINTED

TITLE

DATE SIGNED / AGREEMENT "EFFECTIVE DATE":