

RESOLUTION NO. 3-91

CITY OF CENTERVILLE, OHIO

SPONSORED BY
COUNCILMEMBER James Singer ON THE
18th DAY OF February 1991.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN WOOLPERT CONSULTANTS AND THE CITY OF CENTERVILLE FOR ENGINEERING SERVICES FOR CLYO ROAD IMPROVEMENTS, BIGGER ROAD TO WILMINGTON PIKE IN THE CITY OF CENTERVILLE, OHIO.

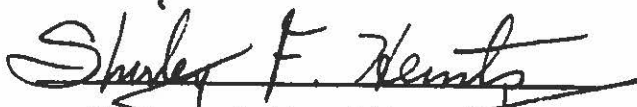
WHEREAS, it is the intent of the City of Centerville to improve Clyo Road from Bigger Road to Wilmington Pike in the City of Centerville, and

WHEREAS, Woolpert consultants has submitted a proposal to provide detailed engineering design and the preparation of detailed construction drawings for this improvement project.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES THAT:

SECTION 1. The City Manager is hereby authorized and directed to execute an agreement between the City of Centerville and Woolpert Consultants for engineering services for the Clyo Road Improvement, Bigger Road to Wilmington Pike, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

PASSED this 18th day of February,
1991.


Mayor of the City of
Centerville, Ohio

ATTEST:

Maile J. Stouffer
Clerk of Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 3-91, passed by the Council of the City of Centerville, Ohio, on the 18th day of February, 1991.

Maile J. Stouffer
Clerk of Council

Approved as to form, consistency
with existing ordinances, the
charter and constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT is made

Between City of Centerville,

100 West Spring Valley Road, Centerville, Ohio 45458

Hereinafter referred to as CLIENT, and WOOLPERT CONSULTANTS, an Ohio general partnership whose principal place of business is 409 E. Monument Ave., Dayton, Ohio 45402-1226, and whose place of performance for this agreement is Same

Hereinafter referred to as WOOLPERT for the following project: Clyo Road Improvements, Bigger Road to Wilmington Pike

WHEREAS, the CLIENT desires to employ Woolpert to provide certain professional service; and

WHEREAS, WOOLPERT is willing to provide these services for the consideration and upon the terms hereinafter stated;

NOW, THEREFORE, in consideration of these premises and of the mutual covenants herein set forth, CLIENT and WOOLPERT agree as follows:

Part 1. Scope of Services

The scope of services is more fully described in Exhibit A, Scope of Services, attached hereto and made a part hereof.

Part 2. Fees

Woolpert will perform the services described in Exhibit A for a fee as more fully described in Exhibit B, Service Fees, attached hereto and made a part hereof.

Part 3. Terms and Conditions of the Agreement

Terms and Conditions of the Agreement are as shown on the reverse side of the first page of this Agreement and Exhibit C.

Part 4. Client Certification (if applicable)

As Fiscal Officer for the _____ I hereby certify that funds in the amount of \$ _____ have been lawfully appropriated for the purpose of meeting the obligation of this Agreement for Professional Services, having been duly authorized by appropriate action of the _____ and are in the treasury or in the process of collection and are hereby available for payments of the amounts set forth.

N/A
Fiscal Officer _____ Date _____

This Agreement Approved as to form

N/A
Attorney _____ Date _____

Part 5. Acceptance

This Agreement represents the entire and integrated Agreement between CLIENT and WOOLPERT and supercedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CLIENT and WOOLPERT.

IN WITNESS THEREOF, CLIENT and WOOLPERT acting herein by their duly authorized representatives have executed this Agreement on the date as shown on the first page of this Agreement.

For: CLIENT
By: _____

Name (typed) Daryl Kenning

Date: _____

For: WOOLPERT
By:  _____

Name (typed) James S. Jones, Assoc Partner

Date: 11/23/91

TERMS AND CONDITIONS OF AGREEMENT

- 1 Woolpert reserves the right to submit invoices monthly on a work progress basis except as otherwise provided or agreed to herein.
- 2 Payment is due upon receipt of invoice.
- 3 In the event of account delinquency either in full or in part, Woolpert reserves the right to suspend work and to withhold and retrieve services and deliverables until delinquency is remedied to the satisfaction of Woolpert.
- 4 No deductions will be made from compensation owed Woolpert on account of penalty, liquidated damages, or other sums withheld from payment to third parties, or on account of the cost of changes in the work other than those for which Woolpert has been found to be directly and solely liable.
- 5 Unless otherwise agreed and herein specified the Client will provide the right-of-entry on the property for Woolpert to perform the specified and necessary survey, tests, explorations, markings and monumentation. Woolpert takes reasonable precautions to minimize property damage caused by or incidental to the performance of our services. Our fee does not include the cost of restoration or other adjustments to property value. Any such activity or adjustments are the entire responsibility of the Client, except as may be included herein by specific description.
- 6 The services to be performed by Woolpert under this Agreement are intended solely for the benefit of the Client. Nothing contained herein shall confer any rights upon or create any duties on the part of Woolpert toward any person or persons not a party to this Agreement including, but not limited to any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them.
- 7 The Client shall review and return to Woolpert all work that requires Client input prior to Woolpert continuing with any further work. Any undue delays by the Client in responding, not the fault of Woolpert, shall activate the provisions of Paragraph 17 herein.
- 8 The Client will give prompt written notice to Woolpert whenever the Client observes or becomes aware of any defect in the services or work of Woolpert performed under this Agreement.
- 9 In order for Woolpert to perform its scope of services, the Client must provide certain data to Woolpert. The Client shall do so as and when requested by Woolpert. Any delays, as more fully defined in Paragraph 17, caused by the Client's failure to provide such data, shall activate the provisions of Paragraph 17.
- 10 If requested by Woolpert, the Client will furnish evidence that financial arrangements have been made to fulfill Client's obligations under this Agreement.
- 11 The Client will not request certifications that require knowledge or services beyond the scope of this Agreement. Such request, if made, may at the discretion of Woolpert, be considered changes in the Scope of Work.
- 12 Services resulting from changes in the specific scope, extent or character of the work or of the Client's needs, including but not limited to changes in size, complexity or schedule; demands by Client's agents or contractors; or revisions or rework of previously performed services, when such revisions are due to causes beyond the control of Woolpert shall be considered additional services and entitle Woolpert to additional compensation.
- 3 Preparing to serve or serving as a consultant or witness for the Client in any litigation, arbitration or administrative proceeding involving the services or products provided or the project site referenced by this Agreement shall be considered additional services and shall entitle Woolpert to additional compensation.
- 4 Unless specifically agreed to in writing, fees for additional services and expenses shall be billed at customary billing rates.

- 15 The obligation to provide further services under this Agreement may be terminated by either party upon a minimum of seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement.
- 16 Failure of the Client to make payments to Woolpert in accordance with this Agreement shall be considered substantial nonperformance and cause for termination and suspension of services. Woolpert shall have no liability to the Client for delay or damage caused the Client because of suspension of such services.
- 17 If the project is delayed by the Client for more than fifteen consecutive days, Woolpert shall be compensated for all services performed through the last day of its most recent invoice period. Woolpert shall be entitled to a change order extending its time of performance and increasing the amount of its fee. Said increase in fees shall be based upon Woolpert's reasonable cost to start up, reassign personnel and commence providing services. Woolpert shall not be responsible for delays beyond Woolpert's control and will be entitled to suspension, termination, extension or abandonment rights as provided herein.
- 18 Execution of this Agreement by both parties will constitute authorization to proceed with the contract services.
- 19 Woolpert will commence the performance of the services described in Part 1 of this Agreement within seven days of the execution of this Agreement by both parties.
- 20 Woolpert maintains Workers Compensation and Employer Liability Insurance in conformance with applicable State Law. In addition Woolpert maintains Comprehensive General Liability Insurance and Automobile Liability Insurance. A certificate of insurance can be supplied evidencing such coverage and proper notification in the event of cancellation. If additional coverage, increased limits, or other coverage modifications are requested, Woolpert will endeavor to obtain and charge separately for costs associated with any coverage modification. The Client agrees by signature herein that such modifications are incidental and are not material conditions of this Agreement.
- 21 The Client acknowledges and agrees by signature herein that Woolpert makes no warranty or guarantee either expressed or implied in connection with the services performed hereunder except that we will use the degree of care and skill ordinarily exercised under similar conditions by reputable members of our profession practicing in the same locality.
- 22 There are no warranties which extend beyond the provisions of this paragraph, Woolpert liability for any damage on account of error, omission or professional negligence will be limited to a sum not to exceed the lesser of Woolpert's services fee or professional liability insurance coverage.
- 23 Woolpert assumes no responsibility for the discovery, presence, handling, removal, treatment, or disposal of, or exposure of persons to hazardous substances identified as "hazardous substances" by the Comprehensive Environmental Response Compensation and Liability Act, as amended; and also includes, but is not limited to: asbestos, asbestos products, polychlorinated biphenyl(PCB), and oil products. Further, should Woolpert become aware of any such hazardous substances at the project site which has not been expressly and specifically identified as to type, location, and extent of hazard, in this Agreement, such shall constitute cause to terminate this Agreement, at Woolpert's sole discretion; and Woolpert shall be entitled to the remedies set forth in this Agreement for terminations not the fault of Woolpert, as well as any and all other legal remedies that may be available.
- 24 Client agrees that the contractor will be solely and completely responsible for working conditions on the job site, safety of all persons and property during the performances of the contractor's work and compliance with all applicable regulations and that these requirements will apply continuously and not be limited to normal working hours. Any observations of the contractor's procedure or work by Woolpert is not intended to include a review of the adequacy of the contractor's safety measures, in, on, adjacent to, or near the construction site.
- 25 Woolpert does not assume responsibility for contractor's means, methods, techniques, sequences or procedures of construction and it is understood that field services provided by Woolpert do not relieve the contractor of his responsibilities for performing the work in accordance with applicable plans and specifications. The words

"Supervision," "inspection," or "control" are used to mean observation of the work and measurement by Woolpert to verify or report substantial compliance with approved plans and specifications. Observations by representatives or employees of Woolpert does not mean that all activities are or can be observed or anticipated.

- 26 All documents including, but limited to, drawings, specifications, reports, photos, field notes, test data, calculations, estimates, and audio or visual records prepared by Woolpert are instruments of service pursuant to this Agreement. Woolpert retains all common law, statutory and other reserved rights, including the copyright. All documents and materials of any nature furnished to the Client or Client's agents or employees, if not paid for in full, will be returned upon demand and will not be used by the Client for any purpose whatsoever. Documents and service products produced or provided by Woolpert pursuant to this Agreement will not be used at any location or for any project not expressly provided for in this Agreement without the written permission of Woolpert and additional appropriate compensation.
- 27 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of performance for this Agreement.
- 28 The Client and Woolpert, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Client nor Woolpert will assign this Agreement without the written consent of the other.
- 29 Woolpert may terminate this Agreement for cause in the event of Client insolvency or filing of bankruptcy, either voluntary or involuntary, or the appointment of a receiver or trustee for the Client, or the execution by seller of an assignment for the benefit of creditors.
- 30 If any provision of this Agreement, or application thereof to any person or circumstance, shall to any extent be invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby and shall be valid and enforced to the fullest extent permitted by law.
- 31 In addition, the Contractor further agrees: that in the hiring of employees for the performance of work under this Contract or for any subcontract related thereto, the Contractor or Subconsultants shall not, by reason of race, color, religion, sex, age, handicap, national origin or ancestry, discriminate against any citizen in the employment of a person qualified and available to perform work to which this agreement relates; and that the Contractor, Subconsultant or any person acting on behalf of the Contractor or Subconsultant shall not, in any manner, discriminate against intimidate, or retaliate against any employee hired for the performance of work under this agreement on account of race, color, religion, sex, age, handicap, national origin or ancestry.

EXHIBIT A

Client: City of Centerville

Project: Clyo Road Improvements, Bigger Road to Wilmington Pike

Woolpert Contact Person: James Dobrowski

SCOPE OF SERVICES

This Scope of Services is for the detailed engineering design and the preparation of detailed construction drawings for Clyo Road, located between Bigger Road and Wilmington Pike. The design will be developed based on the alignment between the west boundary of the Thomas Paine development and Bigger Road as proposed by the 1977 design prepared by Woolpert Consultants. The alignment of the road east of Thomas Paine will be coordinated with the adjacent property owners and the City. The third section of road will be located within existing right-of-way dedicated as part of the Thomas Paine development.

1. Collection of Existing Available Data

This phase of the project will consist of the acquisition and review of all available existing data such as drainage, utilities, road right-of-way, and property descriptions. To obtain this information, the consultant will contact local government agencies as well as utility companies having facilities in the area. Additional information will be obtained through field observation.

2. Survey Control

Vertical and horizontal control will be set throughout the project. Descriptions for this control will be shown in the final plans.

3. Subsurface Investigation

The original 1977 sub-surface testing conducted by Dayton Testing Laboratory will be used for the design of this project.

4. Obtain Topographic Information

This proposal is based upon the use of existing aerial photography. The aerial photography east of the Thomas Paine development to the eastern terminus of the project was flown during the spring of 1990. The topographic information for the remainder of the project will be based on the 1977 topographical data. Property lines and utilities will be shown based on information obtained as stated above under "Collection of Existing Available Data." The plan view will be developed to a scale of 1" = 40'.

5. Alignment and Profile

After assembly of all available data and project research is completed the consultant will schedule a pre-design conference with the City. At this meeting, City and project personnel will be introduced and the design parameters of the project will be decided. The proposed scales for the plans will be 1" = 40' horizontal and 1" = 6' vertical.

6. Typical Sections

The typical section will be four lanes with a center median and left turn lanes. The original alternate "B" section, a full depth asphalt pavement section, used in the 1977 design will be used for the final design with the approval of the City. Typical sections will be developed for normal and super-elevated sections. The curb used will be based on the City's requirements. A 5-foot wide sidewalk is proposed along both sides of the road.

7. Right-of-Way Plans

The right-of-way is proposed to be 90-foot wide. Legal descriptions will be provided for all rights-of-way required for the construction of this project. Descriptions for work outside of the project right-of-way for grading work storm drainage, sanitary sewer and water lines crossing the road will be provided. Any easements required for storm drainage such as a detention pond located outside the limits of the road construction are not included in the Scope of Services.

8. Traffic Control

Traffic maintenance, signing and pavement marking, relocation of existing traffic signal heads, and any design modifications required for the existing traffic signal controls to accommodate a completed Clyo Road is not include in this Scope of Services.

9. Cross Sections

Roadway cross sections will be prepared at 50-foot intervals for the total length of the project. Cross sections at proposed driveways will also be provided. All cross sections will be produced at a scale of 1" = 10' horizontal and 1" = 5' vertical.

10. Intersection Pavement Details

Existing and proposed roadway and driveway intersection details will be produced at a scale of 1" = 20'.

11. Drainage

Drainage for the project will be handled by curb inlets, catch basins, and pipes. A 25-year storm will be used to size pipes under the roadway. The 1977 data will be reviewed for information on the design criteria used in the original design. Drainage

areas will be determined from existing topography data available and USGS maps. The Scope of Services does not include the design of any detention basins.

12. Utility Plan

A 12-inch water main will be designed for the total length of Clio Road with crossings under the roadway. Sanitary sewer plan and profiles will be developed for crossings of Clio Road. The consultant will coordinate with the Montgomery County Sanitary Engineering Department. Scales for the plans will be 1" = 40' horizontal and 1" = 6' vertical.

Dayton Power and Light, Ohio Bell and Continental Cablevision will be contacted regarding the location of conduits under the roadway for future crossings. No street light design or landscaping plans have been included in this Scope of Service.

13. General Notes

General notes will be developed for the project.

14. Quantities

A general summary will be developed for all work items. Items will be separated into the three design sections for a basis on how construction costs will be shared.

15. Drawing list

An approximate list of drawings required for the final plans is as follows:

Cover Sheet	1 Sheet	Cross Sections	13 Sheets
General Notes	1 Sheet	Misc. Details	2 Sheets
Typical Sections	1 Sheet	Sanitary Sewer Plan and Profile	1 Sheet
Quantity Summary	1 Sheet	Water Plan and Profile	5 Sheets
Road Plan and Profile	5 Sheets		
Intersection Details	2 Sheets		
Storm Drainage Plan and Profile	3 Sheets		
Approximate Total Sheets	35		

- 16.** Construction staking, shop drawing review and construction coordination services are available from Woolpert if needed. The cost for these services are not part of this contract.

EXHIBIT B

Client: City of Centerville

Project: Clyo Road Improvements, Bigger Road to Wilmington Pike

Woolpert Contact Person: James Dobrowski

FEES

These fees are associated with the Scope of Services as outlined in Exhibit A. The fees outlined below are valid for a period of one year after the issuance of this agreement. Should the work associated with this project extend beyond the period of one year through requests from the client, we are entitled to a renegotiation of fees. The project is scheduled to be completed within six (6) months.

The cost breakdown is as follows:

Bigger Road - Thomas Paine	\$17,900
Thomas Paine	\$10,200
Thomas Paine - Wilmington Pike	<u>\$42,100</u>
	\$70,200

This fee includes all labor & reimbursable costs.

EXHIBIT C

Client: City of Centerville

Project: Clyo Road Improvements, Bigger Road to Wilmington Pike

Woolpert Contact Person: James Dobrowski

The Owner agrees to indemnify, hold harmless, and defend the Architect (Engineer) from and against any and all claims, costs, suits, and damages, including defense costs, arising out of errors, omissions, or inaccuracies in the documents and information provided by the Owner to the Architect (Engineer).

Daryl Kenning
City Manager
City of Centerville

Date