

BILL NO. S-11-11-27

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROFESSIONAL SERVICES CONTRACT FOR CITY AND COUNTY JOINT LAND USE PERMITTING COMMITTEE: LEGISLATIVE STREAMLINING between CLARION ASSOCIATES and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the PROFESSIONAL SERVICES CONTRACT FOR CITY AND COUNTY JOINT LAND USE PERMITTING COMMITTEE: LEGISLATIVE STREAMLINING by and between CLARION ASSOCIATES and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

provides for legislative services that will result in updating, aligning and streamlining local land use and development related ordinances and other legislative or regulatory documents to address inconsistencies and conflicts within said documents and to enhance user friendliness;

involving a total cost of EIGHTY-FOUR THOUSAND, EIGHT HUNDRED EIGHTY AND 00/100 DOLLARS - (\$84,880.00 - City Share; Total Project amount not to exceed \$169,760.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

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Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME ("PROJECT")

Land Use Permitting – Legislative Streamlining

This Agreement is by and between

ALLEN COUNTY - CITY OF FORT WAYNE JOINT OVERSIGHT PERMITTING BOARD ("Committee")

Roy Buskirk, Chair
200 E Berry Street – Suite
Fort Wayne, Indiana 46802

and

CLARION ASSOCIATES ("Contractor")

Matt Goebel, Vice President
621 17th Street – Suite 2250
Denver, Colorado 80293

Who agree as follows:

Committee hereby engages Contractor to perform the services set forth in Part I - Services ("Services") and Contractor agrees to perform the Services for the compensation set forth in Part III - Compensation ("Compensation"). Contractor shall be authorized to commence the Services upon execution of this Agreement and written authorization to proceed from the Committee. Committee and Contractor agree that these signature pages, together with Parts I-IV (pages 1 through 12) and attachments referred to therein, constitute the entire Agreement ("Agreement") between them relating to the Project.

APPROVALS

APPROVED FOR JOINT OVERSIGHT PERMITTING BOARD

BY:

Roy Buskirk, Chair
County Council

DATE:

[Signatures Continued on Next Page]

APPROVALS, CON'T

APPROVED FOR CLARION ASSOCIATES

BY:


Craig Richardson, Vice President

DATE:

11/09/2011

PART I SERVICES

A. PROJECT DESCRIPTION

In May 2011, the city of Fort Wayne and Allen County announced a multifaceted plan and new approach for land-use permitting that simplifies and speeds up processes, jumpstarts the use of technology, streamlines approvals, provides hands-on support and quicker answers, and strives to clarify and align the complicated rules and regulations of both jurisdictions

This Project provides for consulting services that will result in updating, aligning and streamlining local land use and development related ordinances and other legislative or regulatory documents to address inconsistencies and conflicts within said documents and to enhance user friendliness. The goal of this Project is to make Fort Wayne and Allen County the best place to start and/or grow a business.

B. SCOPE OF WORK

Identification of Critical Zoning Ordinance Barriers & Solutions

1.1 On-Line Surveys

Contractor will design and conduct two Committee approved on-line surveys – one designed solicit information on critical ordinance barriers from city and county staff, and a second designed to solicit opinions from the public and stakeholders about barriers and frustrations that they have experienced, or that they believe are hindering investment and development in and around Fort Wayne. Results will be compiled and shared with the Committee and others identified by the Committee.

1.2 Initial Visit and Public Meeting

Contractor will interview key groups (Governing Board, Planning Commission, Board of Zoning Appeals, City Councilmembers, County Councilmembers, Board of Commissioners, the development community, neighborhood groups, chamber of commerce) and key individuals identified by Fort Wayne/Allen County. Contractor will also conduct a high-visibility public meeting to introduce the project, announce a project-specific Contractor developed, Committee approved web page linked to the city or county web site, and highlight multiple Contractor developed opportunities for public input (including a telephone hot line for those without internet access). Contractor will meet with land sub-dividers/ developers/surveyors to discuss potential issues to be resolved in updated and aligned subdivision controls, and will meet with representatives of the sign industry to discuss potential issues related to signage.

1.3 Presentation of conclusions and findings

Approximately two months after the initial visit, Contractor will review initial findings and conclusions regarding barriers. Participants will include Committee approved stakeholders to solicit feedback and discuss potential solutions that are in use in other communities.

1.4 Assessment

Contractor will draft a 30-40 page Assessment that identifies critical areas for improvement by removing barriers to development and redevelopment. This will be based not only on public and stakeholder input, but on Clarion's nationwide experience with cities and counties. It will include examples of how other city-county cooperative efforts have addressed the shortcomings of the current system, as well as approaches used by similar communities in the region.

Duplication of Ordinances

2.1 Review and Inventory

Contractor will compile an inventory of all Allen County and Fort Wayne ordinances related to land and building development and redevelopment, including ordinances related to subdivision, zoning, site planning, as well as ordinances related to specific uses of land (e.g. telecommunications, group living), and requirements for contributions to public services and facilities in the development process (e.g. road, park, or school, land dedication requirements). It is anticipated that approximately 20 different ordinances may be inventoried in this process. The inventory will include fees charged by city and county departments or other agencies related to each type of application or approval required in order to establish the baseline information required for Task 4 below.

2.2 Recommendations

Contractor will draft a memorandum identifying overlaps and duplication among the different city and county ordinances reviewed in Task 2.1 and recommending how to address inconsistencies and conflicts within said ordinances in order to increase the user-friendliness and understandability of the ordinance to the development and business community.

2.3 Presentation of Results at Public Meeting

Contractor will present the results of Tasks 1 and 2 to key stakeholders, public review groups (e.g. Governing Board, planning commissions, elected officials, business groups) and to the public at an evening public meeting. This meeting will also present the results of the fee comparison prepared in Task 4.1. The implications of this Assessment for Accela software and any required changes to the proposed structure of the integrated development ordinance will be discussed at this time.

Integration with DPS Zoning Ordinance Initiative

3.1 Integration of Zoning Initiatives

Contractor will visit with DPS staff to review progress on the updating and alignment of the Allen County and Fort Wayne zoning and development codes in order to understand the proposed structures of the integrated code and where specific contractor products will fit into that structure. Contractor will validate staff approach and framework and offer suggestions on code structuring for user-friendliness based on our work for other communities throughout the U.S.

3.2 Staff Draft of Subdivision and Sign Regulations

Contractor will prepare a staff draft of updated and aligned subdivision ordinances for both the city and county. These materials will be based on current Fort Wayne and Allen County subdivision controls, the requirements of Indiana law in this area, and Clarion's experience in modernizing subdivision controls in other medium sized communities. Standards and criteria may differ based on whether the land involved is urban or rural and whether it has been platted before.

In addition, Contractor will prepare a staff draft of updated and aligned sign control ordinances for both the city and county. This document will be based on current controls, best practices, Contractor's experience and local conditions. It will address those issues identified by representatives of sign interests. The result will be an updating and aligning of current sign controls to adequately address the identified issues in ways that allow for the timely adoption of the amended ordinances.

These two staff drafts are intended for review by DPS staff (and with Governing Board and others, if desired) through a web conference in order to spot and correct any misstatements or misunderstandings prior to release to the public. The staff draft will be structured to fit into the overall code structure and numbering system discussed with DPS staff in Task 3.1.

3.3 Public Draft of Subdivision and Sign Regulations

Contractor will then revise the staff drafts of the subdivision and sign controls and deliver to DPS public drafts of these two documents suitable for posting on the project web site and release to the public. The public drafts will address any issues identified as a result of the review of the staff draft of the sign ordinances with sign interest representatives.

3.4 Public Presentation of Subdivision and Sign Controls

Contractor will present and explain the Public Drafts of subdivision and sign controls in a public meeting.

3.5 Final Draft and Adoption

Contractor will revise the public drafts of subdivision and sign controls based on comments made at the public meetings, and will present the revised adoption drafts at one joint meeting of the Planning Commissions and one joint meeting of the City Council and County Commissioners. The Fee Recommendation Memo described in Task 4.3 would also be presented at this time. If additional meetings are required to complete the adoption process, Contractor will be available to attend those meetings on a time and expense basis. If the city and county decide to adopt the revised subdivision and sign controls as part of the overall updated and aligned code adoption process, Contractor will delay this step until the full updated and aligned code is ready to begin the adoption process and will participate in hearings at that time.

3.6 Resource Services to DPS in Code Integration Process

In addition to drafting, revising, and presenting the requested subdivision and sign control products, Contractor will serve as a resource to DPS in continuing project to update and align city and county zoning and development controls. We anticipate that this will include:

- Advice or assistance in how to remove those barriers to development and redevelopment identified in Task 1.

- Advice or assistance in how to avoid the duplications identified in Task 2 through amendments, consolidation, or repeal of existing development regulations.
- Advice or assistance in streamlining various development review and approval procedures based on the analysis performed in Task 4.
- Drafting regulations or incentives to address specific issues (other than subdivisions and signs) raised by DPS staff, based on our experience in other communities.

Contractor understands that DPS staff will remain the primary drafters of updated and aligned development controls other than subdivision and sign controls, and that Contractor's role will be focused (1) primarily on integrating other recommendations arising from this Scope of Work and (2) secondarily on providing "upon request" drafting assistance on specific issues within the available budget for the project.

Permit/Review Requirements and Fee Comparison

4.1 Identification of Opportunities to Streamline Procedures and Fees

Starting with the inventory of development review procedures and ordinances completed in Task 2.1, Contractor will conduct a comparison of fees charged for similar services by up to four other similar communities in the region. The list of comparison communities will be preapproved by the Committee. This comparison will be used to identify specific types of applications, permits, and approvals that appear to take longer or to cost more in Fort Wayne and Allen County, and to identify procedural streamlining that could reduce those costs.

4.2 Procedural Streamlining

The results off Task 4.1 will be used to inform the DPS integrated code drafting process as described in Task 3.6. Contractor will advise DPS as to how other communities have reduced the time and expense necessary to grant approvals and permits that appear to be taking longer in Fort Wayne/Allen County than in some competitor communities.

4.2 Fee Recommendations

When the Adoption Draft of the integrated development controls has been released, Contractor will draft a Fee Revision Memorandum identifying which of the existing fees charged by Fort Wayne/Allen County may be able to be revised to reflect procedural savings achieved in the Task 3 drafting process. It will also identify any areas where Allen County/Fort Wayne fees are higher than those in competitor communities and where procedural savings to reduce those fees have not been identified.

Optional Detailed Review of Internal Application Review Procedures

At the city and county's option, Clarion will subcontract with Zucker Systems of San Diego, California, to conduct a detailed review of the internal procedures of the Department of Planning Services and other identified departments involved with review and approval of development permits and subdivisions to identify ways in which review procedures could be streamlined to further encourage investment in Fort

Wayne and Allen County. The specific level of review and costs of that review should be decided if and when the option is triggered, but a meaningful review could be conducted for approximately \$25,000.

C. SCHEDULE

Contractor will begin providing services immediately upon receipt of the Notice to Proceed from the Committee. Tasks 1-4 can be completed within just over a year – 14 months after contract adoption. However, the adoption process itself varies significantly from community to community. In addition, the timing of the DPS code integration effort is not known, and could affect the adoption process for specific products identified in Tasks 1-4. Since two jurisdictions are involved and the timing of review and adoption hearings may be more difficult to coordinate, we have allowed four months for that process.

	Months after Contract Execution																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Task 1: Identify Barriers																		
Task 2: Avoid Duplication																		
Task 3: Integrating Amendments																		
Staff Draft																		
Public Draft																		
Adoption Draft																		
Adoption Process																		
Task 4: Permit and Fee Study																		
Fee Comparison																		
Fee Recommendations																		
Task 5: Optional Internal Review																		

PART II

COMMITTEE'S RESPONSIBILITIES

The Committee shall, at its expense, do the following in a timely manner so as not to delay the services:

A. REPRESENTATIVE

Designate Committee representatives for the project who shall have the authority to transmit instructions, receive information, interpret and define Committee's requirements and make decisions with respect to the Services. The Committee's representative for this Contract will be Deputy Mayor Beth Malloy and County Commissioner Nelson Peters.

B. ACCESS TO DEPARTMENT STAFF AND RELATED INFORMATION

Committee representatives will identify a lead local department and representative who will coordinate administrative functions and provide required technical data, documents, reports, etc. to Contractor. The lead local department and representative for this contract is the Department of Planning Services (DPS), Kim Bowman, Executive Director.

DPS will provide the following, among other things:

- Make available to Contractor City and County department staff, department data, reports, studies and similar information relating to the Services as specified in the Scope of Work.
- Coordinate interactions and facilitate communication with Governing Board, Plan Commissions and the Contractor.
- Facilitate scheduling meetings with department staff, securing meeting space, resources and/or technology needed to successfully complete this project.

Contractor may rely upon information and data provided by individual departments without independent verification unless specifically identified by Committee Representatives as requiring such verification.

C. DECISIONS

Provide all criteria and full information as to Committee's requirements for the Services and make timely decisions on matters relating to the Services.

D. PROGRAM MANAGEMENT

The Permit Committee will contract for services for Program Management to oversee the various components of the overall Land Use Permitting initiative, including Legislative Services. Contractor will coordinate scheduling of outreach projects particularly associated with external stakeholders, provide project status updates to Program Manager, along with other related activities. The Program Manager will be required to consult with Contractor and provide project plans and schedules for the overall initiative to Contractor as soon as they are available.

PART III COMPENSATION

A. COMPENSATION

Compensation for services performed in accordance with Part I – Scope of Work of this Agreement will be based on hours actually spent and expenses actually incurred with a not-to-exceed fee of \$169,760.

The Joint Land Use Interlocal Agreement sets forth a manner for financing and an agreement that costs associated with this initiative will be borne equally between the city and the county. Therefore, the City share and County share of this cost is a not to exceed amount of \$84,880, respectively.

By mutual agreement, the Committee and Contractor may reallocate the budget among project tasks if the total budget amount remains unchanged.

Contingency funds must be approved by Committee prior to Contractor performing any additional services.

Contractor's costs will be based on the hours incurred to complete the project times the hourly rates of the various personnel per Attachment 1 – Project Rate Schedule.

Completion of any portion of Optional Task 5 as detailed in the Scope of Work will require a detailed cost summary, including hourly rate schedule and will require written approval by the Committee prior to initiating Task 5 services.

B. BILLING AND PAYMENT

1. Timing/Format

a. Contractor shall invoice Committee monthly for Services completed at the time of billing. Such invoices shall include a summary of actual expense charges incurred and supported by documentation as Committee may reasonably require.

b. All invoices should be directed to the following:

Allen County Commissioner's Office
Att: Nelson Peters
200 E Berry Street – Suite 410
Fort Wayne, Indiana 46802

c. Committee shall pay Contractor within 30 days of receipt of approved invoice.

2. Billing Records

Contractor shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

PART IV ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Supplier agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Supplier warrants that the Services will be completed on or before the End Date. **TIME IS OF THE ESSENCE.** Supplier warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Supplier further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Supplier warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.

2. **INVOICES.** Supplier shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Supplier hereunder until Supplier has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Supplier to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to supplier against any amount owed by Supplier or any of its affiliated companies to the City.

3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Supplier are and shall remain as independent contractors with respect to each other. The persons provided by Supplier to perform the Services shall be Supplier's employees and shall be under the sole and exclusive direction and control of Supplier. They shall not be considered employees of the City for any purpose. Supplier shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Supplier shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Supplier shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., so as to enable any disabled person furnished by Supplier to perform the essential functions of the job. Supplier agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Supplier's failure to comply with this paragraph.

4. **INDEMNITY.** Supplier shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Supplier including such portion thereof due, or claimed to be due, to the negligence of the City except that Supplier shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City, and if any suit, claim, or demand was defended by Supplier, then the City will reimburse Supplier for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Supplier's obligations to indemnify, defend, or hold harmless. Supplier shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.

5. **LIMITATION OF LIABILITY.** Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorneys' fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.

6. **INSURANCE.** Supplier shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

(a) Worker's Compensation	per statutory requirements.
(b) General Liability	\$1,000,000 minimum per occurrence/ \$1,000,000 aggregate
(c) Automobile Liability	\$1,000,000 minimum per occurrence
(d) Products Liability	\$1,000,000 minimum per occurrence
(e) Completed Operations Liability	\$1,000,000 minimum per occurrence

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:
City of Fort Wayne Purchasing Department
1 East Main Street, Rm B-91
Fort Wayne, IN 46802

7. **HAZARDOUS MATERIALS.** Supplier will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law, as hazardous or toxic. Supplier must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.

8. **PROGRESS REPORTS.** The Supplier shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to

the substantially performed only when fully performed according to its terms and conditions and any modification thereof.

9. **CONFLICT OF INTEREST.** Supplier certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Supplier's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.

10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Supplier further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Supplier in furtherance of this contract—shall be the property of the City. The Supplier shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Supplier. By this contract the Supplier specifically waives and/or releases to the City any cognizable property right of the Supplier to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.

11. **CONFIDENTIALITY OF CITY INFORMATION.** Supplier understands and agrees that data, materials, and information disclosed to Supplier may contain confidential and protected data. Therefore, the Supplier promises and assures that data, material, and information gathered, based upon or disclosed to the Supplier for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.

12. **EMPLOYER CERTIFICATION.** In accordance with I.C. §22-5-1.7, Supplier understands and agrees to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Supplier further understands that they are not required to verify work eligibility of status of newly hired employees of the Supplier through the E-Verify program if the E-Verify program no longer exists. Supplier certifies that they do not knowingly employ any unauthorized aliens.

13. **COMPLIANCE WITH LAWS.** Supplier warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and all applicable immigration laws and regulations including the 1986 Immigration Reform and Control Act et. seq. Supplier agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Supplier's breach of such warranty.

14. **DEFAULT.** In the event that (a) Supplier breaches any warranty contained herein; (b) Supplier fails to provide the insurance certificate required herein; (c) Supplier or Supplier's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Supplier's performance of the Services violates applicable law; (e) Supplier admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Supplier fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.

15. **TERMINATION.** In the event of default by Supplier under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Supplier as to the portion of the Services not yet rendered and to purchase substitute services at Supplier's expense. Supplier shall reimburse the City for the cost of such substitute services upon Supplier's receipt of an invoice therefor.

16. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.

17. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Supplier, and Supplier shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Supplier the Rates for completed Services accepted by the City and the actual incurred cost to Supplier for Services in progress. These payments shall not exceed the Aggregate Price.

18. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

19. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.

20. **ASSIGNMENT.** Any assignment, in whole or in part, of Supplier's rights or obligation under this Agreement without the prior written consent of the City shall be void. Supplier shall not use subcontractors to perform any part of the Services without the prior written consent of the City.

21. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties either with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.

22. **ACCESS TO RECORDS.** The Supplier shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at

their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if requested.

23. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Supplier and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Supplier shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
24. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.

ATTACHMENT 1

Project Rate Schedule

Clarion Associates will bill monthly for documented work completed at the hourly rates shown in the budget below. Travel and meals are documented and charged at cost. Telephone, internet, and reproduction are not charged separately. We do not mark up our actual costs, and we do not offer a discount for prompt payment. We expect to be paid within 30 days of submitting invoices. If additional services are required, Clarion Associates is always happy to provide them at the same rates included in the original contract plus actual costs for travel and expenses. The total cost of this contract to complete Tasks 1-4 and Contingency will not exceed \$144,760. If Task 5 is requested, the total cost will not exceed \$169,760.

Fort Wayne / Allen County Legislative Streamlining Budget					
Staff		Elliott	Dale	Anthony/Sommers	Total
Task	Hourly Rate	\$180	\$155	\$85	
Task 1: Identify Barriers					
Public and stakeholder outreach		56	48	64	
Draft Assessment		32	16	16	
Task Hours		88	64	80	
Task Fees		\$15,840	\$9,920	\$6,800	\$32,560
Task Expenses		\$1,000	\$250	\$500	\$1,750
Task 2. Avoid Duplication					
Comparison of Ordinances		32	8	64	
Draft Memorandum		32	8	16	
Task Hours		64	16	80	
Task Fees		\$11,520	\$2,480	\$6,800	\$20,800
Task Expenses		\$500	\$125		\$625
Task 3. Integrating Amendments					
Staff Draft		104	24	136	
Public Draft		40	16	48	
Adoption Draft		24	0	24	
Adoption Process		32	0	8	
Task Hours		200	40	216	
Task Fees		\$36,000	\$6,200	\$18,360	\$60,560
Task Expenses		\$1,500	\$125	\$500	\$2,125
Task 4: Permit and Fee Study					
Fee Study		16	8	48	
Fee Recommendations		32	16	40	
Task Hours		48	24	88	
Task Fees		\$8,640	\$3,720	\$7,480	\$19,840
Task Expenses (included in Task 2)					
Contingency					\$6,500
GRAND TOTAL					\$144,760

Task 5: Optional Detailed Internal Review				
Zucker Systems				\$25,000
GRAND TOTAL WITH OPTIONAL TASK 5				\$169,760

DIGEST SHEET

Department: Mayor's Office

Resolution Number: N/A

Title of Ordinance: Professional Services Contract for City and County Joint Land Use Permitting Committee: Legislative Services

Awarded To: Clarion Associates

Amount of Contract: Not to exceed \$169,760; City share is \$84,880

Evaluation Process: Two teams, Clarion and Baker and Daniels/American Structurepoint, responded to the request for proposal (RFP). The responses were reviewed by a team of thirteen: six Permit Committee members, four department heads and three volunteers from the business community. After oral presentations and reference calls, each evaluator awarded a maximum of 75 points based on the quality of the response and ability to perform the requested services (experience, staffing, references etc). After the quality of the responses was scored and averaged amongst the evaluators, 25 points was awarded to the lowest price and a percentage of the 25 points was awarded to the highest price. Per the RFP, Baker & Daniels/American Structurepoint, a local team was awarded 20 bonus points. This process is in compliance with state and local purchasing requirements.

As illustrated on the attached graphs, Clarion received 67 quality points while Baker & Daniels/American Structurepoint received 60. For pricing, Clarion received 25 points and Baker & Daniels/American Structurepoint received 7 points. In total, before the local preference was awarded, Clarion had been awarded a total of 92 points and Baker & Daniels/American Structurepoint had been awarded 67. With the local incentive, Clarion received a total score of 92 points and Baker & Daniels/American Structurepoint received a total of 87. Clarion was chosen to continue into contract negotiations.

Description of Project (Be Specific):

Earlier this year, City and County executive and legislative branches formalized the creation of the Joint Oversight Permitting Board to provide strategic oversight including hiring contractors and the purchase of software and other related services for a joint city and county permitting process initiative.

In May 2011, the city of Fort Wayne and Allen County announced a specific, multifaceted plan and new approach for land-use permitting that simplifies and speeds up processes, jumpstarts the use of technology, streamlines approvals, provides hands-on support and quicker answers, and strives to clarify and align the complicated rules and regulations of both jurisdictions.

This Project provides for legislative services that will result in updating, aligning and streamlining local land use and development related ordinances and other legislative or regulatory documents to address inconsistencies and conflicts within said documents and to enhance user friendliness. The scope of this project includes:

1. Identification of critical zoning ordinance barriers & solutions

Identify the critical barriers to development and redevelopment in the community. This broad spectrum will include input from grassroots neighborhood groups, community leaders, and community business leaders. The consultant will conduct research of

- a) other cities and counties with similar mix of rural and urban areas and
- b) regional competitors

Once the critical zoning ordinance issues are identified, consultant will draft zoning ordinance amendments to solve the most critical issues, including issues related to state statutes, if identified as root cause barriers.

2. Duplication of ordinances

Consultant will review all City and County ordinances separately as it pertains to development/permit/review requirements. Identify all permits required by City and County governments. Identify areas of overlap and recommend solutions to reduce duplicate efforts through process improvements, ordinance amendments, or other identified best practice. Recommend ordinance changes to repeal outdated and/or conflicting permit/review requirements.

3. Integration with DPS Zoning Ordinance Initiative

Currently the Department of Planning Services (DPS) staff is working on aligning, updating, and simplifying City and County zoning ordinances. Part of one this initiative, to structurally align the numbering system of the city and county ordinances, has been approved by both City and County legislative bodies. Part two of the initiative, updating the zoning districts permitted-uses section is proposed to be adopted by late 2011 or early 2012.

Assistance is needed in three areas. First, a consultant-driven procedure to draft an updated, simplified, and aligned City and County Subdivision Control Ordinance. Second, a consultant-driven procedure to draft an updated, simplified, and aligned sign control section of the City and County zoning ordinance. Part three is to provide DPS resources and work with staff to complete this overall ordinance project within 18 months of contract execution.

The city and county desires to integrate the work of this scope of work with the DPS staff's work in order to align the final deliverable dates between the DPS project and the Streamlining project. Additional resources from the consultant may be needed and

some project planning will be necessary to ensure the work being done by the staff and the consultant is complementary.

4. Permit/Review Requirements and Fee Comparison

Consultant will research and identify all permit types, required agency approvals, whether formally or informally applied, and related fees. Survey permit consumers including but not limited to building, development, and contractor community for input on fee structure. Recommend overall fee structure based on research of other cities and counties with a similar mix of rural and urban areas and regional competitors. Identify areas of permit and agency review overlap and recommend solutions.

The goal of this Project is to make Fort Wayne and Allen County the best place to start and/or grow a business.

What Are The Implications If Not Approved:

The current opportunity to efficiently and effectively revamp the land use development permitting process in the community, in a joint manner between the City and the County both administratively and financially, significantly impacting the ability to retain and add jobs in our community and increase property tax revenue through private investment, may be missed. Recommendations that come from this project will likely impact the overall project, so it is important that all three of the projects are executed on similar timeframes. Please note: based upon numbers spanning 2008 through 2010, just 8 percent of all permits issued (nonresidential development), accounted for almost \$300 million of annual investment or approximately 65 percent of local, yearly development spending.

It is hoped that the improvements to this process will have an impact on both the businesses the city and county retain, as well as the jobs they seek to attract.

If Prior Approval Is Being Requested, Justify:

Not Applicable.

Additional Comments: The cost for these services will be split equally between the City and the County. The City funding has been appropriated in the General Fund.

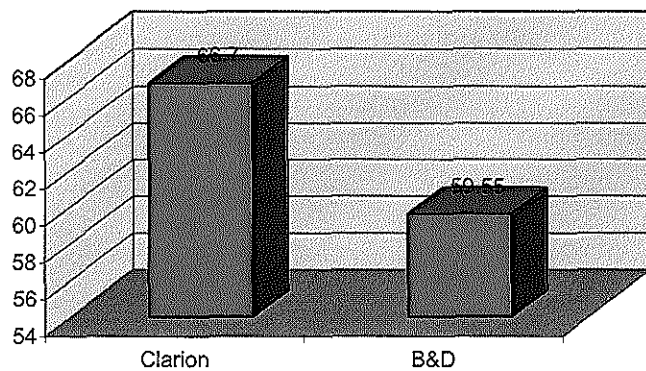
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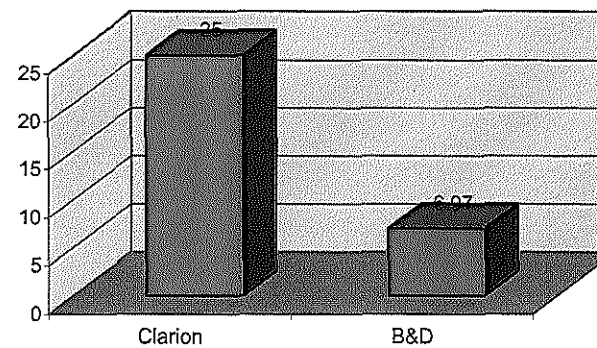
Beth Malloy, 427-1111

	Clarion	B&D
Quality	66.7	59.55
Pricing	25	6.97
Total	91.7	66.52
Total with Local	91.7	86.52

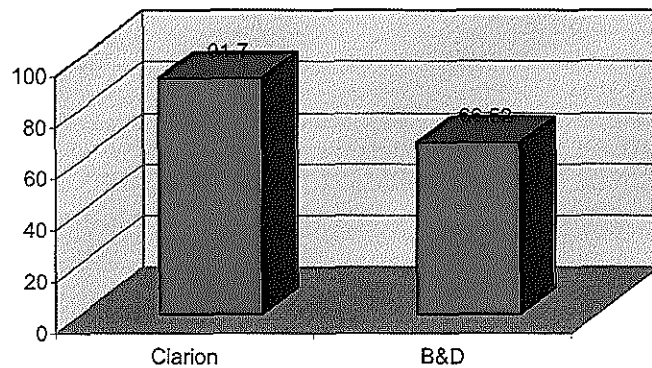
Quality Only 75 points available



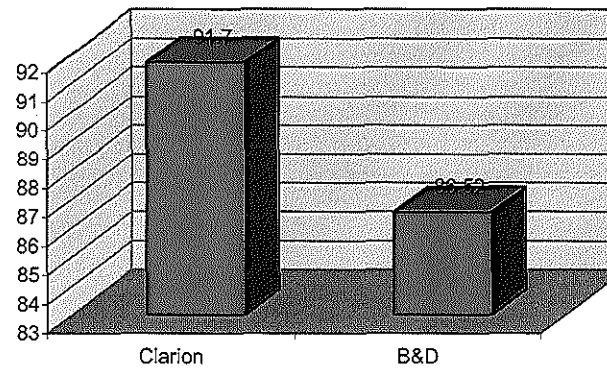
Pricing Only 25 Points Available



Quality plus Price, 100 Points Available



Total with Local Incentive 120 points available



Interoffice Memo

Date: November 17, 2011
To: Common Council Members
From: Beth Malloy, Deputy Mayor
RE: Land Use Permitting Initiative: Professional Services Agreements

Earlier this year, City and County executive and legislative branches ("Bodies") formalized the creation of the Joint Oversight Permitting Board ("Board") to provide strategic oversight including hiring contractors and the purchase of software and other related services for a joint city and county permitting process initiative.

In May 2011, the Board announced a specific, multifaceted plan and new approach for land-use permitting that simplifies and speeds up processes, jumpstarts the use of technology, streamlines approvals, provides hands-on support and quicker answers, and strives to clarify and align the complicated rules and regulations of both jurisdictions. This plan includes contracting for professional services for three separate initiatives including project management, legislative streamlining and ombudsman services.

The Bodies adopted an Interlocal Agreement that set forth a manner for financing and an agreement that costs associated with this overall initiative will be borne equally between the city and the county. Therefore, the Board's approval of the Legislative Streamlining Professional Services Agreement with Clarion Associates calls for the structured reimbursement by the city of one-half of the \$169,760 not to exceed contract price, or \$84,880; and also for the reimbursement by city of one-half of the \$285,420 not to exceed contract price, or \$142,710 for the Program Management Professional Services Agreement with Briljent, LLC.

The Mayor's Office seeks the Council's concurrence with the Joint Land Use Board's action so that they may proceed with implementing the Program Management and Legislative Streamlining components of this essential economic development initiative.

Please contact me at 427-1111 if you have any questions.