

ORDINANCE NO. 2020-02

AN ORDINANCE AUTHORIZING THE PARKS AND RECREATION DIRECTOR, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH BRANDSTETTER CARROLL, INC. (BCI) AND THE CITY OF KENT PARKS & RECREATION DEPARTMENT FOR A COMPREHENSIVE PARKS MASTER PLAN, WAIVING COMPETITIVE QUOTING, AND DECLARING AN EMERGENCY.

WHEREAS, the last parks and recreation master plan study was completed in 1995 which included a feasibility study conducted by BCI for a recreation center and outdoor pool complex; and

WHEREAS, the City of Kent Parks & Recreation Department desires to enter into an agreement with Brandstetter Carroll, Inc. (BCI) to obtain a new Comprehensive Master Plan; and

WHEREAS, this year's budgeted contract amount will be approximately \$75,000; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That Council does hereby authorize the Parks and Recreation Director, or his designee, to enter into an agreement with Brandstetter Carroll, Inc. to help with a comprehensive parks master plan, and is more fully described in Exhibit "A" attached hereto and incorporated herein. Competitive quoting is hereby waived.

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

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: January 22, 2020
Date

Jerry T. Fiala
Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: January 22, 2020
Date

ATTEST: Amy Wilkens
Amy Wilkens
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF *ORDINANCE No.* _____, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON _____, 20_____.

(SEAL)

AMY WILKENS
CLERK OF COUNCIL

**AGREEMENT
PARKS AND RECREATION MASTER PLAN
CITY OF KENT, OHIO**

This Agreement is made between the City of Kent, Ohio (Owner) and Brandstetter Carroll Inc. (Consultants) whereas the Consultant proposes to provide park and recreation system master planning services for the City of Kent.

I. SCOPE OF SERVICES

EVALUATE PHASE

1. Planning Context

- a. **Master Plan Steering Committee** – The City will appoint a Master Plan Steering Committee to work with the Consultants throughout the process. The Consultants will meet with them regularly with updates of the findings and the Committee will assist in establishing the future vision, goals and objectives, and priorities. The Steering Committee should include members of the Park and Recreation Board along with representatives from the City Administration and Staff, Parks and Recreation Department, Schools, Sports Organizations, City Council, Planning Board, and other organizations.
- b. **Demographic Analysis** – Using information provided by the City of Kent and other sources, perform an analysis of the demographic and population characteristics of Kent.
 1. **Using ESRI Business Analyst Software** and by coordinating with the Kent Staff, identify the demographic and land use trends and characteristics within the City limits. Information may include:
 - Demographic characteristics (quantity, ages, race, etc.)
 - Five year population projections
 - Household size
 - Average or median household income and per capita income
- c. **Review of Previous Studies** – Review all previous studies that will be provided by the Owner that pertain to the delivery of parks, recreation and leisure services, including, but not limited to: the previous Kent Parks and Recreation Master Plan, Kent Comprehensive Plan, land use plans, previous Park Master Plans, annual reports, program guides, newsletters, policies, use agreements, brochures, School District plans, and other planning studies. Summarize the key findings of each report to be included in an appendix to the report.
- d. **Benchmarking Comparisons to Similar Systems** – Using the NRPA ParkMetrics (formerly PRORAGIS) program to compare facilities, programs, operating budgets, etc. with other like agencies. Communities throughout Ohio and the midwest with similar populations will be included in the analysis.
- e. **Management Structure** – Perform a review and analysis of the existing management structure, staff levels, policies and operations.
- f. **Kent Policy Review** – Perform a review of Kent policies, and any mandated plans as they may impact park and recreation facilities, programs and services.
- g. **Funding Analysis** – Review the past five year's budgets and the proposed future operating and capital budgets.
- h. **Report and Presentation** – Prepare a report summarizing this phase and present it to the Master Plan Steering Committee.

2. Existing Parks, Facilities, and Programs Analysis

- a. **Parks, Open Space and Facilities Inventory** – Inventory all existing parks and recreation facilities offered in Kent, including parks and facilities operated by others including Schools, County and State Parks, private or non-profit recreation facilities, and others. Make site visits

to all of the City of Kent owned facilities with the purpose of observing the existing conditions and opportunities for improvements. A detailed Qualitative Assessment form will be completed for each City-owned facility.

- b. **Recreation Programs Assessment** – Use public input, staff input and the Consultant's observations to perform a review of current program and service offerings, levels of usage, attendance, and customer satisfaction levels. The Needs Assessment Survey will be utilized to identify existing satisfaction levels. The Stakeholder Groups in the Needs Analysis Phase will be part of this analysis. Identify the core programs that should be offered, competition for these program users, customer satisfaction, and the potential for market growth.
- c. **City-Wide Park and Recreation Facilities Map** – Prepare a map using GIS software which illustrates all of the City-owned parks and recreation facilities and trails as well as those of the Schools and other providers in the area.
- d. **Geographic Distribution – Service Gap Analysis** – Prepare an analysis of the current service gaps by mapping the locations of current parks by park-type categories using walk and drive times. Specific facilities will also be mapped to compare the household locations with the facility locations. Individual maps will be prepared for picnic shelters, trails, playgrounds, soccer fields, baseball/softball diamonds, and more to identify the distribution of the specific facilities throughout the community. A Composite Service Areas Map will be prepared which identifies the overall service delivery throughout the City.
- e. **Report and Presentation** - Prepare a report summarizing this phase and make a presentation of the findings to the Master Plan Steering Committee.

ENGAGE PHASE

1. Needs Assessment

- a. **Kick-Off Event** – In conjunction with the Parks and Recreation Department, conduct an event (possibly combined with an existing program event) in which participants will complete surveys, interact with Staff and the Consultants, use play money to vote on their priorities for various improvements, and become informed about the project interactive web site and on-line surveys.
- b. **Initial Public Open House** – Conduct a more traditional public open house at a convenient location to identify the public perception of park facilities and programming needs. The purpose of this public workshop will be to solicit input from the citizens and users regarding their concerns and opinions about existing facilities and programs, and their desires for future facilities and programs. The workshops will be interactive and involve all participants in a variety of methods.
- c. **Staff Input** – Conduct meetings, employee survey, and interviews with the Kent staff members regarding their perceptions of the public's needs and concerns, and the potential for improved services, facilities, programs, and public access. Identify the strengths, weaknesses, service needs and impediments (SWOT) to current operations. Staff will be invited from the following City Departments: Parks and Recreation, Public Works, Zoning, Engineering, Administration, Police, Economic Development, and Planning. The public input process will assist in this exercise.
- d. **Stakeholder/Focus Groups** – Conduct up to 12 stakeholder group meetings and round table discussions with various special interest and user groups. Kent will provide invitations and meeting space for these meetings. Anticipated groups may include: program users, parents of children in programs, partner organizations, organized athletic league officials, School Board, senior citizens, cultural arts organizations, partners in service, and other organizations to be identified between the Consultant, Steering Committee, and City of Kent. Questions will be prepared in advance to be approved by the Steering Committee. The questions will be sent to the stakeholder group participants for discussions with their organizations before the actual focus group.

- e. **School Student Workshops** – Conduct workshops in the schools to receive ideas and gain the perspective of youth from groups of fifth and sixth graders and high school students. The City will assist in establishing these meetings.
- f. **MindMixer Web Based Public Engagement Program** – Set up and manage a web site to solicit public engagement. BCI currently uses MindMixer, which is a web based on-line community collaboration program whereby residents can find out about the project, input their ideas, second ideas, respond to instant polls, respond to web surveys, and much more. The web site will be specifically for the Kent.
- g. **Household Needs Assessment Survey** – The input from the workshops, stakeholder groups and staff input will be utilized to develop a statistically valid mail and/or phone survey with a minimum of 400 responses from planning areas of Kent. Surveys will be mailed to at least 2,000 households. The base survey included in this proposal is a 5 page survey. The responses will be geocoded to allow analysis by geographic area. Cross tables will be generated to analyze specific items such as priorities of families with children, households with seniors, etc. The survey will be used to identify:
 - Current satisfaction levels with programs and facilities;
 - Participation and satisfaction with current programs;
 - Parks currently used;
 - Needs for various indoor and outdoor facilities and programs;
 - Identification of the most needed indoor and outdoor facilities;
 - Identification of the primary functions that should be performed by the Kent regarding parks, recreation, open space, greenways, trail linkages, horticulture, arts, programs and facilities;
 - Specific questions pertaining to any proposed new facilities.
- h. **Web-Based Survey** – Conduct a shorter web-based survey asking similar questions to the Household Needs Assessment Survey. Whereas the statistically valid mail survey will reach a selected, random sample of residents, the goal of this survey is to engage as many residents as possible. The survey will utilize the BCI subscription to Survey Monkey. Questions will be approved by the Master Plan Steering Committee. Kent will promote the use of the web survey through email blasts, newsletter announcements, In Touch Magazine, placement on their web page, and other methods. A printed version will also be available which can be printed and/or handed out at City buildings and program sites.
- i. **Needs Analysis Report** – Prepare a summary report of the Needs Analysis for review by the Master Plan Steering Committee.
- j. **Needs Assessment Presentation** – Conduct a public workshop presentation of the preliminary findings of the Needs Assessment effort. The purpose of this meeting will be to inform the public of preliminary findings prior to the development of specific recommendations.

ENVISION PHASE

1. **Vision, Goals and Objectives** – Working with the Master Plan Steering Committee, Parks and Recreation Department, and Parks and Recreation Board - The Consultant will:

Vision, Goals & Objectives – Using all of the previous findings, identify the following:

- Develop a mission statement for the Parks and Recreation Department;
- Identify the Future Vision for Parks and Recreation in Kent;
- Identify Proposed Level of Service Standards for park land and specific recreation facilities;
- Identify Short Term Goals and Objectives;
- Identify Long Term Goals and Objectives.

2. **Level of Service Guidelines** – Develop Level of Service Guidelines for the City of Kent based on the public input, the Benchmarking Comparison Survey, and with standards and guidelines developed by the Consultant based on previous experience. The standards will identify guidelines and definitions for park types and their respective service areas and characteristics, facility types and criteria, facility per population standards and geographic distribution criteria.

PLANNING PHASE

1. **Physical Planning, Program, and Services Recommendations** – The Consultant will:
 - a. **City Wide Park and Facility Improvement Recommendations** – Prepare a City-wide map illustrating proposed general locations of new parks by park type categories (mini-park, neighborhood, community, special use, nature, or linear park).
 - b. **Level of Service Guidelines** – Develop Level of Service Guidelines for the City of Kent based on the public input, the Benchmarking Comparison Survey, and with standards and guidelines developed by the Consultant based on previous experience. The standards will identify guidelines and definitions for park types and their respective service areas and characteristics, facility types and criteria, facility per population standards and geographic distribution criteria.
 - c. **Individual Park Recommendations and Costs** – Identify the specific needed improvements at each park or recreation facility. Prepare level of magnitude costs for each capital improvement recommended in the plan.
 - d. **Park Concept Plans** – Prepare park concept plans for up to five parks to illustrate significant changes in overall park design. Additional concepts can be provided for additional fees as outlined in the Fee Proposal. Prepare text recommendations for improvements at other parks.
 - e. **Capital Improvement and Land Acquisition Priorities** – Work with Kent staff and the Master Plan Steering Committee to prioritize, by selected facility type, the capital improvements and acquisitions. This process will identify the short range (0-2 years), mid-range (3-5 years) and long-range (6-10 years) recommendations. Proposed land acquisition will also be prioritized.
 - f. **Report** – Prepare a summary report of the Recommendations stage.
 - g. **Presentations** – Present the plan and recommendations to the Steering Committee and Recreation Commission.
2. **Action Plan** – The Consultant will develop:
 - a. **Phased Implementation Plan** with specific strategies and recommendations for:
 - Guidelines for prioritization of future capital improvements;
 - Land acquisition;
 - Trail recommendations;
 - Parks, greenway and open space land acquisition;
 - Facility recommendations;
 - Park and facility operations recommendations;
 - Programs and services recommendations;
 - Budgeting and funding/financial management recommendations and priorities;
 - This process will identify the short range (0-2 years), mid-range (3-5 years) and long-range (6-10 years) action steps along with the responsible party and potential funding sources
 - The strategies will be referenced to the City Comprehensive Plan.
 - b. **Funding Recommendations** – Identify potential funding sources and their applicability for the recommendations in the Master Plan.
 - c. **Draft Master Plan** – Prepare a Draft Master Plan for review by the City staff and Master Plan Steering Committee.
 - d. **Action Plan Presentation** – Make a presentation of the Draft Action Plan and Final Needs Assessment recommendations to the Master Plan Steering Committee and other groups as identified.

- e. **Final Master Plan** – Following the reviews of each of the separate reports, prepare a Final Master Plan that includes all components of the planning process.
- f. **Final Presentations** – Make presentations of the Final Master Plan to the Master Plan Steering Committee, Park and Recreation Board, and Kent City Council.
- g. **Executive Summary** – Prepare an Executive Summary that summarizes the findings, recommendations, and actions.

3. Deliverables – Final deliverables will include:

- a. A Service Area Map showing existing and proposed residential areas, existing park locations, existing park service areas, and proposed parks, walkways, bikeways and recreation facility locations. These items may be included as one map or separated into several maps, depending upon the clarity of the information and the need for separate maps.
- b. Ten (10) copies of all Technical Reports
- c. Ten (10) copies of the Draft Master Plan
- d. Twenty (20) copies of the Final Master Plan and Executive Summary including all of the previous reports.
- e. Digital copies of all reports and graphics for use by the Owner.
- f. Maps will be prepared in digital shapefile format using ESRI ArcGIS 10.5 for use by the Owner.

II. FEES & CONDITIONS

- 1. Fees - For the above referenced Scope of Services, the Consultants shall be paid the following fees.

a.	Planning Context	\$11,000
b.	Site, Facilities and Programs Analysis	\$11,000
c.	Needs Assessment	\$28,000
d.	Vision, Goals and Objectives	\$3,000
e.	Physical Planning	\$16,000
f.	Action Plan & Final Master Plan	<u>\$16,000</u>
	Total Fee	\$ 85,000

Additional site concept plans may be provided at a fee of \$2,500 each

- 2. Conditions

- a. Any additional copies that are requested by the Owner will be billed to the Owner at the actual printing and preparation costs.
- b. The Owner will provide digital maps of the entire City and the individual sites for use by the Consultant.
- c. The Consultant will be paid monthly based on the percentage of work completed in the previous month.
- d. The Owner will provide the consultant with copies of previous studies related to the delivery of parks and recreation services.
- e. The Owner will coordinate the invitations, scheduling and room arrangements for the stakeholder meetings and public input meetings.
- f. The Owner will promote the web survey and on-line civic engagement.

THIS AGREEMENT PROPOSED BY:

Brandstetter Carroll Inc.

Benjamin E. Brandstetter

President

Title

Date

THIS AGREEMENT ACCEPTED BY:

City of Kent, Ohio

Name

Title

Date

**BRANDSTETTER CARROLL INC.
STANDARD PROVISIONS**

(1) **Consultant's Scope of Services and Additional Services** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Owner and agreed to by the Consultants, the Consultants will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Owner shall pay the Consultants for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates.

(2) **Owner's Responsibilities** In addition to other responsibilities described herein or imposed by law, the Owner shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Owner's decisions.
- (b) Provide all information and criteria as to the Owner's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultants all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, zoning or other land use regulations, etc., upon all of which the Consultants may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultants to provide its services.
- (e) Review all documents or oral reports presented by the Consultants and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultants.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Give prompt written notice to the Consultants whenever the Owner becomes aware of any development that affects the scope and timing of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (h) Bear all costs incident to the responsibilities of the Owner.

(3) **Period of Services** Unless otherwise stated herein, the Consultants will begin work timely after receipt of an executed copy of this Agreement and will complete the services in a reasonable time. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultants do not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment** Compensation shall be paid to the Consultants in accordance with the following provisions:

- (a) Invoices will be submitted by the Consultants to the Owner periodically for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt. If the Owner fails to make any payment due the Consultants under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultants may, after giving notice to the Owner, suspend services under this Agreement until all amounts due are paid in full.
- (b) If the Consultants initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (c) The Owner agrees that the payment to the Consultants is not subject to any contingency or condition. The Consultants may negotiate payment of any check tendered by the Owner, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without

prejudicing any right of the Consultants to collect additional amounts from the Owner.

(5) **Use of Documents** All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Consultants are related exclusively to the services described in this Agreement, and may be used only if the Owner has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Owner or others on extensions of this project or on any other project. The Owner shall not make any modifications to the Consultant's documents. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultants, the hardcopy shall govern. Only printed copies of documents conveyed by the Consultants may be relied upon. Because data stored in electronic media format can deteriorate or be modified without authorization of the data's creator, the Owner has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data transferred.

(6) **Opinions of Cost** Because the Consultants do not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultants cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Owner wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Owner will be paid for as Additional Services.

(7) **Termination** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. In the event of any termination, the Consultants shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultants as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultants, to the total amount of services which were to have been performed.

(8) **Insurance** The Consultants are protected by Workers' Compensation insurance, professional liability insurance, and general liability insurance and will exchange certificates of insurance upon request. If the Owner directs the Consultants to obtain increased insurance coverage, or if the nature of the Consultant's activities requires additional insurance coverage, the Consultants will take out such additional insurance, if obtainable, at the Owner's expense.

(9) **Standard of Care** In performing its professional services, the Consultants will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultants are not a fiduciary with respect to the Owner.

(10) **Limitation of Liability** In recognition of the relative risks and benefits of the Project to both the Owner and the Consultants, the risks have been allocated such that the Owner agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement, that the total liability, in the aggregate, of the Consultants and the Consultant's officers, directors, employees, agents, and subconsultants to the Owner or to anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultants or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultants under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultants be liable for lost profits or consequential damages, for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans

and specifications. This Section 10 is intended solely to limit the remedies available to the Owner, and nothing in this Section 10 shall require the Owner to indemnify the Consultants.

(11) **Certifications** The Consultants shall not be required to execute any certifications or other documents that might, in the judgment of the Consultants, increase the Consultant's risk or affect the availability, applicability, or cost of its insurance.

(12) **Dispute Resolution** All claims by the Owner arising out of this Agreement or its breach shall be submitted first to mediation using a local court mediator as a condition precedent to litigation. Any mediation or civil action by Owner must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(13) **Hazardous Substances and Conditions**

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are limited to those tasks expressly stated in the scope of services. In any event, Consultants shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultants shall notify the Owner of hazardous substances or conditions not contemplated in the scope of services of which the Consultants actually becomes aware. Upon such notice by the Consultants, the Consultants may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultants is to proceed with its services and if Consultants is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

(15) **Assignment and Subcontracting** This Agreement gives no rights or benefits to anyone other than the Owner and the Consultants, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Owner and the Consultants. The Owner shall not assign or transfer any rights under or interest in this Agreement without the written consent of the Consultants. The Consultants reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultants exercises this right, the Consultants will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(16) **Confidentiality** To the extent permitted by the Ohio Public Records Law, the Owner consents to the use and dissemination by the Consultants of photographs of the project and to the use by the Consultants of facts, data and information obtained by the Consultants in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Owner as confidential, the Consultants shall use reasonable care to maintain the confidentiality of that material.

(17) **Miscellaneous Provisions** This Agreement is to be governed by the law of the State of Ohio. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Owner shall be void and are hereby expressly rejected by the Consultants. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.