

RESOLUTION NO. 74-21
CITY OF CENTERVILLE, OHIO

9th SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE
DAY OF August, 2021.

**RESOLUTION AUTHORIZING THE CITY MANAGER TO
ENTER INTO AN AGREEMENT FOR PROFESSIONAL
CONSULTING SERVICES WITH MKSK, INC FOR MASTER
PLANNING & LANDSCAPE ARCHITECTURAL SERVICES FOR
LEONARD E. STUBBS MEMORIAL PARK, STAGE II.**

WHEREAS, the City of Centerville is desirous of obtaining professional consulting services to assist in a master plan development for improvements at Leonard E. Stubbs Memorial Park, Stage II (the "Project"); and

WHEREAS, the City desires to seek assistance for master planning and landscape architectural services for the Project; and

WHEREAS, MKSK, Inc. has unique knowledge such services and a demonstrated ability to assist in accomplishing the objectives of the City; and


WHEREAS, MKSK, Inc. is providing professional services, which are specialized services of a construction project manager, consultant or architect of a nature that is exempt from competitive bidding.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF
THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS
FOLLOWS:**

Section 1. The City hereby agrees to enter into an Agreement with MKSK, Inc. and the City Manager is hereby authorized to execute the Agreement with MKSK, Inc. in a form substantially similar to the Agreement attached hereto as Exhibit "A" and incorporated herein on behalf of the City of Centerville.


Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 9th day of August, 2021.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council
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. 74-21, passed by the Council of the City of Centerville, Ohio on the 9th day of August, 2021.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

Exhibit "A"



July 30th, 2021

Joey O'Brien
Assistant City Planner
City of Centerville
100 W. Spring Valley Road
Centerville, OH 45458

**RE: Centerville Stubbs Park – Stage II
MKSK #21008.01**

Dear Joey,

MKSK is pleased to present our consultant team's proposal for the above referenced project for consideration and to continue our positive and successful relationship with the City of Centerville on another signature project.

Please find below our scope of services and fees for completing Stage II – Documentation Phase of the Leonard E. Stubbs Memorial Park. We continue to value our partnership and continued collaboration with the City of Centerville, and we are looking forward to working with your team on this project. I look forward to your favorable review of our proposal.

1.0 PROJECT INFORMATION

1.1 Project Description: Design and Document Contract Documents, Specifications & Bid Documents for park improvement associated with Phase I of the Leonard E. Stubbs Memorial Park for the City of Centerville.

- Scope includes amphitheater band shell and bowl improvements, concession & bathroom building improvements, new community plaza, main entry & roadway improvements, site drainage improvements and trail & accessibility improvement and park signage / wayfinding.

1.2 Project Location & Boundaries: Phases I of the existing Leonard E. Stubbs Memorial Park as defined by the parks revised master plan.

1.3 Estimated Project Construction Cost: \$1.6m per revised Master Plan.

1.4 Project Initiation: August 10th, 2021.

1.5 Project Schedule: 5 Month Duration
Start Date: August 10th, 2021.
Estimated Completion: December of 2021.

2.0 PROJECT ASSUMPTIONS

2.1 City is to provide the following information or resources for use in performing the contract services. The Design Team is entitled to rely on the accuracy and content of the information provided by the City without verification. The City will provide survey, engineering plan, electronic files, reports and



documents to assist the Design Team in providing professional services.

2.2 Economic impact analysis is not included.

2.3 Geotechnical analysis and reports to be provided by the City.

3.0 SCOPE OF SERVICES

3.1 Amphitheater Improvements

A. Fiber and Electrical Installation and Up-grades

- Provide rigging / connection points to install temporary screen and provide location(s) for projection system along with connections to power / data.
- Site & Bowl Lighting including but not limited to area lighting, stage lights and band shell accent lighting.
- Locate Bowl Sound & Mix Position

B. Band Shell Improvements

- Repair, Resurface & Finish wood supports and exposed wood surfaces.
- Renovate North "Pod" to include new green room, ADA accessible bathroom with fixtures, replace exterior doors & hardware, and any MEP upgrades for code compliance.
- Renovate South "Pod" to include up-grades to electrical service, electrical / lighting controls, provide for additional park storage, exterior doors & hardware, and any MEP upgrades for code compliance.

C. Seating Improvements

- Additional ADA Seating Throughout Bowl, Regrade Seating Area Close to Stage for Fixed Seating and Create "Dance Area" in Front of Stage.
- Do not Impact Sledding Hill Capabilities.

D. Parking Lot and Access Improvements

- Accommodate Tour Bus Drop-off.
- Provide Connection to Peach Creek Road.
- Improve Site Drainage.

E. Pedestrian Access

- Provide at-grade crossings of new Loop Road to and from Amphitheater and Bowl Area.

3.2 Concession/Bathrooms/Community Plaza Space

A. Existing Building Assessment

- Provide design and documentation for repairs and code up-grades.
- Provide design and documentation on all building exterior improvements such as but not limited to front & back "porch" structures, point-of-sale windows, roofing material & exterior CMU block treatment.
- Provide design and documentation for all Community Plaza space including hardscape, planting, MEP & circulation details.

3.3 Park Entrance Enhancements

A. Park Main Entry

- Layout and document lane improvements to include one entry lane, and two exit lanes.
- Design and document new Park Entry signage / gateway including plantings, walkways, accent lighting and interruptive signage. Monkey House to remain in current location.



- B. Layout and document Peachcreek Road extension.
- C. Improve Site Drainage.

3.4 Accessibility / Path Hierarchy

- A. Trail / Path Improvements
 - Evaluate and Improve Trail / Path Crossings including existing bridges to remain or to be removed.
 - Layout and document trail alignment.
 - Establish Hierarchy, Indicate Distances, and Improve Wayfinding.
 - Address Maintainability.

3.5 Signage and Wayfinding

- A. Develop a System of Materials, Sign Type & Names
 - Layout and document signage types including graphics and text.

3.6 Site Utilities Improvements

- A. Roadway Infrastructure Utility Corridor
 - New electric, Fiber Optics, water, sewer & stormwater.
- B. Port-A-John Trailer Pad
 - concrete pad with gravity drain.
 - Water, wastewater, and electrical hook-ups provided.

4.0 PROCESS

Stage II - Documentation Phase

4.1 Contract Documentation – This phase produces the necessary technical drawings and specifications required to communicate design intent to bidders / contractors. These highly developed documents provide the opportunity for a final detailed estimate of cost prior to bidding. Additionally, these drawings will be submitted for permit review and preliminary approval.

- 4.1.1 Finalize General Site Dimensions and Elevations
- 4.1.2 Finalize architectural plans, elevations & details for Band Shell & Concessions building
- 4.1.3 Layout and documents all park MEP improvements
- 4.1.4 Layout and documents all Park Signage Types
- 4.1.5 Finalize Layout Parking / Roadway
- 4.1.6 Locate Vehicle and pedestrian traffic controls (if required)
- 4.1.7 Finalize the Storm Water Management Strategy
- 4.1.8 Provide Layout Plans
- 4.1.9 Provide Grading Plans
- 4.1.10 Provide Hardscape / Materials Plans
- 4.1.11 Provide Site hardscape details
- 4.1.12 Provide Details of Site Furnishings and Equipment
- 4.1.13 Provide Landscape Planting Plans and Details
- 4.1.14 Provide Soils Plan, Details & Specs
- 4.1.15 Diagrammatic Irrigation Plan, Details & Specs
- 4.1.16 Tree Protection Plan and Details for existing trees and significant plantings during construction.



4.1.17 Specifications: Provided complete full-length specifications in current CSI Master Format, describing the type of construction, materials, systems, and other pertinent information per plans. Include all items which are sole-sourced and justification for not specifying three acceptable products.

4.2 Process

- 4.2.1 Site Visits and Investigations: Conduct site visits and investigations as needed to fully coordinate and document extent and requirements of proposed design solutions.
- 4.2.2 Submit progress deliverables at 30%, 60%, 90% and 100% completion.
- 4.2.3 Project Team Meetings: Anticipate weekly meetings in this phase.

4.3 Bidding – The bidding phase will consist of reviewing comments from the City and other reviewing entities and incorporating them into the document set for final approvals and bidding. Likewise, MKSK will assist in providing addenda as needed to clarify bidder’s questions.

- 4.3.1 Clarifications and addenda preparation during bidding period.
- 4.3.2 Attend pre-bid conference.
- 4.3.3 Assist in bid evaluation and award recommendation.

4.4 Process

- 4.4.1 Pre-bid Meeting: attend to introduce project and answer questions from contractors.
- 4.4.2 Address and review questions by contractors and issue addenda as needed.

4.5 Contract Administration – Contract Administration will include observation in-progress of construction, review of submittals, shop drawings and field reports to ensure conformance to design intent on behalf of the Client Group.

- 4.5.1 Review shop drawings, samples and other submittals required by the specifications.
- 4.5.2 Review construction mockups on site.
- 4.5.3 Periodic on-site construction observation and in-office documentation to monitor construction progress.
- 4.5.4 Pre-final and final inspections to facilitate punch-list preparation for improvements documented for construction as described above.
- 4.5.5 Participate in project closeout meetings as necessary (assume one).
- 4.5.6 Field Reports, as necessary.

4.6 Process

- 4.6.1 Site Visits: Conduct 1 site visit per week for a 6-month estimated construction schedule (24 total) and investigations as needed to fully review construction progress and conformity with design intent.
- 4.6.2 Project Team Meetings: Anticipate weekly meetings in this phase.



4.7 Project Closeout / Commissioning – This phase will complete the project and allow for final review of all scope completed by the contractors to ensure conformance with design intent.

- 4.7.1 Punch list (one) and Punch Back Check (one)
- 4.7.2 Record drawings from contractor provided As-built field drawings. Design Team to provide final drawings including all bulletins.

4.8 Process

- 4.8.1 Site Visits: Conduct 2 site visits to preform Punch List and Back Check Reviews

5.0 SERVICE SUMMARY & FEE PROPOSAL

5.1 MKSK Design Services Lump Sum	Fee
Task 4.1 Contract Documentation	\$45,700
Task 4.3 Bidding	\$5,000
Task 4.5 Contract Administration	\$31,680
Task 4.7 Project Closeout / Commissioning	\$5,000
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MKSK PROFESSIONAL SERVICES SUB-TOTAL	\$87,380
5.2 Consultant Design Services Lump Sum	Fee
LJB Inc.	\$63,000
Levin Porter Architects	\$15,000
Heapy Engineering	\$33,000
New Era Technology	\$5,000
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CONSULTANT PROFESSIONAL SERVICES SUB-TOTAL	\$116,000
5.3 PROJECT EXPENSES & REIMBURSABLES	
Direct Project Expenses, Estimate, Hourly and/or per Terms & Conditions	\$3,050
5.4 PROJECT MANAGEMENT	
Project management, administration, and consultant coordination 10%	\$15,000

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MKSK & CONSULTANT PROFESSIONAL SERVICES TOTAL

\$221,430

6.0 IF AUTHORIZED SERVICES SUMMARY & FEE PROPOSAL

6.1 Contract Administration – 2 additional visits per week for a 6-month duration In addition to Task 4.5 Contract Administration Fees {MKSK}	\$63,320
6.2 In-person Design Team Meetings Per meeting, per Person {MKSK}	\$1,500 – \$2,000
6.3 Perspective Renderings and Marketing Quality Illustrations Per Image {MKSK}	\$3,500 - \$5,000
6.4 Additional Public Engagement Meetings / Events {MKSK}	\$5,000

Thanks for your consideration and continued collaboration,
MKSK, Inc.



Jeffrey J. Pongonis, ASLA
Principal

Authorization

Client Signature

Date

MKSK

Client Print Name and Title

City Attorney

Date

City Attorney Print Name and Title

Landscape Architect Signature
MKSK

Date

Landscape Architect Print Name & Title
MKSK

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DIRECT PROJECT EXPENSES Direct project expenses will be billed in addition to the fee for basic services and include actual out-of-pocket expenditures made in the interest of the Project. All direct project expenses will be invoiced at 1.2 times the actual amount. Direct project expenses include, but are not limited to mileage, film and processing, courier and overnight delivery services, travel, hotel, car rental, etc. and may be adjusted annually. All International air travel, if required, will be by business class.

Requested documents to be printed in-house will be invoiced at the following rates: (excluding those for office use)

B/W Copy 8.5" x 11" – Per Sheet	\$ 0.10
B/W Copy 11" x 17" – Per Sheet	\$ 0.20
B/W Large Format Print – Per Sq. Ft.	\$ 0.30
Color Copy 8.5" x 11" – Per Sheet	\$ 1.00
Color Copy 11" x 17" - Per Sheet	\$ 2.00
Color Large Format Print – Per Sq. Ft.	\$ 4.00

ADDITIONAL SERVICES / STANDARD HOURLY RATES If the Scope of Work or if the Consultant's service is substantially revised, the amount of total compensation shall be equitably be adjusted. Fees for requested additional services shall be computed at our standard hourly rates below or outlined under a separate proposal. Rates may be adjusted annually.

Principal	\$ 210
Senior Associate	\$ 165
Associate	\$ 150
Landscape Architect III	\$ 125
Landscape Architect II	\$ 115
Landscape Architect I	\$ 105
Urban Planner III	\$ 125
Urban Planner II	\$ 115
Urban Planner I	\$ 105
Graphic Designer III	\$ 125
Graphic Designer II	\$ 105
Graphic Designer I	\$ 95
Intern	\$ 70
Administration	\$ 70

RETAINER The Client shall make an initial payment as defined in the attached proposal as a retainer upon execution of this agreement. This retainer shall be held by the consultant and applied against the final invoice.

PAYMENT DUE Invoices shall be submitted monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the due date. The Consultant has been commissioned by the Client to provide professional services, which are independent of whether the Project for which they are provided is executed or not.

SATISFACTION WITH SERVICES Payment of any invoice by the Client to the Consultant shall be taken to mean that the Client is satisfied with the Consultant's services to the date of payment and is not aware of any deficiencies in those services.

DISPUTED INVOICE If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within ten (10) calendar days of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the

other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the Client on all disputed invoice amounts that are subsequently resolved in the Consultant's favor and shall be calculated on the unpaid balance from the due date of the invoice.

INTEREST If payment in full is not received by the consultant within forty-five (45) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent of the past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to unpaid principal.

SUSPENSION OF SERVICES If the Client fails to make payments when due or otherwise is in breach of this agreement, the Consultant may suspend performance of services upon seven (7) days' notice to the Client. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this agreement by the Client. Upon payment in full by the Client or cures of the breach to the satisfaction of the Consultant, the Consultant shall resume services under this agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance.

TERMINATION OF SERVICES If the Client fails to make payment to the Consultant in accordance with the payment terms herein, this shall constitute a material breach of this agreement and shall be cause for termination of this agreement by the Consultant.

TERMINATION OF AGREEMENT This agreement may be terminated by either party upon ninety (90) days written notice with or without cause. In the event of termination not initiated by the Consultant, the Consultant shall be compensated for all services performed to the date of termination, together with direct project expenses then due.

MEDIATION In an effort to resolve any conflicts that arise during the design or construction or the project or following the completion of the project, the Client and the Design Professional agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

APPLICABLE LAW Unless otherwise specified, this agreement shall be governed by the laws of the State of Ohio.

ENTIRE AGREEMENT This agreement represents the entire and integrated Agreement between the Client and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Client and Consultant.

LIMITATION OF LIABILITY To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's

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officers, directors, partners, employees and any of them, to the Client and anyone claiming by and through the Client, for any and all claims, losses, costs or damages, including attorney's fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Consultant under this Agreement, or the total amount of fifty thousand dollars (\$50,000), whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

CONTRACTOR AND SUBCONTRACTOR CLAIMS To the fullest extent permitted by law, the Client agrees to limit the liability of the Consultant and the Consultant's officers, directors, partners, employees and sub-consultants to all construction contractors and subcontractors on the Project for any and all claims, losses, costs or damages of any nature whatsoever or claims expenses from any cause or causes including attorney's fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant and the Consultant's sub-consultants to all those named shall not exceed fifty thousand dollars (\$50,000) or the Consultant's total fee for services rendered on this Project, whichever is less. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

OBSERVATION SERVICES The Client understands that by not retaining the Consultant for construction observation services, there may be misinterpretations of the Consultant's plans and specifications during construction, which may lead to errors and subsequent damage. Inasmuch as the Client has elected to proceed with the Project without the Consultant providing construction observation services.

UNAUTHORIZED CHANGES The Consultant, upon delivery of documents is completely absolved from any liability that may result from the interpretation or revision of documents for which the Consultant was not responsible.

STANDARD OF CARE In providing services under this Agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

OPINIONS OF PROBABLE CONSTRUCTION COST In providing opinions of probable construction cost, the Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgment and experience. The Consultant makes no warranty, express or implied, that the bids or negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

SHOP DRAWING REVIEW The Consultant shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The Consultant's review shall be conducted with

reasonable promptness while allowing sufficient time in the Consultant's judgment to permit adequate review. Review of a specific item shall not indicate that the Consultant has reviewed the entire assembly of which the item is a component. The Consultant shall not be responsible for any deviations from the Construction Documents not brought to the attention of the Consultant in writing by the Contractor. The Consultant shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

INFORMATION PROVIDED BY OTHERS The Client shall furnish, at the Client's expense, all information requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

DELIVERY OF ELECTRONIC FILES In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project for which they were prepared. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant. The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

SEVERABILITY Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

SURVIVAL Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

ASSIGNMENT Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the

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prior written consent of the other party. Subcontracting to sub-consultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

PROPRIETARY INFORMATION Subject to Ohio's Public Records Act, The Client agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Consultant pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Consultant.

ADA COMPLIANCE The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility that does not meet the accessibility and usability requirements of the ADA unless it can be demonstrated that it is structurally impractical to meet such requirements. The Client understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Consultant, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Consultant, however, cannot and does not warrant or guarantee that the Client's Project will comply with all interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

CORPORATE PROTECTION It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant, an Ohio corporation, and not against any of the Consultant's individual employees, officers or directors.

BETTERMENT If, due to the Consultant's negligence, a required item or component of the Project is omitted from the Consultant's construction documents, the Consultant shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Consultant be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

DEFECTS IN SERVICE The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that the Consultant may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

CONTINGENCY The Owner and the Consultant agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the drawings and specifications prepared by the Consultant and, therefore, that the final

construction cost of the Project may exceed the estimated construction cost. The Owner agrees to set aside a reserve in the amount of at least ten (10) percent of the Project construction costs as a contingency to be used, as required, to pay for any such increased costs and changes. The Owner further agrees to make no claim by way of direct or third-party action against the Consultant or its sub-consultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

CONSEQUENTIAL DAMAGES Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

CHANGED CONDITIONS If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for re-negotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating re-negotiation, and the Consultant and the Client shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

DEFINITION OF 'HAZARDOUS MATERIALS' As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

HAZARDOUS MATERIALS – SUSPENSION OF SERVICES Both parties acknowledge that the Consultant's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.