

**EMERGENCY RESOLUTION NO. 25-2017**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND BRANDSTETTER CARROLL, INC. TO PERFORM A MASTER PLAN FOR BAKER SPORTS COMPLEX AND DECLARING AN EMERGENCY.

WHEREAS, initial concept drawings were prepared for Baker Sports Complex and Council desires to obtain a detailed Master Plan for this area.

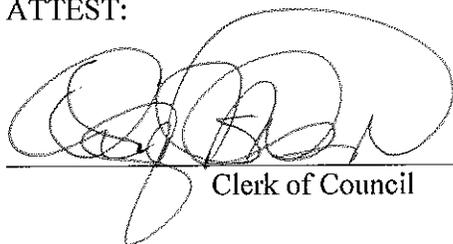
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into an agreement by and between the City of Monroe and Brandstetter Carroll, Inc. to perform a Master Plan for Baker Sports Complex pursuant to the terms and conditions set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to proceed with improvements to the Baker Sports Complex at the earliest possible date. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: March 28, 2017

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

APPROVED:

  
\_\_\_\_\_  
Mayor

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

  
\_\_\_\_\_  
Clerk of Council  
City of Monroe, Ohio

**AGREEMENT  
BAKER PARK MASTER PLAN  
MONROE, OHIO**

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This Agreement is made between the City of Monroe, Ohio (Owner) and Brandstetter Carroll Inc. (Consultant) whereas the Consultant proposes to provide park and recreation master planning services for the new 52.7-acre Baker Park located on Cincinnati-Dayton Road.

**I. Scope of Services**

**A. Site Evaluation Phase – The Consultant will:**

**1. Research Phase**

- a. Obtain all available records of public utilities within the rights-of-way fronting the project site.
- b. Obtain latest report data from the City on wetland delineation.
- c. Review City files for possible ALTA/property boundary surveys and title commitments.

**2. Base Map**

- a. Prepare a base map of the site using digital mapping provided by the City utilizing existing G.I.S. topographic data.
- b. Overlay the project boundary limits.

**3. Site Analysis - Perform an analysis of the site, noting such elements as:**

- historical use of the site,
- topographic features,
- access to the overall site,
- surrounding land use,
- wind and sun orientation as it impacts park facilities,
- existing utilities in the area,
- soils based upon the Butler County Soil Type Mapping,
- Surface drainage routing,
- slopes,
- vegetation,
- zoning setbacks,
- floodplain locations,
- visual impact of the proposed development.

**4. Site Analysis Summary Map - The result of this phase will be a Site Analysis Summary Map with text and an Opportunities and Constraints Map.**

**B. Program Development Phase – The Consultant will:**

**1. Review of Previous Meeting Summaries – Review the documentation of the previous City-wide Parks and Recreation Master Plan meetings where the proposed park was discussed.**

**2. Master Plan Advisory Committee –The City of Monroe will appoint an Advisory Committee to work with the Consultant throughout the process. The Committee will assist in establishing the program, evaluating alternative**

concepts, reviewing draft plans, and establishing priorities. The Committee should include representatives of potential organizations that may use the park, Park Board, City staff, City Administration, and other interested citizens.

3. **Public Workshop** – Conduct a public workshop to invite neighbors, elected officials, staff, and interested citizens to participate in a discussion of the proposed park and its features. The Concept Plan from the Parks and Recreation Master Plan will be used as a start for the discussion.
4. **Stakeholder Meetings** – Conduct meetings of up to four stakeholder groups which include representatives of special interest groups, potential user groups, etc. to discuss the vision for the future of the park.
5. **Program** – Based upon the public input and Advisory Committee recommendations, prepare a prioritized list of facilities and associated characteristics for the expanded park. These will include a listing and evaluation of all of the potential functions and activities that are desired to be included at the park.

**C. Alternative Concept Plans** – The Consultant will:

1. Prepare up to two Alternative Concept Plans showing the location and configuration of the facilities as prioritized during the Program Development Phase.
2. List the negative and positive aspects of each alternative Concept Plan.
3. Present the Alternative Concept Plans to the Advisory Committee for their review and comments.

**D. Preliminary Master Plan** – The Consultant will:

1. Prepare one Preliminary Master Plan that builds upon the preferred Alternative Concept Plan and further refines the specific site features. The plan will illustrate improvement locations, field layouts, parking configurations, conceptual trail locations, and facility features.
2. Prepare a Preliminary Opinion of Probable Project Costs.
3. Prepare a series of display boards to illustrate the plan and proposed potential features with a series of sketches and photographs.
4. Present the Preliminary Master Plan to the Advisory Committee and then to the public.

**E. Final Master Plan** – The Consultant will:

1. Prepare a minimum 30 inch by 40 inch color rendered Master Plan of the facility illustrating facility locations and interrelationships, auto and pedestrian circulation patterns, facility configurations, design features, etc.
2. Provide Master Plan Opinion of Probable Project Cost.
3. Illustrate recommended stages or phases of construction.
4. Prepare a series of graphics to illustrate the proposed features, such as the shelters, trails, and building styles using sketches and/or photographs.

5. Present the Final Master Plan to the Advisory Committee and then to the public.

**F. Deliverables** – The Consultant will provide:

1. Three hard copies of the Draft Report for staff review.
2. Five hard copies of the Final Master Plan Report with an Executive Summary.
3. Three digital copies of the Final Master Plan. One will be a pdf file suitable for printing, and another one will be a pdf file for the web or for emailing.
4. Provide two copies of each of the presentation boards of the Master Plan and Recreational Area Features board.

**II. Fees and Conditions**

**A. Conditions**

1. The Consultant will invoice the Owner monthly based upon the percentage of work completed with a monthly progress report.
2. The Owner will provide and coordinate the invitations, meeting space and promotion of public input meetings, stakeholder meetings, and client review meetings.
3. The conditions of the attached Brandstetter Carroll Inc. Standard Provisions are included in this agreement.
4. The Owner will provide a topographic and boundary survey for the Consultant's use.

**B. Fees**

1. For the above referenced Scope of Services, the Consultant shall be paid the following fees.

|                             |              |
|-----------------------------|--------------|
| a. Site Evaluation Phase    | \$5,000      |
| b. Program Development      | 4,000        |
| c. Alternative Master Plans | 6,000        |
| d. Preliminary Master Plan  | 4,500        |
| e. Final Master Plan        | <u>5,000</u> |

**Total Fee** **\$ 24,500**

**III. Time of Completion**

- A. The Master Plan will be completed within one hundred and twenty (120) days of notice to proceed by the Owner.

**THIS AGREEMENT PROPOSED BY:**

Brandstetter Carroll Inc.

\_\_\_\_\_

Lawrence W. Brandstetter \_\_\_\_\_

President \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_

Date

**THIS AGREEMENT ACCEPTED BY:**

City of Monroe, 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 Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates.

(2) **Client's Responsibilities** In addition to other responsibilities described herein or imposed by law, the Client 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 Client's decisions.

(b) Provide all information and criteria as to the Client'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 Consultant 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 Consultant may rely.

(d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.

(e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.

(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) (h) Give prompt written notice to the Consultant whenever the Client 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.

(i) Bear all costs incident to the responsibilities of the Client.

(3) **Period of Services** Unless otherwise stated herein, the Consultant 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 Consultant does 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 Consultant in accordance with the following provisions:

(a) Invoices will be submitted by the Consultant to the Client periodically for services performed and expenses incurred. Payment of each invoice will be due within 30 days of receipt. Interest will be added to accounts not paid within 30 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services under this Agreement until all amounts due are paid in full.

(b) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing.

(c) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, 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.

(d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition.

The Consultant may negotiate payment of any check tendered by the Client, 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 Consultant to collect additional amounts from the Client.

(5) **Use of Documents** All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client 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 Client or others on extensions of this project or on any other project. The Client 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 Consultant, the hardcopy shall govern. Only printed copies of documents conveyed by the Consultant may be relied upon. Because data stored in electronic media format can deteriorate or be modified without authorization of the data's creator, the Client 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 Consultant does 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 Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client 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 Client 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 Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant 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 Consultant, to the total amount of services which were to have been performed.

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

(9) **Standard of Care** In performing its professional services, the Consultant 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 Consultant is not a fiduciary with respect to the Client.

(10) **Limitation of Liability** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client 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 Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, 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 Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability

may be negotiated for additional fee. Under no circumstances shall the Consultant 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 Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

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

(12) **Dispute Resolution** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client 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, Consultant 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 Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with its services and if Consultant 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.

(14) **Construction Phase Services**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(15) **Assignment and Subcontracting** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant 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 Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant 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 Client shall be void and are hereby expressly rejected by the Consultant. 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.