

## AMENDMENT TO AGREEMENT

**THIS AMENDMENT TO AGREEMENT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through Economic Development ~~DEVELOP LOUISVILLE~~, herein referred to as "**METRO GOVERNMENT**", and **BANTA CMC, LLC**, with offices located at 11610 Expedition Trail, Louisville, Kentucky 40291, herein referred to as "**CONSULTANT**",

### WITNESSETH:

**WHEREAS**, the Metro Government and Consultant executed a small purchase agreement under Metro policies and procedures in an amount not to exceed **TWENTY THOUSAND DOLLARS (\$20,000.00)** ("Small Purchase Agreement") concerning construction management services for the Colonial Gardens Project ("Project"), which Small Purchase Agreement is attached hereto and fully incorporated herein as Attachment A; and

**WHEREAS**, the parties now desire to execute an amendment setting forth the expanded scope of work and cost necessary to continue effective pursuit and completion of the Project, the details of which amendment shall be set forth herein; and

**WHEREAS**, the Consultant has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

**I. SCOPE OF PROFESSIONAL SERVICES AND RECITALS**

**A.** The above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

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B. Consultant shall, at the request of the Metro Government, provide services under the terms of this Amendment to Agreement. The Consultant's work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Amendment to Agreement.

C. Consultant, while performing the services rendered pursuant to this Amendment to Agreement, may incidental thereto utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services rendered.

D. If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant shall notify the proper agent of the Metro Government of this need and arrangements may be made for that contingency. However, at no time shall the Metro Government make available its resources without the full consent and understandings of both parties.

E. The services of Consultant shall include but not be limited to those described on Attachment B attached hereto and fully incorporated herein.

## II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of this Amendment to Agreement as described on Attachment B.

B. Total compensation payable to Consultant for services rendered pursuant to this Amendment to Agreement and the Small Purchase Agreement,

including out-of-pocket expenses, shall not exceed **ONE HUNDRED THOUSAND SEVEN DOLLARS (\$107,000.00)**.

**B.** Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefor shall be made at monthly intervals throughout the duration of this Amendment to Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract, the particular nature of such service and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

**C.** Consultant shall only be reimbursed out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this Amendment to Agreement. The Metro Government will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. The Metro Government reserves the right to reduce or disallow expenses considered excessive or unnecessary under this Amendment to Agreement.

**D.** Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings and out-of-pocket expenses to the Metro Government which are of benefit to the other parties and to provide documentation to all parties to verify the pro-ration of such billings and expenses. In no event will the Metro Government pay bills or expenses which are considered to be double billing (i.e. billing two different parties for the same work or expense).

**III. DURATION**

**A.** The agreement between the parties shall continue through and including April 30, 2019.

**B.** This Amendment to Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Amendment to Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Amendment to Agreement. A waiver by either party of a breach of this Amendment to Agreement shall not operate or be construed as a waiver of any subsequent breach.

**C.** In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Amendment to Agreement. In the event that, during the term of this Amendment to Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Amendment to Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

**IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Amendment to Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Amendment to Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or

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common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

**V. RECORDS-AUDIT**

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's costs which are chargeable to the Metro Government under this Amendment to Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

**VI. INSURANCE REQUIREMENTS**

*PR 7/11/18*

~~Insurance coverage shall be required of Consultant in accordance with Attachment C attached hereto and fully incorporated herein.~~

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**VII. HOLD HARMLESS CLAUSE**

The Consultant shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and

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expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Consultant's (or Consultant's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Amendment to Agreement.

**VIII. REPORTING OF INCOME**

The compensation payable under this Amendment to Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Amendment to Agreement. Consultant further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

**IX. GOVERNING LAW**

This Amendment to Agreement and the Small Purchase Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Amendment to Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties

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expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Amendment to Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**X. AUTHORITY**

The Consultant, by execution of this Amendment to Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Amendment to Agreement.

**XI. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of

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any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

## **XII. ENTIRE AGREEMENT**



This Amendment to Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Amendment to Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Amendment to Agreement. This Amendment to Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

**XIII. OCCUPATIONAL HEALTH AND SAFETY**

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Amendment to Agreement. Consultant agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

**XIV. SUCCESSORS**

This Amendment to Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**XV. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Amendment to Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Amendment to

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Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Amendment to Agreement and shall not affect any other provision hereunder.

**XVI. COUNTERPARTS**

This Amendment to Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.


**XVII. CALCULATION OF TIME** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XVIII. CAPTIONS** The captions and headings of this Amendment to Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Amendment to Agreement.

**XIX. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS** The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.

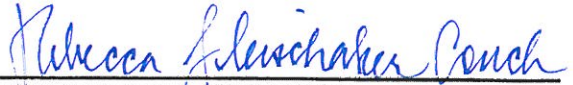
WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND  
LEGALITY CONTINGENT UPON  
METRO COUNCIL APPROVAL  
OF THE APPROPRIATION FOR  
THIS AGREEMENT:

  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

Date: 7/16/18

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

  
JEFF O'BRIEN, DIRECTOR  
DEVELOP LOUISVILLE ECONOMIC DEVELOPMENT

Date: 7.17.18

BANTA CMC, LLC

By: 

Title: MEMBER

Date: 7.16.18

Taxpayer Identification No  
(TIN): \_\_\_\_\_

Louisville/Jefferson County  
Revenue Commission Account  
No.: \_\_\_\_\_

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ATTACHMENT A

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# 34661

## SMALL PURCHASE AGREEMENT

**THIS SMALL PURCHASE PROFESSIONAL SERVICE AGREEMENT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, herein referred to as "**METRO GOVERNMENT**", and Banta CMC, LLC, with offices located at 11610 Expedition Trail, Louisville, KY 40291 herein referred to as "**CONSULTANT**",

### WITNESSETH:

**WHEREAS**, the Metro Government is in need of certain professional services with respect to serving as the owner's representative for Louisville Metro Government on the Colonial Gardens Project and

**WHEREAS**, the Consultant has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

#### **I. SCOPE OF PROFESSIONAL SERVICES**

**A.** Consultant shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The Consultant's work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

**B.** Consultant, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services rendered.

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C. If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant shall notify the proper agent of the Metro Government of this need and arrangements may be made for that contingency. However, at no time shall the Metro Government make available its resources without the full consent and understandings of both parties.

D. The services of Consultant shall include but not be limited to the following: Louisville Metro's representative on the Colonial Gardens Project.

E. The work product or deliverables of Consultant shall include but not be limited to the following: Review pricing of the job, make recommendations about aspects of the project and interact with the developer to ensure that Metro funds are efficiently and wisely spent.

## II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of this Agreement in an amount equal to **One Hundred Fifty Dollars (\$150.00)** per hour. Total compensation payable to Consultant for services rendered pursuant to this Agreement, including out-of-pocket expenses, shall not exceed **Twenty Thousand Dollars (\$20,000.00)**.

B. Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefor shall be made at monthly intervals throughout the duration of this Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract, the particular nature of such service

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and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

C. Consultant shall only be reimbursed out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this contract. The Metro Government will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. The Metro Government reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

D. Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings and out-of-pocket expenses to the Metro Government which are of benefit to the other parties and to provide documentation to all parties to verify the pro-ration of such billings and expenses. In no event will the Metro Government pay bills or expenses which are considered to be double billing (i.e. billing two different parties for the same work or expense).

### III. DURATION

A. This is a professional service contract which shall begin September 5, 2017 and shall continue through and including March 5, 2018.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform

the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

#### **IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

#### **V. RECORDS-AUDIT**

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public



accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

**VI. INSURANCE REQUIREMENTS**

Insurance is not required.

**VII. HOLD HARMLESS CLAUSE**

The Consultant shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Consultant's (or Consultant's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

**VIII. REPORTING OF INCOME**

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The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

**IX. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**X. AUTHORITY**

The Consultant, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or

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understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

**XII. OCCUPATIONAL HEALTH AND SAFETY**

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 et. seq., as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

**XIII. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**XIV. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

**XV. COUNTERPARTS**

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This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

**XVI. CALCULATION OF TIME** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XVII. CAPTIONS** The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

**WITNESS** the agreement of the parties hereto by their signatures affixed hereon.

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

By: *Janet Newman*

Date: 9/27/17

Banta CMC, LLC

By: *Richard Banta*

Title: OWNER

Date: 9.25.17

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*7/16/18*  
*EB*



**Banta**

CONSULTING | MANAGEMENT | CONSTRUCTION

July 29, 2017

Mr. E. Jeffrey Mosley  
Office of the Mayor  
General Counsel  
527 West Jefferson Street  
Louisville, Ky. 40202

Re: Colonial Gardens Project  
Owner Representative - Initial Fee and Limited Scope

Dear Mr. Mosley:

Please consider this proposal my initial fee, pursuant to our conversation on July 28, 2017. It is based upon a limited scope of services with the understanding the fee may be adjusted based upon the need or requirement for additional services.

Listed below is our proposal for, what we would consider as "Owner Representation/ Advisor-Advocate" responsibilities related to the above referenced project. I would report directly to you. I will represent Louisville Metro Government's best interest and coordination matters as you see fit. It is understood the project potentially encompasses the following areas:

1. Historic Colonial Gardens
2. Three (3) new structures – Approximately 16,000 sf
3. Outdoor gathering space
4. Parking, Civil/Site, Utilities & Modifications
5. Historical Preservation

#### **Fee Approach**

- Initial Fee of: \$20,000.00
- Hourly Rates (when/ where applicable):
  - \$150.00/ per hour - Principal
  - \$60.00/ per hour - Administrative
  - Reimbursables @ Cost Plus 5% (Supporting Documentation Provided).

+1-502-773-9753  
rward@bantamc.com  
www.bantamc.com  
11610 Expedition Trail  
Louisville, KY. 40291

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7/16/18

## Project Approach & Limited Scope

- Review of existing project information including, but not limited to, scope of work, estimates, budgets, contract agreement, METRO information, site visits, etc.
- Milestone project scheduling and review.
- Conference calls and email/ letter correspondence
- Project Cost Opinion
- Monthly reporting with intermediate reporting as required.
- Meeting attendance by myself.
- Administrative services.

## Clarifications

- The "Owner's representative/ advisor/ advocate" services will be invoiced every two (2) weeks.
- Should these services no longer be required, BANTA CMC, LLC. will be reimbursed any outstanding hours plus reimbursable, for the work product performed to that date.
- We will work to preserve and maintain a positive working relationship with the designers and developers.
- We reserve the right to adjust our Fee based upon the overall scope of services, and as per our discussions, should they be required. This would be the case should BANTA CMC services be required during construction.
- Reimbursables defined as: copies, scanning of drawings, transportation outside Metro Louisville, and overnight courier services, outside consulting cost i.e. attorney, architectural/ engineering etc. Note, outside consulting cost would be pre-approved prior to execution.
- All information provided to and from Louisville Metro Government between BANTA CMC and Louisville Metro Government is considered privileged and will not be shared with others, to the extent of the law.

Should you have any questions concerning our submission, please do not hesitate to contact me.

Respectfully Submitted,

  
Richard B. Banta, Jr.

Owner

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7/16/18

**ATTACHMENT B**

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**Banta**

CONSULTING | MANAGEMENT | CONSTRUCTION

June 8, 2018

Mr. E. Jeffrey Mosley  
Office of the Mayor  
General Counsel  
527 West Jefferson Street  
Louisville, Ky. 40202

Re: Colonial Gardens Project  
Owner Representative - Fee and Limited Scope Forward

Dear Mr. Mosley:

Please consider this proposal my fee, pursuant to our conversation on/ about May 31, 2018. It is based upon a limited scope of services, for the referenced project, moving forward, starting with the June invoice.

Listed below is our proposal for, what we would consider as "Owner Representation/ Advisor-Advocate" responsibilities related to the above referenced project. I would report directly to you. I will represent Louisville Metro Government's best interest and coordination matters as you see fit. It is understood the project encompasses the following areas:

1. Historic Colonial Gardens
2. Three (3) new structures – Approximately 16,000 sf
3. Outdoor gathering space
4. Parking, Civil/Site, Utilities & Modifications to include:
  - a. West Kenwood
  - b. New Cut
5. Historical Preservation

**Fee Approach**

- Fee Based Upon Estimated 604 Hours (See Project Approach & Scope)
- Hourly Rates
  - *Principal Rate:* \$150.00 @ 566 hours = \$84,900.00
  - *Administrative Rate:* \$60.00 @ 20 hours = \$1,200.00

☎ 502 773 9753  
 ✉ richard@bantamc.com  
 🌐 www.bantamc.com  
 📍 11610 Expedition Trail  
 Louisville, KY. 40291

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- o Reimbursables @ Cost Plus 5% (Supporting Documentation to be Provided). I would include an allowance of \$1,000.00 (\$90.00/mnth).

The "average" monthly invoice will be \$7,900.00 based upon eleven months or June 2018 through April 2019. I will continue to track my hours and invoice those hours at the agreed upon rate. Invoicing will have a bell-curve distribution affect throughout the project, increasing monthly as the scope of work increases and ultimately decreasing as the project tails off/ closes. The fee will not be exceeded unless the scope of the project increases and task increase.

**Total of Fee and Reimbursables listed above: \$87,100.00**

### **Project Approach & Limited Scope**

- Review of the ongoing project to include:
  - Review GC's schedule on a regular basis and compare to the baseline schedule and achievement of Milestone dates.
  - Provide Change Management oversight
  - Review insurances & back check vendors/ subs
  - Review the plans and specifications – This is on going & weekly
  - Review/ respond to RFIs (Request for Information) - Includes emails with all parties
  - Review submittals/ product data/ Site installed materials, Etc....
  - Assist with FFE & coordination efforts between parties at project completion
  - Budget review & updates. Includes tracking.
  - On site walk throughs and inspections weekly
  - Prepare meetings/ Attend/ Conduct – Includes meetings every two (2) weeks w/ Owner
  - Review invoices/ Billings submitted by the Developer, Developer's vendors, the General Contractor and the General Contractor's Vendors.
  - Execute Pay Request, compare with site visits, verify amounts requested, review lien releases, and draft letters/ Correspondence
  - Assist with Warranty & Walk Throughs at Completion of the Project
- Conference calls and email/ letter correspondence
- Project Cost Opinion, where applicable
- Monthly reporting with intermediate reporting as required.
- Meetings with METRO vendors or employees, where applicable
- Administrative services.

PBJ  
7/16/18

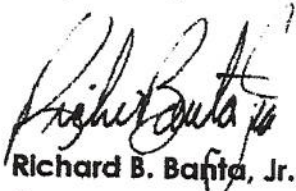


## Clarifications

- The "Owner's representative/ advisor/ advocate" services will be invoiced every two (2) weeks.
- Should these services no longer be required, BANTA CMC, LLC. will be reimbursed any outstanding hours plus reimbursable, for the work product performed to that date supported by the number of hours.
- We will work to preserve and maintain a positive working relationship with the general contractor, design professionals and developer.
- We reserve the right to adjust our Fee based upon the overall scope of services, and as per our discussions, should they be required.
- Reimbursables defined as: copies, scanning of drawings, transportation outside Metro Louisville, and overnight courier services, outside consulting cost i.e. attorney, architectural/ engineering etc. Note, outside consulting cost would be pre-approved prior to execution.
- All information provided to and from Louisville Metro Government between BANTA CMC and Louisville Metro Government is considered privileged and will not be shared with others, to the extent of the law.
- BANTA CMC LLC is not responsible for the monetary cost of the project or the project schedule.

Should you have any questions concerning our submission, please do not hesitate to contact me.

Respectfully Submitted,

  
Richard B. Banta, Jr.  
Owner

RBJ  
7/16/18

**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

Department	Louisville Forward	Department Contact	
Contact Email		Contact Phone	

Contract Type: check one	<input type="checkbox"/> New	<input type="checkbox"/> Amendment		
		Additional Funds	Time Extension	Scope
Professional Service		x	x	
Sole Source (goods/services)				
Requested Contract Dates (MM/DD/YYYY)	Start <b>9/5/17</b>	End 4/30/19		

**VENDOR INFORMATION**

Vendor Legal Name		Banta CMC LLC			
DBA					
Point of Contact	Richard Banta, Jr.	Email	Richard@bantacmc.com		
Street	11810 Expedition Trail				
Suite/Floor/Apt		Phone			
City	Louisville	State	KY	Zip Code	40281
Federal Tax ID#		SSN# (if sole proprietor)			
Louisville Revenue Commission Account #					
Human Relations Commission Certified Vendors	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business		
Select if applicable					

**FINANCIAL INFORMATION**

Not to Exceed Contract Amount	107,000		(including reimbursement expenses, if applicable)		
Fund Source: General Fund					
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #					
Payment Rate	<input checked="" type="checkbox"/>	per hour	150	per day	per service
		per month		Other	
Payment Frequency	<input checked="" type="checkbox"/>	Monthly	Upon Completion / Delivery		
		Quarterly	Other		

RBD  
7/16/18



**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

**CONTRACT SCOPE and PURPOSE** (Attach additional documentation if necessary)

**Amendments:** Describe the circumstances under which a time extension or scope change is needed.

**New:** Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Mr. Banta has performed construction management duties for LMG for the Colonial Gardens project. LMG has approximately 50% financial contribution to the project. Mr. Banta reviews bids and works with the GC and the Developer to ensure that LMG's contribution is well managed and that LMG receives the best value for its contribution.

**JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE** (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

Mr. Banta has decades of experience in this type of construction and has been in charge of other government related projects, namely for the University of Louisville. He possesses intimate knowledge of the project and all of its facets and has built working relationships with the GC and the Developer, etc. It is the belief of the undersigned that LMG's interests are best served to continue to retain Mr. Banta for this work.

**AUTHORIZATIONS:** Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director *Scott A. Herrmann* Date 7/11/18  
Signature  
Scott A. Herrmann  
Printed Name

Purchasing Director *Jed Neaveil* Date 6/22/18  
Signature  
Jed Neaveil  
Jed Neaveil

*PBJ  
7/16/18*

**Alvey, Diana**

---

**From:** Shutt, John <John.Shutt@metrorevenue.org>  
**Sent:** Friday, June 22, 2018 11:30 AM  
**To:** Alvey, Diana  
**Subject:** RE: Banta CMC LLC

Diana,

The taxpayer is in compliance.

John Shutt, Jr.  
Compliance Auditor  
Louisville Metro Revenue Commission  
502-574-4970  
Fax 502-574-4818

**From:** Alvey, Diana [<mailto:Diana.Alvey@louisvilleky.gov>]  
**Sent:** Friday, June 22, 2018 11:25 AM  
**To:** Shutt, John <John.Shutt@metrorevenue.org>  
**Subject:** Banta CMC LLC

Hi John,

Please advise \_\_\_\_\_ is compliant with RevComm.

Thank you,

*Diana Alvey*  
*OMB, Purchasing*  
*502-574-3751*

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

*RBd*  
*7/16/18*

**BANTA CMC, LLC****General Information**

**Organization Number** 0948781  
**Name** BANTA CMC, LLC  
**Profit or Non-Profit** P - Profit  
**Company Type** KLC - Kentucky Limited Liability Company  
**Status** A - Active  
**Standing** G - Good  
**State** KY  
**Country** USA  
**File Date** 3/31/2016 2:47:45 PM  
**Organization Date** 3/31/2016  
**Last Annual Report** 4/12/2018  
**Principal Office** 11610 EXPEDITION TRAIL  
LOUISVILLE, KY 40291  
**Managed By** Members  
**Registered Agent** GSRA, LLC  
9301 Dayflower Street  
Prospect, KY 40059

**Current Officers**

**Member** RICHARD B BANTA JR.

**Individuals / Entities listed at time of formation**

**Organizer** Stephen Smith  
**Registered Agent** GSRA, LLC

**Images available online**

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

<u>Annual Report</u>	4/12/2018	1 page	<u>tiff</u>	<u>PDF</u>
<u>Principal Office Address Change</u>	12/9/2017 10:17:36 PM	1 page	<u>PDF</u>	
<u>Annual Report</u>	3/17/2017	1 page	<u>tiff</u>	<u>PDF</u>
<u>Articles of Organization</u>	3/31/2016 2:47:45 PM	1 page	<u>PDF</u>	

**Assumed Names****Activity History**

Filing	File Date	Effective Date	Org. Referenced
Annual report	4/12/2018 3:24:33 PM	4/12/2018	
Principal office change	12/9/2017 10:17:36 PM	12/9/2017 10:17:36 PM	

RBJ  
7/16/18

7/11/2018

Welcome to Fasttrack Organization Search

Annual report

3/17/2017  
10:40:04 AM

3/17/2017

Add

3/31/2016  
2:47:45 PM

3/31/2016  
2:47:45 PM

**Microfilmed Images**

RBJ  
7/16/18

# 346661

**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

Department	Louisville Forward	Department Contact	Jeff Mosley/Laura Ferguson
Contact Email	jeff.mosley@louisvilleky.gov	Contact Phone	574-2019

<b>Contract Type: check one</b>	<b>New</b>	<b>Amendment</b>		
		Additional Funds	Time Extension	Scope
Professional Service	✓			
Sole Source (goods/services)				
<b>Requested Contract Dates (MM/DD/YYYY)</b>	<b>Start</b>	<b>End</b>		
	09/05/2017	3/5/18		

**VENDOR INFORMATION**

Vendor Legal Name	Banta CMC, LLC			
DBA				
Point of Contact	Richard Banta	Email	richard@bantacmc.com	
Street	11610 Expedition Trail			
Suite/Floor/Apt		Phone	(502) 773-9753	
City	Louisville	State	Kentucky	Zip Code 40291
Federal Tax ID#		SSN# (if sole proprietor)		
Louisville Revenue Commission Account #				
<u>Human Relations Commission Certified Vendors</u>	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business	
Select if applicable				

**FINANCIAL INFORMATION**

Not to Exceed Contract Amount	\$ 20,000.00	(including reimbursement expenses, if applicable)			
Fund Source: General Fund					
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	508	3333	33604 52988	
Payment Rate	✓	per hour	\$150.00	per day	per service
		per month		Other	
Payment Frequency	✓	Monthly		Upon Completion / Delivery	
		Quarterly		Other	

RBJ  
7/16/18





**Office of Management and Budget  
Division of Purchasing  
Non-Competitive Contract Request Form**

**CONTRACT SCOPE and PURPOSE** (Attach additional documentation if necessary)

**Amendments:** Describe the circumstances under which a time extension or scope change is needed.  
**New:** Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.  
 Mr. Banta will serve as the owner's representative for LMG in the Colonial Gardens project. His duties will include but not be limited to reviewing pricing of job, make recommendations to LMG about aspects of project, and interact with developer to ensure that LMG funds are efficiently and wisely spent.

**JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE** (Attach additional documentation if necessary)

Provide Justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.  
 LMG does not possess this expertise on staff. Mr. Banta's has extensive experience in the construction management sector and his professional services will lend a large measure of quality control to the review process.

**AUTHORIZATIONS:** Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director E. Jeffrey Mosley Date 9/13/17  
 Signature \_\_\_\_\_  
 Printed Name E. Jeffrey Mosley

Purchasing Director Joel Neaveill Date 9/14/17  
 Signature \_\_\_\_\_  
 Printed Name Joel Neaveill

*PBJ  
7/16/18*