

# **EXHIBIT A**

## AGREEMENT

THIS AGREEMENT is entered into this the 1<sup>st</sup> day of July, 1999, by and between The Catholic Cemeteries Association of the Roman Catholic Diocese of Cleveland, 1404 East Ninth Street, 8<sup>th</sup> Floor, Cleveland, Ohio 44114 (hereinafter "Association") and Thomas J. Kelley, (hereinafter "Independent Contractor").

WHEREAS, the Association is desirous of engaging the services and expertise of Independent Contractor for the purpose of assisting in the management of the Association's general operations and to provide training and other support to the Association and its staff.

WHEREAS, Independent Contractor has the expertise and knowledge necessary to perform the services required by the Association and Independent Contractor is capable of providing training services to assist, promote and enhance the operations and management of the Association.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein the parties hereto agree as follows:

1. This Agreement will commence on the 1<sup>st</sup> day of July, 1999, and shall continue in full effect for 24 months. The contract shall terminate at June 30, 2001 and shall not be renewable. If the Association elects to terminate this contract prior to June 30, 2001, unless for gross negligence, it will be liable for the full value of this contract immediately upon termination.
2. Independent Contractor's services will be performed at the Association's offices located at 1404 East Ninth Street, 8<sup>th</sup> Floor, Cleveland, Ohio (Main Office) and at other locations as deemed appropriate and mutually agreed upon by the parties.
3. In consideration of the performance of the services under this Agreement, the Association will pay Independent Contractor a consulting fee of Eighty Eight Thousand Three Hundred Sixty Eight Dollars (\$88,368.00) which shall be payable in equal bi-monthly installments of Three Thousand Six Hundred Eighty Two Dollars (\$3,682.00). Independent Contractor will invoice ZJ and Associates at the end of each month for the consulting fees due with respect to the services performed under this Agreement. The Association will reimburse ZJ and Associates for the value of the monthly billings. This format for reimbursement is being initiated to maintain the confidentiality of this contract.
4. For the period of January 1, 2001 through June 30, 2001, the final six months of this contract, the Independent Contractor will be available by phone for consultation. The original amount agreed in Section 3 above, will be reduced to One Thousand Dollars (\$1,000.00) per month for the remainder of the Agreement.

5. In addition, ownership of the 1999 Oldsmobile Eighty Eight currently assigned to Independent Contractor will be transferred to Independent Contractor at a cost of One Dollar (\$1.00). The Independent Contractor is responsible for all applicable sales taxes.
6. Association will reimburse Independent Contractor for all authorized expenses incurred by Independent Contractor for travel required in connection with the furnishing of services under this Agreement, except travel to and from Independent Contractor's home or office and Association's Main Office. Reimbursement shall be made on the basis of an itemized statement submitted to the Association and including, whenever possible, the original invoice or other evidence of the expenditure. All expenses incurred over \$100.00 must be approved by the CEO prior to being incurred.
7. Independent Contractor will furnish the Association with at least 4 days of service per week at 8 hours per day. If at the end of the term of this Agreement, Association has not called upon Independent Contractor for the total number of days guaranteed, Association will nevertheless pay Independent Contractor for the days guaranteed but not used.
8. Independent Contractor will furnish consulting services and advice as specifically requested by the Chief Executive Officer (CEO) of the Association.
9. All services and advice being provided will relate to the work being performed for and planned by the Association in the area of cemetery operations, will be within the area of Independent Contractor's technical competence and will specifically include the following:
  - a. Provide advice and guidance with respect to general cemetery operations and more specifically, the cemeteries owned and operated by the Association;
  - b. Provide advice and guidance with respect to new ventures, budget, purchasing of equipment, new facilities, memorial products and services and other information as needed by the CEO or his appointed representative;
  - c. Provide advice and guidance on all matters involving the cemetery industry and the National Catholic Cemeteries Conference;
  - d. Provide training to the CEO's appointed representative in the general management and operation of the cemeteries which are owned and operated by the Association and in general cemetery operations;
  - e. Respond to all queries regarding cemetery procedures as presented to Independent Contractor by the CEO's appointed representative;
  - f. Provide guidance to the CEO and his representative in the day-to-day management of the Association's cemeteries, including but not limited to, public relations, establishing of policies and procedures, employment issues, operations, marketing and other matters as deemed necessary by the CEO or his representative;
  - g. Assist in any special projects as may from time to time be required by the CEO;
  - h. Conduct himself in a professional manner at all times, with full knowledge and awareness that the services he performs are critical to the ongoing operations of the Association;

10. Independent Contractor will furnish Independent Contractor's services as an Independent Contractor and not as an employee of the Association. Independent Contractor has no power or authority to act for or on the behalf of the Association nor bind the Association in any manner, except when acting as Chief Operating Officer. Independent Contractor is not entitled to the benefits afforded to Association's regular employees. Independent Contractor shall be responsible for the payment of any applicable Federal, state, and local taxes and shall hold Association harmless for any violation of Federal, state and local tax regulations and laws.
11. Association may terminate this Agreement, with 30 day written notice to Independent Contractor, only on a default or breach of this Agreement on the part of Independent Contractor. A default or breach shall include but not be limited to any of the following:
  - a. Unremittingly and chronically failing to perform the services listed herein in a manner acceptable to the Association, as determined by the Association. Written notice of a failure to perform must be given to Independent Contractor prior to termination and there must be a reasonable period for Independent Contractor to remedy the issues noted;
  - b. Unremittingly and chronically disregarding Federal, state and local laws, ordinances, regulations, codes and standards, applicable professional standards, the rules and regulations of the Association and/or any more stringent criteria set forth in this Agreement;
  - c. It is determined that Independent Contractor is culpable of a breach of this Agreement;
  - d. Refusal to or failure to comply with the requirements, terms and/or conditions of this Agreement or respond to the needs and requests of the CEO;
12. In the event of termination of this Agreement, Independent Contractor shall immediately return to the Association any and all information, documentation and equipment which may have been provided to Independent Contractor for the purpose of performing the services under this Agreement which are in Independent Contractor's possession or control at the time of termination. Independent Contractor shall thereafter cease and desist from any and all activity which is in any manner related to the services agreed to be provided or performed hereunder.
13. Independent Contractor acknowledges that the services furnished hereunder shall be performed in an efficient, timely and professional manner and shall be performed in accordance with generally accepted standards for providing the same or similar services.
14. Independent Contractor warrants that he will retain all information belonging to the Association in strictest confidence, and will neither use it nor disclose it to anyone without the explicit permission of the Association. Independent Contractor recognizes that irreparable harm can be occasioned to the Association by disclosure of information relating

to its business and, accordingly, that Association may enjoin such disclosure. Independent Contractor agrees not to permit access to any information to any persons other than those individuals identified by the CEO.

*Confidentiality:* All confidential or proprietary information and documentation relating to the Association, including, without limitation, any information or data stored within Independent Contractor's computer system, shall be held in absolute confidence by Independent Contractor. Independent Contractor shall not disclose, publish, release, transfer, or otherwise make confidential information available in any form to, or for use or benefit of, any person or entity without the express written approval of the Association. Independent Contractor shall, however, be permitted to disclose relevant aspects of confidential information to employees of the Association and others to the extent that such disclosure is reasonably necessary for the performance of their duties and obligations under this Agreement, provided that such party shall take all reasonable measures to ensure that confidential information is not disclosed or duplicated in contravention of the provisions of this Agreement. The obligations in this section shall not restrict any disclosure by Independent Contractor pursuant to any applicable law, or by order of any court or government agency, and shall not apply with respect to information that is or becomes part of the public domain or which Independent Contractor gains knowledge or possession of free of any obligation of confidentiality. Independent Contractor recognizes that his disclosure of confidential information may give rise to irreparable injury to the Association and acknowledges that remedies other than injunctive relief may not be adequate. Accordingly, Association has the right to equitable and injunctive relief to prevent the unauthorized use or disclosure of any confidential information, as well as to such damages or other relief as is occasioned by such unauthorized use or disclosure.

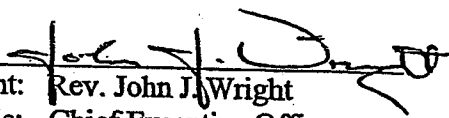
Independent Contractor shall immediately notify the Association of any unauthorized possession, use or knowledge, or attempt thereof, of confidential information by any person or entity which may become known to Independent Contractor

15. During the term of this Agreement, Independent Contractor will not, directly or indirectly, either as principal, partner, agent, manager, employee, stockholder, director, officer, or in any other capacity, including on a consultative basis, or engage in for financial gain, profit or pecuniary advantage, any activity which shall be in conflict with the Association's interests either directly or indirectly. Independent Contractor will advise the Association of Independent Contractor's position with respect to any such activity
16. After the termination of this contract, Independent Contractor agrees not to compete in the same or similar industry of the Association for a period of 18 months. Competition shall be deemed to occur if Independent Contractor accepts employment with a competitor or similar firm in the Association's industry without prior approval from the Association. Competition will also be deemed to occur if Independent Contractor independently pursues business interests or contractual relationships in the same or a similar industry.

17. This Agreement constitutes a personal services contract between the Association and Independent Contractor and may not be assigned or transferred
18. Any modification of this Agreement shall not be valid unless signed in writing and signed by the parties hereto. This Agreement constitutes the entire Agreement between the parties regarding its subject matter and if any provision in this contract is held by any court to be invalid or unenforceable, the remaining provisions shall nevertheless continue in full force and effect. This Agreement shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**Association:**

By:   
Print: Rev. John J. Wright  
Title: Chief Executive Officer

**Independent Contractor:**

  
Mr. Thomas J. Kelley