

RESOLUTION NO. 42-02
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Roger W. Krass ON THE
21st DAY OF October, 2002.

A RESOLUTION RATIFYING THE ACTION TAKEN BY THE CITY
MANAGER TO ENTER INTO A CONTRACT BETWEEN THE CITY
OF CENTERVILLE AND AMERICAN COMMUNITIES
PARTNERSHIP, LTD.

WHEREAS, The City of Centerville, Ohio and Washington Township,
Montgomery County, Ohio, agreed to enter into a Contract for Special Services with
American Communities Partnership, LTD. (ACP) for the development of a Joint Long
Range Comprehensive Plan for the entire community, and

WHEREAS, On the first day of October, 2002, the City Manager, did in fact,
execute said contract on behalf of the City of Centerville.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

Section 1. That the action taken by the City Manager to execute a Contract
between the City of Centerville and American Communities Partnership, LTD. (ACP) for
Special Services be and is hereby ratified, a copy of which is attached hereto,
incorporated herein, and marked as Exhibit "A".

Section 2. That this Resolution shall become effective immediately upon
passage.

PASSED this 21st day of October, 2002.

Sally D. Beals
Mayor of the City of Centerville, Ohio

ATTEST:

Marion J. McFarland
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 42-02, passed by the Council of the City of Centerville, Ohio, on the 21st day of October, 2002.

David J. Farquhar
Clerk of Council

Approved as to form, consistency with existing Ordinances, the Charter and Constitutional Provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

EXHIBIT "A"

AMERICAN COMMUNITIES PARTNERSHIP, LTD.**CONTRACT
FOR SPECIAL SERVICES**

AGREEMENT made this 1st day of OCTOBER, 2002 between the City of Centerville, Ohio and Washington Township (Montgomery County), Ohio (hereinafter referred to as the "Principals") and American Communities Partnership, Ltd. (hereinafter referred to as the "Consultant").

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. **Consultant Services:** Consultant will provide the Scope of Services as enumerated in the Work Program, dated May 3, 2002 pages 1 through 10, attached hereto as Exhibit "A" and incorporated and made a part of this Agreement as if fully set forth herein (the "Project").
2. **Principals' Responsibilities:** The Principals shall provide full and complete information regarding the requirements of the Project as expeditiously as necessary for the orderly progress of the Consultant's services, and the Consultant shall be entitled to rely on the accuracy and completeness thereof. The Principals shall each designate a representative authorized to act on each Principal's behalf and shall timely make decisions pertaining to the Project in order to avoid unreasonable delays.
3. **Compensation:** The professional fee compensation to be allocated to this Project is a fixed-fee amount of \$360,325.00 (Three Hundred Sixty Thousand Three Hundred Twenty Five Dollars). Of that sum, Washington Township shall pay \$150,875 (One Hundred Seventy Thousand Dollars) and the City of Centerville, Ohio shall pay \$209,450 (One Hundred Ninety Thousand Three Hundred Twenty Five Dollars). The project shall be invoiced monthly to each Principal on a percent-complete basis. Services beyond the agreed-upon scope will be billed on an hourly rate.
4. **Reimbursable Expenses:** In addition to the professional fee compensation, the Principals agree to reimburse the Consultant for costs incurred by the Consultant's employees and consultants in performing the Consultant's Services or otherwise in furtherance of the Project. These reimbursable expenses include, but are not limited to:

- i. transportation and living expenses for out of town travel (for transportation by personally owned vehicle, the Principals agree to reimburse the Consultant at a rate of \$.365/mile;
- ii. governmental, public or other fees related to the Project;
- iii. graphic design, computer-aided design, film development, exhibit preparation, literature publication, renderings, models, printing and copying expenses;
- iv. long distance telephone calls, facsimiles, postage, overnight mail and courier services; and
- v. premiums for any unique or additional insurance required by the Principals or the nature of the Project.

Reimbursable expenses will be billed at 1.1 times net costs and are not included in the fixed-fee amount. The total reimbursable expenses will not exceed \$38,250.00 (Thirty Eight Thousand Two Hundred Fifty Dollars) unless authorized in writing by both Principals. Consultant shall allocate said expenses equally to the City of Centerville and Washington Township unless a said expense is incurred for matters specifically requested by either jurisdiction in which case the jurisdiction requesting that which results in the additional expense shall be solely responsible for the payment of said expense over and above its portion of the total reimbursable expenses.

5. **Payments:** All payments for professional fees and documented reimbursable expenses are due and payable thirty (30) days from the date of Consultant's invoice. Any amounts remaining unpaid after thirty (30) days of an invoice shall bear interest at a rate of ten percent (10%) APR, simple interest. An initial payment of five percent (5%) of the total fee is payable upon execution of the contract. This amount will be applied to the final project invoice. Consultant's records relating to the computation of its fees and reimbursable expense amounts pertaining to this Agreement shall be made available to the Principals, or their authorized representatives, at a time mutually agreed between the parties upon a written request by the Principals.
6. **Subconsultants:** All subconsultants will be hired by and be responsible to the Consultant. All coordination, planning and input to the subconsultant will be by the Consultant. Compensation for additional services provided by subconsultants will be at a multiple of 1.1 times the amount billed to the Consultant for such services. If the employment of a subconsultant will

result in a separate expense to either the City of Centerville or Washington Township, which is not considered a reimbursable expense under Paragraph 4 of this Agreement, no subconsultant shall be retained without the specific written approval of the jurisdiction which will incur said expense.

7. **Suspension or Termination:** This Agreement may be terminated or suspended by the Consultant or by either the City of Centerville or Washington Township or both. Said termination or suspension may be made, with or without cause, upon not less than fourteen (14) days written notice to the other parties to this Agreement. A written notice shall be deemed duly served when personally delivered to the party to whom it is directed, or when deposited in the United States mail, certified or registered, return receipt requested, postage prepaid and addressed to the last known address of the party to whom it is directed. The party terminating or suspending the Agreement may not claim that the Consultant's failure to meet any Project deadline or timetable after the suspension or termination has occurred constitutes a breach of this Agreement.

If only one jurisdiction chooses to terminate or suspend the contract, said termination or suspension shall not terminate the entire Agreement. Rather, the Consultant shall complete the work required by Exhibit "A" as it relates specifically to that jurisdiction which did not terminate or suspend the Agreement.

If either Principal fails to make payments when due to the Consultant for services and expenses, the Consultant may immediately suspend performance of services for that Principal who fails to make said payments when due. However, the failure of one Principal to make said payments shall not affect the Consultant's obligation to perform services for the other Principal under the terms of this Agreement. In the event Consultant properly suspends its performance, it shall not be liable to the Principals for any damages suffered as a result of the suspension of services or delay in the progress of the Project.

In the event of termination by either Principal without cause, the Consultant shall be entitled to payment for services performed for that Principal prior to termination, together with reimbursable expenses (if any) then due, prepaid reimbursable expenses incurred or committed, and a termination fee to be paid by the terminating Principal equal to fifteen percent (15%) of the value of the remaining Consultant's services left to be performed under this Agreement for the terminating Principal, provided, however, that if over fifty percent of the fixed-sum compensation has been earned by, or is

due to, the Consultant prior to such termination by the Principal(s) then no termination fee shall be due to the Consultant. The Principals and the Consultant agree that the termination fee is not a penalty and is reasonable based upon the facts and circumstances known to the parties at the time of entering this Agreement, and with due regard to future expectations.

8. Document Use: Except for documents that are proprietary to Consultant, the Principals retain all rights to all documents and reports that are produced, compiled or generated with respect to this Project. Consultant shall identify any documents considered to be proprietary and the parties shall thereupon agree, in writing, upon the extent of use by either party.
9. Applicable Law: This Agreement shall be governed by the laws of the state where the Principals have their primary place of business. If a Principal is a federal entity or agency, this Agreement will be governed by the laws of the State of Ohio.
10. Binding: This Agreement shall be binding on the parties hereto and on their successors, assigns, and legal representatives. Neither the Principals nor the Consultant, nor their successors, assigns, or legal representatives shall assign or delegate any right or obligations under this Agreement without the prior written consent of the other party.
11. Entire Agreement: This instrument contains the entire agreement between the Principals and the Consultant respecting the Project, and any agreement or representation respecting the Project or the duties and obligations of either the Principals or the Consultant in relation thereto not expressly set forth in this instrument is null and void. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and may be amended only by a written modification signed by both parties that makes reference to this Agreement. Nothing in this Agreement shall be construed as creating any rights, obligations, contractual relationships or causes of action with any third parties as against either the Principals or the Consultant.
12. Nonwaiver: No delay or failure by either party in exercising any right under this Agreement, and no partial or simple exercise of such right shall constitute a waiver of that or any other right.

- 13. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement.
- 14. **Legal Construction:** In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 15. **Effective Date:** This Agreement shall become effective as of the ^{15th} day of OCTOBER, 2002, and shall continue until the Consultant's Services are complete or the Agreement is suspended or terminated as provided herein.
- 16. **Other Conditions:** None

PRINCIPALS

AMERICAN COMMUNITIES PARTNERSHIP, LTD.

City of Centerville



(Signature)

(Signature)

GREGORY S. HORN
CENTERVILLE CIT MGR.
 Principal

(Printed Name and Title)

WASHINGTON TOWNSHIP

(Signature)

(Printed Name and Title)

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