

RESOLUTION NO. 48-02  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER C. Mark Kingseed ON THE  
18<sup>th</sup> DAY OF November, 2002.

A RESOLUTION RATIFYING THE ACTION TAKEN BY THE CITY  
MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE  
CITY OF CENTERVILLE AND THE CITY OF KETTERING FOR  
MUNICIPAL COURT PROSECUTION SERVICES.

WHEREAS, The City of Kettering, Ohio, through its Law Department provides  
municipal court prosecution services for its own jurisdiction, Washington Township and  
the City of Centerville, and

WHEREAS, The City of Centerville desires to continue to engage the City of  
Kettering to provide municipal court prosecutor services, and

WHEREAS, On the 5th day of November, 2002 the City Manager, did in fact,  
execute an Agreement on behalf of the City of Centerville with the City of Kettering for  
such service.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY  
RESOLVES:

Section 1. That the action taken by the City Manager to execute an Agreement  
between the City of Centerville and the City of Kettering for municipal court prosecution  
services be and is hereby ratified, pursuant to the provisions of said Agreement, 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 18<sup>th</sup> day of November, 2002.

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

ATTEST:

Marie J. McLaughlin  
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 48-02, passed by the Council of the City of Centerville, Ohio, on the 18<sup>th</sup> day of November, 2002.

Marie J. McLaughlin  
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"

AGREEMENT

This agreement is made this 5th day of NOVEMBER, 2002, between the City of Kettering, Ohio ("Kettering") and the City of the City of Centerville, Ohio ("Centerville"); both parties municipal corporations organized pursuant to the laws of the state of Ohio.

WHEREAS, the City of Kettering is the municipal court host city for the jurisdiction of the City of Centerville; and

WHEREAS, the City of Kettering, through its Law Department, provides municipal court prosecution services for its own jurisdiction and for the unincorporated area of Washington Township in Montgomery County, Ohio; and

WHEREAS, the City of Centerville desires to engage the City of Kettering to provide municipal court prosecutor services pursuant to the provisions of this agreement and the City of Kettering desires to be so engaged;

NOW, THEREFORE, the parties agree to the following terms, conditions and promises:

1. Kettering shall provide for Centerville one or more attorneys for prosecution services in the Kettering Municipal Court. For purposes of this agreement, prosecution services shall mean the following:

- (a.) responding to questions from and advising the Centerville City Council and administrative staff, including the Centerville Police Department, on matters directly related to prosecution in the Kettering Municipal Court;
- (b.) as necessary, review proposed charges and making charging recommendations;
- (c.) representing Centerville in Kettering Municipal Court in all criminal matters for which the Court has proper jurisdiction and

which arose in Centerville and the defendant is charged with a violation of the Ohio Revised Code;

- (d.) representing Centerville in Kettering Municipal Court in all criminal matters in which the plaintiff is the City of Centerville;
- (e.) as necessary and proper, arranging for evidence and witnesses for hearings and trials, and preparing and forwarding to the Clerk of Court for delivery all necessary subpoenas;
- (f.) as necessary and proper, appearing at hearings, responding to motions and responding to discovery requests;
- (g.) as necessary and proper, preparing and prosecuting cases at trial;
- (h.) as necessary and proper, negotiating plea arrangements;
- (i.) except as provided for in paragraph 3, as necessary and proper represent Centerville in cases appealed from the Kettering Municipal Court to the Montgomery County Court of Appeals (Second District Court of Appeals); and
- (j.) as necessary and proper, provide all office and meeting space, office supplies, clerical and secretarial support staff, and communication equipment to provide the services and work described in items (a) through (i), above.

2. At all times while this agreement is in effect, any and all attorneys provided by Kettering to represent Centerville shall be licensed and in good standing to practice law in the State of Ohio. In instances of sickness, vacation, conflict of interest or other valid reasons for absence of an attorney to represent Centerville, Kettering shall provide for Centerville a substitute prosecutor. Selection of a substitute prosecutor shall be at the selection of Kettering and at no additional expense to Centerville.

3. In instances of Centerville criminal cases appealed from the Kettering Municipal Court to the Montgomery County Court of Appeals (Second District Court of Appeals) and in which Kettering provided trial court prosecution services, Kettering shall notify the Centerville Law Director upon receipt of a notice of such an appeal. Unless otherwise notified by the Centerville Law Director, Kettering shall provide prosecution services to represent Centerville in the appeal. Kettering's cost and expense for

representing Centerville in each such appeal, excluding any cost for filing the appeal and any cost for transcript preparation, shall be included in and be part of the payment for services amount referred to in paragraph 5 of this agreement, unless the total amount of attorney work hours devoted to any single appeal exceeds eighty (80). In the event the total amount of attorney hours devoted to any single appeal exceeds eighty (80), then in such event Centerville shall make payment to Kettering in the amount of Seventy Dollars and No Cents (\$70.00) for each hour exceeding eighty hours that is devoted to any single appellate case. Kettering shall submit a statement for such appellate work and Centerville shall make payment of same within thirty (30) days from the statement date.

4. In the instance of any case appealed from the Montgomery County Court of Appeals to the Ohio Supreme Court and in which Kettering provided prosecution or appellate services, upon the request of Centerville and upon agreement of the parties as to suitable payment arrangements, Kettering shall represent Centerville before the Ohio Supreme Court in cases appealed to that same Court.

5. For the services provided pursuant paragraph 1 of this agreement Centerville shall pay annually to Kettering the amount of \$64,000.00 per year. Payment shall be made in four equal payments of \$16,000.00 each, payable and due no later than fifteen days after the conclusion of each calendar quarter (on or before April 15th, July 15th, October 15th and January 15th). The City shall submit a statement for services provided to Centerville for each calendar quarter. The parties agree that appellate services provide for attorney hours exceeding eighty (80) for each appeal and for any representation before the Ohio Supreme Court shall be billed separately from quarterly statements.

6. The parties agree the annual payment for services as referred to in paragraph 5, above, is based on an estimate of Centerville's annual percentage of total criminal case load in the Kettering Municipal Court. The parties agree to meet and use their best efforts to agree on a different annual payment if the Centerville annual percentage of criminal cases significantly changes.

7. The effective date of this Agreement shall be November 1, 2002. This agreement may be terminated by either party by providing at least ~~one hundred twenty (120) days~~ <sup>thirty (30)</sup> advanced written notice to the other respective party. This agreement may be terminated at any time by mutual written agreement of the parties.

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8. All notices required by this agreement or related to this agreement shall be provided by either personal "hand delivery" or by U.S. mail, certified, return receipt requested (green card), and sent to:

(a) If to Centerville:

City Manager  
Centerville Municipal Building  
100 W. Spring Valley Road  
Centerville, Ohio 45458

With a copy to:

Centerville Law Director  
Centerville Municipal Building  
100 W. Spring Valley Road  
Centerville, Ohio 45458

(b.) If to Kettering:

City Manager  
Kettering Government Center  
3600 Shroyer Road  
Kettering, Ohio 45429

With a copy to:

Kettering Law Director  
Kettering Government Center  
3600 Shroyer Road  
Kettering, Ohio 45429

9. All expenses incurred by Kettering for expert witnesses, preparation of exhibits and preparation of demonstrative evidence required for Centerville trials shall be reimbursed to Kettering by Centerville when such total costs exceed \$250.00 per trial. Centerville shall reimburse Kettering at Kettering's direct cost for all costs incurred by Kettering for appellate filing fees and all transcript preparation expenses for Centerville cases represented by Kettering on appeal.

IN WITNESS WHEREOF, by the signatures of their respective authorized representatives, the parties agree to the above terms, conditions and promises.

Witnesseth:

CITY OF KETTERING

\_\_\_\_\_  
signature of witness

\_\_\_\_\_  
Steven C. Husemann, City Manager

\_\_\_\_\_  
printed name of witness

Approved as to Form:

\_\_\_\_\_  
signature of witness

\_\_\_\_\_  
David L. Eubank, Law Director

\_\_\_\_\_  
printed name of witness

Witnesseth:

CITY OF CENTERVILLE

*Linda L. Schroth*  
\_\_\_\_\_  
signature of witness

*Gregory B. Horn*  
\_\_\_\_\_  
Gregory B. Horn, City Manager

*LINDA L. SCHROTH*  
\_\_\_\_\_  
printed name of witness

Approved as to Form:

*Cecy Greive*  
\_\_\_\_\_  
signature of witness

*Robert N. Farquhar*  
\_\_\_\_\_  
Robert N. Farquhar, Law Director

*CECY GREIVE*  
\_\_\_\_\_  
printed name of witness