

RESOLUTION NO. 45-97
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER C. MARK KINGSEED ON THE
16th DAY OF JUNE, 1997.

A RESOLUTION RATIFYING THE ACTION TAKEN BY
THE CITY MANAGER TO EXECUTE AN AGREEMENT
BETWEEN THE GEM REAL ESTATE GROUP, INC. AND
THE CITY OF CENTERVILLE.

WHEREAS, the City of Centerville has identified a need for certain real estate
services; and

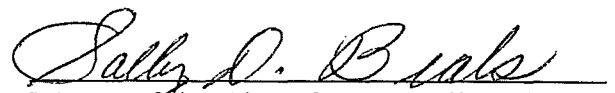
WHEREAS, The Gem Real Estate Group, Inc., is a skilled and experienced firm,
competent and with the personnel and equipment to perform the required work for the
City of Centerville.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

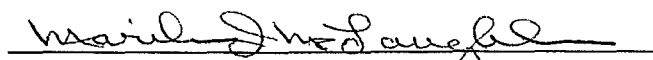
Section 1. That the Council of the City of Centerville hereby ratifies the action
taken by the City Manager in executing an Agreement between the
City of Centerville and The Gem Real Estate Group, Inc., for certain
real estate services, a copy of said Agreement is attached hereto,
marked "Exhibit A," and incorporated herein.

Section 2. That this Resolution shall become effective at the earliest date
allowed by law.

PASSED this 16th day of JUNE, 1997.

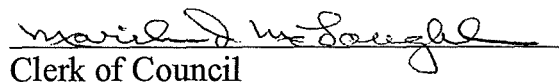

Mayor of the City of Centerville, Ohio

ATTEST:


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 45-97, passed by the Council of the City of Centerville, Ohio, on the 16th day of JUNE, 1997.


Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

ADVISORY SERVICES AGREEMENT

THIS AGREEMENT is made and entered into on this ___ day of May, 1997 by and between the City of Centerville and The Gem Real Estate Group, Inc. ("GREG" or "Advisor") an entity incorporated under the laws of the State of Ohio and having its principal offices at Six North Main Street, Suite 610, Dayton, Ohio 45402, (the "Advisor").

WITNESSETH

THAT, WHEREAS, the City of Centerville has identified a need for certain real estate services; and

WHEREAS, the Advisor has represented that it is, and will continue during the term of this agreement to be, a skilled and experienced firm, competent and with the personnel and equipment to perform the required work;

NOW, THEREFORE, for and in consideration of the promises set forth below, the parties mutually agree as follows with the above recital paragraphs to be deemed part of the resulting contract:

SECTION 1. RESPONSIBILITIES OF ADVISOR

A. The Advisor's services are to be performed with first-class professional skill and care, above average for the area of Montgomery County, Ohio, in this specialized field of work, and to the reasonable satisfaction of the City of Centerville.

B. The parties shall agree upon a written time schedule for performance of the Advisor's services. (This schedule is attached as Exhibit A) That schedule shall include allowances for periods of time, however, if any, required for the City of Centerville's review and for approval of submissions to authorities having jurisdiction over the Project, if any.

SECTION 2. SCOPE OF SERVICES

The Project to be performed by the Advisor under this agreement consists of the services described in Exhibit B, to the extent those services are requested from time to time by the City of Centerville.

SECTION 3. PAYMENTS TO THE ADVISOR

A. Compensation for services. Payment for the services included as the Project covered by this agreement shall be made by the City of Centerville as follows:

1. At the rate of \$200.00 per hour of one primary Advisor's time, as that time is called for through the City of Centerville requesting various services. If multiple primary Advisors are needed to perform the work within the required time schedule, any additional Advisor(s) will be paid at the rate of \$150.00 per hour. These hourly rates include payment for services of GREG'S support staff.
2. Time charges will be on a portal-to-portal basis.
3. Partial hourly billings will be on the basis of ten (10) minute minimum increments.

B. Reimbursable expenses. In addition to the compensation for services, the City of Centerville shall pay the Advisor reimbursement for its expenses reasonably incurred in completion of the services covered by this agreement, subject to the following limitations:

1. Local automobile travel expenses are included in the hourly rates paid as compensation for services. Automobile travel expenses for any destination outside of Montgomery County, Ohio will be reimbursable at the rate of thirty-one and one-half cents (\$.31½) per mile
2. Reimbursable expenses are limited to those out-of-pocket expenses paid by the Advisor to some third party, excluding itself, and its employees, excluding any other Advisor and sub-Advisors and excluding any third party in which the Advisor has an ownership interest or with which the Advisor has some rebate, commission or other arrangement whereby the Advisor receives payments or benefits in consideration for service or product orders given to that third party.
3. Amounts billed as reimbursable expenses are limited to direct costs incurred by the Advisor and shall not include any multiple or additional percentage of those costs.
4. In order to be reimbursable, expenses must be have been reasonably appropriate or must have been necessary, when evaluated in the light of the services to be performed. The cost of alcoholic beverages will not be reimbursed.
5. Signed, legible and explanatory receipts must be submitted for all reimbursable expenses, if requested by the City of Centerville.

C. Billing Frequency. Total charges for consulting time consumed during any given month will be billed at the end of the month incurred along with any out-of-pocket expenses incurred, at cost, during the given month.

SECTION 4. NO ASSIGNMENT. LIMITATIONS ON SUBCONTRACTING

A. Restriction against assignment. The owner is relying upon the professional skill and experience of the Advisor.

B. Limitations on subcontracting. Because the City of Centerville is relying upon the professional skill and experience of the Advisor, no part of the Project may be subcontracted by the Advisor to other organizations or sub-Advisors without the prior, written, express consent of the City of Centerville. Any such consent shall be deemed to require, even though not stated in the consent language, that a written contract be used between the Advisor and such a consented-to subcontractor or sub-Advisor (both referred to as "sub-Advisor"), that such a contract be approved in advance by the City of Centerville and contain, unless waived by the City of Centerville, provisions similar or identical to those in this agreement. The contract requirements referred to in the preceding sentence shall also apply to any sub-Advisors identified or referred to in this paragraph as being consented to by the City of Centerville (or as being exempt from such consent). The Advisor is as responsible for the services and duties it may delegate to any sub-Advisor as the Advisor is for its own performance, and the mere fact that the Advisor used reasonable care in selecting the sub-Advisor shall not relieve this responsibility. Nor shall consent by the City of Centerville to part of the project being subcontracted to a sub-Advisor nor approval of the terms of a contract with a sub-Advisor relieve that responsibility of the Advisor.

C. Termination of Agreement for Cause. If, through any cause, the Advisor shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if the Advisor shall breach any of its promises in this agreement, the City of Centerville shall have the right to terminate this agreement by giving written notice to the Advisor specifying the effective date of the termination, at least five (5) days before such effective date. If such termination occurs, the Advisor will be paid an amount which bares the same ratio to the total compensation as the services actually performed bare to the total services of the Advisor required by this agreement, less compensation previously paid and less any cost incurred by the City of Centerville incurring such a breach. Those costs shall include the compensation and indirect costs paid to or for any City of Centerville employees whose time is used in obtaining such completion or curing such breach.

SECTION 5. DISPUTE RESOLUTION

A. Mediation Period. If during this contract the parties are unable to resolve a dispute or controversy among themselves, prior to instituting any court action or demanding arbitration, the parties shall agree first to try in good faith to settle the dispute by non-binding mediation administered by the American Arbitration Association. All mediation proceedings shall take place in Montgomery County, Ohio.

B. Arbitration. If mediation fails to resolve a dispute or controversy between the parties, it shall be settled, except as specified in subparagraphs 1 and 2, by arbitration administered by the American Arbitration Association. The parties agree to abide by and perform any award rendered by the arbitrator and agree that a judgment of any court having jurisdiction may be entered upon the award. All arbitration proceedings shall take place in Montgomery County, Ohio.

1. Upon application by either party to a court of competent jurisdiction, such court may relieve the parties of their duty to arbitrate claims, or may stay arbitration, if ongoing litigation between one or both of the parties and a third party involves issues of fact or law common with those subject to arbitration and there exists a possibility of inconsistent judgments if such relief is not granted.

2. This arbitration agreement shall not apply to any claim seeking damages, indemnification or contribution from any party in connection with any claim for personal injury or death of any person.

C. Consolidation of separate arbitrations. Upon application from either party to a court of competent jurisdiction, the arbitration proceeding may be consolidated with one or more claims subject to arbitration involving the same project where there is a common issue of fact or law creating the possibility of conflicting rulings by more than one arbitrator or panel of arbitrators.

D. Joinder of additional persons or entities. Any arbitration arising out of or relating to this agreement may include, by consolidation, joinder or in any other manner, any additional person or entity not a part to this agreement.

E. No punitive damages through arbitration. The arbitrator shall have no jurisdiction or authority to award punitive damages for any reason. Both parties agree to this limitation, and each agrees to indemnify, defend and hold the other harmless against any attempted award of punitive damages.

F. Future incorporation of dispute resolution agreement. The parties wish to avoid the litigation or arbitration of claims arising out of the project in more than one proceeding. Therefore, the parties agree to incorporate this dispute resolution clause into any and all subcontracts, performance bonds, guarantees, construction contracts, and other agreements related to the project, either by including this Section 7 in full or incorporating it by reference. When so including or incorporating, any reference to the "Advisor" in the included or incorporated dispute resolution clause is deemed to refer to the other party in such subcontract, performance bond, guarantee, construction contract, or other agreement. Each party who fails to comply with the agreement to so include or incorporate this dispute resolution clause hereby agrees to and shall indemnify and hold every other party harmless from all attorneys' fees and from all costs and expenses incurred by such other party as a result of that failure.

SECTION 6. ADVISOR INSURANCE.

The Advisor shall comply with the laws of the State of Ohio relating to insurance coverage and shall carry and maintain during the performance of this agreement the following forms of insurance:

A. Worker's compensation. This shall be carried as required by the law of Ohio.

B. Comprehensive general liability insurance. This shall include the following:

1. If a deductible amount is involved, it may be no larger than \$10,000.
2. Public liability insurance in the amount of at least \$1,000,000 for bodily injuries including those resulting in death of any one person and on account of any one accident or occurrence.
3. Property damage in the amount of at least \$25,000 for damages on account of any one accident or occurrence.

This dollar amount requirement for professional errors and omissions insurance may be met on a combined basis, i.e., by combining such insurance maintained by the Advisor with similar insurance maintained by any sub-Advisor (to the extent that a sub-Advisor is consented to by the City of Centerville through the process described above in this agreement).

C. Certificate of insurance. If the City of Centerville requests it, a certificate of all or any one of these forms of insurance shall be provided to the City of Centerville within seven (7) days after this agreement is signed. That certificate must contain language identifying all the requirements mentioned in this section of the agreement and affirming that each specific requirement has been met.

SECTION 7. USE OF ADVISOR'S DRAWINGS AND OTHER DOCUMENTS.

Any drawings and other documents which may be prepared by the Advisor for this Project are items which are prepared for and which belong to the City of Centerville, subject to the City of Centerville's obligation to make payments to the Advisor as provided in this agreement. Those drawings and other documents are a part of what the owner is purchasing through this agreement.

SECTION 8. INDEMNIFICATION AND HOLD HARMLESS OBLIGATIONS.

To the full extent permitted by law, the Advisor shall indemnify, defend and hold the City of Centerville and its agents and employees harmless from and against all claims, demands, losses and expenses, including but not limited to attorneys' reasonable fees, arising out of or resulting in whole or in part from any negligent act or omission, and/or from any failure to perform the Advisor's duties under this agreement, attributable to the Advisor, its employees, agents, sub-Advisors and any other person or entity for whose conduct the Advisor may be liable under Ohio law.

SECTION 9. MISCELLANEOUS

A. Severability. If any provision of this agreement is declared or determined to be unlawful, invalid or unconstitutional, that declaration shall not in any manner affect the legality of the remaining provisions; and each provision of this agreement shall be deemed to be separate and severable from every other provision.

B. Nondiscrimination. The Advisor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap.

C. Remedies. The remedies provided in this agreement are cumulative. Delay or forbearance in the enforcement of any right under this agreement shall not be deemed a waiver of, or estoppel against the exercise of, such right.

D. Entire agreement. This written document represents the entire and integrated agreement between the City of Centerville and the Advisor and supersedes all prior negotiations, representations and agreements, whether oral or written. This agreement may be amended only by a written document signed by both the City of Centerville and the Advisor.

E. Conflicts of interest. The City of Centerville recognizes that the Advisor does not provide services exclusively to the City of Centerville. The Advisor shall not accept or perform other counseling assignments, however, which conflict in any way with the work under this agreement or which, alone or when combined with other factors, prevent completion of the work by the required due date.

F. Independent status. The Advisor is performing work under this agreement on an independent contractor basis, not as an employee of the City of Centerville, and so shall not be entitled to any of the benefits afforded employees of the City of Centerville.

G. Applicable law. This agreement shall be governed by the law of the State of Ohio.

H. Notice. Any notice required under this agreement shall be deemed to have been given on the date actually received or forty-eight (48) hours having been deposited in the United States mail, postage prepaid, registered or certified, and addressed to the parties as set forth below, whichever occurs earlier. Either party may change its address from time to time by written notice given in this manner.

If to the City of Centerville:

Mr. Gregory B. Horn
City Manager
City of Centerville
100 West Spring Valley Road
Centerville, Ohio 45458

If to Advisor:

The Gem Real Estate Group, Inc.
Six North Main Street
Suite 610
Dayton, Ohio 45402
Attn.: DOUGLAS E. HARNISH

I. Binding on successors. This agreement is to be binding on the parties, their successors, and any assigns permitted under the terms of the agreement.

IN WITNESS WHEREOF, the City of Centerville and the Advisor have signed this agreement in duplicate as of the date set forth on the first page.

Signed in the presence of:

Sharon K. Bell
Michelle M. Minton

THE GEM REAL ESTATE GROUP
Douglas E. Harnish
By: Douglas E. Harnish
Title: President/COO
Date: 5/30/97

The City of Centerville

Linda Schrock
Peggy S. Whisman

By: Gregory B. Horn
Title: City Manager
Date: 5/27/97

Approved as to form, correctness and legal sufficiency

THE CITY OF CENTERVILLE

Linda L. Schrock
Peggy S. Whisman

By: Gregory B. Horn
Date: 5/28/97

Exhibit A

TIME SCHEDULE FOR PERFORMANCE

Based upon the client's needs to be negotiated.

Exhibit B

SCOPE OF SERVICES

Yankee Trace Development financial review.

Notwithstanding the language of SECTION 3., Paragraph A. Compensation for services, rates have been modified as follows:

1. At the rate of \$150.00 per hour of one primary Advisor's time, as that time is called for through the City of Centerville requesting various services. If multiple primary Advisors are needed to perform the work within the required time schedule, any additional Advisor(s) will be paid at the rate of \$100.00 per hour. These hourly rates include payment for services of GREG's support staff.