



ITEM NO. **7C**

OFFICE OF THE CITY ADMINISTRATOR

Johnston, Iowa

AGENDA COMMUNICATION

February 2, 2009

SUBJECT: Consider an Agreement for Professional Services with Terrus Real Estate Group, L.L.C. for services related to the Merle Hay Road Redevelopment project

ACTION REQUIRED:

- Ordinance
- Resolution
- Approval
- Receive/File
- Attorney Review

JPS

SYNOPSIS:

In the fall of 2008 the city sent out a Request for Qualifications (RFQ) to 14 firms for assistance with real estate services related to the implementation of the Merle Hay Road redevelopment project. Eight firms responded with proposals. A review committee consisting of the Economic Development Subcommittee (City Council members Kallen and Tingley), JEDCO Director Phil Dunshee and City Administrator Jim Sanders reviewed the proposals, conducted interviews and selected Terrus Real Estate Group, L.L.C. as the successful contractor. Terrus will work with city staff and property owners within the project area to create developable parcels that can be marketed to potential developers. Some of the tools they may use in working with property owners may include development agreements, the city purchasing key parcels and the city assisting in removing structures to prepare property for redevelopment. Any decisions that involve expenditure of funds will require the approval of the City Council.

FISCAL IMPACT:

The agreement establishes an hourly rate of \$200. If Terrus earns any brokerage commissions related to the work under the agreement, the fees will be credited against the fees paid on the hourly basis. The estimated cost to complete the contract is \$50,000 plus reimbursable costs.

RECOMMENDATION:

Staff recommends approval of the agreement.

AGREEMENT FOR PROFESSIONAL SERVICES

For

The City of Johnston ("Client")

The parties to this Agreement for Professional Services ("Agreement") are Terrus Real Estate Group, L.L.C. ("Terrus") and the client identified above ("Client"). The purpose of this Agreement is to set forth the terms and conditions under which Terrus will provide certain services for Client.

1. Services. Subject to the terms and conditions of this Agreement, the Client agrees to retain Terrus to perform and Terrus agrees to perform the Services specified on Attachment A.
2. Term. If this Agreement is for a specific project, it shall terminate upon completion of the project and payment for the services which make up the project. Otherwise, this Agreement shall remain in force indefinitely until terminated by either party with thirty (30) days' written notice. The effective date of this Agreement shall be the day after the Agreement is approved by the Johnston City Council but no later than February 18, 2009.
3. Compensation.
 - (a) Basic Fee. Client shall pay a fee to Terrus for its Services under this Agreement as outlined on Attachment A. Terrus may bill Client at the end of each thirty (30) day period for work completed in such time which payment shall be due ten (10) days after receipt of said invoice.
 - (b) Additional Fee. Any additional services performed by Terrus shall be with the prior approval of Client and at rates as agreed to by the parties and reflected in an Amendment to this Agreement.
 - (c) Reimbursable Costs. Client shall pay to Terrus all costs reasonably incurred by Terrus in the performance of its obligations under this Agreement including, but not limited to, travel cost (the "Reimbursable Costs"). Mileage will be reimbursed at the current IRS mileage rate in place at the time of occurrence. Reimbursable Costs shall not include any portion of Terrus' general overhead expense. Reimbursable Costs shall be paid to Terrus in the same manner as Fees under this Agreement.
 - (d) Late Payment. In the event a payment by Client is past due, there shall be added to the amount due a late fee of 1.5% (one and a half percent) per month from the date said payment is due until fully paid. This late fee does not constitute a waiver of any other rights Terrus may have under this Agreement, in law or equity.
4. Independent Contractor. It is understood and agreed that Terrus and its personnel is an independent contractor and not an employee of Client. This Agreement creates no relationship of joint venture, partnership, association or employment between Client and Terrus. Terrus shall pay taxes, assessments, and fees arising out of Terrus' operation under this Agreement, including, without limitation, all payroll taxes and contributions imposed by Federal or state entities. Terrus shall indemnify the Client for any such tax imposed upon the Client that should be assessed to and paid by Terrus.

5. Personnel and Subcontractors. If Terrus intends to use any subcontractors to perform any of its obligations under this Agreement, they shall be identified.
6. Non-solicitation of Employees. Each party agrees not to employ or to hire as an individual independent contractor any employee of the other party for a period of six months after the date such person terminated employment with the other party. Each party agrees not to request, induce or advise any employee of the other party to leave the employ of the other party during the term of this Agreement.
7. Standards of Performance. Terrus represents and warrants that all Services will be performed in a professional manner, by qualified personnel, and in accordance with the terms of this Agreement and all applicable industry standards. Terrus shall make available to Client the full benefit of the judgment, experience and advice of the members of Terrus' Management Team and other staff with respect to the Services provided under this Agreement. Terrus shall not be liable for any action taken or omitted in good faith as authorized by or within the discretion, rights or powers conferred upon it by this Agreement. Terrus does not have the authority to bind the Client.
8. Termination. Either party may cancel this Agreement upon thirty (30) days' advance written notice to the other party.
9. Indemnification and Limitation of Liability. Terrus agrees to indemnify, defend, save and hold harmless from any demand, suit, proceeding, claim or judgment resulting from Terrus' breach of this Agreement or from Terrus' gross negligence or willful misconduct. Client agrees to indemnify, defend, save and hold harmless from any demand, suit, proceeding, claim or judgment resulting from: Terrus carrying out the provisions of this Agreement or acting under the direction of Client; Client's refusal to comply with or abide by any rule, order, determination, ordinance or law of any federal, state or municipal authority; and Client's breach of this Agreement. Terrus' maximum liability under this Agreement shall not exceed the amount paid under the Agreement.
10. Confidentiality. Terrus acknowledges that through its provision of services to Client, Terrus may have access to certain information, documents and records of a confidential or proprietary nature, including but not limited to business records and non-public information. Terrus agrees that it will not directly or indirectly use, in any unauthorized manner, or disclose to any third parties, any written or oral information of a confidential or proprietary nature pertaining to Client or its subsidiaries or affiliates. Further, Client acknowledges that through Terrus' provision of services to Client, Client may have access to certain information, documents and records of a confidential or proprietary nature, including, but not limited to business records, non-public information, flowcharts and written procedures. Client agrees it will not directly or indirectly use, in any unauthorized manner, or disclose to any third parties, any written or oral information of a confidential or proprietary nature pertaining to Terrus.
11. Insurance. Terrus shall keep in force commercially reasonable coverages and limits during the term of this Agreement. Terrus shall, upon Client's request, provide evidence of its insurance coverage.

12. Notices. Any and all notices given under this Agreement shall be sent certified or registered mail, return receipt requested and postage prepaid. Any notices delivered by either party in any manner other than those described above shall be deemed properly given when received.

If to Terrus: Terrus Real Estate Group
616 10th Street
Des Moines, IA 50309
Attn: Shannon G. Holz

If to Client: The City of Johnston
6221 Merle Hay Road
Johnston, IA 50131-0410
Attn: Jim Sanders

13. Miscellaneous:

- (a) Entire Agreement. This Agreement represents the entire agreement and understanding between the parties and supersedes all prior agreements and understandings relating to its subject matter.
- (b) Successors and Assigns. The covenants and agreements contained herein shall be binding upon the respective successors and permitted assigns of the parties.
- (c) Severability. If any of the provisions of this Agreement shall to any extent be invalid or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permitted by law.
- (d) Headings and Captions. The headings and captions of this Agreement are for purposes of reference only and shall not limit or otherwise affect meaning.
- (e) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (f) Choice of Law. This Agreement shall be construed in accordance with Iowa law.
- (g) Amendments. This Agreement shall only be amended by written agreement of the parties.
- (h) No Legal Advice. The Client acknowledges and agrees that no employee of Terrus shall be required to furnish, or shall be deemed to be furnishing, legal advice or legal representation to Client.
- (i) No Design Professional/Code Compliance Advice. The Client acknowledges and agrees that Terrus is not a professional architect and that no employee of Terrus shall be required to furnish, or shall be deemed to be furnishing, professional design services or advice as to code compliance.
- (j) Assignment. Neither party's rights or obligations under this Agreement shall be assigned by either party, or assigned involuntarily or by operation of law, without the written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed.

THE PARTIES HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND BY SIGNING BELOW, AGREE TO BE BOUND BY IT. EACH PARTY REPRESENTS THAT THE INDIVIDUAL SIGNING ON ITS BEHALF HAS FULL AUTHORITY TO BIND SUCH PARTY.

TERRUS REAL ESTATE GROUP, LLC

THE CITY OF JOHNSTON

By: Randall L. Minear

By: _____

Printed Name: Randall L. Minear
President & CEO

Printed Name: _____

Title: _____

Title: _____

Date: 1/16/09

Date: _____

ATTACHMENT A

Description of Services and Fees

Services:

Terrus will provide the following services to the Client:

- Review all parcels in the study area (Merle Hay Road, primarily north of NW 62nd Avenue) as identified by the Client.
- Review study performed by RDG (Merle Hay Redevelopment Study and Marketing Analysis), add an overlay of property ownership onto RDG plan and prioritize parcels based upon location, size, and other relevant criteria.
- Schedule face-to-face meetings with property owners based upon prioritization of parcels determined by Terrus' review and consultations with the Client.
- Provide periodic updates to the Client: Schedule and format of updates yet to be determined. Updates could include presentations to the Council sub-committee leading this project or to the City Council or both.
- Attempt to work out agreements with all property owners within the study area. These agreements may include purchasing property by the City of Johnston or other 3rd party buyers, options or other viable alternatives. Any agreements must be approved and executed by the City of Johnston and Terrus will have no ability to bind the City of Johnston without their written approval of the terms and conditions of each agreement.
- Provide suggestions related to the RDG study; make recommendations to the City of Johnston on suggested uses in the study area and the timing of redevelopment in this area based upon Terrus' expertise in development, financing and brokerage.
- Any other duties as assigned by the City of Johnston related to the project or as outlined in the description of services of the RFQ dated November 14, 2008.

Fees:

\$200.00 per hour. Any brokerage commissions earned by Terrus related to the work under this Agreement (whether paid by the particular seller or the Client), will be credited against fees paid out (or to be paid) under this Agreement.