

RESOLUTION NO. 28-16  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Jeanne Row ON THE 18<sup>th</sup>  
DAY OF April, 2016.

A RESOLUTION AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, TO ENTER INTO AN AGREEMENT WITH MARKET METRICS, LLC FOR CONSULTING SERVICES.

WHEREAS, the City of Centerville has been awarded a grant from the Montgomery County Land Reutilization Corporation ("Land Bank") to conduct a Planning Study of the Centerville Place Shopping Center located at 1023 to 1093 South Main Street and its immediate environs, and

WHEREAS, the City of Centerville has chosen Market Metrics, LLC. to conduct a Market Feasibility Study in association with the Planning Study on behalf of the City of Centerville.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to execute an Agreement between the City of Centerville and Market Metrics, LLC to govern the expenditure of funds in association with a Market Feasibility Study of the Centerville Place Shopping Center, a copy of said Agreement is attached hereto, incorporated herein, marked Exhibit "A".

Section 2. This Resolution shall take effect at the earliest date allowed by law.

PASSED THIS 18<sup>th</sup> day of April, 2016

Bruce A. Compton  
Mayor of the City of  
Centerville, Ohio

ATTEST:

Caren R. Andrews  
Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 28-16, passed by the Council of the City of Centerville, Ohio on the 18<sup>th</sup> day of April, 2016.

Caren R. Andrews  
Clerk of the Council

Approved as to form, consistency  
with existing ordinances, the  
charter & constitutional provisions  
Department of Law  
Scott A. Liberman  
Municipal Attorney

**MARKET METRICS LLC  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into on this \_\_\_\_\_ day of April, 2016 by and between the City of Centerville, Ohio, a Municipal Corporation of the State of Ohio (the "Client"), located at 100 West Spring Valley Road, Centerville, OH 45458, and MARKET METRICS LLC, an Ohio limited liability company (the "Consultant"), located at 429 Brydon Road, Kettering, Ohio 45419-1822.

**WITNESSETH**

THAT, WHEREAS, the Client has identified a need for certain real estate services; and

WHEREAS, the Consultant 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-recited paragraphs to be deemed part of the resulting contract:

**SECTION 1. RESPONSIBILITIES OF THE CONSULTANT**

A. The Consultant's services are to be performed with first-class professional skill and care, in this specialized field of work, and to the reasonable satisfaction of the Client.

B. The schedule for performance of the Consultant's services is set forth in the attached Exhibit A and may be amended from time-to-time by agreement of the parties hereto. The schedule includes as necessary time required for the Client's review and for approval of submissions to authorities having jurisdiction over the project, if any.

**SECTION 2. SCOPE OF SERVICES**

The services to be performed by the Consultant under this agreement consist of the services described in Exhibit A, as amended from time to time by the parties hereto.

**SECTION 3. PAYMENTS TO THE CONSULTANT**

A. The Consultant shall be paid for its services rendered to or on behalf of the Client as set out in the "Compensation for Services and Reimbursement of Expenses" schedule attached hereto as Exhibit B.

B. The Client shall reimburse the Consultant for all expenses incurred in conjunction with the Consultant's completion of the Client's scope of work as set forth in the "Compensation for Services and Reimbursement of Expenses" schedule attached hereto as Exhibit B. Receipts or written explanations must be submitted for all reimbursable expenses, if requested by the Client.

C. Total charges for compensation and expenses will be billed on a monthly basis with invoice payment due within thirty (30) days of submission to the Client.

#### SECTION 4. ASSIGNMENT.

The Client is relying upon the professional skill and experience of the consultant. Therefore, assignment of this agreement by the Consultant is permitted only upon the written consent of the Client.

#### SECTION 5. LIMITATIONS ON SUBCONTRACTING

All subcontractors engaged by the Consultant for purposes of providing the services to which this agreement pertains shall execute a written contract with the Consultant which is similar to this agreement and includes, specifically, provisions substantially similar to Section 7 and Section 8 hereof.

#### SECTION 6. TERMINATION OF AGREEMENT (FOR CAUSE/ OR UPON NOTICE)

(A.) If the Consultant shall materially breach any of the provisions of this agreement, the Client shall have the right to terminate by giving written notice to the consultant specifying the effective date of the termination which in no event shall be fewer than five (5) days after receipt of the notice. If such termination occurs, the Consultant will be paid an amount of compensation which bears the same ratio to the total compensation due under this agreement as the amount of services actually performed as of the effective date of termination bears to the total services of the Consultant required by this agreement, less all compensation previously paid. Additionally, the Consultant will be reimbursed for all reimbursable expenses incurred through the date of termination.

#### (OR UPON NOTICE)

(B.) This agreement may be terminated by either party upon five (5) days written notice to the other. If such termination occurs, the Consultant will be paid an amount of compensation which bears the same ratio to the total compensation due under this agreement as the amount of services actually performed as of the effective date of termination bears to the total services of the consultant required by this agreement, less all compensation previously paid. Additionally, the Consultant will be reimbursed for all reimbursable expenses incurred through the date of termination.

(C.) In the event of agreement termination, for whatever reason, Consultant shall turnover to client all materials and work product produced as of the date of the termination pursuant to Section 9 of this agreement.

**SECTION 7. DISPUTE RESOLUTION**

If the parties are unable to resolve a dispute or controversy between them, prior to instituting any further action, the parties may attempt in good faith to settle the dispute by non-binding mediation upon rules and procedures mutually acceptable to the parties.

**SECTION 8. CONSULTANT INSURANCE**

The Consultant 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. The Consultant shall provide and/or secure worker's compensation insurance as required by applicable law.

B. The Consultant shall also carry other insurance as follows:

1. Worker's Compensation Employers Liability/Ohio Stop Gap Including Intentional Tort Coverage	Statutory Limits \$500,000 Min.
2. Comprehensive General Liability Bodily Injury and Property Damage General Aggregate Products/Completed Operations Aggregate	\$1,000,000 Min. \$2,000,000 Min. \$1,000,000 Min.
3. Comprehensive Automobile Liability Bodily Injury and Property Damage	\$1,000,000 Min.
4. Professional Liability Each Claim Aggregate	\$1,000,000 Min. \$1,000,000 Min.
5. Umbrella Policy	\$1,000,000 Min.

For each of the aforementioned policies of insurance and the coverage provided therein, the deductible may not exceed \$10,000.

C. The dollar amount requirement for professional liability insurance may be met on a combined basis by combining such insurance maintained by the Consultant with similar insurance maintained by any sub-consultant.

D. Client may request that Consultant name the Client as an additional insured on the policy or policies as agreed.

E. If the Client makes a written request, a certificate of all or any of the aforementioned forms of insurance shall be provided to the client 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. The certificate shall also verify that said policies and coverage are in effect prior to the consultant commencing its performance hereunder and will not be canceled during the term of this agreement.

#### SECTION 9. USE OF CONSULTANT'S DRAWINGS AND OTHER DOCUMENTS

Any drawings and other documents which may be prepared by the Consultant for this project are items which are prepared for and which belong to the Client, subject to the Client's obligation to make payments to the Consultant as provided in this agreement. Notwithstanding the foregoing sentence, all systems, formulas or processes employed by the Consultant in the preparation of any drawings or other documents belonging to the Client shall be and remain the property of the Consultant.

#### SECTION 10. FINDINGS CONFIDENTIAL

Reports, maps, data, or any pertinent information prepared or assembled by the Consultant under this agreement are confidential, and the consultant agrees that they shall not be made available to any individual or organization, except for general consultant promotional purposes, without prior written approval of the Client except as otherwise required by law.

#### SECTION 11. PUBLICITY

All publicity in any news media related to the above mentioned project or its findings shall be approved and released through the Client. The Consultant shall receive recognition and credit in all project documentation, public relations, and publicity.

#### SECTION 12. INDEMNIFICATION AND HOLD HARMLESS OBLIGATIONS

The Consultant shall indemnify, defend and hold the Client 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 Consultant's duties under this agreement, attributable to the Consultant, its employees, agents, sub-consultants or any other person or entity for whose conduct the Consultant may be liable under Ohio law.

#### SECTION 13. CONFLICT OF INTEREST

The Client recognizes that the Consultant does not provide services exclusively to the Client. During the term of this contract, the Consultant agrees not to accept employment or to perform for or on behalf of another client whose interests are adverse to that of the client, or for which a conflict of interest between the Client and the Consultant would be created, without the prior written consent of the Client.

SECTION 14. MISCELLANEOUS

A. 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. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap.

C. 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. This written document represents the entire and integrated agreement between the Client and the Consultant 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 Client and the Consultant in the form attached hereto as Exhibit C.

E. The parties hereto agree that, pursuant to this agreement, Consultant is an independent contractor and not an employee or partner of Client. As such, Consultant is solely responsible for the payment of all applicable taxes including, but not limited to, applicable income taxes, self employment tax, medicare tax, workers' compensation and unemployment compensation. Since Consultant is an independent contractor and not an employee entitled to the protections afforded public employees under Chapter 2744, Ohio Revised Code, City may cause Consultant to be added as an additional insured on its liability insurance policy.

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

G. Any notice required under this agreement shall be deemed to have been given on the date actually received or forty-eight (48) hours after 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 client:

Mr. Andrew E. Rodney  
City of Centerville  
100 W. Spring Valley Road  
Centerville, Ohio 45458

If to the consultant:

Mr. Douglas E. Harnish  
MARKET METRICS LLC  
429 Brydon Road  
Kettering, Ohio 45419-1822

I. 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 client and the consultant have signed this agreement in duplicate as of the date set forth on the first page.

Signed in the presence of:

MARKET METRICS LLC, an Ohio limited liability company

\_\_\_\_\_

By: \_\_\_\_\_  
Douglas E. Harnish  
Title: Principal

\_\_\_\_\_

Date: \_\_\_\_\_

Signed in the presence of:

CITY OF CENTERVILLE, OHIO

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

Date: \_\_\_\_\_

This Agreement approved as to form by:

Scott A. Liberman (0058432)  
Altick & Corwin Co., L.P.A.  
1 South Main St., Suite 1590  
Dayton, OH 45402

\_\_\_\_\_

## Exhibit A

### SCOPE OF SERVICES AND SCHEDULE

MARKET METRICS LLC (MMLLC) has been engaged by The City of Centerville, Ohio to prepare a Market Analysis for the Centerville Place Shopping Center, 1023-1093 South Main Street, of the City of Centerville, within Montgomery County, Ohio, pursuant to section 3735.66 of the Ohio Revised Code.

The purpose of the analysis is to provide market based support for the potential development/redevelopment in whole or in part of a 27 acres, more or less, area currently developed in part (15 acres, more or less) as the Centerville Place Shopping Center, plus a vacant infill site (12 acres, more or less). The anticipated timeframe for completion of the market analysis is approximately 60 to 90 days from execution of a Professional Services Agreement and written authorization to proceed. In addition to a narrative document detailing the market analysis, participation in a limited number of meetings and/or a final presentation is anticipated.

The anticipated scope of services includes an analysis of three major land use groups: office, retail and residential. A comprehensive review of the three major land use groups is indicated in order to provide objective opinions regarding these or any other land uses that may be appropriate for the site(s) and can be supported by the local market.

Detailed items/tasks are discussed below by study phase. These items should provide additional insight into the overall scope of services anticipated.

### SCOPE OF SERVICES

#### Phase I: Data Collection/Compilation and Research

MMLLC will define the competitive marketplace for each of the real estate product types identified.

- MMLLC will evaluate the competitive inventory of land use types using available public record sources to define the approximate magnitude of each use group. Residential units will be identified and owner/renter occupancies determined. Retail and service uses will be quantified by the percentages of indigenous market demand being met (the methods employed measure economic activity which may, or may not, correlate to occupancy rates in the study area(s)).
- MMLLC will correlate this data with available inventory data from the public record in order to estimate the supply of real estate for each major land use group
- MMLLC will research the market in each of the identified major product types and estimate the current supply and demand balance for each type

- MMLLC will obtain a range of demographic information for the competitive market area and utilize this data to determine the possible rates of future absorption based on current unmet demand and projected growth
- MMLLC will correlate the information generated above with information provided by the property owners, public officials, and/or stakeholders in the community
- The information above will permit MMLLC to define the range of potential real estate products on the study site(s) that should be successful in a reasonable time period

### **Phase II: Primary Market Research, Data Analysis and Correlation**

- MMLLC will participate in a limited number of meetings with public officials, property owners, and/or local influence leaders in order to comprehend the local market and to understand the competitive factors that enhance or detract from the study site if such meetings are desired by the City. At this time the study scope has limited the number of meetings to a “kick-off meeting”, two “milestone meetings”, and a “final presentation” as described in the following phase of work. The results of the meetings combined with the demographic information and other data developed in Phase I will be analyzed to refine the list of possible real estate products down to a list of products that have a high probability of market success
- Market information will be analyzed to estimate the magnitude of demand for the products that could be developed to serve each of the identified market segments

### **Phase III: Documentation and Presentation of Results**

- MMLLC will participate in two meetings at appropriate project milestones to ensure that the City is kept abreast of study progress and to enable every opportunity to provide input. A total of four (4) meetings; a “kick-off meeting” and two (2) “milestone meetings”, are included in the proposed budget, in order to obtain and review data and analyses, present findings and offer recommendations
- MMLLC will compile the data and analyses it has prepared into a study document, including the results of the market analyses, for the recommended land uses for the use of City staff
- MMLLC will make a “final presentation” to the City and other interested parties at a time to be arranged after completion of the study

### **Information to be provided by the City**

The list of data to be provided by the client includes the following:

- Complete map(s) of the entire study area including all ancillary land areas of specific interest
- Current zoning code(s) (if applicable)
- Current land use plan(s)

- Any prior studies or marketing plans for the site(s) and/or the area(s)
- Aerial photograph(s) (if available)
- A list of all archeological, historic, and/or environmental issues that have been addressed as well as those that may require ongoing efforts to resolve before development of the site(s) can be optimized
- MMLLC will rely heavily on City staff for data regarding residential subdivisions approved but not yet developed, subdivisions approved and in development, as well as residential building permit data from recent years. The final details regarding the data to be supplied by City will be determined prior to commencement of the market analysis.

### **Approach, Methodologies and Deliverables**

MMLLC begins each study by developing a clear definition of the questions to be answered. All remaining tasks during the course of the study are dependent on this definition.

Once the questions have been defined, MMLLC will begin to gather and/or assemble the data necessary to analyze the context of the market in the subject study area and in the marketplace in general. MMLLC will gather data from multiple sources including, but not limited to, the U.S. Census Bureau, Alteryx.com, SOCDS, Municipal data, County data, and State of Ohio data. This collection of data will provide a demographic and economic context for the market analysis of the subject community as well as a background regarding the market in general.

The demographic data will be analyzed to determine the range of possible land uses that it may be possible to accommodate on the study site(s). MMLLC will utilize generally accepted methods along with proprietary models to stratify the segments of the residential, office, and retail markets that may be addressed during the course of the study. The market for single-family housing and/or multi-family housing will be explored applying generally accepted measures of housing affordability. The market for office and retail uses will be evaluated, again applying generally accepted market measurement methods. At this point during the analysis, any land uses deemed inappropriate for the site(s) and/or unsupportable in the marketplace will be eliminated from any further consideration. MMLLC also employs proprietary models that are similar in nature to those used analyze retail supply and demand to assess the supply and demand for consumer and professional services. The approach to these analyses is based on quantitative methods along with market experience and prudent judgment. As stated, some of the quantitative methods that will be employed utilize proprietary models developed by MMLLC.

MMLLC will focus its efforts on determining the types of real estate products that could be accepted in the market along with estimates of absorption. From this data MMLLC will work with City staff to select from the alternatives developed the product or products that should be included in the site plan to be developed.

MMLLC will produce a market study report that will detail the results of all demographic, economic and market analyses including tables, charts, graphs, and/or illustrations that will explain the quantitative and qualitative analyses performed.

As stated above, one progress meeting will be scheduled at an appropriate project milestone. In addition, a formal presentation is anticipated at the conclusion of the study. The milestone meeting and presentation are included in the proposed budget along with a kickoff meeting.

In some cases, the early phases of work demand a modification of the scope of the assignment. In these cases, the scope may be modified, in writing, via the "Change Order" form; and example of which is included at the end of this proposal.

#### **Optional Items at Additional Cost**

As stated in the accompanying proposal, a "kick-off meeting", two (2) "milestone meetings" and a "final presentation" have been budgeted as part of the scope of work outlined above. If more meetings are desired throughout the course of the study; e.g., stakeholder meetings, they may be added at a cost of \$300 per meeting, including all out-of-pocket expenses for travel and collateral materials.

At the request of the client, MMLLC will also be available to attend four (4) staff/steering committee meetings in association with the Study. MMLLC will begin its work based on written notification from the client to proceed. The Study shall be completed no later than December 31, 2016.

#### **SCHEDULE FOR PROJECT COMPLETION**

A timetable of between sixty (60) and ninety (90) days has been estimated. The final timeframe will be established by mutual agreement with the City prior to commencement of the study. The timeframe will start upon full execution of an acceptable Professional Services Agreement (PSA) and written authorization to proceed.

The requested timeframe is subject to revision based upon requested changes of scope of work and/or delays beyond the control of MMLLC.

## **Exhibit B**

### **COMPENSATION FOR SERVICES AND REIMBURSEMENT OF EXPENSES**

1. Compensation will be based on a fixed fee of \$8,100.00, (eight thousand one hundred dollars) including all assignment related out-of-pocket expenses of the consultant based on the "Scope of Services" as may be defined from time to time in accordance with the outline above.
2. Billings for work in progress will be presented monthly based on mutually agreeable assignment parameters or assignment milestones in accordance with the scope of services as defined in accordance with the outline above.
3. This agreement may be modified from time to time based on changes in the scope of services outlined above and upon execution of a written "Change Order" in a form acceptable to MMLLC. No changes or modifications will be binding on the client or the consultant unless documented in writing.

**Exhibit C**

**CHANGE ORDER**

MARKET METRICS LLC and the Client have mutually agreed to modify the "Scope of Services and Schedule" and/or the "Compensation for Services and Reimbursement of Expenses" schedules attached as Exhibit A and Exhibit B, respectively, to the Professional Services Agreement entered into on the \_\_\_ day of \_\_\_\_\_, 2016 as follows:

Scope of Services and Schedule change(s):

Compensation for Services and Reimbursement of Expenses change(s):

Signed in the presence of:

\_\_\_\_\_

\_\_\_\_\_

MARKET METRICS LLC, an Ohio limited liability company

By: \_\_\_\_\_

Douglas E. Harnish

Title: Principal

Date: \_\_\_\_\_

Signed in the presence of:

(the client)

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_