

RESOLUTION NO. 23-15
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE
20th DAY OF April, 2015.

A RESOLUTION AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, 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, The City is authorized to enter into an agreement with the City of Kettering for Municipal Court Prosecution Services and such agreement would be in the best interest of the citizens 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 the City of Kettering for municipal court prosecution services, 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 20th day of April, 2015.



Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James

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 23-15, passed by the Council of the City of Centerville, Ohio, on the 20th day of April, 2015.

Debra A. James
Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

AGREEMENT

This agreement is made between the City of Kettering, Ohio ("Kettering") and the City of Centerville, Ohio ("Centerville"); both parties are municipal corporations organized pursuant to the laws of the State of Ohio.

WHEREAS, the City of Kettering is the host city for the Kettering Municipal Court which has jurisdiction in 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, reviewing 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 in which 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, representing 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, providing 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 discretion 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 sixty (60). In the event the total amount of attorney hours devoted to any single appeal exceeds sixty (60), then in such event Centerville shall make payment to Kettering in the amount of Eighty Dollars and No Cents (\$80.00) for each hour exceeding sixty (60) 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 to paragraph 1 of this Agreement, Centerville shall pay annually to Kettering the amount of \$15,000.00 per year. This amount shall be increased and compounded each year by the percentage cost of living increase in wages given to Kettering employees. (For example only, if Kettering employees receive a 3% wage increase, then the yearly payment will increase by three percent to \$15,450 ($\$15,000 \times 1.03 = \$15,450$). If the wage increase is 2% the following year, then the yearly payment would increase to \$15,759 for that year ($\$15,450 \times 1.02 = \$15,759$)). Centerville shall make payment to Kettering in four equal payments payable no later than fifteen days after the conclusion of each calendar quarter (on or

before April 15th, July 15th, October 15th and January 15th). Kettering shall submit a statement for services provided to Centerville for each calendar quarter. The parties agree that appellate services provided for attorney hours exceeding sixty (60) for each appeal and for any representation before the Ohio Supreme Court shall be billed separately from quarterly statements.

6. The effective date of this Agreement shall be the date it is signed by the last party to sign below. This Agreement may be terminated by either party by providing at least thirty (30) days advanced written notice to the other respective party. This Agreement may be terminated at any time by mutual written agreement of the parties.

7. 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, 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

8. 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.

CITY OF CENTERVILLE, OHIO

CITY OF KETTERING, OHIO

By _____
Gregory B. Horn Date
City Manager

By _____
Mark W. Schwieterman Date
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Scott A. Liberman, Law Director
City of Centerville

Theodore A. Hamer III, Law Director
City of Kettering

FUNDS CERTIFIED BY:

FUNDS CERTIFIED BY:

Steven A. Hinshaw, Ph.D., Finance Director

Nancy Gregory, Finance Director