

RESOLUTION NO. 19-09
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE 18th
DAY OF May, 2009.

A RESOLUTION AUTHORIZING CITY MANAGER TO ENTER INTO AN INDEPENDENT CONTRACTOR AGREEMENT WITH MICHAEL J. MALONE AS MARKET MANAGER FOR THE ON-SITE MANAGEMENT OF CENTERVILLE'S FARMERS MARKET.

WHEREAS, the City operates a seasonal farmers market known as Centerville Farmers Market; and

WHEREAS, the City wishes to contract for an on-site manager who will manage the market and serve as liaison for vendors to the City of Centerville; and

WHEREAS, Michael J. Malone is ready, willing, and able to be the Market Manager to provide management of the market vendors and site;

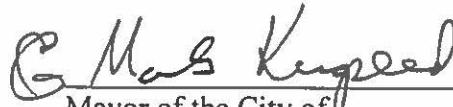
WHEREAS, the City of Centerville has negotiated an Independent Contractor Agreement for the purpose of hiring Michael J. Malone as an on-site manager for Centerville's Farmers Market upon terms acceptable to the City.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1: That the City Manager is hereby authorized and directed to enter into an Independent Contractor Agreement with Michael J. Malone to be the market manager, upon the terms and conditions set forth in the Agreement, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

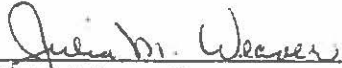
Section 2: That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement.

PASSED THIS 18th day of May, 2009.



Mayor of the City of
Centerville, Ohio

ATTEST:

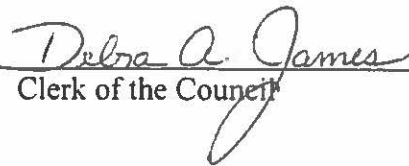


Assistant

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. 19-09, passed by the Council of the City of Centerville, Ohio on the 18th day of May, 2009.



Clerk of the Council

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

INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT made at Centerville, Ohio on the _____ day of _____ 2009 by and between _____ (hereinafter MARKET MANAGER) whose address is _____ and the CITY OF CENTERVILLE, an Ohio municipal corporation, 100 West Spring Valley Rd, Centerville, Ohio 45458-3579 (hereinafter CENTERVILLE).

WITNESSETH

WHEREAS, CENTERVILLE operates a seasonal farmers market known as Centerville Farmers Market; and

WHEREAS, an on-site manager of the market is desirable; and

WHEREAS, MARKET MANAGER represents to CENTERVILLE that he/she is ready, willing, and able to provide management of the market vendors and site;

NOW THEREFORE, in consideration of the foregoing recitations and the benefits to them mutually accruing, the parties agree as follows:

Section 1. TERM This AGREEMENT shall commence upon the date of execution and shall remain in effect for the term of one (1) year; however, it shall be automatically renewed for additional one (1) year periods unless either party gives notice to the other of an election not to renew at least thirty (30) days prior to any expiration date and, provided, further, that either party may terminate same with or without cause at any time by giving thirty (30) days prior written notice to the other party.

Section 2. DUTIES Responsibilities include but are not limited to the following: review and maintain current vendor applications, permits, licenses, and insurance certificates and ensure deposits, fees, and necessary documents are presented to the City; record attendance and collect weekly fees, ensure products for sale comply with stated requirements; serve as liaison for vendors to the City of Centerville; exercise the authority to deny any vendor the privilege to sell at the market site should vendor break market rules or regulations; enforce market hours and direct vendor setup; and ensure cleanup and sanitation of site. While certain management tasks will be assigned to him/her by CENTERVILLE, MARKET MANAGER shall be solely responsible for the method employed and the time for carrying out the management services which, in any event, shall be performed in a competent manner and in full compliance with the provisions of any applicable rules and regulations of CENTERVILLE.

Section 3. COMPENSATION In consideration of his/her performance of services as provided for herein, MARKET MANAGER shall be compensated at the rate of 70% of all proceeds resulting from collection of weekly vendor fees. Weekly vendor payments shall be made through, and recorded by, the City of Centerville. Payment shall be made by CENTERVILLE to MARKET MANAGER based upon finance department records, weekly with payment to be due him/her by CENTERVILLE no later than the end of the following week. In the event of termination as provided for herein, MARKET MANAGER shall only be entitled to compensation for services performed prior to the effective date of the termination.

Section 4. INDEPENDENT CONTRACTOR The parties hereto agree that pursuant to this AGREEMENT, MARKET MANAGER is an independent contractor and not an employee or partner of CENTERVILLE. As such, MARKET MANAGER is solely responsible for the payment of all applicable taxes including, but not limited to, applicable income taxes, self-employment tax, Medicare tax, worker's

compensation, and unemployment compensation. Since MARKET MANAGER is an independent contractor and not an employee entitled to the protections afforded public employees under Ohio Revised Code Chapter 2744, CENTERVILLE shall cause MARKET MANAGER to be added as an additional insured on its liability insurance policy.

Section 5. PERSONAL SERVICE CONTRACT The parties agree that this AGREEMENT is, and is intended to be a "personal service contract" as provided in Ohio Revised Code Section 145.012 and as interpreted in Ohio Administrative Code Section 145-1-42 (A) (3). This AGREEMENT is and is intended to be a formal bilateral written contract between the parties as required by Section 145-1-45 (A) (2) (a). The parties further agree that since this is a personal service contract no Public Employees Retirement System deductions will be made from MARKET MANAGER's compensation nor paid to the Public Employees Retirement System of Ohio and in accordance with provisions of Ohio Administrative Code Section 145-1-45 (B) (2). As a personal service contract, the duties are personal to MARKET MANAGER and may not be assigned by him/her to any other person without the written consent of CENTERVILLE.

Section 6. MISCELLANEOUS This AGREEMENT represents the entire understanding between the parties. No amendment or modification shall be effective unless in writing signed by both parties. Any notices provided for herein shall be served in person or by mail to the address set forth in the first paragraph above until such time as either party has notified the other of a change of address.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the date first above written.

WITNESS:

CITY OF CENTERVILLE

BY: _____

Gregory B. Horn, City Manager

WITNESS:

MARKET MANAGER

Attachment A
City of Centerville

30% of all gross proceeds to The City of Centerville
70% of all gross proceeds to Market Manager