

RESOLUTION NO. 20-23
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Duke Lunsford ON THE 20th
DAY OF February, 2023.

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 a strategy to promote the redevelopment of several strategic corridors including Uptown, Centerville Place and Cornerstone; and

WHEREAS, the City of Centerville has chosen Market Metrics, LLC to conduct market research, data collection and analysis of real estate opportunities thought the City; and

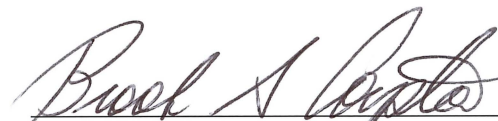
WHEREAS, Market Metrics, LLC has a willingness to provide these consulting services.

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 provide said consulting services. A copy of said Agreement is attached hereto, incorporated herein, marked Exhibit "A".


Section 2. That this Resolution shall go into effect at the earliest date allowed by law.

PASSED THIS 20th day of February, 2023.



Mayor of the City of Centerville, Ohio

ATTEST:



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. 20-23, passed by the Council of the City of Centerville, Ohio on the 20th day of February, 2023.



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 February, 2023 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") having its principle offices 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	Statutory Limits
Employers Liability/Ohio Stop Gap	\$500,000 Min.
Including Intentional Tort Coverage	
2. Comprehensive General Liability	
Bodily Injury and Property Damage	\$1,000,000 Min.
General Aggregate	\$2,000,000 Min.
Products/Completed Operations Aggregate	\$1,000,000 Min.
3. Comprehensive Automobile Liability	
Bodily Injury and Property Damage	\$1,000,000 Min.
4. Professional Liability	
Each Claim	\$1,000,000 Min.
Aggregate	\$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. Wayne S. Davis
City Manager

City of Centerville
100 W. Spring Valley Road
Centerville, Ohio 45458

If to the consultant:

Mr. Douglas E. Harnish
Principal
MARKET METRIC\$ LLC

429 Brydon Road
Kettering, Ohio 45419-1822

H. 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.

MARKET METRICS LLC, an Ohio limited liability company

By: Doug Harnish
Douglas E. Harnish
Title: Principal

Date: 2/9/2023

CITY OF CENTERVILLE, OHIO

By: _____
Wayne S. Davis
Title: City Manager

Date: _____

This agreement approved as to form by:

Scott A. Liberman 2/9/2023
Scott A. Liberman
Attorney
Buckley King LPA
110 North Main Street, Suite 1200
Dayton, Ohio 45402

Exhibit A

SCOPE OF SERVICES AND SCHEDULE

MARKET METRIC\$ LLC (MMLLC) has been engaged by the City of Centerville, Ohio to provide real estate and/or economic development consulting services as directed by the City Manager, Development Director, or designee(s).

Unless renewed in writing, this agreement shall expire on December 31, 2023 or earlier by request of the client or the consultant in accordance with Section 6 of this agreement.

Exhibit B

COMPENSATION FOR SERVICES AND REIMBURSEMENT OF EXPENSES

1. The timeframe for completion of assignments as requested will be established by mutual agreement. MARKET METRIC\$ LLC shall not be penalized for any schedule delays beyond its control that extend the timeframe for completion of any assignment requested under this agreement.
2. Fees for services are based on an hourly rate of one hundred dollars (\$100) not to exceed 200 hours on a portal-to-portal basis, in minimum ten-minute increments, including all assignment related out-of-pocket expenses, based on the scope of services described in Exhibit A above.
3. The scope of services and/or fees identified for any requested assignment may be increased or decreased based on a written "Change Order" in the form contained in Exhibit C. No changes of scope will be binding unless documented in writing by the client and the consultant.

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 _____, 2023 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:

City of Centerville, Ohio

By: _____
Wayne S. Davis
Title: City Manager

Date: _____