

RESOLUTION NO. 23-01-96

AUTHORIZE/SIGN A PROFESSIONAL SERVICES AGREEMENT/RENEWAL
ZENCITY TECHNOLOGIES, LTD. TO
PROVIDE A CITIZEN ENGAGEMENT SOFTWARE PLATFORM

COMMISSIONERS/GENERAL COUNTY

Mr. Simmons moved and Mr. Westfall seconded the motion to authorize and sign the attached Zencity Engage Pro Contract (Renewal) with Zencity Technologies, LTD, Wilmington, DE, as recommended by the Miami County ARPA Committee. The Zen City citizen engagement software platform includes a social media sentiment analysis tool, community surveys and a project-based engagement tool, which allows local government organizations to identify priorities and make decisions based on comprehensive community input and insight. Total cost shall not exceed \$36,000.00, for a term of one (1) year, to be paid from Fund 198.

Mr. Simmons seconded the motion and the Board voted as follows upon roll call:

Mr. Westfall, Yea;

Mr. Simmons, Yea;

Mr. Mercer, Yea;

DATED: January 24, 2023

CERTIFICATION

I, Janelle S. Barga, Clerk to the Board of Miami County Commissioners, do hereby certify that this is a true and correct transcript of action taken by the board under the date of January 24, 2023.


Janelle S. Barga, Clerk

Cc: Journal
Files ✓
Auditor
MCC – Carrie Vaughan



Gregory A. Simmons
Commissioner

Ted S. Mercer
Commissioner

Wade H. Westfall
Commissioner

MEMO

To: Miami County Commissioners
From: Charlotte Colley, Commissioners Administrator
Date: January 18, 2023
Re: Zencity Contract Renewal

Background

Zencity allows local government organizations to identify priorities and make decisions based on the voices of more of their residents, not just those few who attend meetings. A comprehensive community input and insights platform, Zencity is bringing the voices of more community members into the decisions, big and small, that shape the areas in which they live. By offering local governments multiple ways to connect to their residents/businesses and understand what they're saying, Zencity has emerged as the platform local officials use to plan, govern, and evaluate with precise data in hand.

Miami County contracted with Zencity in 2022 in order to get a sense of resident sentiment towards the COVID-19 pandemic and ARPA funding efforts throughout the County. Not only did Zencity provide this information, through data gathering from social media, blogs, websites and news articles, but is also opened up other uses by the County that have been equally beneficial. Zen City allows users to obtain real-time access to resident/business/visitor sentiment and feedback on topics and projects of interest to County leadership and ones that may not be on the "radar" but are significant to community members.

Currently, multiple departments and agencies in Miami County are utilizing Zencity to monitor community member sentiment, utilizing the Zencity reporting tool to generate information, over time, for specific projects, and to monitor data in the aftermath of weather events for more accurate mapping. Zencity has also developed some survey tools that will assist Miami County in obtaining more tailored information and allow for better community member engagement for projects such as the Miami County Needs Assessment. Please see the attached memo from the Department of Development for more specific information on how they would like to utilize this tool in 2023.

Recommendation

Staff would recommend that the Board of Miami County Commissioners approve the contract with Zencity, in the amount of \$36,000, for a 1-year term. The ARPA Committee recommended approval of the contract.

web www.miamicountyohio.gov
visit 201 West Main St. • Troy, Ohio 45373
phone 937.440.5910
fax 937.440.5911



MIAMI COUNTY DEPARTMENT OF DEVELOPMENT

Serving Darke, Mercer Shelby & Auglaize Counties

Richard Osgood
Director

TO: Charlotte Colley, Administrator, Miami County Board of Commissioners;
Richard Osgood, Director, Department of Development

FROM: Michael Clarey, Department of Development

DATE: January 13, 2023

SUBJECT: Zen City's Capabilities in Support of the Countywide Workforce Needs Assessment

The capabilities of Zen City will likely be a significant asset to the Countywide Workforce Needs Assessment research process. Based on the department's previous use of the platform, Zen City will assist in the following ways:

1.) Inventory of Public Discussion of Study Focus Areas – Childcare, Housing, Transportation

-The study will be gathering substantial amounts of input and data through surveys and stakeholder interviews. The candid feedback in venues such as social media will provide an important supplement to the more formal input gathered and analyzed via analytical processes.

2.) Surveying capabilities

-Zen City has functions that allow small polls and surveys to be deployed on social media outlets. While our department has not yet utilized these services, the tutorials presented by Zen City indicate it will be a very helpful tool to the study process.

3.) Converting Public Sentiment to Study Optimization

-The study's surveys will be deployed to a very large, statistically significant population. Zen City's ability to gather reactions and feedback will likely be helpful to the consultant (MRC) in improving their methods. For example, if there is a sentiment of frustration in accessing the survey, MRC can remedy those related issues.

HOME. GROWN. GREAT.

web www.miamicountyohio.gov
visit Hobart Center for County Government
510 W. Water St., Suite 120 • Troy, Ohio 45373
phone 937.440.8121
fax 937.440.8124



ZENCITY ORDER FORM

This Order Form ("Order Form") is entered into between the Zencity entity detailed below ("Zencity"), and the entity identified below ("Customer", and jointly with Zencity the "Parties"), as of the Effective Date (as defined below) which shall remain in effect for the duration of the Initial Term as defined below and any renewal term (the "Term") unless agreed otherwise explicitly and in writing between the Parties. This Order Form includes and incorporates the Zencity Terms and Conditions attached hereto as Appendix A (the "T&Cs"). In the event of any conflict between this Order Form and the T&Cs, the terms of this Order Form shall prevail. All prices are quoted in USD.

ZENCITY	
Entity (legal) name:	Zencity Technologies US Inc.
Full address:	1313 N Market St, Suite 5100 Wilmington, DE 19801
Contact:	Cara Frazin
Email:	cara@zencity.io

CUSTOMER	
Entity (legal) name:	Board of Miami County Commissioners
Full address:	
Contact:	
Email:	

RECURRING FEES						
Name	SKU	Product Description	Unit Price	Term	Initial Term Discount	Net Price
Zencity Engage Pro	ZC-ENG	Community engagement interface to share essential project context and invite resident collaboration and input.	\$54,000	1 year	33%	\$36,000
Zencity 360 Essentials	ZC-ESS	<p>Community engagement platform provides local government professionals with all the essential tools to hear from their communities:</p> <p>Processing organic feedback on various channels, including:</p> <ul style="list-style-type: none"> • Unlimited full track of official sources and limited, unmanaged coverage of leading unofficial channels • Unlimited anomaly highlights, automated reports, digests and media mentions. <p>1 Recurring, online survey measuring resident satisfaction, including:</p> <ul style="list-style-type: none"> • One citywide/countywide sampling area (no geographic breakdown) with large annual samples (800) • One full summary report within the first 3-6 months and unlimited ongoing mid-term reports • Always-on dashboard, including responses, feed, and performance scores • Unlimited translations of questions and responses • Up to 2 add-on questions - closed ended only <p>1 short questionnaire designed to immediately collect feedback on non-emergency services provided by the county</p>				
Total Gross List Price						\$54,000
Total Initial Term Discounts						\$(18,000)

Appendix A

Zencity Terms and Conditions

1. SOFTWARE LICENSE & SUPPORT SERVICES

- 1.1. Subject to the terms and conditions of these Zencity Terms and Conditions and of the applicable Order Form (collectively, the "Agreement"), Zencity hereby grants to Customer a personal, non-exclusive, non-transferable limited license to use the products and services licensed by Zencity to Customer (the "Licensed Program") identified in the applicable Order Form entered into by Zencity and Customer and the documentation and user manuals for the Licensed Program supplied by Zencity to Customer throughout the Term (the "Documentation").

For the purposes of this Section 1.1, the term "use" shall be only in accordance with the confidentiality provisions of this Agreement and shall include the rights to use the Licensed Program only for the use of the Customer's organization, company or institution.

For the purposes of this Section 1.1 the term "use" shall not include: (i) the right to make, use, or sell products incorporating the Licensed Program, or (ii) the right to sub-license the Licensed Program.

No right is granted to the source code of the Licensed Program or to create derivative works thereof or to transfer ownership of the media containing such software except as a part of, or with, or for use in the equipment with which it operates.

- 1.2. Routine customer support is available via email. Any claim will be answered within 24 hours of the report. On or before the Effective Date, Customer and Zencity shall each designate a liaison as a respective point of contact for technical issues. Each party may change such liaison upon written notice from time to time at reasonable intervals. Zencity will not be obligated to provide support to any person other than the Customer's designated liaison.
- 1.3. During the Term, Customer may have access to Updates upon request at no additional cost. "Updates" shall mean certain new features as determined by Zencity, or fixes of minor errors in the Licensed Program which are incorporated in a new release of the Licensed Program.
- 1.4. Certain upgrades can be delivered to Customer upon commercial terms and conditions to be agreed upon. "Upgrades" shall mean enhancements, new functionalities that are added into the Licensed Program.

2. RESTRICTIONS AND RESPONSIBILITIES

- 2.1. Customer agrees not to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Licensed Program, Documentation or data related to the Licensed Program, except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Licensed Program; or copy, reproduce, rent, lease, distribute, assign, sell, or otherwise dispose of the Licensed Program, in whole or in part, or otherwise commercially exploit, transfer, or encumber rights to the Licensed Program; or remove any proprietary notices.
- 2.2. Customer will use the Licensed Program only in compliance with all applicable laws and regulations (including, but not limited to, any export restrictions, surveillance and monitoring restrictions, and any privacy and data protection requirements).
- 2.3. Customer shall be responsible for obtaining and maintaining any equipment and other services needed to connect to, access, or otherwise use the Licensed Program and Customer shall also be responsible for (a) ensuring that such equipment is compatible with the Licensed Program, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) for all uses of Customer user accounts with or without Customer's knowledge or consent. To the extent Customer provides any Personal Data (as defined below) of personnel for registration purposes, Customer represents and warrants that it has any right, license, consent, and power and it has provided any notice, all as required under applicable law, to provide Zencity with such Personal Data and will be fully and solely responsible for providing only Personal Data of personnel related to the Customer. Zencity will handle such Personal Data in accordance with its Privacy Policy available at: <https://zencity.io/privacy-policy/>.
3. PROPRIETARY RIGHTS. Zencity retains all right, title, and interest in the Licensed Program, Documentation and any future modifications and enhancements thereof, and all intellectual property rights (including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark, and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature) therein. Customer is granted only a limited right of use to the Licensed Program and Documentation as set forth herein, which right of use is not coupled with an interest and is revocable in accordance with the terms of this Agreement.
4. CONFIDENTIALITY. Each party (the "Receiving Party") agrees not to disclose (except as permitted herein) any Confidential Information of the other party (the "Disclosing Party") without the Disclosing Party's prior written consent. "Confidential Information" means all confidential business, technical, and financial information of the disclosing party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure (including the terms of the applicable License Agreement). Zencity's Confidential Information includes, without limitation, the software underlying the Licensed Program and all Documentation. The Receiving Party agrees: (i) to use and disclose the Confidential Information only in connection with this Agreement; and (ii) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less

than reasonable care. Receiving Party shall, before receipt or usage of such Confidential Information inform its personnel of Receiving Party's confidentiality obligations under this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that: (i) has become publicly known through no breach by the Receiving Party; (ii) was rightfully received by the Receiving Party from a third party without restriction on use or disclosure; or (iii) is independently developed by the Receiving Party without access to such Confidential Information. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure and an opportunity to oppose or limit disclosure is given to the Disclosing Party.

5. DATA AND MATERIALS LICENSE.

- 5.1. Customer grants Zencity a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to use any data or information provided by Customer for use in, by, or in connection with the Licensed Program, any information collected, and/or any analysis of any such information conducted by the Licensed Program.
- 5.2. Any content created by Customer and provided to Zencity for use in connection with the Licensed Program or other services provided by Zencity ("Customer Materials") shall be the sole property of the Customer. Customer hereby grants Zencity and its successors and assigns a perpetual, irrevocable, transferrable, worldwide, royalty-free, fully paid-up, and non-exclusive license under any of Customer's intellectual property, moral or privacy rights to use, copy, distribute, display, modify and create derivative works of any Customer Materials for the provision of the services in accordance with the terms of this Agreement. The parties acknowledge that Zencity does not require any Personal Data to be provided in order to provide the Licensed Program and Customer undertakes that it shall not provide Zencity with any Personal Data as part of the Customer Materials. To the extent the Customer Materials shall include any Personal Data it shall be incidental and Customer shall be fully liable for such Personal Data in accordance with the terms of this Agreement and applicable law.

6. FEES.

- 6.1. The fees for the Licensed Program ("Fees") are set forth in the applicable Order Form. Properly submitted invoices for which payment is not received within fourteen (14) days of the invoice due date shall accrue a late charge of 1.5% interest per month, compounding annually. The Fees are exclusive of any applicable taxes, which, if payable by Zencity, shall be billed to and paid by Customer, including any bank fees related to the Customer's wire transfer. Customer may not withhold or set-off any amounts from the Fees. For the avoidance of doubt, discounts or credits relating to any term defined in any Order Form shall apply to said term only and shall not carry over to any Renewal Term.

7. TERM & TERMINATION

- 7.1. This Agreement shall commence on the Effective Date and continue for the period of the Licensed Program purchased pursuant to any applicable and outstanding Order Form, including any renewal term, unless earlier terminated in accordance with this Section 7. In the event of any Renewal Term, the Fees payable for the Licensed Program shall be updated as specified in the Order Form. Either party may terminate this Agreement immediately by giving written notice to the other party if: (i) the other party breaches a material provision of this Agreement and fails to cure the breach within seven (7) days after being given written notice thereof; or (ii) the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party; or any petition by or on behalf of such party is filed under any bankruptcy or similar laws.
- 7.2. The Initial Term shall be automatically extended for successive renewal terms of 12 months each (each, a "Renewal Term" and collectively with the Initial Term, the "Term") unless either party provides written notice of non-renewal to the other party at least 90 days before the end of each applicable term.
- 7.3. Upon termination, Customer will pay in full for the Licensed Program up to and including the effective date of termination. Upon any termination of this Agreement: (a) the license of the Licensed Program hereunder shall immediately terminate; and (b) each party shall return to the other party or, at the other party's option, destroy all Confidential Information of the other party in its possession.
- 7.4. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

8. WARRANTY AND DISCLAIMER

- 8.1. Zencity represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Licensed Program shall perform in accordance with generally prevailing industry standards.
- 8.2. Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; (ii) it owns all right, title, and interest in and to all data, including without limitation, any Personal Data that may be included therein, provided to Zencity (if any) for use in connection with this Agreement, or possesses the necessary authorization thereto; and (iii) Zencity's use of such data or materials including Customer Materials as contemplated hereunder will not violate the rights of any

third party; (iv) It has all right, license and consent required to provide Zencity with the Customer Materials, including Personal Data contained therein, if and to the extent provided in accordance with Section 5.2 above; (v) the Customer Materials and Zencity's use thereof in accordance with the terms of this Agreement does not and will not infringe upon any third party's right; and (vi) It shall at all times use the Licensed Program in compliance with applicable law. "Personal Data" have the definition ascribed to it by the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") or any parallel term in the jurisdiction in which the Licensed Program is being used.

- 8.3. ZENCITY DOES NOT WARRANT THAT USE OF THE LICENSED PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE LICENSED PROGRAM. EXCEPT AS SET FORTH IN THIS SECTION 8, THE LICENSED PROGRAM IS PROVIDED "AS IS" AND ZENCITY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ZENCITY DOES NOT WARRANT THAT ANY OR ALL FAILURES, DEFECTS OR ERRORS WILL BE CORRECTED, OR WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAM WILL MEET CUSTOMER'S REQUIREMENTS.
- 8.4. To the extent the Licensed Program or any services provided by Zencity hereunder are provided through or in connection with any third-party services, Zencity shall not have any responsibility for any technical issues or limitations resulting from the use of such third-party service, including actions of Zencity on such third-party service taken on behalf of and at the instruction of Customer. Customer acknowledges and agrees that use of any third-party service shall be in accordance with such third party's terms and privacy policy.
9. **LIMITATION OF LIABILITY.** NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, AND EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR RELATED TERMS AND CONDITIONS UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA (EXCEPT AS OTHERWISE SET FORTH IN SECTIONS 2,3 AND 5.2) OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO ZENCITY (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE LICENSED PROGRAM UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.
10. **MISCELLANEOUS.** Capitalized terms not otherwise defined in these Terms and Conditions have the meaning set forth in the applicable License Agreement. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of God, act of governmental authority, or due to war, riot, labor difficulty, pandemic, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing. Zencity shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in connection with Zencity's website and marketing materials, subject to Customer's trademark usage guidelines (as provided to Zencity). If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable or transferable by either party without the other party's prior written consent, provided however that either party may assign this Agreement to a successor to all or substantially all of its business or assets. This Agreement (including the License Agreement) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Ohio without regard to its conflict of laws provisions and the competent courts of Miami County, Ohio shall have exclusive jurisdiction to hear any disputes arising hereunder.

Total Fees **\$36,000**

Any additional modules, quantity increases or other custom development and integration work requested by Customer during the Term shall require an Order Form executed by the Parties, and shall be subject to the prevailing Zencity rate card subject to amendment from time to time.

ORDER FORM TERMS	
Effective Date:	January 25, 2023
Initial Term:	12 months, commencing on the Effective Date.
Fees:	The Fees are exclusive of any applicable taxes (including sales tax) and withholdings, which will be added to the Fees and paid by Customer, to the extent applicable.
Payment Terms:	The Fees shall be payable on an annual basis within 30 days of the Effective Date and on each annual anniversary thereof.
Customer Billing Contact:	Name: [], Phone: [], Email: []
Customer PO # (if applicable):	

CUSTOMER

Signature: _____

Name: Wade H. Westfall, Gregory A. Simmons, Ted S. Mercer

Title: Commissioner

Date: 1/24/2023

ZENCITY

Signature: _____

Name: Eyal Feder

Title: CEO

Date: Jan 10, 2022

Approved As To Form Only

By: [Signature]
Miami County Prosecutor's Office