



Cincinnati Fountain Square



# The CEO Resource

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## KMKC Helps Elevate the Metro Orlando EDC to a New Level

The *CEO Resource* is a periodic hot sheet of resource information for our colleagues, Chief Executives and Senior Management in business and leadership.

Our focus is to help senior management and company owners accelerate their pathways, first to "success" and then to "making a difference"- a significant difference for their families, their stakeholders and their communities. *The CEO Resource* is a time sensitive tool directly responsive to this critical focus.

### KMKC Client in the News

Current Communications, the nation's premier Broadband over Power Line (BPL) provider offering broadband services to residential and small business customers, recently applauded the decision by the Federal Communications Commission that unanimously affirmed the widespread deployment of BPL services and technology. The decision will allow the company to accelerate the service's roll-out to customers across the country.

The service is an "always on" high speed Internet access connection that customers access by plugging their computer into the existing power outlets through a special power line modem. Additional information about Current is available online at [www.current.net](http://www.current.net) and [www.currentgroup.com](http://www.currentgroup.com).

KMK Consulting Company once again has left a positive mark on a major Florida region. KMKC is proud to support the continued growth of the Metro Orlando Economic Development Commission. KMKC was retained to direct a strategic planning and leadership assessment process as well as to lead a major private sector capital campaign. The EDC recently concluded its funding campaign announcing that it had exceeded its goal by almost \$1 million.

The Metro Orlando Economic Development Commission is a not-for-profit private/public partnership which serves Orange, Lake, Seminole and Osceola counties and the City of Orlando. The EDC is charged with marketing the Metro Orlando

region worldwide, attracting new business investment and assisting local businesses with expansion plans and other business concerns. It also runs the film office for the region, representing a significant impact for that market, as one might imagine. The EDC, with approximately 340 investors, offers a variety of services that have been instrumental in facilitating the creation of nearly 17,000 jobs, \$1.45 billion in capital investment and absorbing 9.1 million square feet of real estate in the last three and a half years alone.

Armed with passion and momentum from business leaders throughout the region, *Accelerate 2008*, under the leadership of KMKC, began in January 2004. *Accelerate 2008*, the most

aggressive initiative ever pursued by the EDC, is a five-year, \$27.5 million program with private and public sector goals of \$15 million \$12.5 million respectively. The significant increase in private sector investment generated by *Accelerate 2008* will propel the EDC and the Metro Orlando region to the next level in the economic development arena.

As a result of extensive strategic analysis from our Leadership Assessment, *Accelerate 2008* is focused on the following initiatives: building and marketing a sustainable brand as a progressive business center; increasing market research and business intelligence capabilities; and, ensuring an environment through public policy support, among other initiatives, where (cont. on p. 5)

## Taking Environmental Exposure Issues Out of the Equation in Redevelopment Deals and M&A Transactions

KMK Consulting was recently engaged by Environmental Risk Solutions (ERS), an environmental risk management solutions company that develops individually tailored strategies for clients with business problems associated with environmental impediments. ERS works with governmental entities and quasi-governmental entities like port authorities as well as privately and publicly-owned companies.

The basis of their business solutions is ERS's assumption of a client's environmental risks, while at the same time establishing the financial

assurances, through environmental insurance, necessary to ensure that the client will not incur further liability with respect to those risks. What distinguishes ERS from others that purport to provide risk transfer solutions is that ERS consistently brings transactions to closure, and does so with the most efficient program possible.

To provide support to its clients, the ERS team of environmental engineers and consultants, construction managers, environmental attorneys and insurance and environmental risk

management professionals provide a dedicated environmental liability and risk transfer program focused specifically on the customer's business needs and concerns.

The ERS Assured Business Solution allows ERS to assume its clients' environmental liability (and where necessary to implement a comprehensive solution, the liability of other associated responsible parties) for a guaranteed fixed price, and provide its client the certainty (cont. on p. 2)



## Taking Environmental Exposure Issues Out of the Equation (cont.)

that the site will fully comply with applicable regulatory requirements. To secure the financial assurances necessary to achieve the requisite performance standards, ERS negotiates and acquires environmental insurance from "A" rated carriers for each project that affords the broadest terms, conditions and limits possible.

Through this Assured Business Solution, clients receive critical benefits, including:

- Clients can focus on their core business strategies without having to worry about the environmental liabilities that have been assumed by ERS.
- The client no longer needs to spend time managing and administering environmental compliance, cleanup and closure of the site.
- A guaranteed fixed price for an otherwise highly variable liability (taking into account the client's consulting, remediation, legal, and regulatory oversight costs, among others), often for less than the client would have spent if ERS was not involved.

- Certainty of outcome that the site will comply with all current and future regulatory standards.
- Possible removal of the designated environmental liabilities from the client's balance sheet.
- Possible provision of improved tax efficiency for future costs.
- Likely increased post-remediation asset value.



Because risk transfer is their core, and sole, business, in contrast with

environmental consulting and remediation firms, brokers, insurers and other environmental service providers, ERS's business model provides it with the freedom to consider and utilize a much wider breadth of remedial and regulatory strategies for every environmental condition. This ability, in turn, allows the company to develop and provide to their client the most risk-efficient solution possible.

Having executed hundreds-of-millions of dollars in transactions, the ERS team has the expertise and creativity to overcome the environmental barriers that separate you and your objectives. To learn more about ERS, please visit them online at <http://www.environmentalrisksolutions.com/> or contact Bob Jennings at 513-639-3905 or [rjennings@kmkconsulting.com](mailto:rjennings@kmkconsulting.com).



## Community Universities: A New Form of Leadership

It is very clear to those of us in economic development work that community colleges have played a key role in preparing our workforce to emerge as the next generation of highly skilled knowledge workers in the United States. What is less apparent, is the transformation occurring at a number of major urban universities respecting their geographical and economic spheres of influence. These universities are morphing from key centers of academic excellence into major economic development engines creating growth and prosperity in and around their core centers of academic excellence. In short, these universities are taking the job of creating safe, quality neighborhoods with a robust retail and social environment into their own hands—creating a footprint of the “Community” University beyond the boundaries of its academic mission .

This is a true sea change. It will dramatically effect housing, transportation, development patterns and the delivery of services in a wide

geographical and financial “eco-band” around such universities. Local governments, developers, builders, planners, architects and financial professionals will all play a key role in how this plays out over time. As we have seen in many large urban environments in the U.S., if left just to the private sector, the quality, affordability and safety of urban environments for students, alums and the general public buying goods and services will almost certainly suffer. In those same environments, given the recent economic downturn, direct government largesse appears an unlikely source to solve the problems of urban campus “creep.” While public universities are subject to some of the same pressures on their budget, they have been more nimble and oftentimes more savvy in forming partnerships with other key constituents to create their own future. The next generation of workers and leaders coming out of a traditional graduate and undergraduate context are demanding and getting more and better services and facilities in the highly competitive college and university markets. Universities have

responded by providing those services more directly and thus more proactively have created a way to pay for their own enlarged footprint as well as other aspects of its academic plan.

“Community universities” have awakened to the power of their numbers—from endowments to demographics, they are real players in urban development. These are “small cities” within the boundaries of their municipality. Developers and others poised to participate in the revitalization of our urban cores must take note of this emerging model—because their next major “partner” may well be a “community university” and not their bank or other financial deep pocket. Municipal government likewise must understand that this movement can supplement and enhance, not supplant and destroy, the efforts of its own economic development plan. This will

(cont. on p. 6)



## Don't Leave Money on the Table: Rule #1 for Any Business Expansion or Relocation- Plan Ahead

As we all know, the use of economic development incentives has increased significantly in recent years. Governments have become more creative in attracting and retaining employers in their jurisdictions (however, see accompanying article on recent 6<sup>th</sup> Circuit Court of Appeals case). Economic development practitioners, site selection consultants and real estate executives, meanwhile, have become increasingly savvy regarding the wide assortment of incentives available in each community. Global corporations like Procter & Gamble and Ford Motor Company have pursued, negotiated and secured incentives for multi-million dollar projects. Likewise, small, privately-owned businesses have secured substantial government incentive packages to offset project costs in exchange for job creation/retention and enterprise investment commitments.

However, these incentive packages are not negotiated overnight. By the time a deal is publicized, most of the heavy lifting is complete. Terms have been accepted by the parties. Applicable governmental bodies have voted or will be voting. Because the general public does not see the months of work that lead up to this moment, it is easy to understand why people might believe incorrectly that these deals are completed in a short period of time. The reality is that the process tends to take longer than a typical business-to-business transaction.



While large companies like Procter & Gamble and Ford are well aware of the pace of government in this arena, smaller companies do not always appreciate the slower pace simply because

they do not interact with government on a regular basis. Because of their relative inexperience, they often fail to allow the proper amount of time to introduce a project to government, go through one or more application processes, negotiate and gain approval. They expect to be able to begin a project within weeks of any initial conversation with government. Unless they are willing to delay the start of the project,

valuable incentives and ultimately leave potential savings on the table.

In a best case scenario, an incentive negotiation project will take anywhere from 60 to 90 days. In order for the project to be completed in this timeframe, all of the players need to have their ducks in a row- the business must define all of the project's details (number of jobs, detailed financials related to investment in machinery or equipment, 3-yr historical and 3-yr projected financials for the company, etc.) and the government must have the tools available for use (tax credits, enterprise zones, training programs, tax abatement agreements with school districts, etc.).

Executives should be prepared to spend at least four to six months leading an economic development relocation or expansion project through its three phases. Those phases are:

**1. Identification and analysis** - This phase is extremely important because it is when you determine what options are available for the company. Does relocation make financial sense? If you have existing facilities in multiple jurisdictions, which location is best suited for expansion? What incentives are available from local and state government to offset some of the project's costs? What have your competitors or other businesses in your industry received from the jurisdictions that you are considering? Which location will best position you to attract and retain sufficient and qualified workforce? What is the cost of living in location A versus location B? What are the comparable tax rates, energy transportation, and operating costs, etc.? Indeed, the analysis is much deeper than these few key examples.

A number of these questions can be answered prior to any formal discussions with government. Regional economic development organizations like the Cincinnati USA Partnership can provide valuable information relative to the laundry list of programs in their areas and consultants like KMKC can provide valuation estimates of potential incentive packages. With all this in hand, it is ultimately for the company's senior management (e.g. CEO or owner) to determine which location makes the most sense for the company and its employees.

**2. Negotiation and Procurement**- This phase of the project will involve a great deal of

interaction with government. First, you will need to initiate the process by meeting with the responsible official(s) from the governmental jurisdictions to discuss the project and the possibility of incentives. Once they have an understanding of the project and its economic impact to the jurisdiction, a preliminary offer will be provided detailing the level of government support for the project. The time gap between the initial meeting and an offer will depend on the complexity of the proposed project and the availability of incentives that apply as currently written in statute. If there are gray areas involved with the project and its eligibility for incentives, the timeline will be extended.



It is important to remember that the preliminary offer is just that- preliminary. Changing the investment or job estimates will cause the level of support to fluctuate accordingly. The company must be prepared to make its case for increased support, if the preliminary offer does not satisfy the need. This includes the company negotiating for increased support in one area, such as training dollars, if it will not use a particular incentive program offered. It must also be prepared to walk away from one jurisdiction in favor of another if the respective deals do not match the company's needs. And if the company bluffs by saying it will go to the other jurisdiction if their needs are not met, they must be prepared when the government calls that bluff. Don't say it if you're not willing to follow through with it.

After both parties have come to an agreement on the incentives to be used and the dollar figures tied to them, the company will then need to submit an application requesting financial support from the government. These applications can take a fairly significant amount of time to organize and submit, especially if the company is not fully prepared with the information requested in the application. The governmental bodies have standing meeting times each month and the applications must be submitted well in

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## U.S. Sixth Circuit Court of Appeals Ruling Puts States in Tenuous Position

Everyone across the country involved in economic development has seen, heard or read about the United States 6<sup>th</sup> Circuit Court of Appeals (Cincinnati) September decision regarding the State of Ohio's use of an investment tax credit in 1998 to convince DaimlerChrysler to invest \$1.2 billion to renovate and expand an existing Jeep manufacturing plant in Toledo rather than building a new facility in Michigan. The incentive package provided to DaimlerChrysler included a ten-year 100% property tax exemption and an investment tax credit of 13.5% against the State of Ohio's corporate franchise tax. The package was valued at approximately \$280 million.



In order to make room for the expansion of the Toledo plant, about thirty residents and three businesses were relocated. About twelve of the residents and three business owners filed suit, with support from presidential candidate and consumer rights advocate Ralph Nader, arguing that the statutes allowing the incentives violated the Commerce Clause of the U.S. Constitution and the Equal Protection Clause of the Ohio Constitution. The case was filed in Federal District Court which dismissed the complaint on grounds of failure to state a claim, so the plaintiffs appealed.

The plaintiffs argued that the property tax exemption created a scenario where two Ohio personal property owners are subject to different tax rates since the exemption is based upon agreements to maintain a certain level of employment and investment in the state. Therefore, the owner that agrees to invest and hire in the state receives preferential treatment over the owner that would rather maintain an option to choose to invest or hire elsewhere. However, the Court found that the exemption did not unfairly coerce businesses into continued re-investment in Ohio in order to receive the exemption, that the exemption was project-specific, and that the business retained its

elsewhere without the threat of losing the already agreed upon exemption.

With regard to the investment tax credit, the plaintiffs argued that the incentive discriminates against interstate economic activity by coercing existing Ohio businesses to expand in Ohio rather than in another state by offering a reduction in tax liability. An Ohio business that chooses to expand locally will receive the benefit of a tax reduction whereas its Ohio competitor that chooses to expand out-of-state is subject to a higher tax burden because it is ineligible for the credit against its Ohio tax. Their argument was based on the U.S. Supreme Court's explanation of the Commerce Clause in cases that invalidated tax systems that encourage local development by placing greater burdens on development out-of-state.

While the defendants argued that the credit, and other tax incentives like it, are allowed as long as they do not penalize out-of-state economic activity, the Court's three judge panel found in favor of the plaintiffs because it "thwarts free trade and discriminates against interstate Commerce":

*"In short, while we may be sympathetic to efforts by the City of Toledo to attract industry into its economically distressed areas, we conclude that Ohio's investment tax credit cannot be upheld under the Commerce Clause of the United States Constitution."*

The State of Ohio has appealed the decision by the three-judge panel and has asked that the case be reheard in front of the full 12-member court. Governor Bob Taft, Attorney General Jim Petro and Department of Development Director Bruce Johnson have all said that the ruling puts the state in a competitive disadvantage for major economic development projects.

The other states within the 6<sup>th</sup> Circuit's jurisdiction, Michigan, Tennessee, and Kentucky, have filed amicus briefs supporting Ohio's use of the investment tax credit. Chambers of Commerce throughout the four states have also filed briefs. These states, and many others across the nation, have similar programs to the Ohio incentive.

Should the Court of Appeals, and possibly the U.S. Supreme Court, if indeed the case makes it that far, uphold the unconstitutionality of the Ohio program, a precedent will be set that completely changes the economic development landscape. The damaging effects of the decision will be felt immediately in Ohio, Tennessee, Michigan and Kentucky as they struggle to adjust and maintain their ability to attract and retain business. Other states would be able to point to their programs and immediately put themselves in a better competitive position. However, lawsuits will immediately arise in these states if the precedent is set by the Supreme Court.

Unless the use of economic development incentives is controlled at the federal level, decisions like this one made by the 6<sup>th</sup> Circuit create a competitive imbalance among the states. Is it the place of the federal government to determine what incentives are provided to companies deciding whether to relocate or expand in Ohio versus, let's say Illinois, or is it up to the local and state governments to decide if and when incentives are provided?



The use of incentives has increased over the last several years, states have become increasingly creative, and the debate about whether incentives are right or wrong has escalated. Politicians and their constituents are interested in attracting and retaining high-wage jobs in their communities but what is the price to do so? Are tax breaks the best way to create vibrant communities where people come to live, work and play? What revisions to each state's tax code can be made to replace the incentives? The debate is sure to heat up in the coming months. Send your thoughts to [jmcgraw@kmkconsulting.com](mailto:jmcgraw@kmkconsulting.com).



## KMKC Helps Elevate the Metro Orlando EDC to a New Level (cont.)

business location decision makers will look to expand and thrive.

The EDC believes that accountability to its investors is of utmost importance. The



effectiveness and success of *Accelerate 2008* will be measured and reported annually based upon a number of meaningful economic indicators including: jobs, capital investment, absorption, wages, disposable net income, gross regional product, inbound deals, retention/expansion, brand awareness, and a competitive market index.

KMKC also helped the EDC significantly strengthen its leadership structure by creating a Governors Council for the senior most private sector executives. The creation of the Governors Council is a great accomplishment for the EDC. As a result of KMKC's leadership and strategic planning, the Governors Council now consists of 11 members and growing. This group will have a profound impact on leading the Orlando market and its growth as a business destination.

"As chairman of the Metro Orlando Economic Development Commission's Accelerate 2008 Investment Campaign, it was my pleasure to work with Jim McGraw and Hap Durkin of KMK Consulting. Jim and Hap led us in exceeding a challenging goal of \$15 million of private business investment commitments over the next five years and certainly moved the EDC to the next level. The KMK approach was strategically oriented. They assessed the market accurately, identified the EDC's strengths and weaknesses and proposed processes that not only helped increase investment but also helped us develop a more robust and focused strategy. They know well the details of organizing a campaign and provided excellent support and leadership to the EDC staff." says John Hillenmeyer, CEO of Orlando Regional Healthcare.

The *Accelerate 2008* funding effort was capped off on September 23, 2004, when Hillenmeyer, announced to the EDC's Board of Directors and investors gathered for the Campaign celebration that the EDC exceeded their \$15 million private sector goal by \$916,000 with significant

additional commitments still coming in.



"KMK Consulting was a major reason our campaign was successful" added Hillenmeyer.

For more information, contact Jim McGraw at 513-639-6932 or [jmcgraw@kmkconsulting.com](mailto:jmcgraw@kmkconsulting.com). ■

## Rule #1 for Any Business Expansion or Relocation- Plan Ahead (cont.)

advance (usually a month) in order to be put on the agenda. Some of the bodies only meet once a month; so missing the submission deadline means the timeline is pushed back another month. Also effecting the timeline in some cases is the fact that some programs go before two separate entities - first the project is discussed and debated by an advisory board of appointed subject matter experts who vote on whether the company should be considered for government support and, if it is passed out of the advisory board level, the project then goes before the final governing body comprised of elected officials. After the governing board approves the project and the proposed incentives, any items tied to the project can be captured and accounted for in meeting the agreed upon commitments.

**3. Compliance** - The first two pieces of the process are wasted if this third phase is not done properly. The commitments made in the negotiation process, in order to receive the incentives and governmental approvals, must be tracked throughout the life of the project.

Incentive agreements usually have clawback language as well as annual reporting requirements that must be met. If the company fails to reach its commitment levels or file the updates on time, not only are future incentives at risk, but the government can also reclaim some of the incentives already disbursed.

One of the most important phrases to remember when considering the pursuit of economic development incentives is "plan ahead." While "go forward" language in preliminary offer letters is always helpful, some statutes require all governmental approvals to be in place before the company can take advantage of the incentives or finalize their transaction. Company's must be very careful here, such as knowing if it can sign a lease or close on a purchase. In that case, the company's timeline for implementing the proposed project will either need to be flexible or the company will need to be willing to forego a certain amount of incentives in order to stick to the planned

schedule. Failing to properly account for the lengthy process can mean leaving money on the table.

As these deals are publicized more in local papers, business journals, and television newscasts, they are also subject to a considerable amount of scrutiny and skepticism from elected officials and their constituents. Consequently, the timeframe can be extended even more.

There are good, experienced advisors available to assist companies through every step of this process. It is this support that can make a significant difference. For more information, call Jim Benedict at (513) 639-3963. ■



## Community Universities– A New Form of Leadership (cont.)

only occur with clear understanding of the game, its rules and boundaries.

One university that has embarked on this path with a powerful consortium of allies and partners is the University of Cincinnati. In an effort to create a revitalization of the urban environment of the corridor of the City of Cincinnati known as Uptown, the University came up with the key players and a plan to make this work. The five largest employers in this area, the University of Cincinnati, Cincinnati Children’s Hospital Medical Center, the Cincinnati Zoo, the Health Alliance of Greater Cincinnati and TriHealth, Inc. formed the Uptown Consortium, a non-profit organization committed to pooling resources to address the physical and economic landscape in the Uptown area. The University of Cincinnati alone used \$50 million from the \$75 million line of credit from the endowment to stimulate the revitalization of adjacent neighborhoods and business districts." This money has been leveraged and according to Tony Brown, the President & CEO of the Uptown Consortium, will “help create neighborhood development corporations in the Uptown and other areas surrounding the campus. Through these new non-profits, extensive redevelopment is underway on major corridors around the University. These exciting projects will add new housing, retail, parking and other public

spaces to Uptown.” To date, this has translated into revolving loans to create better housing and the filing of an associated \$190 million New Market Tax Credit application. Indeed, universities around the country from Marquette University in Milwaukee to George Washington University in Washington D.C. are displaying the need to be their own best hope for a strong and safe community environment.



But it does not stop there. There is an interesting juxtaposition of this movement along with two others emerging in the economic development landscape for post secondary education: one is the commercialization of discoveries at major universities and the second is the focus of various states and their universities in creating life science clusters. The creation

of research and development facilities at universities is part of a larger movement that sees universities as key drivers of both innovation and growth (all while literally and figuratively writing the textbook on the subject). Indeed, the whole conference center model created at universities over the past 10 years to accommodate corporate and alumni activities is part of this movement. Universities are co-locating business and science parks on and near key university buildings to get the inevitable business spin-off and applications coming out of the academic environment. We believe at KMK Consulting that the convergence of all of these factors makes the university a key player and worthy partner in the urban economic development settings of municipalities far beyond football, basketball and university related health care. It is creating a “Community University” economic engine with far reaching impact for our cities and states.

For more information, contact us at [jdiers@kmkconsulting.com](mailto:jdiers@kmkconsulting.com) . ■

## KMKC Update

Bob Jennings, Vice President, recently participated in the Northern Kentucky Tri-County Economic Development Corporation’s production of “The Economic Development Game” for the 2004 class of Leadership Kentucky. Bob was asked to participate because of KMKC’s national reputation as a site and economic development consulting firm. The purpose of the game was to give leaders from across the Commonwealth insight into the tough issues surrounding the decision of a company to locate (or not) in a particular community. The selection of one of four communities by four hypothetical companies included considerations such as site selection, incentives, company and community culture as well as the interplay of education and job training in the overall selection of that community (and state). The executives came away with a keen sense of the dynamic tension that exists in real life between communities and the prospective companies under these circumstances. Bob, as the overall economic development and site consultant, gave practical, “hands on” advice along the way to all the teams as well as provided the expert wrap up analysis on their respective playing of the “Economic Development Game.”

Jim McGraw, President and CEO, recently facilitated a two day Board of Directors strategic planning retreat for the Fort Worth Chamber of Commerce. The Chamber is responsible for the economic development program of this most admired community. This effort created the strategic plan for the Chamber’s next 5 years. Both Pier 1 and Radio Shack just moved into their new headquarter facilities downtown while the Alliance airport complex continues its Fort Worth growth currently at \$4.7 billion invested, 144 companies and 22,000 employees on site.

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Chip Gerhardt, Vice President, was named Chairman of Southwest Ohio Lawyers for Bush and is responsible for the effort in 8 counties. He is also serving as the Treasurer of the renewal levy in Hamilton County, Ohio for mental retardation, developmentally disabled (MR/DD) services. ■

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