

**CONTRACT AGREEMENT  
FOR  
ECONOMIC DEVELOPMENT CONSULTING SERVICES**

**PART I. PARTIES**

THIS AGREEMENT is made on the 3 day of November, in the year 2020, between the CITY OF ARKANSAS CITY, KANSAS hereinafter called the CITY, and RETAIL ATTRACTIONS, LLC, hereinafter called the CONSULTANT for professional consulting services as more fully described herein in an effort to attract appropriate retail, residential, office, and other ancillary mixed use development to CITY, subject to the terms and conditions specified in this Agreement.

**PART II. TERM OF AGREEMENT**

CITY intends to contract CONSULTANT for professional economic development consulting services for a TWELVE (12) MONTH period commencing Nov. 3, 2020 and concluding Nov. 3, 2021. This Agreement is for a TWELVE (12) month period renewable for an additional twelve (12) month period(s) with mutually negotiated fees, terms, and conditions with written notification of continuation of services between both parties. However, CITY or CONSULTANT may terminate this Agreement as described in Part VII, Paragraph 1.

**PART III. SCOPE OF SERVICES**

CONSULTANT shall provide the following services:

1. Consultant will research, analyze, and collate a thorough and detailed market study that will prove up and validate retail and other development potential in the city and trade area. These reports will provide detailed demographic information, housing and residential data, income data and potential, ethnicity, age, and educational data, projected growth, and retail leakage and sales, as well as retail voids in the market area. Reports will contain the very latest data available and are pulled from the same data sources that national retail and restaurant development professionals currently access. The market reports include city limits; five (5), ten (10) and fifteen (15) mile radius reports. In addition to the radius data, drive times in increments of ten (10), fifteen (15), and thirty (30) minutes will also be included. A twenty (20) mile radius or a custom trade area report will also be included depending on your market geography, consumer access into the market, and other factors. The decision to provide the custom trade area or twenty mile radius will be determined after initial findings are evaluated. These detailed market reports will provide insight into the development potential for retail, office, medical and health services, hospitality, and residential (single family and multi-family) growth potential. These reports will be updated with every new release of data from our data suppliers though the

duration of the contract. [Data is usually released two to three times a year]. CONSULTANT will provide all data to city personnel as designated in this agreement. Data and market reports will be stored on our servers and will be available via the internet. City will own the data.

2. CONSULTANT will prepare a summary for Consultant's use to highlight the key demographics and attributes of the trade area. This marketing material will include a map of the trade area, and a condensed summary of market data and will be used to introduce the City's community to Consultant's extensive network of commercial and residential developers and retail, restaurant, hotel, and corporate tenants.
3. CONSULTANT will bring broad-based experience and knowledge of incentives and their practical applications to craft development agreements that will profit both the private and public sectors and truly encourage new investment. CONSULTANT will work with city staff to develop incentive packages that are advantageous to the City and the prospective businesses with priority given to needs of the local municipality. City administrators and elected officials should be prepared to deal with incentive requests from developers and retail and restaurant tenants in this very competitive economy.
4. CONSULTANT will work with city staff members, city officials and other agents of the City as designated by the City to identify recruitment targets that will meet the long term needs of the city and will be targeted in response to the leakage gaps identified. Also, Consultant's initial strategy will be to identify and target retail and restaurant entities that will draw consumers from outside the market area into city trade area. In addition to targeted retail and restaurant tenants, CONSULTANT will also work toward hotel/motel and other hospitality uses, mixed uses including medical, professional office, warehouse, and residential development as well as industrial and manufacturing deals through our ongoing relationship and work with national economic development professionals and site selectors.
5. CONSULTANT will actively recruit targets identified and approved by City and supported by data. Recruitment efforts will be through personal contact, mail, email, International Council of Shopping Centers ("ICSC") events, other retail and development conferences and development/industry contacts continually throughout the term of this contract.
6. CONSULTANT will work directly with our extensive network of developers to create interest in the market, define development opportunities and

coordinate/attend meetings with City and private sector investors. When timing indicates a deal with a target is imminent or when a target's response indicates the need to intensify our efforts, CONSULTANT will be available to mediate, schedule site tours and meetings and work to close the deal.

7. CONSULTANT will represent the city at the International Council of Shopping Centers conference in Texas and the International Council of Shopping Centers RECon conference in Las Vegas in May, and other ICSC and Retail Live! Conferences and other economic development conferences as they occur. Many of these events may be held virtually due to Covid-19 restrictions.
8. CONSULTANT will provide monthly updates to City's designated contact. As deemed necessary and requested by the Mayor or City Manager, Consultant will be present for public and private meetings in the City to provide status updates on the performance of services under this agreement, specialized training, meet with civic clubs, and meet with city staff and elected officials and other appropriate citizen groups, as CONSULTANT'S schedule allows. CONSULTANT will make every effort possible to meet City's scheduling.
9. CONSULTANT will bid any specialized marketing materials (printed or video) for local development sites, web updates, retail specific web sites, traffic counts, aerial photography, and grant research and writing under separate bids. The commitment of the City for the purchase of any such materials shall be in advance of the order or purchase of said materials in order to bind the City to the payment of the purchase. City's authorization for purchase shall be in written form, signed by the Mayor and City Clerk, evidencing its advance approval for purchase.
10. Standard marketing materials to be developed and supplied by the Consultant as a standard component of this agreement at no additional charge apart from the compensation stated in this agreement are as follows:

Deliverables include market reports for the following geographies: City Limits; Five (5), Ten (10), Fifteen (15) Mile Radius reports, Twenty (20) Mile Radius report; Ten (10) Fifteen (15) and Thirty Minute (30) Drive Time Reports. Void Analysis on each geography, Opportunity Gap (Leakage Report) on each geography. Consultant shall be provided by the City with a complete copy of the City's current Comprehensive Plan. Consultant shall endeavor in its economic development efforts to market the City in harmony with the objectives of the City's Comprehensive Plan.

11. Consultant and City acknowledge that the marketing and recruitment efforts of the Consultant and City with potential businesses interests often times involves various degrees of protection of sensitive information as confidential information. Additionally, Consultant and City acknowledge the necessity of stream lined and well defined lines of communication as being important to orderly and effective planning and the execution of planning in economic development activities. In the interest of the protection of sensitive information and for the effective use of time and coordination of efforts communications from the City to the Consultant and from the Consultant to the City shall be limited. Communications with the Consultant by the City shall be limited to communications directed through the Mayor or the City Manager. Communications from the Consultant to the City shall be directed to the Mayor or the City Manager. When appropriate and reasonably necessary the Mayor or the City Manager may authorize communications between the Consultant and other designated City officials or staff.

**Amendments to the above Scope of Services may be made as necessary, provided that such Amendments are agreed to in writing by both parties.**

**PART IV. CONSULTANT'S FEES**

1. CITY shall pay CONSULTANT for the Scope of Services described in Part III as follows:

Commencing on \_\_\_\_, 2020

Retainer ( paid monthly ) on the first day of the month for length of contract	\$4000.00 per month	\$48,000 total for 12 month initial term of contract
CITY pays all travel and expenses, (travel and expenses shall be approved by CITY prior to Consultant incurring expenses for same. Expenses may include but not necessarily be limited to air fare, lodging, and meals)		

CITY shall pay CONSULTANT, a monthly retainer in the amount of FOUR THOUSAND DOLLARS (\$4000.00) due on the First day of the month of contracted scope of work.

#### **PART V. CITY'S RESPONSIBILITIES**

**CITY shall:**

1. Assist CONSULTANT by placing at his disposal all available pertinent information, including previous reports and any other data as required for performance of CONSULTANT'S Scope of Services. Retail Attractions, LLC will execute a confidentiality agreement with CITY. CITY will provide Retail Attractions, LLC monitored access to sales revenue data to analyze, but any release of sales revenue information must have CITY approval.
2. Represent that CONSULTANT shall be entitled to rely on the accuracy and completeness of any documents or other materials provided by CITY to CONSULTANT; and that CONSULTANT's use of such documents and materials will not infringe upon any third parties' rights.
3. Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform his services.
4. Designate one or more representatives authorized to act on the CITY'S behalf with respect to the Agreement. CITY or such authorized representative(s) shall examine the documents submitted by the CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the CONSULTANT'S services except for those decisions or actions that must go before the CITY'S Board of Commissioner's for approval.
5. In the event that CITY needs CONSULTANT to travel to other locations to attend special meetings (outside of or in addition to the proposed scope of work in this proposal, CITY will pay all related travel and expenses for CONSULTANT). Travel pay must be approved by CITY in writing.

#### **PART VI. NOTICES**

Reports and notices shall be made by CONSULTANT to CITY'S representative:

Randy Frazer, City Manager  
City of Arkansas City, KS  
P.O. Box 778  
Arkansas City KS 67005

Reports and notices shall be made by CITY to CONSULTANT or to CONSULTANT'S representative:

Mr. Rickey Hayes  
CEO  
Retail Attractions, LLC  
12150 East 96<sup>th</sup> Street, Suite 107  
Owasso, OK 74055

#### **PART VII. MISCELLANEOUS PROVISIONS**

1. Termination and Suspension. This Agreement may be terminated by either party for convenience or for cause. However, the terminating party must provide the other party no less than sixty (60) days prior, written notification of intent to terminate the Agreement.

CITY shall pay CONSULTANT for all the Services performed up to the date of termination.

The provisions of this Article shall also apply to each individual Amendment, separate and apart from any other Amendments, and without terminating or otherwise affecting this Agreement as a whole.

2. Ownership of Documents. Original documents developed in connection with services performed hereunder belong to, and remain the property of CITY. CONSULTANT shall store the originals and may retain reproducible copies of such documents.

All documents, including computer software prepared by CONSULTANT pursuant to this Agreement are instruments of service. They are not intended or represented to be suitable for reuse by CITY or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by CONSULTANT for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to CONSULTANT. CITY shall hold harmless CONSULTANT and its sub-consultants, if any, against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse.

3. Successors and Assigns

CITY and CONSULTANT each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations of this Agreement.

Neither CITY nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates and sub-contractors as he may deem appropriate to assist him in the performance of services hereunder.

4. Relation of Parties. The parties to this Agreement shall not constitute nor create an employer/employee relationship. CONSULTANT is an independent contractor responsible for all obligations relating to federal income tax, self-employment Medicare and FICA taxes and contributions and all other employer taxes and contributions.
5. Controlling Law. This agreement is to be governed by the Law of the State of Oklahoma. Venue shall be in Tulsa County, Oklahoma.
6. Attorney's Fees. In the unlikely event that a dispute occurs which is litigated or arbitrated, or a cause of action in law or equity is filed concerning the operation, construction, interpretation or enforcement of this agreement, the losing party shall bear the cost of the attorney's fees incurred by the prevailing party and any and all costs applicable thereto, including but not limited to, court costs, deposition fees, expert witness fees, out of pocket expenses and travel expenses which are incurred by the prevailing party.
7. Approval Not Waiver. Approval by CITY shall not constitute nor be deemed a release of the responsibility and liability of the CONSULTANT, CONSULTANT'S employees, subcontractors, agents and consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work, nor shall that approval be deemed to be an assumption of that responsibility by the CITY for any defect in the designs, working drawings, and specifications or other documents prepared by the CONSULTANT, CONSULTANT'S employees, subcontractors, agents and consultants.
8. Compliance with Applicable Law. CONSULTANT, CONSULTANT'S consultants, agents, employees, and subcontractors shall comply with all applicable federal and state laws, the charter and ordinances of the CITY, and with all applicable rules and regulations promulgated by all local, state and national boards, bureaus, and agencies. CONSULTANT shall further obtain all permits and licenses required in the preparation of the work contracted for in any Amendments to this Agreement.

9. The scope of work outlined in this agreement shall in no way prohibit CONSULTANT from working with any other clients, or being compensated by other clients for work done while this agreement is in force in or out of the CITY.

10. This agreement shall require approval of the Mayor and City Council to be effective and obligatory upon the City. Termination of the agreement pursuant to the terms hereof by the City prior to the expiration of the term of the agreement shall be effective following City Council action taken to terminate same.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY:  
CITY OF Arkansas City, KS

By: Karen Welch

Date: 11-3-2020

CONSULTANT:  
RETAIL ATTRACTIONS, LLC

By: Rickey Hayes

Rickey Hayes, CEO

Date: 11/5/20

Approved as to form and legality:

[Signature]  
City Attorney

Approved by the City Council in open session on the 3 day of November, 2020.

[Signature]  
City Clerk  
The seal is circular with a double border. The outer border contains the text "CITY OF ARKANSAS CITY" at the top and "KANSAS" at the bottom. The inner border contains the text "City Clerk" and "SEAL" in the center.