

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE
CONSULTING SERVICES**

This Professional Services Agreement to Provide Consulting Services (this "Agreement") sets forth the mutual understanding of (the "Client") Montgomery Economic Development Corporation and Retail Strategies, LLC, an Alabama limited liability company (the "Consultant") on this ___ Day of _____ (the "Execution Date"), for the provision of professional consulting services as more fully set forth below.

RECITALS:

The Consultant possesses a high degree of professional skill and experience and is a unique provider of professional consulting services.

The Client desires to hire the Consultant to provide professional consulting services because of its professional skill and experience.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, the Client and the Consultant, intending to be legally bound, do hereby agree as follows:

1. **CONSULTING SERVICES.** The Consultant agrees to provide professional consulting services to the Client (the "Services") detailed in Exhibit A.

2. **TERM.** The Consultant's engagement and provision of Services will commence upon the Execution Date. The Consultant's engagement and this Agreement will terminate automatically three (3) years after the Execution Date.

3. **CONSULTING FEE.**
 - A. **Consulting Fee.** In consideration for providing the Services, the Client agrees to pay the Consultant a consulting fee (the "Consulting Fee") in an amount equal to \$90,000 according to an invoice schedule as below:

Upon Execution of the Contract - \$40,000
12 Months After the Execution Date - \$25,000
24 Months After the Execution Date - \$25,000

 - B. **Payment Default.** If the Client fails to pay any portion of the Consulting Fee on the requisite payment date, the Consultant will immediately cease all Services.

4. **CLIENT INFORMATION AND ACCESS.**
 - A. To the extent permitted by law, the Client will provide the Consultant with access to relevant personnel, facilities, records, reports and other information (including any information specified in the Consultant's proposal to the Client) accessible by the Client that the Consultant may reasonably request from time-to-time during the Term. The Client acknowledges and agrees that the Consultant's scheduled delivery of the Services

is dependent upon the timely access to such personnel, facilities, records, reports and other requested information.

- B. To facilitate such access and Consultant's delivery of the Services, the Client designates the following (the "Client Representatives:")

Gary Palmer, City Administrator

- C. The Client Representative will serve as the primary liaison between the Consultant and the Client. The Client Representative will have responsibility for regular communications between the Client and the Consultant, including providing updates in a timely manner through Basecamp. The Client Representative will also be responsible for disseminating updates relative to consultants' activities related to scope of work to members of local stakeholder groups of the Client (e.g. City Council, Economic Development Boards, and Chamber of Commerce etc.).
- D. The Client hereby authorizes the Client Representative(s) (i) to act on behalf of the Client in the day-to-day administration and operation of this Agreement and the arrangements it contemplates and (ii) to execute and deliver, on behalf of the Client, such notices, approvals, consents, instruments, amendments or other documents as may be necessary or desirable to facilitate or assist the Consultant with the provision of the Services.

5. **INTELLECTUAL PROPERTY.** As part of the Services, the Consultant will prepare periodic and final reports including demographic and other research reports and strategic action plans that will become the property of the Client upon delivery from the Consultant. Any other reports, trainings, video resources, presentation decks, electronic mail, facsimile transmissions or other written documents prepared or used by the Consultants in connection with the Services will remain the property of the Consultant. With the Consultant's prior permission, the Client may use other information provided by the Consultant for internal purposes while taking reasonable steps to so limit the use of such materials and maintain its confidentiality.

6. **TERMINATION.**

- A. **By the Client At-Will.** The Client may terminate this Agreement at any time for any or no reason upon delivery of 30 days' prior written notice to the Consultant. Any portion of the Consulting Fee paid prior to such termination of this Agreement is earned when paid and nonrefundable.

By the Client Upon the Consultant's Default. The Client may notify the Consultant within 90 days of the day that the Client knows or should have known that the Consultant breached this Agreement. The Consultant will have 30 days following receipt of such notice to cure any alleged breach. If the Consultant fails to cure any alleged breach within that 30-day period, then the Client may terminate this Agreement. Within 30 days of such termination of this Agreement, the Consultant will refund a pro rata portion of the installment of the Consulting Fee previously paid for the contract period during which such termination occurs based upon the number of days remaining in such contract period.

- B. **By the Consultant At-Will.** The Consultant may terminate this Agreement at any time for any or no reason upon delivery of 30 days' prior written notice to the Client. Within

30 days of such termination of this Agreement, the Consultant will refund a pro rata portion of the installment of the Consulting Fee previously paid for the period during which such termination occurs based upon the number of days remaining in such period.

C. **By the Consultant Upon the Client's Default.** The Consultant may notify the Client within 90 days of the day that the Consultant knows or should have known that the Client breached this Agreement. The Client will have 30 days following receipt of such notice to cure any alleged breach. If the Client fails to cure any alleged breach within that 30-day period, then the Consultant may terminate this Agreement. Any portion of the Consulting Fee paid prior to such termination of this Agreement is earned when paid and nonrefundable.

7. **NOTICES.** Any notice or communication in connection with this Agreement will be in writing and either delivered personally, sent by certified or registered mail, postage prepaid, delivered by a recognized overnight courier service, or transmitted via facsimile or other electronic transmission, addressed as follows:

Client: Montgomery Economic Development Corporation
 101 Old Plantersville Road
 Montgomery, TX 77356
 Email: gpalmer@ci.montgomery.tx.us
 Attention: Gary Palmer

Consultant: Retail Strategies, LLC
 2200 Magnolia Ave. South, Suite 100
 Birmingham, AL 35205
 Email: sleara@retailstrategies.com
 Fax: (205) 313-3677
 Attention: Stephen P. Leara, Esq – EVP | General Counsel

or to such other address as may be furnished in writing by either party in the preceding manner. Notice shall be deemed to have been properly given for all purposes: (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier, (ii) if personally delivered, on the actual date of delivery, (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing, or (iv) if sent by facsimile or email of a PDF document (with confirmation of transmission), then on the actual date of delivery if sent prior to 5 p.m. Central Time, and on the next business day if sent after such time.

8. **INDEPENDENT CONTRACTOR.** The Consultant, in its capacity as a professional consultant to the Client, is and will be at all times an independent contractor. The Consultant does not have the express, implied or apparent authority either (A) to act as the Client's agent or legal representative or (B) to legally bind the Client, its officers, agents or employees.

9. **STANDARD TERMS.**

- A. **Affiliated Services:** The Client acknowledges that certain affiliates of the Consultant provide real estate brokerage and management services for which they are paid brokerage, development, leasing, management and similar fees. In connection with the Services and with the prior written permission of the Client, such affiliates may be engaged to provide such services in consideration for the payment of such fees.
- B. **Applicable Laws:** The Consultant will abide by all laws, rules and regulations applicable to the provision of the Services.
- C. **Insurance:** The Consultant will carry all employee insurance necessary to comply with applicable state and federal laws.
- D. **Third Party Beneficiaries:** This Agreement is for the sole benefit of the parties to this Agreement and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- E. **Publicity:** The Client agrees that the Consultant may, from time-to-time, use the Client's name, logo and other identifying information on the Consultant's website and in marketing and sales materials.
- F. **Entire Agreement:** This Agreement, together with any exhibits or amendments hereto, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. Any prior written or oral understandings and agreements between the parties are merged into this Agreement, which alone fully and completely expresses their understanding. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.
- G. **Further Assurances:** Each party hereby agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.
- H. **Force Majeure:** Neither party to this Agreement will hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.
- I. **Limitation on Liability; Sole Remedy:** Each party's liability to the other party arising out of or related to this Agreement or the Services will not exceed the amount of the Consulting Fee. The Client's sole remedy in the event of any alleged breach of this Agreement by the Consultant will be the notice, cure and refund provisions of Section 6(B) of this Agreement.
- J. **Amendment in Writing:** This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement

in writing, properly executed by a duly authorized officer of the Consultant and the Client Representative, acting for and on behalf of the Client.

- K. **Binding Effect:** This Agreement will bind the parties and their respective successors and assigns. If any provision in this Agreement will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
- L. **Captions:** The captions of this Agreement are for convenience and reference only, are not a part of this Agreement and in no way define, describe, extend, or limit the scope or intent of this Agreement.
- M. **Construction:** This Agreement will be construed in its entirety according to its plain meaning and will not be construed against the party who provided or drafted it.
- N. **Prohibition on Assignment:** No party to this Agreement may assign its interests or obligations hereunder without the written consent of the other party obtained in advance of any such assignment. No such assignment will in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning party will in all respects remain liable hereunder irrespective of such assignment.
- O. **Waiver:** Non-enforcement of any provision of this Agreement by either party will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remaining terms and conditions of this Agreement.
- P. **Survival:** Section 5 and Section 9(H) will survive termination of this Agreement.
- Q. **Counterparts; Electronic Transmission:** This Agreement may be executed in counterparts, each of which will be deemed to be an original, and such counterparts will, together, constitute and be one and the same instrument. A signed copy of this Agreement delivered by telecopy, electronic transmission or other similar means will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Client and the Consultant have caused this Agreement to be executed by their duly authorized officers to be effective as of the Execution Date.

CLIENT:

MONTGOMERY ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Name:
Title:
Date:

CONSULTANT:

RETAIL STRATEGIES, LLC

By: _____
Name:
Title:
Date:

EXHIBIT A

I. CONSULTANT AGREEMENT – DOWNTOWN STRATEGIES

This section outlines what Retail Strategies (the "consultant") will provide to Montgomery Economic Development Corporation (the "client").

A. Discovery (months 1-3)

1. Kick-off Call & Partnership Overview
2. Review of Documents (existing plans, ordinances, incentives)
3. Electronic Community Input Survey

B. In-market Downtown Strategic Visioning Workshop (months 4-5)

1. Core Group Meeting
2. Walking/Windshield Tour
3. Stakeholder Input Session

C. 5-Year Downtown Strategic Action Plan Deliverable (months 6-8)

1. Custom Downtown Market Analysis
 - a. Identification of market trade area using mobile data analysis
 - b. Trade area demographics (population, income, housing, etc.)
 - c. Market and retail GAP analysis for trade area (i.e. leakage and surplus)
 - d. Tapestry lifestyles – psychographic profile of trade area
 - e. Commute Patterns Report
 - f. Identification of priority business categories for entrepreneurship, recruitment and/or local expansion
 - g. Downtown Walkability Assessment
 - h. Downtown Neighborhood Demographics
2. 5-Year Downtown Strategic Action Plan Deliverable
 - a. Focusing on policy & administration, design, tourism & promotion, and economic vitality recommendations
 - b. Implementation matrix

D. Launch of Local Action Teams & Action Plan Jumpstart (months 9-12)

1. Consultant team will launch our process of Local Action Teams to encourage community support and engagement for incremental implementation.
 - a. Action Planning Workbook Deliverable
 - b. Project Mapping Workshop
 - c. First Action Team Meeting
2. Consultant team will provide support to the Core Team for implementation of a strategy in 5-Year Downtown Strategic Action Plan.
 - a. Strategy will be determined collaboratively depending on traction in Local Action Teams and subject matter expertise within Consultant team.

E. Action Plan Implementation (year 2)

1. Monthly Office Hours
 - a. Opt-in time with consultant team to discuss specific challenges, roadblocks, or for additional support.
2. Ongoing Technical Support
 - a. Consultant team will provide:
 - i. Templates & Trainings
 - ii. Examples
 - iii. Connections to Partners
3. Collaboration Calls
 - a. Three (3) tri-annual collaboration calls with Core Team to discuss success, troubleshoot teams that are off-track, and confirm strategy roadmap for remainder of year.
4. Expansion of Local Action Teams (if desired)
 - a. Action Planning Workbook
 - b. Project Mapping Workshop
 - c. First Action Team Meeting (for new team(s))

F. Action Plan Implementation (year 3)

1. Monthly Office Hours
 - a. Opt-in time with consultant team to discuss specific challenges, roadblocks, or for additional support.
2. Ongoing Technical Support
 - a. Consultant team will provide:
 - i. Templates & Trainings
 - ii. Examples
 - iii. Connections to Partners
3. Collaboration Calls
 - a. Three (3) tri-annual collaboration calls with Core Team to discuss success, troubleshoot teams that are off-track, and confirm strategy roadmap for remainder of year.
4. Expansion of Local Action Teams (if desired)
 - a. Action Planning Workbook
 - b. Project Mapping Workshop
 - c. First Action Team Meeting (for new team(s))

G. Partnership Wrap-up

1. Partnership Wrap-up Call to recap progress, discuss next steps, and discuss renewal of Downtown Implementation contract.

II. CLIENT AGREEMENT – DOWNTOWN STRATEGIES

This section outlines what the Montgomery Economic Development Corporation (the “Client”) will provide for Retail Strategies (the “Consultant”).

A. Point of Contact

1. One individual shall be specifically designated by Client and identified to Consultant as the Primary Point of Contact (POC.)
2. POC will be responsible for regular communications between Client and Consultant
3. POC will be responsible for communicating all of Consultants updates and activities to Client as necessary
4. POC will be the primary facilitator of communication as it relates to concerns from board members, city council and/or other decision-making community leaders
5. POC will be competent to aid Consultant in navigation of local political landscape
6. POC will have access to Basecamp and will post and check messages and on – going local updates in a timely manner

B. Information and Material Requested by Consultant:

1. Client/ POC understands that Consultant’s ability to stay on schedule will depend on receiving requested information by the requested deadline
2. If Client is a no-show for a scheduled presentation, the presentation will be recorded and posted to Basecamp but not rescheduled live
3. Client recognizes that if the partnership timeline derails because of non-responsiveness of the Client, the partnership will move forward and deliverables or scheduled presentations may be foregone in an effort to remain on schedule

