



**CITY OF STARKVILLE COVERSHEET
RECOMMENDATION FOR BOARD ACTION**

AGENDA ITEM DEPT.:
AGENDA DATE:
PAGE:

SUBJECT: Discussion and consideration of a professional services agreement with Retail Strategies, LLC to provide consulting and related services to the city of Starkville, OCEDA and GSDP

AMOUNT & SOURCE OF FUNDING \$17,500 from a \$28,860 reimbursement from the Innovation District project

FISCAL NOTE: The City received a \$28,860 reimbursement on January 28, 2016 for professional services work on the Innovation District.

AUTHORIZATION HISTORY:

**REQUESTING
DEPARTMENT:**

**DIRECTOR'S
AUTHORIZATION:** Little; Wiseman

FOR MORE INFORMATION CONTACT:
Alderman Little or Mayor Wiseman

SUGGESTED MOTION: Move approval of the professional services agreement with Retail Strategies, LLC as presented.

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE
CONSULTING AND RELATED SERVICES**

THIS AGREEMENT is entered into by and between Retail Strategies, LLC, an Alabama limited liability company (hereinafter referred to as “Consultant”), the Oktibbeha County Economic Development Authority (“OCEDA”), the Greater Starkville Development Partnership (“GSDP”), and the City of Starkville, MS, (“Starkville”) (collectively referred to as “Clients”) on this the 16th day of February 2016, as follows:

WHEREAS, the Clients desire to have performed those consultation services identified on Exhibit A attached hereto by Consultant (the “Project”); and,

WHEREAS, Consultant has agreed to provide professional consulting services for the Project to Clients as further set forth below.

W-I-T-N-E-S-S-E-T-H:

NOW, THEREFORE, this agreement is made and entered into on the date first above written by and between the Clients and Consultant, by which Consultant will provide professional consulting and related services to the Clients as hereinafter specified:

1. SCOPE OF SERVICES

Consultant hereby agrees to provide professional services for Clients in the form of consulting and related services for the Project as set out in Exhibit A.

2. TERM

The Term of this Agreement shall commence upon February 16, 2016, and run for a period of three (3) years unless terminated pursuant to the terms of Paragraph 8 below.

3. COMPENSATION

As compensation for the consultation services provided herein by Consultant, Clients agree to pay Consultant the following for such services:

PAYMENT TERMS	COMPENSATION
February 16, 2016 - September 30, 2016	Starkville - \$17,500; OCEDA - \$10,000; GSDP - \$10,000
October 1, 2016 - February 15, 2017	Starkville - \$12,500
February 16, 2017 - February 15, 2018	Starkville - \$5,000; OCEDA - \$10,000; GSDP - \$10,000
February 16, 2018 - February 15, 2019	Starkville - \$15,000; OCEDA - \$10,000; GSDP - \$10,000

Compensation shall be paid in full when billed by Consultant. Initial fees in year one are due upon execution of this Agreement. Consultant shall send separate invoices to Starkville, OCEDA, and GSDP for their pro-rata shares of annual compensation as outlined above.

4. CLIENTS' RESPONSIBILITIES

In addition to paying Consultant for services according to the preceding paragraph, the Clients shall also provide for Consultant: access to its relevant personnel, facilities, and materials including, but not necessarily limited to, those items specified in Consultant's proposal to Clients, and such records, reports, and information as reasonably requested by Consultant and in Clients' possession.

5. INTELLECTUAL PROPERTY

The Clients and Consultant, jointly and separately, acknowledge and agree that the intellectual property of both parties shall remain owned by the respective party. With the exception of Consultant's periodic and final reports generated for performance of this agreement to or for the Clients, reports, memorandums, electronic mail, facsimile transmissions and other written and prepared documents shall be owned by the party who authored, generated or who originally possessed the same and nothing in this agreement shall contravene said rights. The Clients acknowledge that all intellectual property developed during the course of this agreement by Consultant shall belong exclusively to Consultant. However, the Clients may utilize any of the foregoing for and on behalf of their internal operations, but will take steps reasonably necessary with their employees with respect to the use, copying, protection and security of the foregoing.

6. APPLICABLE LAWS

Consultant, in its role as a professional service provider of consulting services, shall abide by all laws, rules and regulations applicable to such services.

7. INSURANCE

Consultant shall carry all appropriate and necessary insurance to be in compliance with state and federal laws regarding the insurance coverage of its employees. Consultant shall carry the insurance listed on the Certificate of Insurance attached hereto as Exhibit "B", which is incorporated herein by reference, throughout the term of this Agreement.

8. DEFAULT AND TERMINATION

(a) In the event Consultant should violate any of the terms of this Agreement, Clients shall provide Consultant with written notice of any such default. Consultant shall have a period of thirty (30) days following such notice to cure any alleged deficiencies. Should Consultant fail to cure such default in the time period provided, Clients shall be permitted to terminate this Agreement.

(b) Notwithstanding the above, Clients may terminate this Agreement for any reason by providing written notice six (6) months prior to the date of termination.

(c) This Agreement shall automatically expire upon the expiration of the three (3) year term. The parties may renew the consulting relationship by executing an amendment or new agreement setting forth the new terms between the Consultant and the Clients.

(d) All fees paid for any term are fully earned when paid and are not subject to refund following any termination hereunder.

9. NOTICES/PARTIES REPRESENTATIVES

All notices, bills, invoices and reports required by this agreement shall be sufficient if sent by the parties hereto in the United States Mail, postage prepaid thereon to the addresses noted below:

Clients: City of Starkville, MS
110 W. Main Street
Starkville, MS 39759

Greater Starkville Development Partnership

200 E. Main St.
Starkville, MS 39759

Oktibbeha County Economic Development Authority
200 E. Main St.
Starkville, MS 39759

Consultant: Retail Strategies, LLC
120 18th Street South Suite 201
Birmingham, AL 35233
Attention: Brooke Holbert

10. INDEPENDENT CONTRACTOR

While Consultant's role will be that of consultant to the Clients, Consultant shall be and remain an independent contractor and not act in the role of an agent or legal representative on behalf of the Clients. Consultant shall not have the authority to bind or obligate the Clients, their officers, agents or employees. Clients do not reserve any right to control the methods or manner of performance of the services by Consultant. Consultant in performing the services provided herein, shall not act as an agent or employee of Clients, but shall be and act as an independent contractor, and shall be free to perform the services by such methods and in such manner as Consultant may choose.

11. INDEMNIFICATION

Consultant shall indemnify, defend, and hold harmless Clients and their officers, agents, servants, and employees from and against any and all loss, damage, or liability resulting from any claims, suits, and actions for injuries to persons or entities and damages caused by or arising out of any action or inaction of Consultant, or anyone directly or indirectly employed by it or anyone for whose acts Consultant may be liable, in any way associated or connected with the performance of the services herein, in whatever manner the same may be caused, and whether or not the same be caused by or arise out of the joint, concurrent or contributory acts or omissions of Client, its officers, agents, servants, or employees. This indemnity includes, but is not limited to, court costs, attorney fees, costs

of investigation, costs of defense, settlement and judgments associated with such claims, suits or actions.

12. **COVENANT NOT TO COMPETE**

Consultant agrees that during its contractual relationship with Clients, it will not perform any services similar to those provided to Clients for any person, firm, or entity, including but not limited to, governmental entity, quasi-governmental entity, political subdivision, economic development organization, chamber of commerce, municipal corporation, county, or any combination thereof located in the following counties: Oktibbeha, Clay, and Lowndes. Consultant acknowledges that the three-year term of this contract and the geographical area set forth is reasonable, and that enforcement of a remedy by way of injunction will not prevent Consultant from conducting business. It is the intent of the parties that Consultant will provide services solely to Clients within the area described in this paragraph.

13. **MISCELLANEOUS**

Third Party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.

Final Integration: 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. All written or oral understandings and agreements heretofore had between and among the parties are merged into this agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this agreement or expressly referred to herein have been relied on by any party in entering into this agreement.

Force Majeure: Neither party to this agreement shall 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.

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 all of the parties.

Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatee, distributees, successors, and assigns. If any provision in this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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.

Construction: This agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

Governing Law: This Agreement shall be construed under the laws of the State of Mississippi. Venue for any dispute arising between the parties shall be in the Circuit Court of Oktibbeha County, Mississippi or the United States District Court for the Northern District of Mississippi, Aberdeen Division, as applicable.

Prohibition on Assignment and Delegation: No party to this agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

Waiver: Non-enforcement of any provision of this agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the agreement.

Agreement Date/Counterparts: The date of this agreement is intended as and for a date for the convenient identification of this agreement and is not intended to indicate that this agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

Brokerage Rights: Clients acknowledge that affiliates of Consultant act in the capacity of a real estate brokerage service business and may earn fees for services including brokerage, development, leasing and management fees in the performance of such affiliates services.

SIGNATURES ON FOLLOWING PAGE

CLIENTS:

City of Starkville, MS

By _____

Title _____

Date _____

Oktibbeha County Economic Development
Authority

By _____

Title _____

Date _____

Greater Starkville Development Partnership

By _____

Title _____

Date _____

CONSULTANT:

RETAIL STRATEGIES, LLC

By _____

Title _____

Date _____

EXHIBIT A

I. CONSULTANT AGREEMENT

This section outlines what Retail Strategies (the “consultant”) will provide to the City of Starkville (the “Clients”).

A. Research

1. Identify market retail trade area using political boundaries, drive times and radii and custom boundary geographies
2. Perform market and retail GAP analysis for trade area (i.e. leakage and surplus)
3. Conduct retail peer market analysis
4. Competition analysis of identified target zones trade area(s)
5. Tapestry lifestyles – psychographic profile of trade area / market segmentation analysis
6. Aerial imagery by trade area
7. Retail competitor mapping/analysis
8. Analysis of future retail space requirements in relation to the retail market analysis, the market’s growth potential and trends in the retail industry
9. Identification of at minimum 50 retail prospects to be targeted for recruitment over three year engagement
10. Retailer recruitment and execution of the retail strategy
11. Monthly updates provided on retail industry trends
12. Custom on-demand demographic research – historical, current, and projected demographics – to include market trade areas by radius/drive time, and custom trade area

B. Boots on the Ground Analysis

1. Identify/Evaluate/Catalog priority commercial properties for development, re-development and higher and best use opportunities
2. Identification of priority business categories for recruitment and/or local expansion
3. Perform competitive analysis of existing shopping centers and retail corridors
4. Active outreach to local brokers and land owners

C. Retail Recruitment

1. Pro-active retail recruitment for targeted zones
2. **Clients** will contact a minimum of 50 retailers, restaurants, brokers and/or developers
3. Updates on new activity will be provided to Clients’ designated primary point of contact (Sec. II-A) via Basecamp, telephone, or email on a monthly and/or as needed basis
4. One market visit per calendar year included in agreement, any travel outside of the agreement shall be approved and paid for by the contracting entity
5. ICSC conference representation- updates provided according to the yearly conference schedule

EXHIBIT A (Continued)

II. CLIENTS AGREEMENT

This section **Client** outlines what the City of Starkville (the “Clients”) will provide for Retail Strategies (the “Consultant”).

A. Point of Contact

1. One individual shall be specifically designated by Clients and identified to Consultant as primary point of contact (“POC”)
2. POC will be responsible for regular communications between Clients and Consultant
3. POC will be responsible for communicating all of Consultants updates and activities to Clients 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 messages and on –going local updates in a timely manner

B. Information and Material Requested by Consultant:

1. Consultant will provide POC with no less than 3 business days’ notice before materials and other information are needed
2. Clients/ POC understands that Consultant’s ability to stay on schedule will depend on receiving requested information by the requested deadline
3. Clients/ POC will provide consultant with ongoing updates related to retail growth and development, including but not limited to: (i) businesses that open, close, or rumors associated, as such; (ii) changes in economic drivers (i.e. significant increase or decrease in employees for major employment, school enrollments, housing or medical); (iii) new ownership of real estate or changes in the owner’s personal situation that may affect willingness to sell property
4. Clients/ POC will inform Consultant of plans to attend ICSC conferences providing ample time to assist in planning

C. Information and Material Requested by Clients:

1. POC will provide Consultant with no less than 3 business days’ notice before a full update is needed
2. Clients/ POC understand the confidentiality of communication containing retailer specific information and will notify Consultant before sharing such information publically

EXHIBIT B

Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/4/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bates, Roberts, Fowlkes & Jackson Insurance 1812-6th Avenue, South Post Office Box 101537 Irondale AL 35210	CONTACT NAME: Tina Mashburn PHONE (A/C, No, Ext): (205)956-0563 FAX (A/C, No): (205)956-6905 E-MAIL ADDRESS: Tina@batesia.com
INSURED Retail Specialists, LLC & Retail Strategies, LLC 120 18th Street S. Suite 201 Birmingham AL 35233	INSURER(S) AFFORDING COVERAGE INSURER A: CINCINNATI INSURANCE CO NAIC # 10677 INSURER B: TRAVELERS 25623 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER:CL162404243

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	X	EPP0229811	2/1/2016	2/1/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1M/3M
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS		EPP0229811	2/1/2016	2/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired/borrowed \$ 1,000,000
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB DED ☒ RETENTION \$ 0		EPP0229811	2/1/2016	2/1/2017	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	UB-3F575081	12/1/2015	12/1/2016	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Starkville, MS, Greater Starkville Development Partnership and Oktibbeha County Economic Development Authority are named as additional insured as respects the General Liability policy.

CERTIFICATE HOLDER

City of Starkville, MS
110 Main Street
Starkville, MS 39759

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Thomas Roberts/TINA

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ADDITIONAL COVERAGES

Ref #	Description Uninsured motorist combined single limit	Coverage Code UMCSL	Form No.	Edition Date
Limit 1 1,000,000	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description Medical payments	Coverage Code MEDPM	Form No.	Edition Date
Limit 1 5,000	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description Experience Mod Factor 1	Coverage Code EXP01	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				

Ref #	Description	Coverage Code	Form No.	Edition Date
Limit 1	Limit 2	Limit 3	Deductible Amount	Deductible Type
Premium				