

**PROFESSIONAL SERVICES AGREEMENT FOR
RETAIL FEASIBILITY STUDY, STRATEGIC PLANNING AND
BUSINESS RECRUITMENT**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the Lake Worth Community Redevelopment Agency ("CRA"), a Florida public agency created pursuant to Chapter 163, Florida Statutes, ("CRA"), with a business address of 29 South J Street, Lake Worth, FL 33460, and Retail Strategies Alabama, LLC, an Alabama limited liability company, authorized to do business in the State of Florida ("Consultant"), with a business address of 120 18th Street South, Suite 201 Birmingham, AL 35233.

RECITALS

WHEREAS, the CRA is seeing a professional firm to develop a comprehensive market/retail feasibility study and the development and execution of a recruitment plan within the Community Redevelopment Area ("Scope of Services"); and,

WHEREAS, on February 20, 2015, the CRA issued Request for Proposal #02-2015 ("RFP"), a copy of which is attached hereto as **Exhibit "A"**, and incorporated herein by reference, seeking proposals from professional firms to assist the CRA with the development of the recruitment plan and to proactively recruit retailers on behalf of the CRA; and

WHEREAS, the Consultant submitted a proposal in response to the RFP, (the "Proposal"), a copy of which is attached hereto as **Exhibit "B"**, and incorporated herein by reference, in which the Consultant identified the Consultant's ability to provide the Scope of Services requested in the RFP; and

WHEREAS, the Consultant is willing to provide qualified personnel to provide the CRA with the Scope of Services as more fully described in **Exhibit "C"** which is attached hereto, and incorporated herein by reference; and,

WHEREAS, the CRA Board of Commissioners finds that this Agreement serves a municipal and public purpose, is consistent with the CRA's Community Redevelopment Plan, and with the requirements of Chapter 163, Florida Statutes; and,

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the sufficiency of which is hereby acknowledged by the parties, the CRA and the Consultant agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement as true and correct statements.

SECTION 2: CONSULTANT'S SERVICES. The Consultant shall provide the Scope of Services, which is attached hereto as **Exhibit "C"**, and incorporated herein by reference, on behalf of the CRA.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that Consultant will act hereunder as an independent contractor and none of the Consultant's, officers, directors, employees, independent contractors, representatives or agents performing services for Consultant pursuant to this Agreement shall have any claim under this Agreement or otherwise against the CRA for compensation of any kind under this Agreement. The relationship between the CRA and Consultant is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

SECTION 4: TERM AND TERMINATION.

a. Term. The term of this Agreement is for a period of one (1) year from the Effective Date (the "Term") unless earlier terminated as stated herein. The "Effective Date" shall be the date the CRA executes this Agreement. The parties may agree in writing to extend the Term of this Agreement upon the execution of a written amendment to the Agreement in order to provide additional services identified in the RFP and the Contractor's Proposal.

b. Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days prior written notice of termination. Termination in accordance with the preceding sentence shall be without penalty or expense to the CRA of any kind whatsoever; however, CRA shall pay Consultant for all services performed under this Agreement through the date of termination. CRA acknowledges that the compensation set forth in Section 5 below, once paid is non-refundable and fully earned.

c. Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that the CRA is a political subdivision of the state of Florida, and as such, this Agreement (and all Exhibits hereto) are subject to budgeting and appropriation by the CRA of funds sufficient to pay the costs associated herewith in any fiscal year of the CRA. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the CRA's governing board in any fiscal year to pay the costs associated with the CRA's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the CRA to be, insufficient to pay the costs associated with the CRA's obligations hereunder in any fiscal period, then the CRA will notify Consultant of such occurrence and either the CRA or Consultant may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice.

SECTION 5: COMPENSATION.

a. Payments. The CRA agrees to compensate the Consultant an amount equal to Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Contract Price") for the services provided pursuant to this Agreement for the term of one year. Any succeeding term, if exercised shall be at the fees then agreed upon between CRA and Consultant. The CRA shall not reimburse the Consultant for any additional costs incurred as a direct or indirect result of the Consultant providing services to the CRA under this Agreement. In the event the CRA and Consultant

agree to extend this Agreement beyond the initial term in order for the Consultant to provide additional services, then any agreement to pay additional compensation shall be contained in an amendment to this Agreement signed by both parties.

b. Invoices. The Consultant shall provide invoices to the CRA for payment. One invoice in the amount of Twenty Five Thousand and 00/100 (\$25,000.00) shall be presented upon execution of this Agreement by both parties. The second invoice in the amount of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) shall be presented following the presentation of the Strategic Recruitment Plan in October, 2015. The invoices shall specify the services performed and the time spent on such services. Invoices will normally be paid within thirty (30) days following the CRA's receipt of the Consultant's invoice.

SECTION 6: INDEMNIFICATION. The Consultant, its officers, employees and agents shall indemnify and hold harmless the CRA, including its officers, employees and agents from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the gross negligence of the Consultant, its officers, directors, employees, representatives and agents employed or utilized by the Consultant in the performance of the services under this Agreement. The CRA agrees to be responsible for its own gross negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CRA or the Consultant, nor shall this Agreement be construed as a waiver of sovereign immunity for the CRA beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 7: COMPLIANCE AND DISQUALIFICATION. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement, including, without limitation, the applicable licensure requirements and the Florida Building Code.

SECTION 8: PERSONNEL. The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CRA. All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state and local law to perform such services. Due to the nature of the services being provided by Consultant on behalf of the CRA, and the need for the CRA to have a good working relationship with Consultant, the CRA's Executive Director has the right to approve the Consultant's representatives that will provide services pursuant to this Agreement. Such approval shall not be unreasonably withheld.

SECTION 9: SUB-CONSULTANTS. The CRA reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. All sub-consultants providing professional services to the Consultant under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Agreement, the

Consultant shall indemnify and hold harmless the CRA for any claim in excess of the sub-consultant's insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant.

SECTION 10: FEDERAL AND STATE TAX. The CRA is exempt from payment of Florida State Sales and Use Tax. The Consultant is not authorized to use the CRA's Tax Exemption Number.

SECTION 11: INSURANCE. Prior to execution of the resulting contract derived from this RFP, the awarded firm shall obtain and maintain in force at all times during the term of the resulting contract insurance coverage as required herein. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the firm has obtained insurance of the type, amount, and classification as required for strict compliance with this provision and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CRA. Compliance with the foregoing requirements shall not relieve the firm of its liability and obligations under the resulting contract.

A. The firm shall maintain during the term of the contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.

B. The firm shall maintain, during the life of the contract, commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence to protect the firm from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under the contract, whether such operations be by the firm or by anyone directly or indirectly employed by or contracting with the firm.

C. The firm shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the firm shall specifically include the Lake Worth CRA and the City of Lake Worth as an "Additional Insured".

Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement. Thirty (30) days written notice must be provided to the CRA via certified mail in the event of cancellation of any insurance.

SECTION 12: SUCCESSORS AND ASSIGNS. The CRA and the Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

SECTION 13: LAW, VENUE AND REMEDIES. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 14: ACCESS AND AUDITS. The Consultant shall maintain adequate records to justify all payments made by the CRA under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. The CRA shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Consultant's place of business. In no circumstances will Consultant be required to disclose any confidential or proprietary information regarding its products and service costs.

SECTION 15: NONDISCRIMINATION. The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

SECTION 16: AUTHORITY TO PRACTICE. The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the CRA upon request.

SECTION 17: SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 18: PUBLIC ENTITY CRIMES. Consultant acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Consultant will advise the CRA immediately if it becomes aware of any violation of this statute.

SECTION 19: NOTICE. All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the CRA shall be sent to:

Joan Oliva, Executive Director
Lake Worth Community Redevelopment Agency
29 South "J" Street
Lake Worth, FL 33461
Telephone No.: (561) 493-2550
Facsimile No.: (561) 493-2549

with copy to:

Goren, Cherof, Doody & Ezrol, P.A.
3099 E. Commercial Blvd. #200
Fort Lauderdale, FL 33308
Attn: David N. Tolces, Esq.
Telephone No.: (954) 771-4500
Facsimile No.: (954) 771-4923

and if sent to the CONSULTANT, shall be sent to:

Retail Strategies Alabama, LLC
120 18th Street South, Suite 201
Birmingham, AL 35233
Attention: Bradley G. Siegal, General Counsel
Telephone No.: (205) 871-0353
Facsimile No.: (205) 313-3677

The foregoing names and addresses may be changed if such change is provided in writing to the other party.

SECTION 21: ENTIRETY OF AGREEMENT. The CRA and the Consultant agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 22: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 23: PREPARATION. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

SECTION 24: MATERIALITY. All provisions of the Agreement shall be deemed material. In the event Consultant fails to comply with any of the provisions contained in this Agreement or

exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and CRA may at its option provide notice to the Consultant to terminate for cause.

SECTION 25: LEGAL EFFECT. This Agreement shall not become binding and effective until approved by the CRA. The Effective Date is the date this Agreement is executed by the CRA.

SECTION 26: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 27: SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 28: COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.

SECTION 29: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS. This Agreement consists of this Agreement, any exhibits attached hereto, and the CRA's Request for Proposal #02-2015 dated February 20, 2015, and the Consultant's Response to the Request for Proposal dated March 27, 2015. The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists any conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the RFP next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 30: REPRESENTATIONS and BINDING AUTHORITY. By signing this Agreement, W. Mead Silsbee, III, hereby represents to the CRA that he has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of the Consultant for whom he is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

SECTION 31: PUBLIC RECORDS. Effective July 1, 2013, pursuant to section 119.0701, Florida Statutes, the Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and specifically agrees to:

- (a) Keep and maintain all public records that ordinarily and necessarily would be required by the CRA to keep and maintain in order to perform the services under this Agreement.

- (b) Provide the public with access to said public records on the same terms and conditions that the CRA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining said public records and transfer, at no cost, to the CRA all said public records in possession of the Consultant upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from Chapter 119, Florida Statutes, disclosure requirements. All records stored electronically must be provided to the CRA in a format that is compatible with the information technology systems of the CRA.

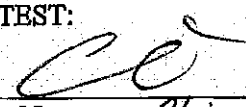
SECTION 32: OWNERSHIP OF DOCUMENTS. The supporting documents, or other work products which are listed as deliverables by the Consultant to the CRA shall become the property of the CRA upon delivery. The Consultant may keep copies or samples thereof and shall have the right to use such drawings, mock-ups, renderings, calculations, supporting documents, or other documents. The CRA accepts sole responsibility for the reuse of any such documents in a manner other than as initially intended, or for any use of incomplete documents unless prior written approval is obtained from the Consultant. Both parties hereby agree that the intellectual property of both parties shall remain owned by each respective party. With the exception of the deliverables generated for the performance of this Agreement to or for the CRA, all intellectual property shall be owned by the party who originally possessed the same.

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement as of the day and year set forth below by the CRA.

**LAKE WORTH COMMUNITY
REDEVELOPMENT AGENCY**, a Florida
public agency created pursuant to Chapter 163,
Florida Statutes

By: 
Joan Oliva, Executive Director

ATTEST:


Print Name: Chris Dabcos
Title: Project Manager

**RETAIL STRATEGIES ALABAMA, LLC, an
Alabama limited liability company**

ATTEST:

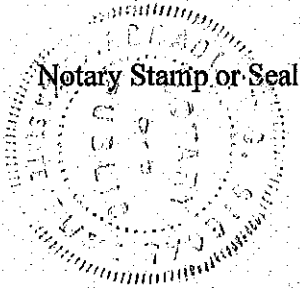
Matthew Peltro
Print Name: Matthew Peltro
Title: Account Executive

W. Mead Silsbee, III
By: W. Mead Silsbee, III
Print Name: W. Mead Silsbee, III
Title: Manager

(CORPORATE SEAL)

STATE OF ALABAMA
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this 8th day of June, 2015
by W. Mead Silsbee, III, as Manager, of Retail Strategies Alabama,
LLC, an Alabama limited liability company, and who is personally known to me or who has
produced the following driver's license as identification.



Buyer
Notary Signature

LIST OF EXHIBITS

EXHIBIT "A" REQUEST FOR PROPOSALS #02-2015

EXHIBIT "B" RESPONSE TO REQUEST FOR PROPOSALS

EXHIBIT "C" SCOPE OF SERVICES