

**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”) Haines City, Florida, a Florida municipal corporation, and Retail Strategies, LLC, an Alabama limited liability company (the “Consultant”) on this _____ day of _____ 2022 (the “Execution Date”), for the provision of professional consulting services as more fully set forth below.

R E C I T A L S:

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

The Consultant entered into an agreement with the City of Lauderdale Lakes on October 8, 2019, to provide to provide services related to Retail Trade Analysis and Marketing Plan.

The Client upon the passing of a resolution adopted by its City Commission has the legal authority to piggyback onto a purchasing agreement procured in accordance with Chapter 287.057 Florida Statutes by another governmental entity pursuant to Section 189.053, Florida Statutes, when seeking to utilize the same or similar services provided in said agreement.

The Client desires to piggyback onto the above referenced purchasing agreement between the Consultant and the City of Lauderdale Lakes for utilization of the same or similar services for Retail Trade Analysis and Marketing Plan.

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. PIGGYBACK AGREEMENT.

- A. The above listed recitals are true and correct and are incorporated herein by reference.
- B. The Consultant affirms and ratifies the terms and conditions of the above listed agreement with the City of Lauderdale Lakes and agrees to perform the services as set forth therein for the Client until the work is completed. Consultant further agrees that for the purposes of interpretation and enforcement of the subject Agreement, the term "City of Haines City" shall be substituted for the term "City of Lauderdale Lakes" throughout the Contract Documents.
- C. The Client agrees to utilize the services of the Consultant in a manner and upon the terms and conditions as set forth in the agreement with the City of Lauderdale Lakes.

D. The Consultant and the Client agree to modify the agreement between the Consultant and the City of Lauderdale Lakes as set forth in this Agreement.

2. **CONSULTING SERVICES.** The Consultant agrees to provide the following professional consulting services to the Client (the “Services”):

- A. **Research.** The Consultant will identify the Client’s retail trade area using a blend of demographics, political boundaries, drive times and/or custom boundaries. The Consultant will perform market and retail analysis based on current industry standards at the time such reports are run. The Consultant will map retail locations and analyze opportunities given local and macro retail trends.
- B. **In-Market Real Estate Analysis.** The Consultant will analyze existing shopping centers and retail corridors and actively reach out to local brokers and real estate owners. The Consultant will identify, evaluate and catalogue priority commercial properties for development or redevelopment based on their highest-and-best-use. The Consultant will identify priority business categories to expand locally and to recruit to the area.
- C. **Retail Recruitment.** The Consultant will proactively recruit businesses for targeted zones through the contact of a minimum of 30 retailers, restaurants, brokers or developers. The Consultant will regularly update the Client Representative on retail recruitment efforts via email, telephone and the Consultant’s client web portal known as “Basecamp.” One market visit per calendar year is included in this agreement, additional travel outside of this agreement and requested by the Client shall be approved and paid for by the Client. The Consultant will represent the Client at International Council of Shopping Center conferences and provide updates according to the yearly conference schedule.
- D. **Updates.** The Consultant will provide the Client Representative with updates within three business days of receipt of a request from the Client Representative (as defined in Section 4 below).

3. **TERM.** The Consultant’s engagement and provision of Services will commence upon the Execution Date as set forth above. The Consultant’s engagement and this Agreement will terminate automatically on the third anniversary of the Execution Date (the “Term”) unless earlier terminated as provided in Section 6 below. At the end of the Term, the Client, acting by and through the Client Representative, may extend the Term at its option for successive one year periods on such terms and conditions as the Client Representative, acting for and on behalf of the Client, and the Consultant may agree upon in writing.

4. **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 \$120,000. The Consulting Fee will be paid in installments of immediately available funds as follows:

Contract Period	Payment Date	Payment Amount
Year One	Upon execution of this agreement	\$40,000

Year Two	On or before the 1st anniversary of the Execution Date	\$40,000
Year Three	On or before the 2 nd anniversary of the Execution Date	\$40,000

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, including but not limited to: (1) negotiation of incentive agreements; (2) all recruiting and marketing efforts; (3) representation of the Client at trade shows; (4) booking meetings for the Client with prospective retailers; and (5) including the Client in marketing materials.

5. 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 City Manager (the “Client Representative”), currently Edward Dean. 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’s communications to the Consultant will include information regarding retail growth and development, such as actual and prospective business openings and closings, changes in economic drivers (e.g., significant increases or decreases in workforce of major employers, school enrollments, housing or healthcare services) and changes in the ownership of targeted real estate (e.g., transfers of real estate or changes in the finances of ownership). 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.).
- C. The Client hereby authorizes the Client Representative (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.

6. INTELLECTUAL PROPERTY. As part of the Services, the Consultant will prepare periodic and final reports including demographic and other research reports that will become the

property of the Client upon delivery from the Consultant. Any other reports, memoranda, 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, such as specifics related to retailers, developers, site information or other "confidential information" for internal purposes while taking reasonable steps to so limit the use of such materials and maintain its confidentiality. The parties acknowledge and agree that (i) the Client is a Florida municipal corporation which has public record compliance obligations pursuant to Chapter 119, Florida Statutes, and (ii) pursuant to Section 119.0715, Florida Statutes, a trade secret (as defined by Section 688.002, Florida Statutes) of the Consultant held by the Client is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

7. 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.
- B. **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.
- C. **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.
- D. **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.

8. 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: Haines City, Florida
620 East Main Street

Haines City, FL 33844
Email: edward.dean@hainescity.com
Attention: Edward Dean, City Manager

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.

9. 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.

10. 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. **Compliance with Laws:** The Consultant will abide by all laws, rules and regulations applicable to the provision of the Services.
- C. **Applicable Laws.** This agreement shall be construed, interpreted and controlled by the Laws of the State of Florida.
- D.

Insurance: As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Consultant, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Consultant. The Consultant shall provide the Client a certificate of insurance evidencing such coverage. The Consultant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Consultant shall not be interpreted as limiting the Consultant's liability and obligations under this Agreement. All

insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the Client's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the Client, and these coverages, limits, and/or endorsements shall in no way be required to be relied upon by the Consultant for assessing the extent or determining appropriate types and limits of coverage to protect the Consultant against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the Client's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Consultant under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 project aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 project aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The Client, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Consultant. The coverage shall contain no special limitation on the scope of protection afforded to the Client, its officials, employees, and volunteers.

Projects over \$10,000,000, contractor shall maintain \$3,000,000 general liability coverage for each occurrence.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Consultant does not own vehicles, the Consultant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the Client must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the Client's Risk Manager, if they are in accordance with Florida Statute.

The Consultant waives, and the Consultant shall ensure that the Consultant's insurance carrier waives, all subrogation rights against the Client and the Client's officers, employees, and volunteers for all losses or damages. The Client requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Consultant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Workers Compensation coverage through an Employee Leasing structure (PEO) is not acceptable.

Insurance Certificate Requirements

- a. The Consultant shall provide the Client with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Consultant shall provide to the Client a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Consultant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Consultant shall provide the Client with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The Client reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The Client shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The Client shall be granted a Waiver of Subrogation on the Consultant's Workers' Compensation insurance policy.
- h. The title of the Agreement or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Haines City
620 E. Main St.
Haines City, FL 33844

The Consultant has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the Client as an Additional Insured shall be at the Consultant's expense.

If the Consultant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Consultant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Consultant's insurance coverage shall be primary insurance as respects to the Client, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the Client, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Consultant that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the Client, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, the Consultant must provide to the Client confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The Client reserves the right to review, at any time, coverage forms and limits of Consultant's insurance policies.

The Consultant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Consultant's insurance company or companies and the Client's Risk Management office, as soon as practical.

It is the Consultant's responsibility to ensure that any and all of the Consultant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Consultant.

E.

F. **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.

G. **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.

H. **Public Records.** The parties acknowledge that Client is a "public agency" and the Consultant is a "contractor" as defined in Section 119.0701, Florida Statutes, and that Consultant must comply with public records laws, and specifically to:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

- b. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 - c. Ensure that 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 public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
 - e. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
- I. **Presuit Mediation.** Disputes arising under this Agreement must first be mediated by a Florida Supreme Court-certified Civil Mediator in accordance with Chapter 44, Florida Statutes. The parties agree that the mediation shall occur within thirty (30) days of the date mediation is requested by either party. The Mediator shall be agreed upon, but if the parties are unwilling or unable to agree, the parties agree that a Civil Mediator from Central Florida Mediation Group, LLC shall be selected by striking names from the mediators in that Group. The parties agree to mediate in good faith, be bound by the Mediation Agreement (if any), pay Mediator fees promptly and share them on an equal basis unless otherwise agreed upon by the parties. Litigation may not be commenced until after mediation has been (i) declared an impasse by the Mediator, or (ii) terminated in writing by one or both of the parties. The confidentiality provisions of the Mediation Confidentiality and Privilege Act (Section 44.403, Florida Statutes) shall apply to any such pre-suit mediation.
- J. **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.
- K. **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.
- L. **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.
- M. **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.

- N. **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.
- O. **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.
- P. **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.
- Q. **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.
- R. **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.
- S. **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.
- T. **Survival:** Section 5 and Section 9(H) will survive termination of this Agreement.
- U. **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 Effective Date.

CITY OF HAINES CITY,

A Florida municipal corporation

By: _____
Morris L. West, Mayor-Commissioner

ATTEST:

Erica Anderson, City Clerk

APPROVED AS TO FORM AND CONTENT.

Fred Reilly, City Attorney

CONSULTANT:

RETAIL STRATEGIES, LLC

By: _____
Name:
Title:
Date

EXHIBIT A

I. CONSULTANT AGREEMENT

This section outlines what Retail Strategies (the "Consultant") will provide to Haines City, FL (the "Client").

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. Customized retail market guide including aerial map with existing national retailer brands and traffic counts
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 30 retail prospects to be targeted for recruitment over three-year engagement
10. Updates provided on retail industry trends
11. 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. Will contact a minimum of 30 retailers, restaurants, brokers and/or developers
3. Updates on new activity will be provided to Client's 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