

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into as the day of 5 of September 2019, by and between the DELAWARE DIVISION OF SMALL BUSINESS ("DSB") a division of the DEPARTMENT OF STATE ("DOS"), an agency of the State of Delaware (the "State"), the DELAWARE STATE HOUSING AUTHORITY ("DSHA"), and Retail Market Answers ("Vendor").

NOW THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the parties hereto agree as follows:

**1. Services**

Vendor shall perform for DSB and DSHA the services (the "Scope of Work") specified in Appendix "A" attached hereto and made a part hereof.

**2. Payment for Services**

In consideration of the services provided for under this Agreement, DSB agrees to pay Vendor the amounts (the "Fee Schedule") as indicated on Appendix "A" attached hereto and made a part hereof. The Fee Schedule shall include all fees for services.

The Fee Schedule shall be paid by DSB to Vendor upon the date the Purchase Order covering the Fee Schedule has been approved by the Secretary of the Department of Finance of the State.

Vendor shall submit an invoice to DSB on a monthly basis. Upon the approval of the Purchase Order, DSB agrees to pay those invoices within thirty (30) days of receipt. DSB and DSHA shall have the opportunity to review any invoices prior to payment being made. In the event DSB or DSHA disputes a portion of an invoice, DSB agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of DSB's and/or DSHA's position on the disputed portion of the invoice within thirty (30) days of receipt. The obligation of DSB to pay any consideration to Vendor is subject to Section 10 hereof. All payments should be sent to Vendor in accordance with the instructions provided to the Delaware Division of Accounting during supplier registration.

**3. Term**

The effective date of this Agreement shall be the date a valid, executed Purchase Order (the "Purchase Order") covering the Fee has been approved by the Secretary of the Department of Finance of the State (the "Effective Date").

The term of this Agreement shall be from the effective date through June 30, 2020 (the "Term").

**4. Responsibilities of Vendor**

Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor under this Agreement.

Vendor will not use DSB's and/or DSHA's name, or any other materials furnished by DSB and/or DSHA either express or implied, in any of its advertising, marketing or sales materials without DSB's and/or DSHA's express written consent.

**5. DSB's and DSHA's Responsibilities**

DSB and DSHA agrees that its officers, employees or designated representatives will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.

Vendor will not be responsible for accuracy of information or data supplied by DSB and/or DSHA.

**6. Workproduct; Intellectual Property; Permissions**

Vendor agrees that all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft furnished by DSB and/or DSHA under this Agreement are the sole and exclusive property of the State and that they shall not be used by Vendor or by any other person or destroyed without the express written permission of DSB and/or DSHA.

**7. Termination**

Unless sooner terminated hereunder, this Agreement shall terminate at the end of the Term or any extension; provided however, that the provisions of this Agreement that survive this Agreement by their own terms shall continue in full force and effect.

This Agreement may be terminated in whole or in part by either party for cause in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than fifteen (15) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

This Agreement may be terminated in whole or in part by DSB and/or DSHA for their convenience, but only after Vendor is given:

- a. Not less than fifteen (15) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DSB and/or DSHA prior to termination.
- c. If termination for default is effected by DSB and/or DSHA, DSB will pay Vendor that portion of the compensation, which has been earned as of the effective date of termination.

**8. Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**9. Force Majeure**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**10. Non-Appropriation of Funds**

Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DSB may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DSB's and DSHA's obligations under it shall be extinguished at the end of the fiscal year in which the State fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts, which will then become due.

**11. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Vendor consents to jurisdiction venue in the State of Delaware.

**12. Complete Agreement**

This agreement and its Appendices shall constitute the entire agreement between DSB, DSHA and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

The rights and remedies of DSB, DSHA and Vendor provided in this Agreement are in addition to any other rights and remedies provided by law.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this Agreement as of the date first above written.

DELAWARE STATE HOUSING AUTHORITY

RICK FERRELL

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Rick Ferrell*  
*President, Retail Market Answers, LLC*

DELAWARE DIVISION OF SMALL BUSINESS

By: \_\_\_\_\_  
Name: Damian DeStefano  
Title: Director

# **APPENDIX “A” TO PROFESSIONAL SERVICES AGREEMENT SCOPE OF WORK & FEE SCHEDULE**

**Position: Community Development Coach  
Effective: September 1, 2019-June 30, 2020**

## **I. Community Development Coach**

### **A. Scope of Services**

The Downtown Development Districts (DDD) program has helped spur private investment in targeted areas throughout the state. In order to build on this success, and continue to enhance the program, the State of Delaware Department of State, Division of Small Business, has entered into an agreement with Retail Market Answers (Vendor) for professional services as a Community Development Coach to current and potential future designated Districts. Services will be provided to:

1. Organize, educate, empower, and develop municipal staff to assist them in identifying and attracting new businesses or expanding existing ones in their downtowns;
2. Develop specific actionable recommendations tailored to specific downtowns, and highlight unique growth opportunities for each;
3. Advance the integration of the DDD program into other local, state, and regional economic development initiatives;
4. Advance public/private redevelopment opportunities by developing strategic merchandising strategies for downtowns and related “economic nodes”.
5. Evaluate each District’s incentive package and if needed, recommend amended incentives to increase their effectiveness and attractiveness;
6. Provide business development/coaching to existing and potential developers and business owners; and,
7. Market priority projects to larger investor bases in order to attract additional investment.

#### **Contract Management Team:**

Representatives from the State of Delaware Division of Small Business, Delaware State Housing Authority, and the Office of State Planning Coordination will work with Vendor via a partnership working process to:

1. Ensure agreement regarding reporting; financial management; implementation of services and allocation and budgeting of hours.
2. Review, discuss and agree on issues arising from monthly report.
3. Communicate progress with respective agencies;

4. Manage and communicate expectations of services with Districts; and,
5. Ensure services are aligned with DDD program objectives.

**VENDOR:**

To meet the above objectives, the Vendor will:

1. Evaluate each District's need for technical assistance and capacity/preparedness.
  - In the context of the District Plan and related supporting documents, audit the District's capacity in terms of what they have assessed, their plan(s) and subsequent actions taken to date.
  - Evaluate municipal personnel, partnering organizations, volunteers and their prospective stakeholder partners, gauge functional capacity and preparedness to maintain and advance their District (particularly in terms of priority projects, its goals, and objectives). This will include the following areas:

**Ability to Retain** existing businesses by helping them stabilize/maintain, and grow this ongoing cycle that requires attention for thriving downtowns.

**Ability to Recruit and Attract** both development and business investor/prospects.

**Ability to Assist, Inform and Promote:** While organizational structures may exist, is it adequately communicated to state, county, and other local resource partners.

*This audit will identify the following:*

- A. Metrics to track and measure by organizational or municipal partners. Examples of metrics include:
    - Retail Goods and Services Business/Category mix
    - Jobs creation
    - Vacancy Reduction
    - New Business Growth
    - Current Business Expansion (existing businesses that have grown)
    - New resident spending potential analysis
  - B. Areas of technical assistance necessary to meet District goals. See Appendix A for 'Categories of Assistance'.
  - C. Key tracking and measuring tool for the District: The Business and Building Inventory to match "end-users" of downtown space with the available space for occupancy.
2. Share results of Audit with Contract Management Team. The audit will be used to prioritize actions and determine best approach for delivery of services, such as:
    - Provided by the Vendor using the following categories;
      - General product available to each DDD
      - Specialized assistance to a particular community
      - One-on-One Business Owner/Prospect Technical Assistance
    - Provided in existing venues such as regularly scheduled DDD workshop;

- Supported or provided by a Contract Team Member through their agency role and its respective resources; or,
- Through vendors or arrangements outside of this contract.

A Delivery of Services Work Plan will be mutually agreed upon by the Vendor and Contract Management Team. To manage Vendor hours, the Work Plan will allocate time to provide direct assistance to individual DDD municipalities, and existing and potential developers and businesses.

3. Implement Assistance to DDD Municipalities. The Vendor will implement the Work Plan as directed and will update Contract Management Team through the monthly reporting process. The Vendor is further encouraged to reach out to the Contract Management Team for guidance anytime during the contract period.

## **B. Monthly Report and Meeting**

- A. The Vendor and Contract Management Team will meet monthly to ensure services are delivered according to Work Plan. The meetings may occur in person or via conference call/webex, and in a mutually agreed upon format. The meeting will cover the following items:
  - Status update regarding actions completed in the previous month and progress on the overall Work Plan for the contract period.
  - An opportunity to evaluate performance and adjust priorities and assigned actions as needed to achieve the objectives of the Scope of Services.
  - An opportunity for the Vendor to provide feedback and observations to Contract Management Team regarding opportunities to improve the performance of the DDD program, or issues that hinder the success of the DDD program.
  - Each meeting will result in agreed 'actions' that include responsible party for the action and target completion date.

## **II. Appendix**

### **A. Categories of Assistance**

1. Business Recruitment Assistance to Property Owners, their Real Estate Broker representatives and directly to prospective and current Business Owners
2. Business Retention – providing one on one assistance to targeted business in an effort to stabilize or improve business performance, succession planning, sale and disposition of businesses or real estate assistance to retain categories of business
3. Business Expansion Assistance
4. Access to Capital
5. One-On-One Business Owner/Prospect Technical Assistance in areas of:
  - a. Strategic business development planning
  - b. Developing financial projections for redevelopment and development projects
  - c. Small business plan development

- d. Retail Merchandising assessments
  - e. Product mix
  - f. Signage
  - g. Store-layout assistance
  - h. Debt restructuring
  - i. Loan assistance to support access to capital needs (recomuning providers and articulating the needs of the business in the context of the lenders requirements)
  - j. Site selection assistance
  - k. Marketing assistance
6. Grant writing assistance
  7. Primary and Secondary Marketing research
  8. Market Demographics
  9. Gap Analysis
  10. Ongoing Implementation Assistance relating to all of the above services

Responsibilities:

- Provide administrative support to the Division of Small Business (up to 40 hours per month)
  - Draft communications to targeted external stakeholders
  - Coordinate meetings, training sessions, conferences, etc.
  - Perform research into contracts or other projects as required
  - Assist in maintaining Division records in accordance with internal guidelines and archive schedules
  - Identify areas of opportunity in performing outreach to small business community
  - Compile data in support of DSB programs
  - Assist Director/Deputy Director as needed
- Schedule time throughout the month to total up to 40 hours of in-office support. Proposed schedules should be sent to the Director/Deputy Director prior to the 1<sup>st</sup> of each month.

Compensation: **\$5,000 per month** (to be paid in accordance with Section 2 of the Agreement)

DELAWARE STATE HOUSING AUTHORITY

RICK FERRELL

By: \_\_\_\_\_

Name: *Alissa Menzies*  
 Title: Director

By: \_\_\_\_\_

Name: *Rick Ferrell*  
 Title: *President, Retail Market Answers, LLC.*

DELAWARE DIVISION OF SMALL BUSINESS

By: \_\_\_\_\_

Name: Damian DeStefano  
 Title: Director