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### **TECHNOLOGY & ADVISORY SERVICES AGREEMENT**

This Technology & Advisory Services Agreement ("Agreement") effective as of June 1, 2020 ("Effective Date"), by and between Giftbar, LLC., a California Limited Liability Corporation ("Giftbar"), and The City of Merced ("Client"), a California City incorporated in 1889.

WHEREAS, Client desires to secure the technology & advisory services of Giftbar, and Giftbar desires to provide such services to Client;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Subject to the terms of this Agreement, Giftbar shall provide technology and advisory services to Client, as specifically provided in Schedule 1 attached hereto as amended from time to time upon the written consent of both Giftbar AND Client (collectively, the "Services"). Giftbar will use its commercially reasonable best efforts to perform the Services consistent with and specifically recognizing Giftbar's commitments and obligations to other businesses for which it performs services.
2. Giftbar has agreed to a customized package with the following terms:
  - (a) Giftbar agrees to forego any up front development compensation for the "City of Merced Giftbar Marketplace", the "Card Application and Administration Portal", the ongoing hosting/support/maintenance of these systems, the distribution of funds to merchants in the timely manner, and the collaborative marketing efforts to promote the project;
  - (b) Client will begin with a prepaid amount of no less than \$500,000. Said prepaid funds will be held in trust by Giftbar and will be distributed in accordance with the business rules of the City Of Merced Giftbar Marketplace program. Additional funds may be added to program at any time per the same terms in this contract;
  - (c) Giftbar will take a piece of each prepaid amount to cover administrative costs, as outlined in Schedule 1, prior to the commencement of the program. Any injection of prepaid dollars into this effort will be subject to the same fees. These fees are non-refundable;



(d) City of Merced agrees to aid Giftbar's efforts to replicate this program in other California cities through the endorsement of Giftbar's efforts and introductions as available.

3. The term of this Agreement shall commence on the Effective Date and continue for a period of two (2) years ("Term"), and shall automatically renew for successive one year term(s), unless either party provides the other party with written notice of termination of this Agreement at least 30 days prior to the end of the initial term or any renewal term.

This Agreement may be earlier terminated by either party (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party, or (b) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within ninety (90) days, or the other party becomes judicially declared insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course. In the event Client elects to terminate this Agreement without cause: (a) Client shall be obligated to pay to Giftbar fees and pre-approved expense reimbursements with respect to the period through the date of such termination and (b) the provisions of Sections 4, 5, 6, 7, 8, and 9 shall survive such termination and continue in full force and effect.

#### Rights in Materials.

All materials custom developed pursuant to Client's specifications shall be the sole and exclusive property of Client ("Work Product") and shall be considered "Work for Hire". Client agrees that this Agreement shall not prevent Giftbar from providing services to other customers using the ideas, concepts, techniques, know how and experience used hereunder or from developing products or services which might be similar to or competitive with the Work Product.

The Work Product custom developed by Giftbar may include Giftbar materials which shall remain the property of Giftbar or its third party licensors ("Giftbar Materials"). Giftbar Materials are generally used or provided to Giftbar's customers in the normal course of Giftbar's business and include, but are not limited to, products, software, documentation, algorithms, methodologies, notes, data, processes, techniques or know how or any modifications or enhancements thereto, and all intellectual property rights contained therein, or any other materials or components identified by Giftbar as Giftbar Materials.

Giftbar grants to Client a nonexclusive license to use the Giftbar Materials embodied in the Work Product or provided as standalone material for Client's internal use only. Client may make one copy of the Giftbar Materials for archival or backup purposes only and shall include all existing copyright and other proprietary notices in such copy. No title to or ownership of Giftbar Materials or any of its parts, nor any



applicable intellectual property rights therein such as patents, copyrights or trade secrets, are transferred to Client.

In the event Client desires that Giftbar, in the performance of Services hereunder, use software licensed to Client by a third party, Client shall ensure that Client has the right to provide Giftbar with access to such software on Client's behalf. Giftbar shall use such software only in the performance of services hereunder and shall have no further rights to such software.

4. Client hereby agrees that in the event that Giftbar or any of its officers, directors, agents or employees is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding") related to Client or the Services under this Agreement, or to the extent that Giftbar or any such indemnified person is a witness in any proceeding, by reason of the fact that Giftbar serving or had served as a consultant to Client, whether the basis of such proceeding is alleged action or inaction in such capacity as a consultant or in any other capacity while serving as a consultant, Giftbar or any such person shall be indemnified and held harmless by Client, to the fullest extent permitted by applicable law, against costs, charges, expenses, liabilities and losses (including attorney's fees and disbursements, judgements, fines, or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by Giftbar or any such person after Giftbar has ceased to provide Services to Client and shall inure to the benefit of the successors, heirs, executors, and administrators of such persons; provided, however, that Client shall not be required to indemnify Giftbar or any such person if Giftbar (or by any other indemnified person's), as the case may be, is finally determined in such proceeding to be guilty of negligence, misconduct, bad faith or knowing violation of applicable law. Giftbar or any such indemnified party shall have the right to be paid or reimbursed by Client the expenses incurred in defending or serving as a witness to producer of documents in any such proceeding, upon the written request by Giftbar in advance of the final disposition of the proceedings. This right to indemnification and the right to payment or reimbursement of expenses incurred in defending or serving as a witness or responding to a document request in any such proceeding in advance of its final disposition shall not be exclusive of any other right or remedy which Giftbar may have.
5. Giftbar agrees to indemnify, hold harmless and defend Client, its directors, officers, employees and agents from and against any and all claims, actions, proceedings, losses, liabilities, costs and expenses (including, without limitation, reasonable attorney's fees) incurred by any of them in connection with or as the result of any negligence or misconduct by Giftbar or any of its directors, officers, employees or agents, in connection with the performance of Giftbar's services pursuant to this Agreement.
6. Giftbar makes no representations, expressed or implied, that it will affect a financing or exist as a result of the Services furnished under this Agreement except that it will use commercial best



efforts to deliver the Services. Except as otherwise expressed herein, the duties of Giftbar shall not include legal or accounting services, which shall be procured by Client at its own expense.

7. In the event of any dispute, claim, or disagreement arising from or relating to this Agreement or the breach thereof, the parties agree to use all reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they agree to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 30 days, then the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration. Any controversy or claim arising from or relating to this contract or breach thereof not resolved by mediation shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties further agree that the mediation or arbitration shall take place in Redding, California. The Client shall have the sole right, at its sole discretion, to select both a mediator and an arbitrator from a list designated by the office of the American Arbitration Association in Chicago, Illinois. The arbitrator is empowered to grant only such relief as would be available in a court of law. The fees and expenses of the arbitrator shall initially be borne equally by the parties. Judgment may be entered on the award of the arbitrator in any court having jurisdiction. The prevailing party in the arbitration proceeding as determined by the arbitrator, and in any enforcement or other court proceedings, shall be entitled, to the extent provided by law, to reimbursement from the other party for all of the prevailing party's reasonable costs (including but not limited to the arbitrator's compensation), reasonable expenses and reasonable attorney's fees.
8. This Agreement shall be governed and construed in accordance with the laws of the State of California, without giving effect to any conflict or choice of law provision that would result in the imposition of another state's Law. This Agreement, together with the exhibits and schedules hereto and thereto which are hereby incorporated herein by this reference, constitutes the complete agreement between the parties with respect to the subject matter hereof. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. Neither party shall have the right to assign all or any portion of its obligations or interests in this Agreement or any monies which may be due pursuant hereto without the prior written consent of the other party. This Agreement shall be for the benefit of and binding upon the parties hereto and shall inure to the benefit of the heirs, successors, assigns, executors, administrators and personal or legal representatives of the parties.
9. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any facsimile



or portable document format (pdf) copies hereof or signature hereon shall, for all purposes, be deemed originals.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Services Agreement to be executed in their respective names by their respective officers thereunto duly authorized, as of the date first written above.

Giftbar, LLC

City of Merced

By: Alex Minicucci

By: Steven Carrigan

Title: Founder / CEO / Manager

Title: City Manager

APPROVED AS TO FORM:

PHAEDRA A. NORTON  
City Attorney

Date



## **CUSTOM GIFTBAR PROGRAM FOR CITY OF MERCED**

The goal of this initiative is to create a localized merchant stimulus program that provides the Merced community with a spending allowance at local merchants only, with the intention to create positive community sentiment, new customer relationships and economic momentum to revitalize the City of Merced's small business community, and correspondingly, improve the quality of life for all citizens of the City of Merced.

- 1) Giftbar will create a custom, co-branded merchant portal that mirrors Giftbar.com, but only displays merchants authorized by City of Merced
  - a) Giftbar will waive the customary setup (\$299) and monthly (\$99) fees for all business participating in this program;
  - b) Giftbar will discount the online marketplace fee from 18% to 3% on the custom 'City of Merced Giftbar Marketplace'. This fee will be deducted from the remittance of 'prepaid funds' to Giftbar at the time of deposit.
  - c) Giftbar will also discount the standard processing fee from \$2.95/card to \$1.00/card. This will also be deducted from the 'prepaid funds' distributed to the Merchant.
- 2) Merchants will also be displayed on Giftbar.com (primary site) and be subject to full marketplace fee (customary for sale through Giftbar marketing efforts) of 18% and subject to our standard processing fee (paid by the purchaser).
- 3) Giftbar will create a "Card Application and Administration Portal", to be developed in conjunction with the City of Merced to help administrate the distribution of cards. The goal of this portal will be to:
  - a) Ensure fair and equal distribution of cards to all who are entitled to them
  - b) Minimize fraud
  - c) Follow business rules of program (ie: 'one card per family', 'must reside in Merced')
  - d) Pull expired cards out of circulation, then offer again to community to ensure utilization
- 4) Giftbar shall also be reimbursed for all Client pre-approved reasonable and necessary out-of-pocket expenses incurred in the performance of its duties, upon presentation of monthly statements.
  - a) There may be expenses associated with the emails and other administrative duties.
- 5) Giftbar will administrate the prepaid dollars, and ensure the prompt payment to merchants within best practices determined by Giftbar.
  - a) It is Giftbar's goal to remit payment to merchants within 48 hours or less once card has been used at said merchant. This will decrease consumer issues with merchants having gone out of business or refusing to honor cards. If Giftbar holds the funds until redeemed, Giftbar can switch the card for another merchant.
- 6) Giftbar will work collaboratively with the City of Merced to promote this special program through all means appropriate, including: links on city and county web properties, promotion on broadcast channels (radio/TV/newspaper), etc.



- 7) Giftbar will work collaboratively with the City of Merced to ensure the proposed program meets the California Community Foundation Grant requirements, as follows:
- a) The key indicators/metrics will be provided by the City at any stage of the process the donor requests and a final impact report at the end of the initiative. [See Metrics listed below]
  - b) The end date of the program is one year from the start date. The City will begin the voucher program soon after the June 15th City Council meeting.
  - c) The program will be measured in 90-day increments. After the first 90 days, the City will reach out to those who did not respond to ensure they received the information. This will continue until the City feels that they have made every effort to inform the public and the public has been given full opportunity to participate in the program.  
[The one-year timeline gives the donor and the City a year of exposure, as the need is not going away soon. It also gives the City more time to get additional donors.]
  - d) Provided there is a balance of money after the program, the donor and the City will decide whether to get a refund and/or reinvest in a new program after the one-year period.

Metrics:

- e) Phase 1: Codes released to all households (90 days)
- f) Phase 2: Receive updated on non-redeemed codes, re-issue codes for distribution (90 days)
- g) Phase 3: Receive update on non-redeemed codes, re-issue codes for distribution (90 days)
- h) Phase 4: Receive update on non-redeemed codes, personal contact made to remaining households (60 days)
- i) Phase 5: Final report on all funds disbursed, refund to City/Grantee (1 year)