

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
BUXTON COMPANY**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 3rd day of April, 2020 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and BUXTON COMPANY, a Texas corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide retail recruitment and mobile visitor insights solution services, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant's Proposal, attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant's total compensation shall not exceed Forty-Nine Thousand Nine Hundred Dollars (\$49,900.00). City shall pay Consultant in two (2) installments

in accordance with Exhibit A.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit the first invoice to the City, for fifty percent (50%) of Consultant's maximum compensation, upon execution of this Agreement. Consultant may submit the second invoice, for the remaining fifty percent (50%) of Consultant's total compensation, on or after July 1, 2020. City agrees to pay Consultant's invoices within thirty (30) days of receipt. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of one (1) year, ending on April 2, 2021, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including

the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start

of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the

parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Buxton Company
2651 South Polaris Drive
Fort Worth, TX 76137
Tel: (817) 320-0388
Attn: Lisa McCay

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5088
Attn: Dan Inloes

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

6.5. Drug-Free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall

be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance

Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors,

pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.21. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.22. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.23. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.24. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.25. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.26. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.27. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.28. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CONSULTANT

David Glover
Signature

David Glover, Chief Financial Officer
[Name and Title]

Date: 4/21/2020

[Redacted]
Social Security or Taxpayer ID Number

CITY OF COSTA MESA

Susan Price
Assistant City Manager

Date: 5/5/20

ATTEST:

Brenda Green
Brenda Green
City Clerk



APPROVED AS TO FORM:

Kimberly Hall Barlow
Kimberly Hall Barlow
City Attorney

Date: 5/1/20

APPROVED AS TO INSURANCE:

Ruth Wang
Ruth Wang
Risk Management

Date: 4/29/2020


APPROVED AS TO CONTENT:



Daniel Inloes
Project Manager

Date: 4/21/2020

DEPARTMENTAL APPROVAL:



Barry Curtis
Economic and Community Development
Director

Date: 4/21/20

APPROVED AS TO PURCHASING:



Jennifer King
Assistant Finance Director

Date: 4/28/2020

EXHIBIT A
CONSULTANT'S PROPOSAL



Proposal

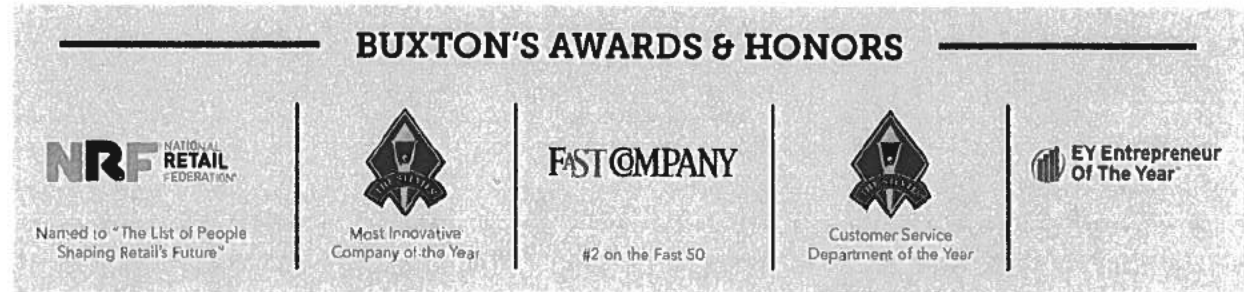
RETAIL RECRUITMENT & MOBILE VISITOR INSIGHTS SOLUTION

Prepared by: Lisa McCay
Expiration: March 2020

Buxton[®]

OUR VALUE PROPOSITION

Since our founding in 1994, Buxton has been a leading force in retail site selection and development. We are recognized for creating solutions that provide results. Buxton began as a service to help retailers make informed site selection decisions by understanding their customers and precisely determining their markets. Buxton soon realized that the company's expertise in retail site and market analysis could also be leveraged to benefit communities desiring retail expansion.



More than simply providing data, Buxton supplies custom marketing materials and strategies targeting the unique site requirements of retailers, developers, and commercial real estate brokers. Buxton clients achieve outstanding success using our tools for retail identification, selection, and recruitment. Clients benefit from Buxton's unique understanding of site selection from the retailer's point of view.

- **Grow Your Community.** Create new, permanent jobs that will satisfy your citizens' desire to shop at home; retain dollars currently spent outside of your community and maximize revenue growth to fund city services
- **Leverage Buxton's Retail Industry Expertise.** Establish credibility with decision makers by providing factual evidence to support your site and gain a competitive position by leveraging our experience:
 - 4,000+ total clients from the retail, restaurant, healthcare, and public sector industries
 - 800+ public sector clients nationwide
 - 40+ million square feet of retail space recruited
 - 500+ cumulative years of retail management and economic development experience
- **Access Your Buxton Solution with Ease.** Utilize your best-in-class retail recruitment solution via SCOUT™ with the touch of a button from any mobile device; gain answers to your retail recruitment and site analysis questions and have the big picture in the palm of your hand
- **Develop a Long-Term Partnership.** Receive personal guidance and ongoing insight into key industry topics. **Staff:** Account Manager, Project Manager, Scout Helpdesk, Sr VP, Managing Director.

SCOPE OF SERVICES

Buxton is pleased to present this proposal to the City of Costa Mesa, California. The purpose of this proposal is to outline and review your community development objectives and how Buxton's solutions will enhance your ability to effectively meet those objectives.

City of Costa Mesa's Objectives:

1. **Develop profile of residents, workforce and visitors, leveraging mobile analytics**
2. **Understand current retail and restaurant economic condition**
3. **Recruit new retailers and restaurants**
4. **Retain existing retailers and restaurants**

Retail Recruitment and Retention Solution: Your Community & Visitor Profile

Our solution is a total marketing strategy that enables community leaders to understand the consumer profile of their residents and to identify specific retailers and restaurants who seek a market with household purchasing habits just like yours. This solution provides you with the ability to actively pursue identified retailers, making a compelling case for their expansion to the City of Costa Mesa by utilizing custom marketing packages that Buxton will create for you. You will have access to the same analytical information and insights retailers depend on today to make site selection decisions. This knowledge will provide you with instant credibility and the ability to differentiate your community.

Step 1 – Research Your Community

Buxton uses over 250 consumer and business databases that are updated regularly and compares your potential sites to the universe of all competing sites operating in the U.S. We define your current retail situation and those in any neighboring communities that impact your retail environment.

Step 2 – Define and Evaluate Your Trade Area

Customers shop by convenience, measuring distance based on time, not mileage. We will conduct a custom drive-time analysis to determine your trade area using our proprietary methodology and knowledge of individual retail clients' actual trade areas. Your drive-time trade area will be provided to you as a map that accurately depicts your consumer shopping patterns.

Step 3 – Profile Your Trade Area's Residential and Visitor Customers and provide insights related to events

You will have insights into more than 7,500 categories of lifestyles, purchase behaviors, and media reading and viewing habits of your residents and visitors. Buxton will develop three (3) unique profiles for your solution:

1. **Residential Profile** – will analyze all the households in your drive-time trade area.
2. **Visitor Profile (non-resident)** – will analyze data from mobile devices for a recent twelve-month (12) period where the device holder's originating address is located outside of your city limits (domestic addresses only). Buxton will combine this mobile dataset with our other household-level data, which provides Buxton with a way to develop an accurate consumer profile of the visitors to your community.

Combined Total Community Consumer Profile – Buxton will combine your residential and visitor profiles to develop your overall consumer profile which will be used to match retailers and restaurants as fits for your community.

Step 4 – We Match Retailers and Restaurants to Market Potential

Buxton will match the consumer profile of your community's trade area against the customer profiles of 5,000+ retailers in our proprietary database. We will identify the similarity between the two profiles analyzed using Buxton's proprietary retail matching algorithm to determine if your site presents an attractive opportunity for each retailer. We then qualify the list of matched results to verify that a retailer is currently operating or expanding, that they operate in similar sites, and that your site affords adequate buffer from competition and cannibalization to be realistically considered.

Step 5 – We Create Marketing Packages

Buxton will assemble individualized marketing packages for up to twenty (20) targeted retailers. We will notify each retailer's key real estate decision maker by letter, informing them that they have been qualified by Buxton as a potential viable fit for your site and should expect to be contacted by a representative of the city.

Your marketing packages will be delivered to you in SCOUT, an application in the Buxton Analytics Platform, and include a:

1. Map of the retail site and trade area
2. Map of the retailer's potential customers

Retailer match report that compares the site's trade area characteristics and consumer profile with the retailer's sites in similar trade areas

Support decision-making Costa Mesa and provide a tool for discussions between the City and various grocer concepts/brands in the southern sector with special attention given to at least the following target areas:

Include sites

Step 6 – We Provide Business Retention Tools

Buxton will provide reports through SCOUT that can be used to support business retention efforts by helping local business owners to make better business decisions. In addition, Buxton is pleased to offer the City of Costa Mesa access to LSMx. LSMx, which stands for Local Store Marketing powered by Buxton, is a customer acquisition solution designed specifically for small business owners and franchisees. The City of Costa Mesa can also leverage this tool to support local businesses and entrepreneurs, foster an environment that encourages private-public partnerships, and strengthen the business climate in their community. Upon execution of the LSMx Addendum, the City of Costa Mesa will have access to up to 25 complimentary LSMx monthly subscriptions/license codes* to distribute to local retailers, restaurants and service providers.

Solution Deliverables:

- Buxton Analytics Platform/SCOUT access - \$25,000 value
- Drive time trade area maps - \$5,000 value
- Retail site assessment - part of marketing packages task below
- Residential, visitor (mobile analytics), and combined profile - \$10,000 value offered complementary

- Retailer specific marketing packages (for up to twenty (20) retailers)-\$20,000 value
- LSMx subscriptions (for up to twenty-five (25) monthly license codes)* -\$5,000 value offered complementary

Multi Year Deliverables (Optional):

If elected, Years 2 and 3 of this agreement will include a Retail Recruitment model refresh, retail marketing packages, LSMx subscriptions,* and full access to the Buxton Analytics Platform.

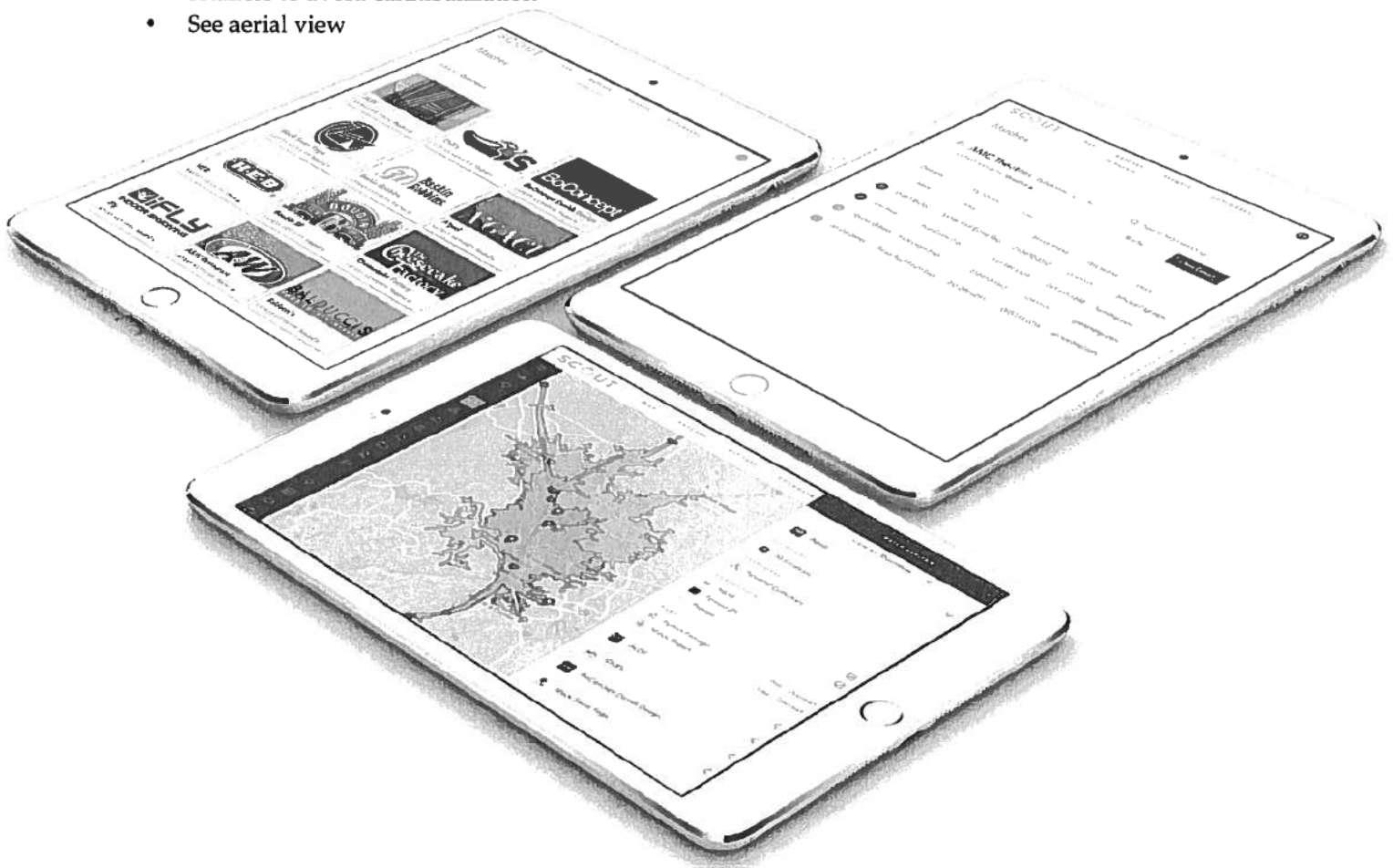
**LSMx deliverables are subject to the City of Costa Mesa executing the LSMx Addendum and the terms and conditions described therein.*

Access and Use Your Retail Recruitment Solution via the Buxton Analytics Platform

Buxton's Retail Recruitment and Retention solution will allow you to actively recruit retailers to your community and support existing businesses with just a few clicks using SCOUT, which provides you with crucial information about your community, your trade areas, your residents, and much more. SCOUT is an application in the web-based Buxton Analytics Platform, which is accessible on any Windows or iOS enabled device with an Internet connection. It is designed to give decision-makers in your community access to the data and solutions that will assist them in making better business decisions. The Retail Recruitment and Retention solution enables (15) SCOUT users with the ability to run demographic and trade area profile reports, and view maps and other data elements.

In SCOUT you will be able to:

- Identify retail matches
- Geolocate and assess Enclaves
- Assess existing business within City
- Run variable reports
- View city limit maps
- Access split-screen views and Google street view
- Access dynamic thematic mapping
- Print maps (including large format)
- See existing locations for prospective retailers to avoid cannibalization
- See aerial view
- View physician intelligence
- Run healthcare reports
- Run consumer propensity reports
- Run comparable reports
- Run demographic reports
- Run retail leakage/surplus reports
- Track outreach activity to quickly report on economic development efforts to stakeholders



Reporting Features

Retail Leakage Report

The Retail Leakage/Surplus Analysis provides an estimate of retail dollars flowing into or out of the trade area. It calculates a sales gap index that provides an estimate of the dollars spent outside the trade area (leakage) and the number of dollars coming in from outside the trade area (surplus), as well as a relative comparison of leakage/surplus.

Consumer Propensity Report

The Consumer Propensity Report (CPR) shows lifestyle, product, and psychographic likelihood indices for consumers in the trade area. Information is provided for thirty-two (32) major categories with more than 4,800 total line items. Please note that line items are based on national-level purchasing and lifestyle characteristics. These line items are then correlated to the underlying household characteristics of consumers in the trade area. Some line items may not be relevant or available in your market. The score indicates the degree to which local consumers would purchase an item if it were relevant and available. Often, similar brands or concepts use this information to determine expansion potential.

Demographic Report

The Demographic Report is a good go-to resource as it includes almost all of our demographic information in a single report. It can yield many different outputs as listed below.

*Age by Sex**

Provides a breakdown of the population by age and sex. Offers total population for several years and breaks this information down further by sex and age range.

*Basic Demographic Chart**

Healthcare Reports

There are six healthcare reports available in SCOUT. These reports give insight into healthcare demand by major diagnostic code, physician specialty, physician setting, DRG, and payment source by current year or 5-year projections. The physician intelligence report also provides a count of physicians in the study geography.

Profiles Report

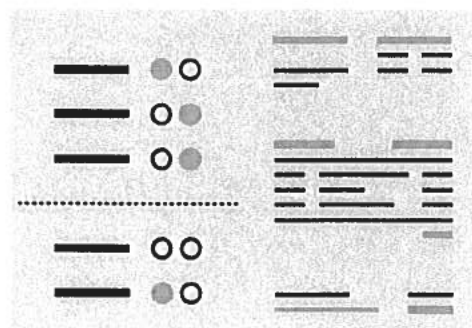
Gives residential/workplace populations and percentage breakdowns of the 71 Mosaic segment groups.

Green Awareness Report

Provides a household and workplace green awareness index score.

Count Base Daytime Population Report

The Daytime Population Report looks at the workforce in the study area and gives a count of the workforce population by industry. It also allows you to see a count of businesses in the area by two-digit SIC and workforce size.



Provides a breakdown of population by general categories, including households by income, household size, age, race and ethnicity percent change, educational attainment percent change, marital status, and household and population percent change.



Complete Demographic*

Provides a breakdown of the population by specific groups, for 2000 and 2010 census numbers, current year estimates, and 5-year projections. These categories include: population demographics, population by race/ethnicity, population by age, median age, households by income, employment, housing units, vehicles available, marital status, and educational attainment.

Household Units Summary

Provides a breakdown of households within a specified geography. Information includes total number of housing units, owner vs. renter statistics, home value of owned homes, and monthly cash rent.

Income by Age Summary

Provides a breakdown of household demographics and income by age of head of household for the 2000 and 2010 censuses, current year estimates, and 5-year projections.

Income Report*

Provides a breakdown of population demographics and splits the households into groups by income for the 2000 and 2010 censuses, current year estimates, and 5-year projections.

Mosaic Comparison Summary

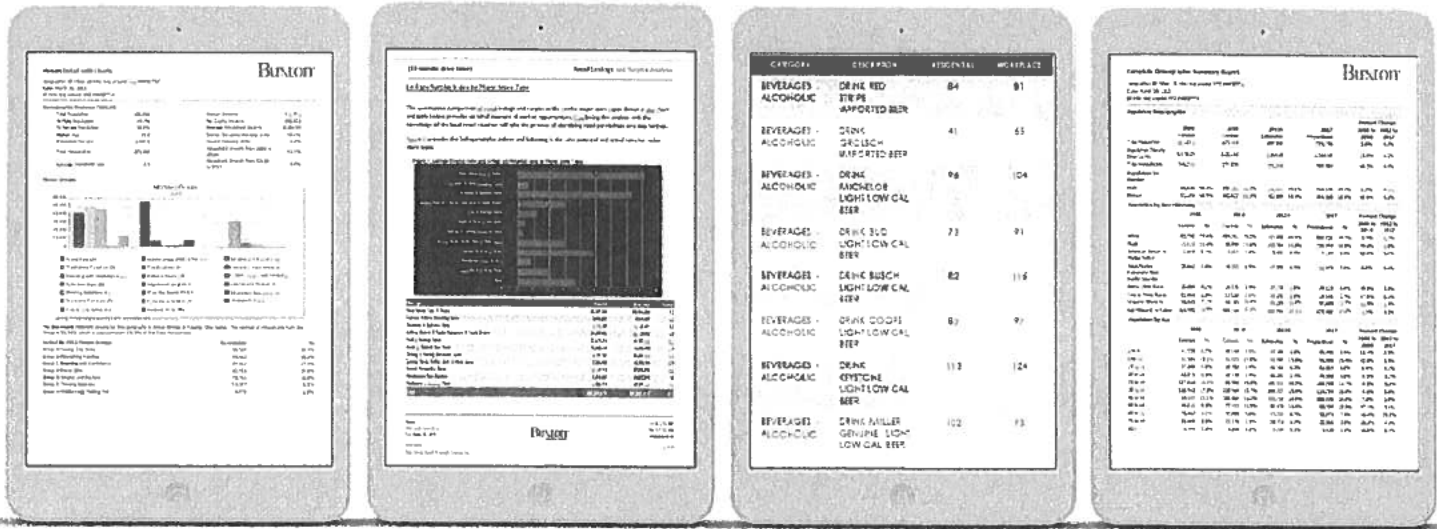
Gives a population and percentage breakdown of the 71 Mosaic segment groups.

Mosaic Detail Charts

Gives a demographic overview and a graph showing the breakdown of the 20 Mosaic groups within the specified geography. This report also indicates which group is dominant and sorts each group by percentage.

Population Comparison Report

Gives total population, female vs. male population, educational attainment, marital status, race, and Hispanic ethnicity as percentages. These numbers are based on 2000 and 2010 censuses, current year estimates, and 5-year projections.



*These reports can be run as summary or comparison reports. The summary report allows you to see results for multiple geographic regions combined, or a single drive time or radius. The comparison report allows you to compare up to 5 geographies side-by-side in the same output.

SUPPORT

Buxton Analytics Platform Technical Requirements

The Buxton Analytics Platform can be accessed at the following URL: www.buxtonco.com

The Buxton Analytics Platform is a web-based collection of applications accessible on any desktop, laptop, or mobile tablet device that has an Internet connection. When operating the platform, Buxton's recommended hardware configuration is 4-core CPU, 4 GB RAM (or higher). Examples include most modern-day laptops or desktops purchased within the last 3 years, iPad Pro 2017 or newer, Microsoft Surface Pro 2 or newer, or Samsung Galaxy Tab S3. The recommended browser for accessing the platform is the latest version of Chrome.

Buxton's Helpdesk

(1-817-332-3681) is available during normal office hours (8:00 AM-5:00 PM CST, excluding weekends and public holidays). Buxton's Helpdesk team will be available to support all educational, functional, and technical inquiries and will respond to all requests within twenty-four (24) hours of submission.

Buxton's Helpdesk

Monday – Friday: 8:00 am – 5:00 pm CST

1-817-332-3681

TERM, FEES, AND DELIVERY

Agreement Term

Year 1 Fee (50% invoiced upon execution of this agreement; 50% invoiced July 1 2020)	\$49,900
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Delivery **The City of Costa Mesa will have access to retail match lists and marketing packages within sixty (60) business days of execution.**

Your Buxton Analytics Platform access will be enabled within ten (10) business days of the execution of this agreement. The City of Costa Mesa will have access to retail match lists and marketing packages within sixty (60) business days of execution. All service fees associated with this agreement are due in net ten (10) days of the date of the invoice. Execution of this agreement will act as full consent that Buxton may include the City of Costa Mesa on its client list and in presentations and public relations efforts. Additionally, Buxton may issue a press release announcing the City of Costa Mesa as a client. When doing so, Buxton will not reveal information that is confidential and proprietary to the City of Costa Mesa.

PROJECT TIMELINE

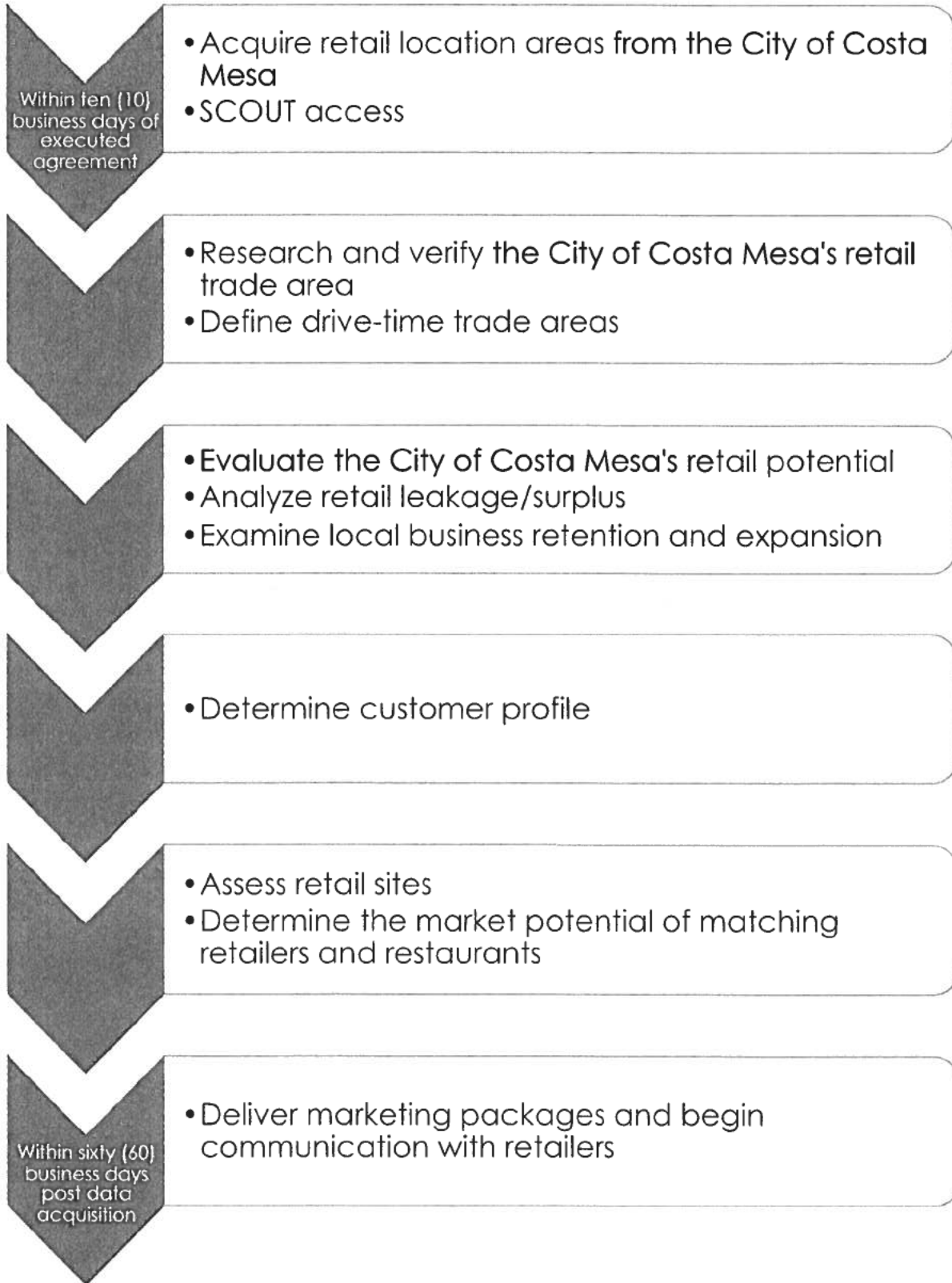


EXHIBIT B

CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
 - B. Establishing a Drug-Free Awareness Program to inform employees about:

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.