

AGREEMENT FOR SERVICES #233-S1011

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Buxton Company, a Retail Retention and Development Consultant, duly qualified to conduct business in the State of California, whose principal place of business is 2651 S. Polaris Drive, Fort Worth, TX 76137, (hereinafter referred to as "Consultant"), City of Placerville ("City") and Marshall Medical Center ("Marshall");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Consultant to provide a Retail Retention and Development Tool; and

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, the services with consultant are valuable to County, City and Marshall and;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County, City, Marshall and Consultant mutually agree as follows:

ARTICLE I
Scope of Services:

Consultant, Buxton to provide professional services to the County, City and Marshall concerning Business Retention, Expansion and Attraction, Customer Analytics, Demographic Profiles to include Health Care Services, for a period of two years as described in Exhibit A Proposal to Develop a Retail Economic Development Strategy attached.

Access to the SCOUT program will be provided to each of the three (3) recipient parties by Buxton without additional charge for two (2) years. Sites analyzed by Buxton will be chosen by

City of Placerville (up to one (1) site), and El Dorado County (up to six (6) sites). Each site will be analyzed separately and will be considered independent entities for the purposes of retail matching. Buxton will analyze portions within the overall City site in order to find differences and similarities between natural divisions of the community. This exercise will be done in order to utilize various methodologies for sections of the City to achieve direction on business retention as well as attraction and promotion. For example, should we find that the downtown is dramatically different than the rest of the community; we may chose (with the Cities permission) to utilize a business retention model for profiling rather than the traditional method of recruitment. Health Care analysis will be delivered following the site analysis. Buxton will submit a draft Physician needs Assessment for review with back up information on their findings and conclusions with the ability to provide clarification where their information may need to be adjusted. The Physician needs assessment shall be limited to the Western Slope of El Dorado County. Marshall Hospital shall be involved in the choice of the 14 markets we will be compared to. Designated project managers for each entity will receive all deliverables and correspondence regarding the project. The project managers include:

- John Driscoll- City Manager; City of Placerville, CA
- James Whipple- Administrator; Marshall Medical Center
- Ronald A. Grassi -Chief Administrative Office; County of El Dorado, CA

Consultant agrees to furnish the personnel and equipment necessary as outlined in “Exhibit A”.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire two years from date of execution.

ARTICLE III

Compensation for Services:

County, City and Marshall agree to contribute to the costs of those services in return for access to the work product, as follows:

1. The three (3) undersigned recipient parties (County, City and Marshall) agree to pay Consultant (Buxton Company) their respective share of the Community ID Retail Retention and Development Tool within thirty (30) days following the receipt and approval of the invoice(s) identifying services in accordance with the following payment schedule:

1. \$17,500 invoiced to the City upon execution of the agreement
2. \$17,500 invoiced to Marshall upon completion of Health Care Analysis
3. \$55,000 invoiced to the County of El Dorado on August 1, 2010

SCOUT will be delivered for 2 years with this agreement and includes the following:

1. Waived-Monthly maintenance fee of \$1,000 per month
2. Waived-Set Up fee of \$3,000

After the second year there will be a \$1,000 per month SCOUT maintenance fee. The first year

begins upon completion of the project. El Dorado County may cancel SCOUT at any time with thirty (30) days written notice. If cancellation is within the first three years, the \$3,000 set up fee will be charged.

Direct travel costs will be charged for any pre-approved, mutually agreed upon travel associated with the project. This does not include travel associated with the presentation or negotiation of this agreement.

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

ARTICLE VI

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VII

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subConsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the

provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE IX

Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole

or in part upon seven (7) calendar day's written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO

Chief Administrative Office, Office of Economic Development
330 Fair Lane
Placerville, CA 95667
ATTN: Ronald Grassi, Assistant Chief Administrative Officer

Or to such other location as the County directs.

Marshall Medical Center
1100 Marshall Way
Placerville, CA 95667
ATTN: James Whipple, Administrator;

City of Placerville
3101 Center Street
Placerville, CA 95667
ATTN: John Driscoll, City Manager

Notices to Consultant shall be addressed as follows:

BUXTON COMPANY
2651 S. POLARIS DRIVE
FORT WORTH, TX 76137
ATTN: LISA HILL, VICE PRESIDENT

Or to such other location as the Consultant directs.

ARTICLE XI

Indemnity: The Consultant shall defend, indemnify, and hold the County, City and Marshall harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County, City and Marshall employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, City or Marshall the Consultant, subConsultant(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may

have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the County.

ARTICLE XIII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIV

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

ARTICLE XV

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

ARTICLE XVI

California Residency (Form 590): All independent Consultants providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVIII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XIX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Ron Grassi, Assistant Chief Administrative Officer, Chief Administrative Office, or successor.

ARTICLE XX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXII

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator Concurrence:

By: _____ Dated: _____
Ronald Grassi
Assistant Chief Administrative Officer
Chief Administrative Office

Requesting Department Head Concurrence:

By: _____ Dated: _____

Gayle Erbe-Hamlin
Chief Administrative Officer
Chief Administrative Office

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

CITY OF PLACERVILLE, CA

By: _____ Dated: _____

Title: _____

MARSHALL MEDICAL CENTER

By: _____ Dated: _____

Title: _____

AND

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chairman
Board of Supervisors
"County"

ATTEST:
Suzanne Allen de Sanchez, Clerk

of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

-- CONSULTANT --

Buxton Company
2651 Polaris Drive
Fort Worth, TX 76137

By: _____
Lisa Hill
Vice President
"Consultant"

Dated: _____

By: _____
Corporate Secretary

Dated: _____

vs