

RESOLUTION No. 2008-53-740

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT WITH THE BUXTON COMPANY TO PREPARE A RETAIL MARKET ANALYSIS FOR THE CITY IN AN AMOUNT NOT TO EXCEED \$50,000.00, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, as part of its efforts to stimulate economic development, the City needs to attract national retailers, and

WHEREAS, in order to attract national retail establishments, it is necessary for the City to conduct a study to assist the City with demonstrating the benefits of locating in the City to larger retail establishments, and

WHEREAS, Mayor Shirley Gibson is recommending that the City contract with the Buxton Company in order to provide a retail market analysis for the City, and

WHEREAS, since this is a professional service contract, the City is not required to bid this Project; however, the City of Fort Myers issued RFQ #1001-04 for a retail market analysis and awarded the Project to the Buxton Company,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The City Manager and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement with

the Buxton Company to prepare a retail market analysis for the City of Miami Gardens in an amount not to exceed \$50,000.00, a copy of which is attached hereto as **Exhibit A.**

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to the Buxton Company, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MARCH 26, 2008.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, CMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: MAYOR SHIRLEY GIBSON

MOVED BY: Councilman Williams  
SECONDED BY: Councilman Bratton

**VOTE: 6-1**

Mayor Shirley Gibson	<u>  x  </u> (Yes)	<u>    </u> (No)
Vice Mayor Barbara Watson	<u>  x  </u> (Yes)	<u>    </u> (No)
Councilman Melvin L. Bratton	<u>  x  </u> (Yes)	<u>    </u> (No)
Councilman Oliver G. Gilbert III	<u>  x  </u> (Yes)	<u>    </u> (No)

Resolution No. 2008-53-740

Councilman Aaron Campbell  
Councilwoman Sharon Pritchett  
Councilman André Williams

<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)
<input type="checkbox"/>	(Yes)	<input checked="" type="checkbox"/>	(No)
<input checked="" type="checkbox"/>	(Yes)	<input type="checkbox"/>	(No)

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# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Barbara Watson  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilwoman Sharon Pritchett  
Councilman André Williams

## Agenda Cover Page

Date: **March 26, 2008**

Fiscal Impact: No  Yes

(If yes, explain in Staff Summary)

Funding Source: **Economic Dev. Initiative Grant**

Contract/P.O. Requirement: Yes  No

Sponsor Name/Department: **Mayor Shirley Gibson**

Public hearing

Ordinance

1st Reading

Advertising requirement:

RFP/RFQ/Bid # **City of Ft. Myers #1001-04**

Quasi-Judicial

Resolution

2nd Reading

Yes  No

## Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT WITH THE BUXTON COMPANY TO PREPARE A RETAIL MARKET ANALYSIS FOR THE CITY IN AN AMOUNT NOT TO EXCEED \$50,000.00, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

## Staff Summary

### Background

As part of its efforts to stimulate Economic Development, the City desires to attract an increased level of national retailers. City staff recognizes the potential that exists here in the City given the existing and expected resident population, the City's geographic location, and the existing presence of anchor properties such as Dolphin Stadium and St. Thomas and Florida Memorial Universities.

While the desire to attract national retail establishments is a priority, there exist the challenges of which specific retailers to attempt to attract, and the most effective method with which to attract them. In seeking to address this matter, City staff researched several nationally recognized companies whose expertise is centered in this type of analysis, and identified Buxton as the best vendor to conduct the City's Economic Development Research. **Buxton** was founded in 1994 and has been a leading force in retail locations and development. Moreover, they work with numerous national retailers in conducting site selection work on their behalf. Their service now includes retail and market analysis (Community ID) to communities to assist them in leveraging the community's benefits to achieve the appropriate retail mix. To date, Buxton has provided their Community ID services to over forty (40) cities, towns, or CRA's.

The outcome of the Community ID would be a detailed report showing the appropriate retail mix for the city, along with marketing packages that will be used to attract those specific retailers. The research will be broken into four phases:

- Researching and Verifying Miami Garden's Retail Trade Area
- Evaluating Miami Garden's Retail Potential
- Matching Retailers and Restaurants to Miami Garden's Market Potential
- Delivering Miami Gardens' Marketing Packages

The ultimate goal of the Community ID is to provide a framework for the City for developing a sustainable marketing program designed to ensure the economic viability of the retail sector over the long-term. It is estimated that the study will be completed within sixty (60) business days.

This resolution seeks City Council approval in contracting with Buxton for the provision of the Community ID services to the City of Miami Gardens. The cost of these services will not exceed \$50,000. The City of Ft. Myers issued RFQ #1001-04 for a retail market analysis and awarded the project to Buxton-Community ID. Ft. Myer's contract allows other governmental entities to utilize this contract with the same terms and conditions. Adopting the proposed resolution would authorize the City Manager to execute the attached agreement and allow City staff (Department of Community Development) to coordinate with Buxton to proceed with the work.

**Recommendation**

It is recommended that City Council approve the attached resolution.

## AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this 26<sup>th</sup> day of March, 2008, by and between the City of Miami Gardens, a Florida municipal corporation (hereinafter referred to as "City"), and Buxton Company authorized to do business in the State of Florida, (hereinafter referred to as "Consultant") and jointly referred to as the Parties.

### WITNESSETH:

WHEREAS, the City of Ft. Myers competitively bid and awarded a Professional Services Agreement to Consultant for Retail Market Analysis and Retail Economic Development Strategy dated March 21, 2007, ("City of City of Ft. Myers RFQ#1001-07"); and

WHEREAS, PROVIDER agrees to allow the CITY to "piggy-back" on the City of Ft. Myers Agreement,

NOW THEREFORE, in consideration of the premises and the mutual covenants herein named, the parties hereto agree as follows:

#### Article 1      Incorporation by Reference.

The following documents are hereby incorporated by reference and made part of this Agreement.

- (i) Specifications and Proposal Documents prepared by the City for Ft. Myers for Retail Market Analysis and Retail Economic Development Strategy Services (Exhibit 1).
- (ii) Proposal for the City of Miami Gardens prepared by Consultant dated March 7, 2008. (Exhibit 2).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. This Agreement
- B. Exhibit 1
- C. Exhibit 2

#### Article 2      Scope of Work

Consultant shall conduct community ID retail economic development strategy per the methodology, scope of study and timeline to conduct the analysis of the City's retail potential and for implementation for retail marketing as outlined in Exhibit 2.

### Article 3      Qualifications

Consultant and the individual executing this Agreement on behalf of the Consultant warrant to the City that the Consultant is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Consultant possesses all of the required licenses and certificates of competency required by the State of Florida and the County of Miami-Dade to perform the work herein described.

### Article 4      Compensation

For all Services provided by Consultant, the City shall pay Consultant \$45,000.00. All invoices for services shall be submitted not more than once per month and upon completion and acceptance of each phase and in sufficient detail to demonstrate compliance with the terms of this Agreement, and shall include a detailed explanation of all fees and charges. The City shall remit payment within thirty (30) days after submittal of an invoice

The City's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the City Council. Consultant shall make no charges to the City for supplies, labor, taxes, licenses, permits, overhead or any other expenses or costs unless any such expense or cost is incurred by Consultant with prior written approval of the City. If the City disputes any charges on the invoices, it may make payment of the contested amounts and withhold payment on the contested amounts until they are resolved by agreement with Consultant. Reimbursable expenses shall be listed individually, with supporting documentation attached.

### Article 5      Completion Time

The work described herein shall be completed not later than sixty (60) days from the date of award.

### Article 6      Indemnification

Consultant shall defend, indemnify, and hold the City, its agents, officers, and employees harmless from and against any and all demands, claims, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all of its expenses including reasonable attorney fees and costs, up through any appeal. The City retains the right to select counsel of its choosing. Nothing contained herein shall be deemed a waiver of sovereign immunity.

### Article 7      Insurance

Consultant shall provide and maintain general liability insurance coverage, for personal injury and property damage in the minimum amount of One Million (\$1,000,000.00) Dollars, per incident, for personal injury, and Five Hundred Thousand (\$500,000.00) Dollars, per incident, for property damage.

Consultant shall provide and maintain professional liability (errors and omissions) insurance coverage 1) \$500,000 per occurrence, \$1,000,000 aggregate or dedicated project limits with a deductible (if applicable) not to exceed \$25,000.00 per claim (audited financial statements required). The certificate of insurance shall reference any applicable deductible. 2) Claims made policy must have an extended period of two years or occurrence based policy. 3) Deductible program or Self Retention Program an Irrevocable Letter of Credit or performance Bond for amount of SRI is required.

Consultant shall also be required to provide and maintain, during the life of the Agreement, comprehensive automobile liability insurance coverage for bodily injury and property damage in the minimum amount of \$500,000.00 or each occurrence and \$500,000.00 combined single limit.

All policies of insurance shall designate the CITY as an additional insured and Consultant shall deliver a fully effective certificate to that effect, evidencing no less than thirty (30) day cancellation power.

Consultant shall also provide CITY with proof that Consultant has workers' compensation insurance in an amount, which satisfies the requirements of Florida Law, for any employee of the Consultant.

Consultant shall not commence work pursuant to this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

#### Article 8      Term

This Agreement shall become effective upon execution by both parties and shall continue in force until receipt and acceptance of all deliverables as outlined in Exhibit 2.

#### Article 9      Termination

The City may, for its convenience and without cause, terminate this Agreement by giving Consultant written notice at least thirty (30) days prior to the effective date of the termination. Upon written notice of the termination, Consultant shall provide only those services and incur only those expenses specifically approved or directed in writing by the City Manager.

The City may, terminate this Agreement for cause immediately, and shall provide notice as soon as possible to Consultant.

Consultant may terminate this Agreement by giving the City at least thirty (30) days prior to the effective date of termination.

In the event of termination or expiration of this Agreement, Consultant and City shall cooperate in good faith in order to effectuate a smooth and harmonious transition from Consultant to the City or to any other person or entity the City may designate, and to maintain during such period of transition that same services provide to the City pursuant to the terms of this Agreement.

Consultant will take all reasonable and necessary actions to transfer all records, etc. and data of the City in its possession in an orderly fashion to either the City or its designee in a hard copy and computer format.

If either party terminates this Agreement, the City shall only pay Consultant for the services provided through the date of termination.

#### Article 10      Ownership

All inventions, discoveries, deliverables, intellectual property, technical communications and records originated or prepared by Consultant pursuant to this Agreement including papers, charts, computer programs, and other documentation or improvements thereto shall be owned by the City.

#### Article 11      Modification/Amendment

This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

#### Article 12      Severability

If any term or provision of this Agreement shall to any extent be held invalid, or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

#### Article 13      Governing Law

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

#### Article 14      Waiver

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

No waiver by the City of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Consultant of the same, or any other provision or the enforcement thereof. The City's consent to or approval of any act by Consultant requiring the City's consent or approval shall not be deemed to render unnecessary the obtaining of the City's consent to or approval of any subsequent consent or approval of Consultant, whether or not similar to the act so consented to or approved.

Article 15      Notices/Authorized Representatives

Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

City:  
Danny Crew, City Manager  
City of Miami Gardens  
1515 NW 167<sup>th</sup> Street #200  
Miami Gardens, FL 33169

Consultant:  
Chip Rodgers  
Buxton Company  
2651 South Polaris Drive  
Fort Worth, TX 76137-4479

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

Article 16      Independent Contractor

Consultant is and shall remain an independent contractor and is not an employee or agent of the City. Services provided by Consultant shall be by employees of Consultant and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the City.

Consultant shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Consultant. The rights granted to Consultant hereunder are nonexclusive, and the City reserves the right to enter into agreements with other persons or firms to perform services including those hereunder.

Article 17      Assignment

Subject to the provisions above, this Agreement shall not be assignable by Consultant.

Article 18      Prohibition Against Contingent Fees

Consultant warrants that it has no employees or retained any Consultant or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s),

Consultant, corporation, individual or firm, other than a bond fide employee working solely for Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 19      Attorneys Fees

Should any dispute arise hereunder, the City shall be entitled to recover against the Consultant all costs, expenses and attorney's fees incurred by the City in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions.

Article 20      Non-Discrimination

Consultant agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, the Americans with the Disabilities Act of 1990, the Age Discrimination Act of 1975. Consultant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status or status with regard to public assistance. Consultant will take affirmative action to insure that all employment practices are free from such discrimination.

Article 21      Conflict of Interest

Consultant agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.11, as amended, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

Article 22      Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

Article 23      Construction

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

Article 24      Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

Article 25      Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

Article 26     Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 27     Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Article 28     Exhibits are Inclusionary

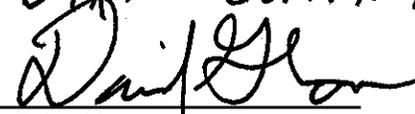
All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

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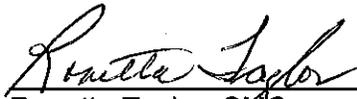
IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

WITNESSES:

  
Print Name: Judy Young  
Office Manager

BUXTON COMPANY  
By:   
Print Name: DAVID GLOVER  
CHIEF FINANCIAL OFFICER

ATTEST:

  
Ronetta Taylor, CMC  
City Clerk

CITY OF MIAMI GARDENS

By:   
Danny Crew  
City Manager

Date: 4/2/2008

APPROVED AS TO LEGAL SUFFICIENCY AND FORM:

  
\_\_\_\_\_  
Sonja Dickens, City Attorney