

**CITY OF SAUSALITO  
PROFESSIONAL/CONSULTING SERVICES AGREEMENT**

This **PROFESSIONAL/CONSULTING SERVICES AGREEMENT**, (the "Agreement") is made and entered into this \_\_\_ day of November, 2019, by and between the **CITY OF SAUSALITO**, a municipal corporation (hereinafter "City") and **KOSMONT COMPANIES**, a California Corporation with offices located at **1601 North Sepulveda Boulevard, Manhattan Beach, CA 90266** (hereinafter "Consultant").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

**Section 1. Scope of Work.**

Consultant shall provide City with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full.

The duties and services required of Consultant under this Agreement and pursuant to this Section 1 are referred to throughout the remainder of this Agreement as "the Work."

**Section 2. Term of Services.**

The term of this Agreement shall begin on the Effective Date and continue through June 30, 2020, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 16.

**Section 3. Responsible Individual.**

Consultant represents and warrants that the execution of this Agreement has been approved by Consultant and that person executing this Agreement on behalf of Consultant has the full authority to do so. The person responsible for the Work is **Ken K. Hira, President, Kosmont Companies**.

**Section 4. Work Schedule.**

Consultant shall be available to work as many hours as required to complete the Work immediately upon receipt of the signed Agreement from the City and shall complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.

**Section 5. Compensation.**

In consideration of the performance of the Work Consultant shall be compensated in accordance with the fee schedule attached hereto as Exhibit B and shall not exceed \$59,000. Consultant shall not charge City for any additional administrative expenses or overhead, including without limitation, facsimile, mileage and other/or any other expenses incurred by Consultant in connection with Consultant's provision of the Work.

Consultant acknowledges and agrees that the compensation to be paid to Consultant under this section represents the full amount due and owing to Consultant in connection with performance of the Work.

**Section 6. Amendments.**

In the event City desires to retain Consultant for the performance of additional services or wishes to delete any services in connection with this Agreement, specifications of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

**Section 7. Independent Contractor - Subcontractors.**

It is specifically understood and agreed that in the making and performance of this Agreement, Consultant is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent, or servant of City. The consultant shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Consultant acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Consultant hereby waives any and all claims to such rights and/or privileges.

**Section 8. Consultant's Responsibility.**

It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that City relies upon the professional skills of the Consultant to do and perform the Work in a skillful and professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work

Acceptance by City of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment, the Work can and shall be completed for a fee within the amounts set forth in Section 3 of this Agreement.

**Section 9. Indemnification.**

**Indemnity for Professional Liability:**

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal Consultant's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities, and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

### **Indemnity for Other Than Professional Liability:**

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal Consultant's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant. Consultant shall consult with City staff should it become necessary to defend the Land Economics Study as a result of any legal or other challenge.

## **Section 10. Insurance.**

### **Professional Liability Insurance**

Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

### **General Liability**

Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Consultant's general liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.

### **Auto Liability**

Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident.

### **Workers' Compensation**

Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

### **Section 11. Nondiscrimination.**

There shall be no discrimination against any employee who is employed in the Work, or against any applicant for such employment because of race, religion, color, sex, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

### **Section 12. City Personnel Conflict of Interest.**

No officers, member, or employee of City and no member of the governing body of City who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which she is, directly or indirectly interested; nor shall any such officer, member or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

### **Section 13. Consultant Conflict of Interest.**

Consultant covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. Consultant further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.

### **Section 14. Assignment.**

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of City.

### **Section 15. Ownership of Work and Documents.**

Consultant agrees that all work and documents produced in the performance of this Agreement shall be the sole property of the City including all rights therein of whatever kind and whether arising from common or civil law or equity.

### **Section 16. Termination.**

City and/or Consultant may terminate this Agreement at any time without reason stated or required by giving written notice of the same and specifying the effective date thereof, at least sixty (60) calendar days before the effective date of such termination.

If the Agreement is terminated by City as provided herein, Consultant shall be paid for all effort and material expended on behalf of the Work under the terms of this Agreement, less any charges against Consultant as otherwise provided herein, up to the effective date of termination, except that upon notification of such termination, Consultant shall immediately cease to undertake any duties under the Agreement not yet underway, and shall limit its further activities up to the effective date of termination to those duties necessary to wind up work then underway.

**In Witness Whereof**, City and Consultant have executed this Agreement as of the date first written above.

City of Sausalito

Consultant  
Kosmont Companies

\_\_\_\_\_  
By: Adam W. Politzer  
Its: City Manager

\_\_\_\_\_  
By: Ken K. Hira  
Its: President

Approved as to form:

\_\_\_\_\_  
Mary Anne Wagner  
City Attorney

## **EXHIBIT A SCOPE OF WORK**

The Scope of Work to be provided was included in the proposal submitted by Consultant and is shown below:

### **UNDERSTANDING / APPROACH**

Kosmont Companies (“Kosmont”) understands the challenges facing the City and dozens of other cities in the evolution of land uses including marine/waterfront industrial, retail, restaurants, arts, office, hospitality, residential, etc. We applaud the City’s decision to do a Land Economics Study as a prelude to the preparation of an Economic Development Strategic Plan, updated zoning, and land use policies, as well as for the General Plan update in process.

The City Council has appointed two subcommittees to assist Council in understanding local business conditions. Business Advisory Council (“BAC”) consists of 9 members whose focus is on the economic health of the community and the Hospitality Business Development Committee (“HBDC”) consists of six members whose focus is on promoting hospitality and tourism.

As technology is prevalent in today’s communication and consumers’ purchasing commodities and a broad array of goods, economic forces demand approaches to land use that explore diversification in uses and densities, and concepts for public amenities and private attractions that help cities create destinations. Younger consumers, with their increased use of media and digital communication, seek gathering places with restaurants, entertainment venues and experiential retail, rather than simply a collection of traditional store fronts. Another important group is the creative class of professionals (artists, designers, scientists, musicians) who are an important force in economic development. This dynamic workforce is attracted to communities with clustered centers, which provide a sense of vitality, diversity, convenience and a mix of work, entertainment, services, arts, and culture.

Building on these studies, the City is seeking a consultant to provide focused recommendations to enhance the economic vitality of three unique areas of the City: The Downtown retail area, the Caledonia neighborhood retail area, and the Marinship area. Kosmont is dedicated to assisting the City in achieving this objective by gathering available market data for commercial, industrial, hospitality and residential real estate markets in the City, complemented with more focused analysis of marine/waterfront, local serving and tourist oriented commercial, applied arts and fine arts.

Kosmont’s approach is to not only analyze, but also strategize, and most importantly, implement our findings (as desired) to help the City achieve the desired results of creating a compelling experience for residents and visitors, as well as foster a sense of community to which people and businesses are drawn to the Downtown, Caledonia, and Marinship areas and are inspired to participate in these destinations.

The RFP identified seven specific issues to be addressed:

- Study Existing and Desirable Uses in Business Areas
- How can the Business Mix in Sausalito be improved?
- Strategies to Retain & Grow Independent Businesses?
- Should the City review/revise Format Retail restrictions?
- How does the City attract high value visitors?
- What businesses are missing from Sausalito? Future uses?
- Study Resident Serving Business and their future success

While our analysis will address and prioritize these items, Kosmont believes items such as “How to improve the Business Mix“, “How to attract high value visitors” and identifying future success can be also addressed in more depth during the City’s Economic Development Strategic Plan process.

### **SCOPE OF SERVICES**

The following scope of work details Kosmont’s approach for this analysis. The approximate time required for each task is included herein is estimated to take approximately 16 weeks\* to complete, reflecting the additional presentations requested.

#### **Task 1: Kick off Meeting and Assessment of Current Land Use Conditions (2 weeks)**

Kosmont will commence its assessment by in-person meeting with City staff to discuss Client objectives with respect to the seven issues identified in the RFP (discussed above), refine the scope of work and establish communication protocols. Kosmont will tour the three districts, interview select business owners/managers and review the following documents to help understand how each district has evolved, irrespective of actual zoning, and explain they are likely to evolve over the next 5-20 years:

- City General Plan
- Sales Tax and Business Tax Data by Geo Zone (ideally 10 years of data for each zone)
- Marinship Specific Plan
- Previous Revitalization efforts
- Recommendations from BAC and HBDC

Kosmont will learn from this review the many ideas that have been recommended by the community and will prepare a Strength, Weakness, Opportunities, Threat (“SWOT”) analysis to help prioritize the ideas.

#### **Task 2: City Outreach (Concurrent with Task 1)**

In conjunction with the kickoff meeting, Kosmont will work with City staff to coordinate in-person meetings with City Council members, Economic Development subcommittee members (BAC, HBDC), and other key stakeholders to understand goals and objectives (e.g. increase tax revenues, provide better services for residents, etc.) and then identify business zone opportunities best suited to achieve those objectives.

### **Task 3: Economic Trends & Market Potential (3 Weeks)**

Kosmont will outline the current national and regional land use/retail trends relevant to the retail environment (e.g. increasing emphasis on destination and experience). Consultant will identify office, retail, residential, marine industrial and hospitality market trends, best practices, and incentives used by other communities to enhance the success of local businesses.

To better understand the local market, Kosmont will prepare an Economic and Demographic Profile, illustrating social and economic characteristics, including population, household incomes, race/ethnicity, housing preferences, educational attainment, commute patterns, resident/employee concentrations, tourist population, tapestry segments (a psychographic analysis profiling lifestyles, purchasing behaviors, and media readings of area households and individuals), and other metrics such as social media artificial intelligence (when available) within specific geographic boundaries as deemed relevant by Consultant.

Additionally, Kosmont will evaluate local market conditions by category within the three districts (e.g. hotel, office, marine/waterfront uses, arts, restaurants, grocery, general merchandise, etc.). This evaluation will include an analysis of retail sales surplus/leakage to determine whether retail sales are being captured in the City or lost to neighboring geographies (or to online shopping). Kosmont will also examine variables such as retail sales per square foot, sales tax revenue, TOT revenue, commercial inventory, vacancy and lease rates, absorption rates, and other relevant real estate data for Sausalito and competitive Marin County communities. From this analysis and findings, Kosmont will make recommendations to reach more consumers, help grow small businesses and assist the City gradually expand service offerings toward the needs of residents and visitors.

### **Task 4: Land Use Planning / Case Studies (3 Weeks)**

Kosmont has worked with many communities, who have similar issues to Sausalito and the Marinship area, related to the evolution of industrial zones (Funk Zone in Santa Barbara, Smoky Hollow in El Segundo). Kosmont will outline the land use trends and case study research relevant to identify benefits that can come from a vibrant mix of blended uses (marine/waterfront, arts, retail/restaurant, creative office, hospitality, and housing). Consultant will identify best practices and density incentives used. Kosmont will do a preliminary evaluation of the available vacant/underutilized land within the three districts to understand the potential for financially feasible development. Kosmont will also examine local infrastructure challenges and prepare a menu of potential public financing options to explore. Kosmont will prepare an interim draft report summarizing the results of the initial analysis.

### **Task 5: Special Events, Marketing (1 week)**

Kosmont will review City's current marketing, arts and events programming and will suggest high level changes to restructure (e.g. use of Social Media platforms, Free Concerts, Farmer's Markets, Pop-Ups) and provide more opportunities for the benefit of residents and increase downtown pedestrian traffic.



### **Task 6: Permits, Regulatory Tools & Policies (2 Weeks)**

Kosmont will have discussions / conduct phone interviews with key stakeholders (list to be provided by City) as appropriate to identify needs and challenges faced by businesses, property owners, commercial brokers, lenders, business associations and government officials. Kosmont will review City regulations that affect local businesses (Format Retail and Land Use restrictions), including permitting rules and implementation procedures, signage, outdoor dining, and special events. This information will be used by Kosmont to identify potential revisions to regulations, policies, and procedures to improve new business startup and existing business growth.

### **Task 7: Draft Report / Final Presentation (4 Weeks)**

The report will summarize existing conditions, including our assessment of how the three business districts (Downtown, Caledonia, Marinship) will likely evolve over next 5-20 years. Based on the SWOT analysis, Kosmont will discuss with the City staff a wide range of strategies to capitalize on the opportunities and address the threats for each of the three districts, in three major categories (Marketing, Capital Investment and Administrative Actions). They can help transform the daytime and nighttime uses and prioritize sites for potential new development. Consultant will address the seven issues and provide near term and long-term recommendations for both public and private sector to inform the City in its future efforts for a realistic, results-oriented strategic plan.

Kosmont will compile a draft PowerPoint, including the relevant data sources and key findings, and specific recommendations and strategies for staff review and comment, as well as a draft executive summary in memorandum format.

Consultant will then prepare a revised draft PowerPoint for a presentation to the BAC and HBDC committees and obtain their feedback.

Consultant will then prepare a final Executive Summary and PowerPoint Presentation format including graphics and visuals as relevant, which Kosmont will use to present findings to the City Council in person.

### **Task 8: Optional Follow Up Presentation to City Council (1 week)**

At the Cities option, Kosmont will be available to provide an additional in-person presentation to City Council.

### **Next Steps: Implementation**

Kosmont prides itself on assisting clients with follow-on research, analysis, and implementation services.

*\*Time may be re-allocated between tasks and personnel categories as deemed appropriate by Consultant in order to adequately provide services to City and stay on schedule.*

**EXHIBIT B  
FEE SCHEDULE**

Consultant's fee is based on expenses associated with the execution of the services as defined in Exhibit A and in the proposal from Consultant. The following table summarizes Kosmont's estimated project budget and timeframe.

<b>CITY OF SAUSALITO</b> <i>Land Economics Study</i>		<b>Hours</b>	<b>Estimated Cost</b>	<b>Estimated Time to Complete</b>
<b>TASKS</b>				
1	Kick off Meetings / Site tour Assess Current Conditions	24	\$8,000	2 weeks
2	City Outreach Meetings	12	\$4,000	concurrent
3	Economic Trends & Market Potential	32	\$7,000	3 weeks
4	Land Use Planning	40	\$9,000	3 weeks
5	Special Events, Marketing	8	\$2,500	1 week
6	Permits, Regulatory Tools & Policies	20	\$6,500	2 weeks
7	Final Report/Presentations	30	\$12,000	4 weeks
8	<i>Optional Presentation</i>	10	\$4,000	1 week
<i>Subtotal</i>			\$53,000	<b>16 weeks</b>
<i>Reimbursable Expenses /1</i>			\$6,000	
<b>Total Budget (Not to Exceed)</b>		<b>176</b>	<b>\$59,000</b>	

*/1 Includes airfare to Bay Area, car rental and lodging for four (4) in-person trips for kickoff meetings, committee presentation, and two City Council meetings for 1-3 professionals.*

*Duties may be allocated between tasks as deemed appropriate by the Project Manager in order to adequately provide services to the Client and stay within budget. If needed, additional team members, may be assigned to work on this project in a support or research role.*