



Date: June 22, 2015
To: Mayor and City Council
From: Michael Chandler, Senior Management Analyst
Subject: Main Street 2015-16 Contract

Recommendation

Approve a resolution authorizing the City Manager to execute a contract with Main Street Martinez.

Background

The City's contract with Main Street Martinez is done annually by fiscal year and includes funding approved by the City Council as part of the budget process. The City's FY 2015-17 Budget, adopted on June 17, 2015, allocates \$45,000 to Main Street for each of the next two fiscal years, to be paid in quarterly installments of \$11,250. Section 1 of the attached contract specifies Main Street's required scope of service and deliverables, including other services related to promoting downtown revitalization efforts, supporting downtown businesses, and providing and developing downtown promotional/special events.

Fiscal Impact

\$45,000 is budgeted for this contract in FY 2015-16.

Attachments

- Contract
- Resolution

APPROVED BY: 
Rob Braulik, City Manager

**AGREEMENT FOR PROFESSIONAL SERVICES
WITH MAIN STREET MARTINEZ**

This Agreement is made this 1st day of July 2015, between the City of Martinez (“CITY”), and Main Street Martinez (“MAIN STREET”), a non-profit corporation.

RECITALS

- A. CITY and MAIN STREET agree on the importance of revitalizing Downtown Martinez and working together to accomplish this pursuant to CITY’S Downtown Specific Plan.
- B. MAIN STREET represents to CITY that the Main Street organization has the desire to assist in the planning and implementation of revitalization plans for downtown Martinez.
- C. The parties have negotiated the terms pursuant to which MAIN STREET will provide services to CITY and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, CITY and MAIN STREET agree:

1. SCOPE OF SERVICE & DELIVERABLES

MAIN STREET shall provide CITY with the following services and deliverables from July 1, 2015, through June 30, 2016:

- (a) MAIN STREET will provide a revitalization program for downtown Martinez using the National Main Street Four-Point approach and incorporating principles and practices of the nationally-recognized Main Street model. Specifically, MAIN STREET will organize, manage and implement work plans (goals) for four standing committees; these are the Organization, Promotions, Economic Restructuring and Design Committees. The Committee Chairs, with the assistance of the Executive Director of MAIN STREET (“Executive Director”), will call and facilitate each of the four committees’ meetings, including distributing notices, materials and data needed to conduct business.

(b) The Board of Directors of MAIN STREET (“Board”) will encourage downtown property owners and businesses to participate in the leadership of the MAIN STREET program to the maximum extent possible.

(c) MAIN STREET agrees to hold regularly scheduled, publicly noticed meetings that are open to the public.

(d) MAIN STREET will also hold regular Board meetings and election of officers as specified in the By-Laws of MAIN STREET. The Executive Director will attend each Board meeting, undertake Board-related activities as specified by the Board, and maintain approved meeting minutes for each Board Meeting. A representative from the City of Martinez City Council or a designated staff person will serve as an Ex-officio non-voting member of the Board.

(e) MAIN STREET shall adopt an Annual Budget and maintain complete financial records and accounting of expenditures, revenues and donations, grant funding and other funding sources. A copy of the approved Annual Budget for MAIN STREET 2015-16 is attached as Exhibit A and shall serve as the financial guide for the operations of MAIN STREET. This Agreement is not considered executed unless the approved Annual Budget for the 2015-16 year is attached. A business office shall be maintained and the Executive Director will be responsible for day-to-day management of the organization. The Executive Director will also serve as liaison to the City of Martinez, the Chamber of Commerce, and other relevant organizations and institutions. On a semi-annual basis, a representative from MAIN STREET shall report on the organization’s activities, accomplishments, and events to the Martinez City Council.

(f) MAIN STREET agrees to assist CITY in retaining and attracting new businesses to Downtown Martinez, including but not limited to participating when possible in up to two downtown development conferences per year, or the equivalent thereof.

(g) MAIN STREET agrees to promote City of Martinez as a place to live, work, invest and visit.

(h) MAIN STREET agrees to foster and maintain a positive partnership between downtown property owners, merchants and other public and private stakeholders, including but not limited to implementing a membership program and holding MAIN STREET informational meetings for all property owners, merchants and stakeholders.

(i) MAIN STREET agrees to encourage and assist downtown property owners to renovate, improve and maintain the exteriors of downtown buildings and to participate in MAIN STREET projects, programs and events, including but not limited to participating with CITY in

periodic meetings with downtown property owners and inviting each downtown property owner to meet at least once per year. Each quarterly report pursuant to Section 1(o) will include a summary of such meetings that took place during that quarter.

(j) MAIN STREET agrees to encourage downtown businesses to participate in MAIN STREET programs, projects and events, including but not limited to organizing merchant meetings that address topics of interest to downtown merchants and extending invitations to meeting individually at least once per year with each downtown business as stated in Section 1(i) above. Each quarterly report pursuant to Section 1(o) will include a summary of such meetings that took place during that quarter.

(k) MAIN STREET agrees to continue to provide and develop 3 or 4 annual, large, high quality, downtown promotional and/or special events and to provide CITY annually with a financial summary of all special events during the previous 12 months at the end of each fiscal year. MAIN STREET shall obtain all necessary permits for such events from all authorities having jurisdiction. MAIN STREET shall work with the CITY to create exit surveys for participants of said downtown promotional and/or special events, distribute the surveys at two (2) events per year, and report the results of the surveys to the CITY twice per year. MAIN STREET shall be responsible for administration, organization, and management of the downtown farmers' markets in accordance with the requirements approved by the CITY (e.g. contract terms, indemnity and insurance requirements).

(l) MAIN STREET agrees to provide the CITY with promotional economic development video spots and advertising content suitable for airing on the City Channel and I-680 digital billboard, respectively. Said video spots and advertising content shall become the CITY'S property and may be aired/posted at the CITY'S sole discretion.

(m) MAIN STREET agrees to work with downtown businesses to help obtain compliance with the CITY'S ban on single-use plastic carryout bags and any other City laws and regulations affecting the business community.

(n) MAIN STREET and CITY agree the aforementioned deliverables are subject to further refinement and revision to establish more clearly defined qualitative and quantitative measures. Any such changes shall be made in accordance with Section 8 of this Agreement.

(o) MAIN STREET shall provide quarterly reports to the Martinez City Council, in a format to be mutually agreed upon. Said quarterly reports shall include the information required

to be reported quarterly, as set forth in this Agreement and shall also include any additional information requested in writing by the CITY.

2. COMPENSATION

(a) The CITY shall pay to MAIN STREET a total of \$45,000 for FY 2015-2016 in performance of this Agreement. Said compensation shall be paid by the CITY in equal quarterly installments, (\$11,250 each quarter), only after receipt of each quarterly report, as set forth in Section 1(o), a written invoice as described in Section 2(d) below, and the financial information as required in Section 3(c).

(b) Payments prescribed herein shall constitute all compensation to MAIN STREET for services performed as set forth in Section 1 hereof, Scope of Service & Deliverables.

(c) MAIN STREET shall use these funds for the following purpose and no others, unless it obtains written consent from the City Manager of CITY. That purpose is to provide all necessary services to assist CITY with the revitalization of Downtown Martinez pursuant to Section 1 of the Scope of Services and Deliverables. In accordance with Section 1, said Services may include (1) administrative expenses (including salaries, taxes, benefits, rent, utilities, etc.); (2) promotional and recruitment materials; (3) promotional activities and special events related to attracting residents and visitors to Downtown; and (4) maintenance of website containing information on Downtown Martinez including available properties for lease or purchase, events, and lists of merchants and goods and services available in Downtown.

(d) Prior to the CITY'S issuance of quarterly funds, MAIN STREET shall provide an itemized invoice showing how the funds paid to MAIN STREET by CITY funds were expended during that quarter.

3. DOCUMENTATION: RETENTION OF MATERIALS

(a) MAIN STREET shall maintain full and complete written documentation to substantiate all charges for wages, materials and expenses as required by Section 2 of this Agreement.

(b) MAIN STREET shall keep and maintain full and complete documentation and accounting records concerning all services performed by it and shall make such documents and records available to authorized representatives of CITY for inspection at any reasonable time.

(c) MAIN STREET shall provide the following specific financial records in accordance with the timeline identified herein:

1. the most current profit and loss statement of MAIN STREET on a form recommended by Main Street and approved by the CITY, within thirty (30) days of execution of this Agreement and quarterly thereafter.
2. the most current balance sheet for MAIN STREET on a form recommended by Main Street and approved by the CITY, within thirty (30) days of execution of this Agreement and quarterly thereafter.

(d) MAIN STREET shall maintain its records and shall allow CITY access to such records for a period of four (4) years.

4. INDEMNITY/LIABILITY/INSURANCE

(a) INDEPENDENT CONTRACTOR

The status of MAIN STREET is that of an independent contractor operating and having control of his/her work and the manner in which it is performed. MAIN STREET is not considered to be an officer, an employee, or an agent of CITY, nor shall he/she hold him/herself out as or represent that he/she is an officer, employee, or agent of the CITY.

(b) INDEMNITY

MAIN STREET assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance, acts, errors or omissions of MAIN STREET and/or his agents or employees. To the extent permitted by law, MAIN STREET shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including MAIN STREET from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of MAIN STREET, its employees and agents hereunder and regardless of CITY'S passive negligence. CITY agrees to provide MAIN STREET with reasonable notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this paragraph.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for MAIN STREET under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by MAIN STREET.

(c) **INSURANCE**

Without limiting MAIN STREET'S indemnification provided hereunder, MAIN STREET shall take out and maintain or cause to be taken out and maintained, at all times during the term of this Agreement, the following policies of insurance in connection with the performance of the work hereunder by MAIN STREET, its agents, employees, representatives, sub-consultants, contractors, sub-contractors and vendors:

1. **Commercial General Liability (CGL)**

Commercial general liability insurance for all activities of MAIN STREET and its sub-consultants, contractors, sub-contractors and vendors, arising out of or in connection with this Agreement, written on a commercial general liability form. Coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the performance under this Agreement or the general aggregate limit shall be twice the required occurrence limit. At the time the Agreement is entered into the CITY may require higher limits depending on the nature of the services being provided by MAIN STREET. Such determination shall be made by the CITY'S Risk Manager.

2. **Automobile Liability**

Coverage shall be at least as broad as, ISO Form Number CA 0001 covering Code 1 (any auto), or if MAIN STREET has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less One Million Dollars (\$1,000,000) per accident for bodily injury and property damage. At the time the Agreement is entered into the CITY may require higher limits depending on the nature of the service being

provided by MAIN STREET. Such determination shall be made by the CITY'S Risk Manager.

3. **Workers' Compensation**

Workers' Compensation insurance to cover its employees, and MAIN STREET shall require all sub-consultants, contractors, sub-contractors and vendors, performing work or present at or on CITY property pursuant to the terms of this Agreement, similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the said person or entity's employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the CITY.

In the event any class of employees engaged in hazardous work under the Contract is not protected under Workers' Compensation Statutes, MAIN STREET shall provide, and shall cause all sub-consultants to provide adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to CITY and shall provide that it will not be canceled without first giving thirty (30) days notice to the CITY.

All Workers' Compensation insurance as required herein shall be endorsed to include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment."

To the extent that MAIN STREET utilizes or authorizes sub-consultants, contractors, sub-contractors or vendors, relating to, arising out of, or in connection with this Agreement MAIN STREET shall either provide the required insurance(s) for the type of service being provided by such sub-consultants, contractors, sub-contractors or vendors or shall provide evidence acceptable to the CITY demonstrating that such sub-consultants, contractors, sub-contractors or vendors has in effect the required insurance(s).

If MAIN STREET maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by MAIN STREET. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (i) The CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work performed by or on behalf of MAIN STREET including materials, parts or equipments furnished in connection with such work. General liability coverage can be provided in the form of an endorsement to MAIN STREET'S insurance at least as broad as ISO form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms.
- (ii) For any claims related to this Agreement, MAIN STREET'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of MAIN STREET'S insurance and shall not contribute with it.
- (iii) MAIN STREET hereby grants to CITY a waiver of any right to subrogation which any insurer thereof may acquire against the CITY by virtue of the payment of any loss under such insurance. MAIN STREET agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY received a waiver of subrogation endorsement from the insurer.
- (iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

- (v) All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY. Current certification of such insurance shall be kept on file with the City Clerk at all times during the term of this Agreement.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers, or MAIN STREET shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

5. ASSIGNMENT

MAIN STREET shall not assign any rights or duties under this Agreement to a third party without the prior express written consent of CITY.

6. TERMINATION

(a) This Agreement may be terminated at any time, with or without cause, by the CITY within its sole discretion with a thirty (30) day written notice to MAIN STREET. MAIN STREET may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause. MAIN STREET'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination by MAIN STREET, MAIN STREET shall only be compensated for all work MAIN STREET satisfactorily performs prior to the time MAIN STREET delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by CITY, MAIN STREET shall be compensated for all work satisfactorily performed prior to the time MAIN STREET receives the termination notice, and shall be compensated for all materials ordered by MAIN STREET, and services of others ordered by MAIN STREET prior to receipt of the

CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to MAIN STREET or the CITY, provided that MAIN STREET is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, MAIN STREET shall not be entitled to any additional compensation over that provided herein; nor shall MAIN STREET be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant to this section.

Should MAIN STREET fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. MAIN STREET shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by CITY by virtue of the MAIN STREET'S breach of this Agreement.

7. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

CITY:

Michael Chandler
Senior Management Analyst
City of Martinez
525 Henrietta Street
Martinez, CA 94553

MAIN STREET:

Leanne Petersen
Executive Director
Main Street Martinez
P.O. Box 776
Martinez, CA 94553

8. ADDITIONAL SERVICES

If the CITY desires to amend the scope of services and/or deliverables or MAIN STREET requests such an amendment, such mutually agreed upon changes shall be by written amendment to this Agreement.

9. SUCCESSORS AND ASSIGNS

CITY and MAIN STREET each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

10. ENTIRE AGREEMENT

This Agreement is the entire Agreement between the parties.

11. MODIFICATION

The Agreement shall not be modified except in writing executed by all parties.

12. NON-DISCRIMINATION

MAIN STREET shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.

13. TIME OF PERFORMANCE

MAIN STREET shall begin work effective July 1, 2015, and shall thereupon work diligently and continuously to provide all the required services and activities described herein until June 30, 2016.

14. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

15. In the event either party to this Agreement brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to attorney's and witness fees as well as other costs.

16. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

MAIN STREET

By _____

Name _____

Title _____

CITY OF MARTINEZ

By _____

Rob Braulik

City Manager

ATTEST _____

Deputy City Clerk

RESOLUTION NO. -15

**AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH
MAIN STREET MARTINEZ**

WHEREAS, the City of Martinez recognizes the importance of economic development and the continued revitalization of its downtown; and

WHEREAS, to help achieve its goals, the City has included annual funding for Main Street Martinez ("Main Street") within its adopted FY 2015-17 Budget; and

WHEREAS, as a condition of providing said annual funding, the City requires a formal contract with Main Street; and

WHEREAS, Main Street plays a central role supporting the economic health and well-being of the downtown business community and assisting the City's efforts to plan and implement revitalization of the downtown; and

WHEREAS, through these and other efforts, Main Street provides services that benefit businesses and the community and therefore help to improve the quality of life in Martinez; and

WHEREAS, the parties have agreed upon terms under which these services will be provided for FY 2015-16 in the form of the attached contract.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Martinez hereby authorizes the City Manager to execute a contract with Main Street upon the mutually agreeable terms, considerations, covenants, and conditions as set forth in the form attached to this resolution.

* * * * *

I HEREBY CERTIFY the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez, at a Regular Meeting of said Council held on the 1st day of July, 2015, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ