



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
January 16, 2008**

TO: Mayor and City Council

FROM: Karen L. Majors, Assistant City Manager Community and Economic Development

SUBJECT: Agreement with Main Street Martinez

DATE: January 9, 2008

RECOMMENDATION:

Adopt resolution approving the 2007-08 Agreement for Professional Services with Main Street Martinez.

BACKGROUND:

The purpose of the proposed new grant agreement is to implement the funding for Main Street Martinez provided for as part of the 2007-09 City Budget. This new agreement was also drafted to ensure that the Council's desire that the City receives certain services, benefits and deliverables that assist in the implementation of the Downtown Specific Plan and the overall economic development goals are met.

The new agreement includes the following goals and requirements:

1. Adoption of Annual Budget,
2. Regular and publically noticed board meetings,
3. Further implementation of the National Main Street Model,
4. Expansion of property owner and merchant involvement on the Main street Board of Directors,
5. Participation in tourism, hospitality, retail and related trade shows for the purpose of marketing Downtown Martinez and bringing in new business,
6. Encourage and assist property owners in the improvement, renovation and maintenance of downtown buildings, including regular individual meetings,
7. Encourage merchants to participate in Main Street activities including regular individual meetings,
8. Develop 3-4 large and high quality, annual downtown promotional events,
9. Work with Martinez Chamber of Commerce to provide downtown revitalization, business recruitment, and market services in the most cost effective way.
10. Regular reports and presentations to the City Council.

FISCAL IMPACT:

As part of the 2007-09 budget process, the City Council allocated \$50,000 in each fiscal year for the Martinez Main Street Program. This agreement implements this allocation of funds for the first year of funding.

ACTION:

Motion adopting a resolution approving an agreement for professional services with Main Street Martinez and authorizing the City Manager execute the agreement.

ATTACHMENTS:

- 1) Resolution
- 2) Proposed Agreement for Professional Services with Main Street Martinez

APPROVED BY:



City Manager

RESOLUTION NO. -08

APPROVING THE AGREEMENT FOR PROFESSIONAL SERVICES WITH MAIN STREET MARTINEZ FOR THE 2007-08 FISCAL YEAR

WHEREAS, the Martinez City Council adopted a budget for the 2007-08 and 2008-09 fiscal years that included funding for Main Street Martinez in the amount of \$50,000 in each fiscal year; and

WHEREAS, the City Council directed staff to ensure that the City receive certain services, benefits, and deliverables that assist in the implementation of the Downtown Specific Plan and overall community economic development goals; and

WHEREAS, the proposed agreement for professional services with Main Street Martinez meets that goal and is agreeable to Main Street Martinez.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez that the agreement for professional services with the Main Street Martinez is hereby approved and that the City Manager is hereby authorized to execute the agreement.

* * * * *

I HEREBY CERTIFY that 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 16th day of January, 2008, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

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

This Agreement is made this 16th day of January, 2008, between the City of Martinez ("CITY"), and Main Street Martinez (MAIN STREET), a non-profit corporation and covers the time period from July 1, 2007 – June 30, 2008.

RECITALS

- A. CITY and MAIN STREET agree on the importance of revitalizing Downtown Martinez and working together to accomplish this pursuant to the recently adopted 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 term to writing.

AGREEMENT

NOW, THEREFORE, CITY and MAIN STREET agree:

1. OPERATIONAL PROVISIONS

MAIN STREET shall at all times that this Agreement is in effect operate as a non-profit corporation in a reasonable, accountable, and lawful manner and shall on an ongoing basis conduct the following operations as a condition to the payment of compensation by the CITY under Section 3 of this Agreement:

- a. Both parties acknowledge that MAIN STREET receives a majority of its funding from a public agency that is subject to the Ralph M. Brown Act [Chapter 9 of Division 2 of Title 5 of the California Government Code] ("Brown Act"). Therefore MAIN STREET agrees to adhere to the spirit and intent of the Brown Act by having regularly scheduled, publicly noticed meetings that are open to the public. Nothing in

this section shall render MAIN STREET subject to the Brown Act, or any of its provisions, or subject MAIN STREET to any sanction, penalty, or liability for noncompliance with the Brown Act, with the exception of CITY'S right to withhold compensation under this Agreement for noncompliance with the terms of this subsection. CITY may not be held responsible or liable in any manner for any act or event conducted by MAIN STREET which constitutes a violation of any provision of the Brown Act.

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

c. 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 2007-08 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 2007-08 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 provide a written and oral report on the organization's activities, accomplishments, and events to the Martinez City Council. CITY and MAIN STREET will jointly determine the form and content of the report.

2. SCOPE OF SERVICE & DELIVERABLES

MAIN STREET shall provide CITY with the following services and deliverables from July 1, 2007, through June 30, 2008:

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 for four standing committees; these are the Organization, Promotions, Economic Restructuring and Design Committees. The Committee Chairs, with the assistance of the Executive Director, will call and facilitate each of the four committees' meetings, including distributing notices, materials and data needed to conduct business.

b. MAIN STREET Board will encourage downtown property owners and merchants to participate in the leadership of the MAIN STREET program to the maximum extent possible and will work diligently to add at least 1 property owner and 1 merchant to its Board of Directors by December 31, 2007.

c. MAIN STREET agrees to assist CITY in retaining and attracting new businesses to Downtown Martinez, including but not limited to participating with the City and/or the Martinez Chamber of Commerce in at least two trade shows per year. Trade shows are defined as meetings, conferences or related venues where retailers, travel and/or hospitality vendors and related businesses congregate for the purpose of expanding tourism, hospitality, retail and related business.

d. MAIN STREET agrees to promote Downtown Martinez as a place to live, work, invest and visit.

e. 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 semi-annual MAIN STREET informational meetings for all property owners, merchants and stakeholders.

f. 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 monthly meetings with downtown property owners and meeting individually with each downtown property owner at least once every other year. Each quarterly report submitted pursuant to Section 3a will include a summary of such meetings that took place during that quarter.

g. MAIN STREET agrees to encourage downtown merchants to participate in MAIN STREET programs, projects and events, including but not limited to, organizing monthly merchant meetings that address topics of interest to downtown merchants and meeting individually at least once every other year with each downtown merchant. Each quarterly report pursuant to Section 3a will include a summary of such meetings that took place during that quarter.

h. MAIN STREET agrees to develop and grow 3-4 annual, large, high quality downtown promotional and/or special events and to provide CITY annually with a cost-benefit report of all special events during the previous 12 months at the end of each fiscal year. CITY and MAIN STREET will work together to determine the parameters of "large and high quality events"

i. MAIN STREET agrees to develop a plan in coordination with the Martinez Chamber of Commerce to provide downtown revitalization, business recruitment and community marketing services in the most cost-effective way possible. A final report and recommendation for implementation will be submitted to CITY by 6-30-08.

3. COMPENSATION

a. The CITY shall pay to MAIN STREET a total of \$50,000 for materials and services provided under this Agreement during FY 2007-2008. Payment shall be made in quarterly installments of \$12,500 at the end of each fiscal quarter upon receipt of: 1) a quarterly report summarizing the expenditure of funds pursuant 3c below (in a format to be mutually agreed upon) submitted by MAIN STREET; and 2) a written invoice as further described in Section 3d below from MAIN STREET.

b. Payments prescribed herein shall constitute all compensation to MAIN STREET for services performed under this Agreement.

c. Any compensation paid to MAIN STREET by CITY under this Agreement shall be used to provide all necessary services to assist CITY with the revitalization of Downtown Martinez pursuant to Section 2 of this Agreement, unless MAIN STREET obtains written consent from the City Manager for any other purpose. Expenses that may be incurred for the purpose intended by this Agreement include the

following: (1) administrative expenses (including salaries, taxes, benefits, rent, utilities, and similar expenses); (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, goods and services available in Martinez Downtown.

d. Prior to the CITY making quarterly payment of compensation under this Section, MAIN STREET shall provide an invoice itemizing expenses incurred for the purpose set forth by subsection (c) above during the preceding quarter. MAIN STREET will submit each quarterly request for payment within 2 weeks after the end of the quarter for which payment is requested. Within 2 weeks of receiving the request for payment, city staff will approve or return the request for payment for additional information or correction. CITY will make each quarterly payment to MAIN STREET within 2 weeks of approval of the request for payment.

e. The City's Director of Administrative Services is authorized to make payment to MAIN STREET in accordance with this Agreement, upon the CITY's judgment that payment is warranted under the terms of this Agreement.

4. DOCUMENTATION: RETENTION OF MATERIALS

a. MAIN STREET shall maintain full and complete written documentation in support of all expenses that it claims were incurred for the purpose set forth by Section 3c of this Agreement.

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

c. MAIN STREET shall maintain, and allow CITY access to, all records and documentation required by this section for a period of no less than four (4) years from the date of preparation or origination of the document.

5. INDEMNITY/LIABILITY

INDEPENDENT CONTRACTOR

a. The status of MAIN STREET is that of an independent contractor operating, 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 MAIN STREET hold itself out as, or represent that, MAIN STREET is an officer, employee, or agent of the CITY.

INDEMNITY

b. MAIN STREET assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance, errors or omissions of MAIN STREET and/or its 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.

INSURANCE POLICIES

c. Without limiting MAIN STREET'S indemnification provided hereunder, MAIN STREET shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance with a Best rating of no less than A:VII.

WORKERS COMPENSATION

d. Workers' Compensation insurance to cover its employees, and MAIN STREET shall require all sub-consultants similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the sub-consultant'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.

MAIN STREET'S Workers' Compensation insurance shall 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."

GENERAL LIABILITY INSURANCE

e. Commercial general liability insurance including personal injury and property damage insurance for all activities of MAIN STREET and its sub-consultants arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, x, c, u hazards, subcontractors named as additional insured (inapplicable if no subcontractors or sub-consultants), vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than \$1 million dollars combined, single limit personal injury and property damage for each occurrence. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by CITY. The commercial general liability policy shall be endorsed with the following language:

- i) The CITY OF MARTINEZ is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or

property damage or destruction arising in any respect, directly or indirectly in the performance of the contract.

ii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

iii) The insurance provided herein is primary and no insurance held or owned by the CITY OF MARTINEZ shall be called upon to contribute to a loss.

iv) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the CITY OF MARTINEZ.

REQUIRED DOCUMENTATION

f. MAIN STREET shall submit to CITY documentation evidencing its required insurances signed by the insurance agent and companies named. Any deductible or self-insured retentions must be declared to and approved by CITY. At the option of CITY, insurer shall reduce or eliminate such deductible or self-insured retention as respects CITY, its officers and employees or MAIN STREET shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.

6. 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.

7. TERMINATION

a. This Agreement may be terminated at any time, with or without cause, by the CITY within its sole discretion upon thirty (30) days' 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.

b. In the event termination takes effect prior to the expiration of any fiscal quarter, MAIN STREET shall only receive that percentage of quarterly compensation set forth by Section 3a that is the same as that percentage of the quarterly time period that has elapsed prior to the date that MAIN STREET receives, or notifies the City of, written notice of termination, provided that the CITY in its sole and unfettered discretion determines that MAIN STREET has satisfactorily performed the terms of this Agreement during the same time period. In addition, CITY may choose to pay MAIN STREET in whole or in any part, for any services or materials that were ordered by MAIN STREET prior to receipt of written notice of termination from CITY, 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. Notwithstanding any of the above, however, if either party terminates the Agreement, MAIN STREET shall not be entitled to payment of any amount that exceeds the quarterly compensation payable by CITY under Section 3a, 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.

c. 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 MAIN STREET'S breach of this Agreement.

8. 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:
Karen Majors
Assistant City Manager for
Community & Economic Development
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

9. 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.

10. 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.

11. ENTIRE AGREEMENT

This Agreement is the entire Agreement between the parties.

12. MODIFICATION

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

13. 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.

14. TIME OF PERFORMANCE

MAIN STREET shall begin work effective July 1, 2007, and shall thereupon work diligently and continuously to provide all the required services and activities described herein until June 20, 2008.

15. SIGNATURES

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

MAIN STREET

CITY OF MARTINEZ

By 
Name BRADLEY JACKSON

By _____
Donald A. Blubaugh
Title _____

Title PRESIDENT, Main Street Martinez

ATTEST _____
Deputy City Clerk

APPROVED AS TO FORM

By _____
Jeff Walter, City Attorney