



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
September 2, 2009**

TO: Mayor and City Council

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

SUBJECT: 2009-10 Agreement with the Martinez Chamber of Commerce for Visitor/Tourism services.

DATE: August 26, 2009

RECOMMENDATION:

- A. Presentation: Bi-annual update by the Martinez Chamber of Commerce; and
- B. Consider resolution approving the 2009-10 Martinez Chamber of Commerce Agreement and authorizing the City Manager to execute agreement.

Adopt resolution approving the 2009-10 Agreement with the Martinez Chamber of Commerce to provide visitor and tourism services and authorizing the City Manager to execute the agreement.

BACKGROUND:

The City of Martinez has provided funding to the Martinez Chamber of Commerce to provide visitor and tourism services out of their office adjacent to the Martinez Amtrak Train Station for several years. In the City's Budget for Fiscal Years 2009-10 and 2010-11, the City appropriated \$47,500/year to the Chamber of Commerce to support visitor and tourism services as part of the City's overall economic development program.

The 2008-09 Chamber of Commerce Agreement reflected the City's goal to move from a straight grant to "fee for professional service" agreement. However, due to their current financial situation, Chamber Executive Director, Cynthia Murdough asked City staff to allow a full upfront payment in the 2009-10 fiscal year. This would give the Chamber financial flexibility to repay previous debts, develop updated programs, solicit new memberships, and implement several successful fund raising projects. The Chamber agrees to continue to provide quarterly reports, bi-annual verbal reports to the City Council and other terms and conditions of their previous agreement. The Chamber also agreed to return to the "fee for professional service" approach for the 2010-11 fiscal year.

RESOLUTION NO. -09

APPROVING THE AGREEMENT FOR VISITOR/TOURISM SERVICES WITH
MARTINEZ CHAMBER OF COMMERCE FOR THE 2009-10 FISCAL YEAR

WHEREAS, the Martinez City Council adopted a budget for the 2009-10 and 2010-11 fiscal years that included funding for the Martinez Chamber of Commerce in the amount of \$47,500 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 City's overall community economic development goals; and

WHEREAS, the proposed agreement for visitor/tourism services with the Martinez Chamber of Commerce meets that goal and is agreeable to the Chamber Board of Directors.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez that the agreement for visitor/tourism services with the Martinez Chamber of Commerce 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 2nd day of September, 2009, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

AGREEMENT FOR PROFESSIONAL SERVICES
WITH THE MARTINEZ CHAMBER OF COMMERCE

This Agreement is made this 1ST day of July, 2009, between the City of Martinez, a general law city, ("CITY"), and the Martinez Chamber of Commerce ("CHAMBER") a non-profit corporation.

RECITALS

- A. The CITY acknowledges the CHAMBER'S central role in promoting the economic health -and-well-being of the Martinez business community, marketing the City of Martinez to our residents and visitors, and promoting a better quality of life for Martinez residents.
- B. The CITY recognizes that the CHAMBER provides visitor services that benefit the economic health of Martinez, provides for a better experience for visitors, and works to promote tourism in Martinez, thereby benefiting both visitor-related businesses and the community as a whole.
- C. CHAMBER represents to CITY that it is fully qualified to continue to provide quality visitor services and to promote tourism within Martinez.
- D. The CITY and the CHAMBER have agreed upon the terms under which these visitor services will be provided and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, the CITY and CHAMBER agree:

1. **SCOPE OF SERVICE & DELIVERABLES**

CHAMBER shall provide CITY with the following services from July 1, 2009, through June 30, 2010. The CHAMBER shall provide the following visitor-related services: (1) provide information, maps, and brochures to all visitors arriving at the Visitor's Center, as well as responding to all phone and written requests for visitor-related assistance; (2) maintain a complete selection of brochures and information related to visitor attractions and tourism amenities within the City, including hotels, restaurants, transportation and tour services, gift and souvenir shops and other relevant businesses; (3) maintain the Visitor Center facility, providing

the general public with walk-in services to visitors during regularly scheduled office hours (Monday thru Thursday , 9am to 5pm and Friday, 10am to 2pm, (4) maintain a Chamber Executive Director position and sufficient staff position(s) to perform the day-to-day activities of the Visitor Center; (5) research, produce & make available up-to date Visitor/Relocation Guide and an bi-annual Business Directory, including linking both documents to the CHAMBER' S website; (6) produce and print a City of Martinez map (6,000 copies); (7) work in partnership with Main Street Martinez, First Night and other local organizations to plan, advertise and carry out promotional events designed to attract area residents and visitors to Martinez and to showcase local amenities; (8) maintain an up-to- date website with information about Visitor Center location, hours, services and materials, including helpful links to relevant visitor attractions and tourism services; (9) in order to perform its oversight function, the CHAMBER shall conduct regularly-scheduled Board meetings with a quorum of Board Members, enforce the Chamber's policy that requires Board Members to attend all Board Meetings unless granted an excused absence of which three is the limit in a calendar year, and ensure that all Board Members maintain up-to-date memberships in the Martinez Chamber of Commerce, (10) annually prepare and adopt a budget and provide the CITY with a copy, attached as Exhibit A pf this agreement and (11) the CHAMBER agrees to continue to work with Martinez Main Street to provide business recruitment and community marketing services in the most cost effective way possible.

CHAMBER shall provide a quarterly written report to the CITY that summarizes work accomplished, specifically the number of visitor contacts, description of services rendered, events and celebrations held that attracted visitors and tourists to Martinez, type and volume of materials distributed (City Maps, brochures, Relocation Guides, Business Directories, etc.) and other relevant activities that accomplish the CHAMBER'S visitor and tourism function. The CITY and CHAMBER will develop a mutually agreeable format for this quarterly report.

CHAMBER will make bi-annual presentations to the City Council during regularly scheduled City Council meetings to inform the Council about the Chamber's Visitor Center accomplishments, activities, and services performed during the prior six months

2. COMPENSATION

a. The CITY will pay to the CHAMBER a total of \$47,500 for FY 2009-2010 in performance of this Agreement. Given the Chamber's financial situation and recent in staffing

change the CITY will pay the entire 2009-01 grant amount within 5 days of the execution of the this agreement. The CHAMBER will provide to CITY a quarterly written report (in a format to be mutually agreed upon) and a written invoice as further described in Section 2.

b. Payments prescribed herein shall constitute all compensation to CHAMBER for services performed as prescribed in Section 1, Scope of Service & Deliverables.

c. CHAMBER shall use these funds for the following purpose and no others, unless it obtains written consent from the City Manager or his designatee. That purpose is to provide all necessary services to organize and perform a Visitor Center for the City of Martinez. The services to be provided are set forth in Section 1, Scope of Service & Deliverables. In accordance with Section 1, the CHAMBER shall expend the City's funds for the following: (1) applicable salaries; (2) promotional materials such as brochures, the City map, and business directory; (3) promotional activities related to attracting visitors through events and special celebrations; (4) maintenance of website containing Visitor Center information, location, hours, and services; (5) percentage of applicable office expenses related to performing Section 1, Scope of Service & Deliverables.

d. CHAMBER shall keep accounting records of all Visitor Center related activities funded with the CITY funds it receives and expends..

e. CHAMBER shall not commingle the CITY funds for Visitor Center related activities with any other CHAMBER funds.

3. DOCUMENTATION: RETENTION OF MATERIALS

a. CHAMBER shall submit to the CITY a quarterly written report on all Visitor Center related activities, in a format mutually agreed upon, detailing the performance of the Scope of Service & Deliverables, as set forth in Section 1, and a written invoice that substantiates the use of the CITY'S grant monies, as required by Section 2.of this Agreement.

b. CHAMBER shall keep and maintain full and complete documentation and accounting records of all Visitor Center related activities and expenditures 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. CHAMBER shall maintain its Visitor Center related records and shall allow CITY access to such records for a period of four (4) years.

4. **INDEMNITY/LIABILITY**

INDEPENDENT CONTRACTOR

a. The status of the CHAMBER is that of an independent contractor operating having control of his/her work and the manner in which it is performed. CHAMBER 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.

INDEMNITY

b. CHAMBER assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance errors or omissions of the CHAMBER and/or his/her agents or employees. To the extent permitted by law, the CHAMBER 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 the CHAMBER from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of the CHAMBER, his employees and agents hereunder and regardless of CITY'S passive negligence. CITY agrees to provide the CHAMBER 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 the CHAMBER 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 the CHAMBER.

INSURANCE POLICIES

c. Without limiting the CHAMBER'S indemnification provided hereunder, the CHAMBER 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 the CHAMBER 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, the CHAMBER 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.

The CHAMBER'S Worker's 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 the CHAMBER 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), 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:

(1) The CITY 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.

(2) 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.

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

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

REQUIRED DOCUMENTATION

f. The CHAMBER 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 the CHAMBER shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.

5. ASSIGNMENT

The CHAMBER 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 upon written notice to the CHAMBER. The CHAMBER may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause. The CHAMBER'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination by the CHAMBER, the CHAMBER shall only be compensated for all work the CHAMBER satisfactorily performs prior to the time the CHAMBER delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, the CHAMBER shall be compensated for all work satisfactorily performed prior to the time the CHAMBER receives the termination notice, and shall be compensated for all materials ordered by the CHAMBER, and services of others ordered by the CHAMBER 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 the CHAMBER or the CITY, provided that the CHAMBER is

not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, the CHAMBER shall not be entitled to any additional compensation over that provided herein; nor shall the CHAMBER 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 the CHAMBER 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. The CHAMBER 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 CHAMBER'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:

Karen Majors
Assistant City Manager/
Community & Economic Development Dir
City of Martinez
525 Henrietta Street
Martinez, CA 94553

CHAMBER:

Cynthia Murdough
Executive Director
Chamber of Commerce
603 Marina Vista
Martinez, CA 94553

8. ADDITIONAL SERVICES

If CITY makes a decision to change the Scope of Service & Deliverables, as delineated in Section 1 above, all such changes shall be by written amendment to this Agreement.

9. SUCCESSORS AND ASSIGNS

CITY and CHAMBER 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

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

12. NON-DISCRIMINATION

CHAMBER shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts 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

CHAMBER shall begin work effective July 1, 2009, and shall thereupon work diligently and continuously to provide all the required services and activities described herein until June 30, 2010.

14. **SIGNATURES**

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

CHAMBER

CITY OF MARTINEZ

By Cynthia Murdough
Name Cynthia Murdough
Title Executive Director

By _____
Philip Vince
City Manager

Attest _____
Deputy City Clerk