



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
October 7, 2009**

**TO:** Mayor and City Council

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

**SUBJECT:** Agreement with Main Street Martinez

**DATE:** September 25, 2009

**RECOMMENDATION:**

- A. Presentation: Bi-annual update by Main Street Martinez; and
- B. Resolution approving an agreement for professional services with Main Street Martinez for the 2009-2010 fiscal year; and authorizing the City Manager to execute agreement.

**BACKGROUND:**

The purpose of the proposed 2009-10 agreement for professional services is to implement the funding for Main Street Martinez that was appropriated in the 2009-11 City Budget. Two years ago a new agreement was negotiated and drafted to reflect the Council's desire that the City receive certain services, benefits and deliverables that assist the City of Martinez in the implementation of the Downtown Specific Plan as well as the City's overall economic development goals.

The 2009-10 agreement includes only minor modifications from the previous agreement.

**FISCAL IMPACT:**

As part of the 2009-11 budget process, the City Council allocated \$47,500 in each fiscal year for the Martinez Main Street Program. This agreement implements this allocation of funds for the first year of funding.

**ACTION:**

Adopt resolution approving the 2009-10 Agreement for Professional Services with Main Street Martinez and authorizing the City Manager execute the agreement.

**APPROVED BY:**

A handwritten signature in black ink, appearing to read "Phil Vucic". The signature is written in a cursive style with a large initial "P".

City Manager

**ATTACHMENTS:**

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

RESOLUTION NO. -09

APPROVING THE AGREEMENT FOR PROFESSIONAL SERVICES WITH MAIN STREET MARTINEZ 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 Main Street Martinez 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 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 7<sup>th</sup> day of October, 2009, 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 1<sup>st</sup> day of July 2009, 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 the 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. SCOPE OF SERVICE & DELIVERABLES**

MAIN STREET shall provide CITY with the following services and deliverables from July 1, 2009, through June 30, 2010:

- 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 business owners to participate in the leadership of the MAIN STREET program to the maximum extent possible. MAIN STREET will, as Board vacancies occur, make every effort to increase the number of downtown business owners serving on the Board of Directors..

c. Both parties acknowledge that MAIN STREET receives a majority of their funding from a public agency that is subject to the Ralph M. Brown Act. Therefore MAIN STREET agrees to adhere to the spirit and intent of the Ralph M. Brown Act by having 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. 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 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 and revenues including donations, grants and other funding sources. A copy of the approved Annual Budget for MAIN STREET 2009-10 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 2009-10 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 the City of Martinez in Downtown Revitalization and Economic Development by doing the following:

- Create a database for the downtown that includes; Property & Business Owner information, plus Vacant and/or Available Properties

- Review City Ordinances and Zoning to determine what changes to the ordinances/zoning or new ordinances/zoning would maximize downtown revitalization and submit proposed changes to city staff for review
- Participate in business recruitment by promoting available property listing on Main Street Martinez website.
- Develop and maintain communication with downtown property owners and businesses.
- Assist with business retention through business education opportunities.
- Assist CITY in retaining and attracting new businesses to Downtown Martinez.
- Work with the Martinez Chamber of Commerce to provide business recruitment and community marketing services in the most cost-effective way possible.
- Promote the City of Martinez as a place to live, work, shop, invest, and visit.

g. MAIN STREET agrees to assist the City with downtown Beautification by doing the following:

- Maintain tree light program along Main Street.
- Hold 1-2 downtown Clean-Up days per year.
- Work with city staff on design projects such as; outdoor dining, lighting, plants, etc

h. MAIN STREET will produce special events to attract visitors to the downtown area including; 4<sup>th</sup> of July Parade & Celebration, 2 Peddlers Faires, Italian Street Painting Festival, Santa, Snow Park & Ice Rink, and other seasonal events.

i. MAIN STREET will oversee contract with the two seasonal farmers markets and will participate in promoting and encouraging growth in both public attendance and vendor participation.

j. MAIN STREET will identify funding opportunities and write grants for downtown improvements and projects.

k. MAIN STREET will recruit volunteers to help with projects and events.

l. MAIN STREET will help disseminate information to downtown businesses when needed.

m. MAIN Street will maintain an email database to promote downtown projects and events.

## 2. COMPENSATION

a. The CITY shall pay to MAIN STREET a total of \$ 47,500 for FY 2009-2010 in performance of this Agreement. The CITY shall pay \$11,875.00. each quarter to MAIN STREET after receipt of each quarterly report (in a format to be mutually agreed upon) and a written invoice as further described in Section 2d below.

b. Payments prescribed herein shall constitute all compensation to MAIN STREET for services performed as prescribed in Section 1, 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 or designee. 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: (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 CITY'S funds were expended during that quarter.

e. The City's Assistant City Manager is authorized to pay all approved claims.

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 maintain its 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 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 he/she hold him/herself out as or represent that he/she 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 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, his 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.

**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 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:

Karen Majors

Assistant City Manger 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

**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**

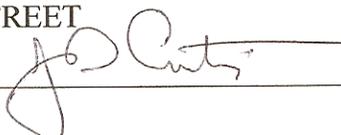
MAIN STREET shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing 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, 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 date and year first above written.

MAIN STREET  
By 

Name John D. Curtis

Title President  
main Street Martinez

CITY OF MARTINEZ  
By \_\_\_\_\_

Philip Vince  
Title \_\_\_\_\_

ATTEST \_\_\_\_\_  
Deputy City Clerk