



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
July 10, 2013**

**TO:** Mayor and City Council  
**FROM:** Michael Chandler, Senior Management Analyst  
**SUBJECT:** Martinez Chamber of Commerce and Main Street Martinez  
2013-14 Contracts  
**DATE:** July 1, 2013

**RECOMMENDATION:**

Adopt a resolution authorizing the City Manager to execute contracts with Chamber of Commerce and Main Street Martinez.

**BACKGROUND**

The City’s contracts with the Chamber of Commerce and Main Street Martinez are done annually by fiscal year. Each contract includes funding as approved by the City Council as part of the budget process. The City’s 2013-15 Budget, adopted on June 19, 2013, allocates \$45,000 to each organization, to be paid in equal quarterly installments of \$11,250. Section 1 of each contract specifies the scope of services to be provided by the respective organizations.

**FISCAL IMPACT:**

\$45,000 is budgeted for each contract in fiscal year 2013-14 for a total of \$90,000.

**ACTION:**

Adopt a resolution authorizing the City Manager to execute contracts with the Chamber of Commerce and Main Street Martinez.

Exhibits:  
Resolution  
Attachment A – Chamber of Commerce 2013-14 Contract  
Attachment B – Main Street Martinez 2013-14 Contract

**APPROVED BY:**

City Manager

RESOLUTION NO. -13

**AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH THE  
CHAMBER OF COMMERCE AND MAIN STREET MARTINEZ**

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

**WHEREAS**, to help achieve these goals, the City has included annual funding to the Martinez Chamber of Commerce ("Chamber") and Main Street Martinez ("Main Street") organizations as part of its adopted 2013-15 Budget; and

**WHEREAS**, the City requires as a condition of providing said annual funding that separate contracts be executed with Chamber and Main Street; and

**WHEREAS**, the City has worked with Chamber and Main Street representatives to develop the 2013-14 contracts for both organizations, which are included as attachments A and B, respectively; and

**WHEREAS**, the organizations have obtained all approvals necessary to execute said contracts from their respective board of directors.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council authorizes the City Manager to execute contracts with the Chamber and Main Street upon the mutually agreeable terms, considerations, covenants, and conditions as set forth in the forms attached to this resolution.

\* \* \* \* \*

**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 an Adjourned Regular Meeting of said Council held on the 10<sup>th</sup> day of July, 2013, 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 1<sup>st</sup> day of July, 2013, 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 a variety of 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 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, 2013, through June 30, 2014: (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 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) work in partnership with the City and Main Street Martinez to create exit surveys for participants of said promotional events, distribute the surveys at two (2) events per year, and report the results of the surveys to the City twice per year (9) provide the City with quarterly promotional economic development video spots suitable for airing on the City Channel. Said video spots shall become the City's content and may be aired at the City's sole discretion; (10) 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; (11) in order to perform its oversight function, the CHAMBER shall conduct regularly-scheduled meetings of the Board of Directors of CHAMBER ("Board") 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, in accordance with CHAMBER bylaws, and ensure that all Board Members maintain up-to-date memberships in the Martinez Chamber of Commerce, (12) annually prepare and adopt a budget and provide the CITY with a copy, attached as Exhibit A of this agreement, and (13) the CHAMBER agrees to continue to work with Main Street Martinez to provide downtown revitalization, business recruitment and community marketing services in the most cost effective way possible. An updated report on the progress of the collaboration between the CHAMBER and Main Street Martinez in this regard shall be presented to the City by 12-31-13.

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 \$45,000 for FY 2013-2014 in performance of this Agreement. The City shall pay \$11,250 each quarter to the CHAMBER after receipt of each quarterly written report (in a format to be mutually agreed upon) and written invoice as described in Section 3a; and after receipt of the financial information as required in Section 3b.

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

c. CHAMBER shall use these funds for the purpose of providing all necessary services as 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) working with CHAMBER members through promotional and educational activities to foster economic development in Martinez; and (6) a percentage of applicable office expenses related to performing the services described in 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.

## **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. In addition, the CHAMBER shall provide the following specific financial records in accordance with the timeline identified herein:

1. the most current profit and loss statement of the CHAMBER on a form approved by the City, within thirty (30) days of execution of this Agreement and quarterly thereafter.
2. the most current balance sheet for the CHAMBER on a form approved by the City, within thirty (30) days of execution of this Agreement and quarterly thereafter.

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**

a. The status of the CHAMBER is that of an independent contractor operating and having control of its 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 it hold itself out as or represent that it is an officer, employee, or agent of the CITY.

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, its 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.

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:

1) 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."

2) 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:

(a) 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.

(b) 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.

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

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

d. 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:

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

CHAMBER:

John Stevens  
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, 2013, and shall thereupon work diligently and continuously to provide all the required services and activities described herein until June 30, 2014.

**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 \_\_\_\_\_

By \_\_\_\_\_

Philip A. Vince, City Manager

Name \_\_\_\_\_

Title \_\_\_\_\_

Attest \_\_\_\_\_

Deputy City Clerk

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

This Agreement is made this 1<sup>st</sup> day of July 2013, 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, 2013, through June 30, 2014:

- 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 2013-14 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 2013-14 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 with the City and/or the Martinez Chamber of Commerce 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 2a 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 2a 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 in partnership with the City and the Chamber of Commerce 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 administering the downtown farmers' markets.

l. MAIN STREET agrees to provide the City with quarterly promotional economic development video spots suitable for airing on the City Channel. Said video spots shall become the City's property and may be aired at the City's sole discretion.

m. MAIN STREET agrees to continue to work with the Chamber of Commerce to provide downtown revitalization, business recruitment and community marketing services in the most cost-effective way possible. An updated report on the progress of the collaboration between MAIN STREET and the Chamber of Commerce in this regard shall be presented to the City by 12-31-13.

**2. COMPENSATION**

a. The CITY shall pay to MAIN STREET a total of \$45,000 for FY 2013-2014 in performance of this Agreement. The CITY shall pay \$11,250 each quarter to MAIN STREET after receipt of each quarterly report (in a format to be mutually agreed upon); a written invoice as further described in Section 2d below; and the financial information as required in Section 3c.

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**

##### **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 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 POLICIES

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

d. WORKERS COMPENSATION

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."

e. GENERAL LIABILITY INSURANCE

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.

f. **REQUIRED DOCUMENTATION**

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 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, 2013, and shall thereupon work diligently and continuously to provide all the required services and activities described herein until June 30, 2014.

**14. 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 \_\_\_\_\_

Philip A. Vince, City Manager

Title \_\_\_\_\_

ATTEST \_\_\_\_\_

Deputy City Clerk