



DATE: May 6, 2009

TO: Honorable Mayor and City Council Members
Chairman and Members, Community Development Commission

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE COMMUNITY DEVELOPMENT COMMISSION OF THE
CITY OF OCEANSIDE AND MAINSTREET OCEANSIDE FOR FISCAL
YEARS 2009-2010**

SYNOPSIS

Staff recommends that the City Council and Community Development Commission approve professional services agreements for the production and maintenance of the Daytime and Sunset Markets, with MainStreet Oceanside for FY 09-10, at no cost to the City, and authorize the Executive Director/City Manager to execute the Agreement.

BACKGROUND

The MainStreet program began in 2000. Since that time MainStreet has provided many vital functions for the City and the funding has increased. Over the past several years the City Council and Community Development Commission has approved several professional services agreements and amendments for a variety of activities. The history of funding for MainStreet is as follows:

<u>Fiscal Year</u>	<u>City Funding Amount</u>
00-01	\$100,000
01-02	\$100,000
02-03	\$ 90,000
03-04	\$ 80,000
04-05	\$ 50,000
05-06	\$ 50,000
06-07	\$100,000
07-08	\$100,000
07-08 Amendment 1	\$100,000 (Evening Market)
07-08 Amendment 2	\$ 50,000 (July 4 activities on The Strand)
08-09	\$190,000

MainStreet Oceanside was originally conceived as a marketing group for the downtown, replacing a longtime downtown business association. The boundaries of the organization are within and without the Redevelopment Project Area. As the

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organization matured, there had been discussions of the possible creation of a Business Improvement District (BID). A BID is a special benefits area where the property owners, business owners and residents vote to tax themselves to pay for enhanced services. The idea was to enhance and replace the City efforts at street, sidewalk, lighting and landscaping construction and maintenance; banner installation; and other infrastructure, maintenance and programs that would enhance the downtown. At this time, infrastructure construction of such things as streets, sidewalks, and streetlights are paid out of a combination of developer funding, redevelopment funds and some general funds. Sidewalk maintenance is a requirement of the property owners with frontage, and limited code enforcement takes place to assure it is done. Downtown promotions are generally self-funded or paid directly or indirectly out of Redevelopment funding with some in-kind services from the general fund. These in-kind funds have not been monitored or accounted for.

Several years ago staff, in conjunction with MainStreet and a BID consultant, examined various boundaries and benefit scenarios of a BID. A survey was mailed by the consultant and MainStreet to property owners, businesses and residents in the generally proposed area, and the results were negative. In general, the property owners, business owners and residents wanted greater services but were unwilling to pay for them. At this time, with the economy in an extreme position, it is generally thought that an election for a BID would fail, and it would be better done when the economy recovers. It is not an action that the City can undertake without the consent of the affected taxpayers.

The plans to diversify and expand the downtown economic base have been the purview of the Economic and Community Development Department. The department, with Redevelopment funds, has done much to position the downtown through parking efforts, landscaping, streetscapes, entitling new developments, marketing to developers and businesses, and public relations and marketing. These efforts have resulted in the successes currently in place and formed the foundation for the successes of the future. It was never anticipated that MainStreet could successfully diversify or expand the downtown economic base.

In the coming year the Economic and Community Development Department is able to provide resources and opportunities to interested businesses in the downtown to potentially change their business plans and become more profitable. Resources such as the Small Business Development Center, speakers and trainers, and business consultants could provide value to interested downtown merchants.

In February 2009 the City Council requested a Workshop on the MainStreet Oceanside program to make a number of decisions regarding the 4th of July activities, the funding for the 4th of July, and the MainStreet programs. Areas of concern included long-term funding for the organization, the mix of special events, programs assisting the downtown merchants and a higher degree of accountability in budgeting, monitoring, and financial management and reporting. At this workshop it was decided that the City would forgo the Fireworks due to budget constraints; however, there should still be programmed activities on The Strand on the 4th of July.

At this workshop the City Council requested that the MainStreet Board return in 60 days with a Work Plan and Budget for 2009-2010 that would reduce overhead costs and improve budgeting, monitoring, financial management and reporting.

ANALYSIS

The current Work Plan being proposed by MainStreet has eliminated several of the activities which did not provide revenue and actually cost money to produce. Therefore, the proposed Work Plan only includes the following activities: Daytime Market, Sunset Market, Beach Services and the Directional Sign. MainStreet still intends to maintain a presence in the downtown and will continue to be a point of contact for merchants, residents and visitors. They will continue to produce a monthly newsletter and conduct monthly meetings; however their core activities will include only the above-mentioned activities. It should be noted that they will not be doing Antiques on Mission, Dia de los Muertos, Developers Forum or the Freedom Days Parade.

With this reduced Work Plan MainStreet is not requesting any funding from the City of Oceanside. If there are additional services that the City requests from MainStreet, they would be handled on a case-by-case basis and an associated fee for that service would need to be calculated, similar to the way July 4th activities have been managed over the last couple years.

Each of the four services will have separate contracts. The City of Oceanside currently has a Master Concessionaire Property Use Agreement for Beach Services which was entered into in July 2005 and terminates July 2010 with an option for four additional extensions of five-year periods. In addition, the City has an existing Property Use Agreement for the Directional Sign, which was entered into in February 2009 and terminates January 2010, with an option to extend for one year.

Attached are two proposed Professional Service Agreements (PSAs) for both the Daytime and Sunset Markets. Attached to the PSAs are the activities and services that MainStreet shall provide. Both PSAs are for one-year terms. Having separate agreements for each of the activities allows the City to add or change the terms and conditions of each program. Although the City will not be directly subsidizing MainStreet, the City is requesting quarterly reports on their activities, expenses and revenues, and annual audits every other year.

FISCAL IMPACT

None

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met. MainStreet Oceanside has provided proof of insurance for Workers' Compensation, General Liability and Property Damage and Directors and Officers coverage. All policies name the City as additionally

insured. Proof of insurance for any special events will be provided as required for each individual event.

COMMISSION/COMMITTEE REPORT

The Redevelopment Manager apprised the Redevelopment Advisory Committee at its April 22, 2009, meeting, of this staff report. This was an information item only.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

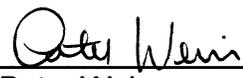
Staff recommends that the City Council and Community Development Commission approve professional services agreements for the production and maintenance of the Daytime and Sunset Markets, with MainStreet Oceanside for FY 09-10, at no cost to the City, and authorize the Executive Director/City Manager to execute the Agreement.

PREPARED BY:



Kathy Baker
Redevelopment Manager

SUBMITTED BY:



Peter Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Jane McVey, Economic & Community Development Director



ATTACHMENTS/EXHIBITS:

1. Proposed Work Plan/Strategic Plan
2. Proposed Professional Services Agreement Daytime Market
3. Proposed Professional Services Agreement Sunset Market

MainStreet Oceanside Incorporated

2009 - 2010

Strategic Plan and Work Plan



Purpose

The purpose of MainStreet Oceanside is to assist in downtown commercial revitalization by building an effective volunteer organization guided by State and National Main Street principles. MainStreet Oceanside's mission is to create a unified image, develop and implement strategies that bring people to the downtown area, enhance the appearance of the area and retain and strengthen existing businesses.

Background

The National Trust for Historic Preservation Main Street Program (on which MainStreet Oceanside was based) has created the Main Street Four-Point Approach to Commercial District Revitalization. The Main Street Four-Point Approach™ is a community-driven, comprehensive methodology used to revitalize older, traditional business districts throughout the United States. It is a common-sense way to address the variety of issues and problems that face traditional business districts. The underlying premise of the Main Street approach is to encourage economic development within the context of historic preservation in ways appropriate to today's marketplace. The Main Street Approach advocates a return to community self-reliance, local empowerment, and the rebuilding of traditional commercial districts based on their unique assets: distinctive architecture, a pedestrian-friendly environment, personal service, local ownership, and a sense of community.

The Main Street Four-Point Approach™ is a comprehensive strategy that is tailored to meet local needs and opportunities. It encompasses work in four distinct areas — Design, Economic Restructuring, Promotion, and Organization — that are combined to address all of the commercial district's needs. The philosophy and the Eight Guiding Principles behind this methodology make it an effective tool for community-based, grassroots revitalization efforts. The Main Street approach has been successful in communities of all sizes, both rural and urban.

The Main Street approach is incremental; it is not designed to produce immediate change. Because they often fail to address the underlying causes of commercial district decline, expensive improvements do not always generate the desired economic results. In order to succeed, a long-term revitalization effort requires careful attention to every aspect of downtown — a process that takes time and requires leadership and local capacity building.

Goals of this Strategic Plan and Work Plan

The following strategic plan and work plan has been organized around the Main Street Four-Point Approach in an effort to realign MainStreet Oceanside with the national program. Each one of the action points in this plan have been assigned to one of the four points. The MSO Board of Directors is committed to the immediate formation of the four committees as specified by the National Trust to guide the organization toward fulfilling the needs of the downtown business community, Oceanside residents and out-of-town visitors. In addition, this committee structure will allow the organization to immediately expand the number of participants that are planning the activities and guiding the direction of MainStreet Oceanside.

MainStreet Oceanside Strategic Plan 2009 - 2010

Manage revenue streams to fund the organization's work plan

Manage Mainstreet Oceanside's revenue sources (Farmers Market, Sunset Market, Beach Services, Wayfinding Signs, Membership Dues) to increase income while delivering maximum services to the community

Restructure the organization to conform to the National Trust's Four Point Approach

Organize and support the four key committees as specified in the Four Point Approach: Organization, Design, Promotion, and Economic Structuring

Eliminate signature events and focus existing resources on managing the weekly markets, Freedom Days Parade and Fourth of July Activities

Promote Downtown Oceanside

Create a unified image and implement strategies to attract residents and visitors to the downtown area

Support the downtown business community

Develop and implement strategies for the retention and success of existing businesses

ORGANIZATION

Organization involves getting everyone working toward the same goal and assembling the appropriate human and financial resources to implement a Main Street revitalization program. A governing board and standing committees make up the fundamental organizational structure of the volunteer-driven program.

GOAL: Strive to build consensus and cooperation among the diverse groups with roles in the downtown area implementing a unified management strategy. MainStreet Oceanside will recruit new members, hire staff, attract volunteers and raise funds to support planned activities.

1	Develop and maintain strong committee structure to implement work plan
2	Expand participation of the general public in committee and board positions
3	Define clear goals and action steps by developing and following an annual work plan
4	Conduct an annual Board retreat to finalize and adopt the annual workplan and budget and review the Strategic Business Plan
5	Continue to grow membership by developing increased services and value to business members
6	Promote downtown events on the MSO website, on the wayfinding sign and on a special events calendar
7	Display posters and distribute collateral materials in MSO office and at weekly market
8	Provide a downtown office available to members and the general public to access downtown information and resources and as a venue for monthly MainStreet Morning meetings
9	Report activities and financial data to the Community Development Director on a quarterly basis in the form that is required by the city
10	Produce a quarterly electronic newsletter and distribute to all interested parties within and outside the MSO district boundaries
11	Continue to actively participate with the National Main Street network, the California Main Street Alliance (CAMSA) and the California Downtown Association (CDA)

ECONOMIC RESTRUCTURING

Economic Restructuring strengthens a community's existing economic assets while expanding and diversifying its economic base. The Main Street program helps sharpen the competitiveness of existing business owners and recruits compatible new businesses and new economic uses to build a commercial district that responds to today's consumers' needs.

GOAL: Improve the economic base of downtown by strengthening existing businesses and recruiting others to improve the retail mix.

1	Develop and implement strategies for the retention and success of existing businesses by keeping the business community informed and providing business resources
2	Continue improvement of the Beach Services Program, Farmer's Market and Sunset Market to provide dependable revenue streams for MainStreet Oceanside
3	Regularly survey business members and property owners for input on downtown issues

DESIGN

Design means getting Main Street into top physical shape. Capitalizing on its best assets — such as historic buildings and pedestrian-oriented streets — is just part of the story. An inviting atmosphere, created through attractive window displays, parking areas, building improvements, street furniture, signs, sidewalks, street lights, and landscaping, conveys a positive visual message about the commercial district and what it has to offer.

GOAL: Convey an attractive, coherent and quality image of downtown by capitalizing on its unique assets and heritage, incorporating all elements of the downtown's appearance and function.

1	Promote a pedestrian-friendly environment by encouraging business owners to provide attractive signage, window displays, and storefronts and continue to promote the city's facade improvement program
2	Maintain relationships with the local cultural arts community and promote cultural activities in the downtown, on the website and at the markets

PROMOTION

Promotion sells a positive image of the commercial district and encourages consumers and investors to live, work, shop, play and invest in the Main Street district. By marketing a district's unique characteristics to residents, investors, business owners, and visitors, an effective promotional strategy forges a positive image through advertising, retail promotional activity, special events, and marketing campaigns. These activities improve consumer and investor confidence in the district and encourage commercial activity and investment in the area.

GOAL: Create and market a unified, positive image of downtown through special events, retail sales, effective advertising and public relations.

1	Continue to stage the Freedom Days Parade
2	Continue to stage the weekly Farmer's Market
3	Continue to stage the weekly Sunset Market
4	Continue to operate the Beach Services Program
5	Produce Fourth of July Activities in collaboration with the City to provide safe activities for beachgoers
6	Participate with the Oceanside Tourism Council to promote visitor attendance in the downtown
7	Advertise, produce notices to the media, and press releases for all MSO events and activities as identified in the MSO budget with the goal of increasing media coverage for downtown Oceanside
8	Function as an information center for the merchants and the community regarding ongoing activities in the downtown

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between Community Development Commission of the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and MAINSTREET OCEANSIDE, INC., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:
A detailed Scope of Work is more particularly described in the attached Exhibit "A."
Generally, through the MainStreet program, the CONSULTANT shall conduct and manage the Daytime Market.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this program. Such reporting shall not include volunteers; however, CONSULTANT shall be solely responsible for action of the volunteers consistent with the above.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the Redevelopment Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best or otherwise approved by the City.

4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For

the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

6. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall be the revenues from the activities outlined within Exhibit "A".

CONSULTANT shall submit a quarterly written report describing its activities, revenues and expenditures in relation to the Scope of Work. An Independent

Certified Audit shall be completed annually and submitted to the City by January 1, for the previous fiscal year completed.

7. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

8. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

9. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

10. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

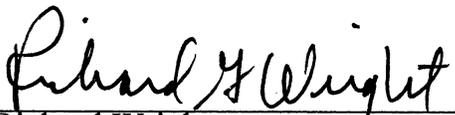
11. **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other contract which may create a conflict with the scope of work for this agreement. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a “city officer or employee,” and this section shall be interpreted in accordance with Government Code Section 1090. In the event that the CONSULTANT becomes financially interested in any other contract which may create a conflict with this agreement, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 5 above, for any claims for damages resulting from the CONSULTANTS’S violation of this Section.

12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this _____ day of _____ 2009.

MAIN STREET OCEANSIDE, INC.

CITY OF OCEANSIDE

By: 
Richard Wright
Interim Executive Director

By: _____
Peter Weiss
City Manager/Executive Director

By: _____

APPROVED AS TO FORM:


City Attorney/Agency Counsel

33-0923965
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego



On 4/28/09 before me, Curtis Jackson, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Richard G. Wright

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Professional Services Agreement

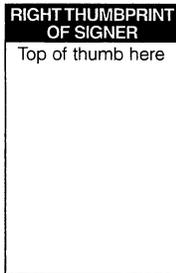
Document Date: NA Number of Pages: 6

Signer(s) Other Than Named Above: NA

Capacity(ies) Claimed by Signer(s)

Signer's Name: Richard G. Wright

- Individual
- Corporate Officer — Title(s): Exec. Director
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

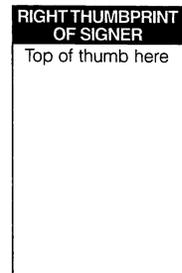


Signer Is Representing: _____

Main Street Oceanside

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Exhibit “A” Daytime Market

MainStreet will be responsible for the production of the Daytime Market including but not limited to: the recruitment of all vendors, entertainment, setup, break down, trash and general maintenance. The location of the Daytime Market will be on Pier View from Coast Highway east to Ditmar. No change in the location of the market shall be permitted without prior written City of Oceanside approval.

The Daytime Market is a year round daytime market in downtown, every Thursday from 9:00 a.m. to 1:00 p.m. featuring food, entertainment, fresh produce, arts, crafts, community organizations and commercial vendors.

This Professional Service Agreement is only for Fiscal years 2009/2010 and shall be renewed on an annual basis.

CITY OF OCEANSIDE

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NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:
A detailed Scope of Work is more particularly described in the attached Exhibit "A."
Generally, through the MainStreet program, the CONSULTANT shall conduct and manage the Sunset Market.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this program. Such reporting shall not include volunteers; however, CONSULTANT shall be solely responsible for action of the volunteers consistent with the above.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the Redevelopment Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best or otherwise approved by the City.

4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For

the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

6. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall be the revenues from the activities outlined within Exhibit "A".

CONSULTANT shall submit a quarterly written report describing its activities, revenues and expenditures in relation to the Scope of Work. An Independent

Certified Audit shall be completed annually and submitted to the City by January 1, for the previous fiscal year completed.

7. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

8. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

9. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

10. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

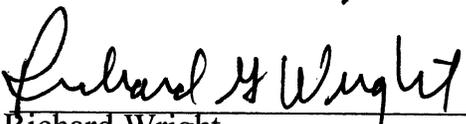
11. **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other contract which may create a conflict with the scope of work for this agreement. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a “city officer or employee,” and this section shall be interpreted in accordance with Government Code Section 1090. In the event that the CONSULTANT becomes financially interested in any other contract which may create a conflict with this agreement, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 5 above, for any claims for damages resulting from the CONSULTANTS’S violation of this Section.

12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this _____ day of _____ 2009.

MAINSTREET OCEANSIDE, INC.

CITY OF OCEANSIDE

By: 
Richard Wright,
Interim Executive Director

By: _____
Peter Weiss
City Manager/Executive Director

By: _____

APPROVED AS TO FORM:


City Attorney/Agency Counsel

33-0923965
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

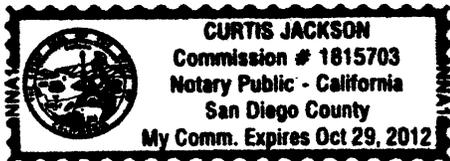
On 4/28/09 before me, Curtis Jackson, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Richard G. Wright
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/het/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Professional Services Agreement

Document Date: NA Number of Pages: 6

Signer(s) Other Than Named Above: NA

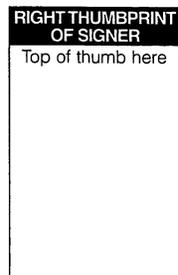
Capacity(ies) Claimed by Signer(s)

Signer's Name: Richard G. Wright
 Individual
 Corporate Officer — Title(s): Exec. Director
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: Main Street Oceanside

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: _____

Exhibit "A" Sunset Market

MainStreet will be responsible for the production of the Sunset Market including but not limited to: the recruitment of all vendors, entertainment, setup, break down, trash and general maintenance. The location of the Sunset Market will be on Pier View from Coast Highway to Cleveland Street and Tremont Street from Mission Avenue to Civic Center Drive. No change in the location of the market shall be permitted without prior written City of Oceanside approval.

The Sunset Market is a year round evening market in downtown, every Thursday, weather permitted (January through March 4:00 pm to 8:00 pm & April through December 5:00 pm to 9:00 pm), featuring food, entertainment, fresh produce, arts, crafts, community organizations and commercial vendors.

This Professional Service Agreement is only for Fiscal years 2009/2010 and shall be renewed on an annual basis.