

CONSULTANT SERVICES AGREEMENT
(PBIA Services)

THIS AGREEMENT is made at Fairfield, California, as of January 3, 2018, by and between the City of Fairfield, a municipal corporation (the "CITY") and Fairfield Main Street Association, a California non-profit mutual benefit corporation ("CONSULTANT"), who agree as follows:

1) SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2) PAYMENT. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) TERM. This agreement shall be in effect January 1, 2018 to December 31, 2018; or until the scope of work is completed.

EXECUTED as of the day first above-stated.

City of Fairfield, a municipal corporation

By: David A. White
David A. White
City Manager

By: Margaret Manno
FAIRFIELD MAIN STREET ASSOCIATION, a
California non-profit mutual benefit corporation

EXHIBIT "A"

SCOPE OF SERVICE

(1) DESCRIPTION OF SERVICES/WORK.

(a) CONSULTANT will use the Downtown Parking and Business Improvement Area (PBIA) funds provided by the CITY under this Agreement to administer the planning and execution of the California Main Street Program and its four point approach:

1. **Organization.** This includes those activities that strengthen and grow the Fairfield Main Street Association including the following:

- Annual board retreat to be held.
- Annual elections for Board of Directors and seek City Council adoption. Ensure adequate representation from all downtown merchants and property owners.
- Submit 2019 annual report to the CITY by October 15, 2018 to include accomplishments of the past year, Committee work plans, schedule of meetings for the upcoming year, and a proposed budget.
- Produce quarterly ongoing FMSA email newsletter.
- Proactively recruit local merchants to participate on the Board of Directors and committees.

2. **Design.** This includes those activities of the Fairfield Main Street Association focused on promoting a friendly, safe, attractive and well maintained Downtown include the following:

- Prepare and submit annual Committee work plan for 2018.
- Organize regular meetings of the Design Committee. Prepare and submit schedule of meetings to the CITY.

3. **Economic Restructuring.** This includes those activities of the Fairfield Main Street Association focused on recruiting new businesses and retaining viable businesses; and, creating a dynamic, vibrant business district. Will include the following:

- Prepare and submit annual Committee work plan for 2018.
- Organize regular meetings of the Economic Restructuring Committee and submit a schedule of meetings to CITY for 2018.
- Submit report to CITY regarding business issues on a quarterly basis.
- Proactively market the CITY loan programs.
- Proactively market the workshops and counseling available through the Solano College Small Business Development Center (SBDC).

(b) The duly elected Board of Directors will supervise disbursement of the PBIA funds,

which shall be maintained in a separate bank account from those provided to CONSULTANT for special events.

- (c) All PBIA funds paid to the CITY under this Agreement are passed through to the Fairfield Main Street Association.
- (d) FMSA shall perform an annual audit to assure appropriate recordkeeping upon the CITY'S request.

EXHIBIT "B"

PAYMENT

1) The total contract price for services rendered by CONSULTANT under this Agreement shall be equal to the amount of Parking and Business Improvement Association funds charged and collected by the CITY from businesses within the boundary of the district for calendar year 2018, which is estimated to be \$30,000. The Budget is attached as Exhibit B-1.

2) Payment shall be made to CONSULTANT:

Fairfield Main Street Association
1000 Webster Street, 1st Floor – Suite A
Fairfield, CA 94533
Attention: Margaret Manzo, Executive Director
Phone: (707) 422-0103

3) CONSULTANT shall submit invoices and reports to:

City of Fairfield
Economic Development Division
1000 Webster Street 2nd Floor
Fairfield, CA 94533-1883
Attention: Jennifer Rice, Real Estate Specialist II
Phone: (707) 428-7727

EXHIBIT "B-1"

2018 PBIA Budget

SEE NEXT PAGE

**FAIRFIELD MAINSTREET ASSOCIATION
2018 PBIA BUDGET**

	<u>PBIA ADMIN 2018</u>
Income	
5010 · Admissions	0.00
5020 · Advertising Income	2,500.00
5030 · Affiliate Membership Fees	900.00
5040 · Grants	0.00
5044 · Green Grant	0.00
5050 · Commissions	0.00
5060 · Donations	250.00
5080 · CFF-PBIA	30,000.00
5085 · CFF-EVENTS	0.00
5090 · Retail	0.00
5095 · Entry/Participation Fees	0.00
5100 · Sponsorship	0.00
5110 · Vendor Fees	0.00
5120 · Other Income	500.00
Total Income	<u>34,150.00</u>
Gross Profit	34,150.00
Expense	
7000 · Commissions Paid	
7010 · Accounting & Bookkeeping	6,000.00
7020 · Advertising & Promotions	2,000.00
7030 · Bank Fees	100.00
7040 · Employee/Board Training	2,000.00
7050 · Registration Fees	0.00
7080 · Trophies & Cash Awards	0.00
7090 · Contracted Entertainment	0.00
7100 · Contracted Labor	1,000.00
7120 · Contributions/Donations	100.00
7140 · Equipment Maintenance	1,000.00
7150 · Equipment Rental/Lease	3,400.00
7160 · Insurance	4,500.00
7165 · Interest	0.00
7170 · License & Permits	10.00
7180 · Miscellaneous	100.00
7190 · Dues & Subscriptions	1,450.00
7200 · Office Supplies	1,500.00
7240 · Postage	400.00
7251 · Printing-Promotions	500.00
7260 · Rent/Storage	0.00
7270 · Repairs & Maint-Facilities	800.00
7300 · Supplies-Events	0.00
7310 · Taxes/Filing Fees	35.00
7320 · Telecommunications	1,400.00
7330 · Travel/Mileage/Accommodations	2,000.00
7350 · Meals-Bus	1,200.00
7360 · Meals-Event/Facilities	0.00
7400 · Utilities	0.00
Total Expense	<u>29,495.00</u>
Net Income	<u>4,655.00</u>

EXHIBIT "C"

GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

4) CONSULTANT NOT AN AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards

of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

a) If AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(b)(2), CONSULTANT shall hold harmless, defend and indemnify the CITY, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

b) If AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

11)PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12)LOCAL EMPLOYMENT POLICY. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13)CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

14)EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT's federal tax identification number.

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- Fidelity / Crime / Dishonesty Bond in the minimum amount of \$ _____
- MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- Builder's Risk / Course of Construction Insurance in the minimum amount of \$ _____.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT's policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.