

**AGREEMENT FOR PARTICIPATION IN THE MAIN STREET PROGRAM
BETWEEN THE CITY OF LANGLEY AND
THE LANGLEY MAINSTREET ASSOCIATION**

WHEREAS, the City of Langley, a Washington municipal corporation (hereinafter, the "City"), and Langley Main Street Association, a Washington nonprofit corporation and a nonprofit organization under internal revenue code sections 501(c)(3), Federal Tax ID # _____, (hereinafter, "The Association ") desire to enter into an agreement; and

WHEREAS, the National Trust for Historic Preservation created the Main Street approach in 1980 in an effort to revitalize downtown "Main Streets", mainly in small towns, through preservation of historic downtown districts; and

WHEREAS, the Main Street approach offers a proven systematic, comprehensive model for downtown district revitalization that combines historic preservation and educational programs in local revitalization initiatives; and

WHEREAS, Main Street is a national movement that has spanned three decades and taken root in more than 2,000 communities in the United States; and

WHEREAS, the national Main Street movement has transformed the way communities think about the revitalization and management of their historic downtown commercial districts and have encouraged public and private reinvestment in such districts by galvanizing volunteers to promote historic preservation; and

WHEREAS, Main Street movements across the nation have demonstrated that a prosperous, sustainable community is only as healthy as its historic business core; and

WHEREAS, the Main Street approach features the creation of four community volunteer committees, each of which concentrates its efforts on one of the four elements of the "Main Street Four Points" approach: Organization, Economic Restructuring, Promotion, and Design; and

WHEREAS, organization builds consensus and cooperation between the many individuals and groups who have a role in the revitalization process; and

WHEREAS, economic restructuring strengthens downtown's existing economic assets while simultaneously sustaining our historic small town culture and historic appearance; and

WHEREAS, promotion creates excitement. It reinforces and markets a positive image to customers, potential investors, new businesses, local citizens, and visitors based on the unique attributes of a historic maritime district; and

WHEREAS, design enhances the unique visual qualities of downtown by addressing elements that create an appealing physical environment; and

WHEREAS, the Main Street Approach provides a flexible framework that puts the traditional assets of our downtown, such as unique architecture and locally-owned businesses, to work as a catalyst for a sustainable economy and community pride; and

WHEREAS, the Association is approved as a _____ under the Mainstreet program and approved as a nonprofit organization under internal revenue code sections 501(c)(3); and,

WHEREAS, the Association’s purpose is to promote historic preservation in a positive manner, to develop educational and social activity programs, to assist the City in public works streetscape activities and the development of design standards, and to collaborate with other organizations engaged in similar purposes..

WHEREAS, the Langley Chamber of Commerce has built a strong program of business development and promotion and has an experienced executive director and staff; and

WHEREAS, the City desires that the efforts of the Association and the Langley Chamber of Commerce be coordinated and that the Association cooperate with the Langley Chamber of Commerce and the City on the development and implementation of events and education which highlight the small town character of the district and its economic and historic connection to the waterfront; and

WHEREAS, the CITY has determined that the services of Association represents a "public purpose" which are in the best interest of the City of Langley; and

WHEREAS, the CITY in return for the services to be rendered by the Association will agree under the terms of this agreement to provide financial support and assistance to the Association; and

NOW, THEREFORE, in consideration of the public and community benefits and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed to as follows:

Article I: The City agrees to:

- A. The City will appropriate for the period commencing with designation by the State in 2012 and ending December 31, 2012, the total sum of Forty-five thousand Dollars (\$45,000.00) to be administered and disbursed to the Association solely for the purposes set forth herein (hereinafter “Funds”). The funds will be distributed in equal quarterly payments to be paid on the first day of each quarter following designation by the State. In the event in that the State designation does not occur within the first quarter of 2012 the first quarter payment will be made in the first month following designation by the State. The funds are contingent upon the Association being designated by the Washington State as a “Main Street” organization to allow for the City to obligate its utility excise tax to the Association pursuant to the Washington Main Street Program Tax incentives program. Continued funding for the years 2013, 2014, and 2015 will be considered annually in association with the preparation of the annual budget.
- B. For services provided by Association, the City shall provide by payment a total amount not to exceed the sum of the amounts set forth above for services provided in this Agreement. Payments by the City shall be contingent upon the continuing faithful and timely performance of all of the provisions of this Agreement by the Association.

- C. The said financial support shall be used by the Association in the amount of for operating expenditures and for the maintenance of streetscape plantings and other streetscape beautification items identified in the approved annual work plan.
- D. In September of 2015, the City's future contribution to the Association will be reevaluated with the City's goal being that the annual financial support by the City of the Association will not constitute more than 33% of the annually projected revenues.
- E. The source of the City's contribution to the Association shall be the City's Utility Excise tax based upon the Washington Main Street Program Tax incentives program established under Chapter 82.72 RCW. In the event that the tax credit authorized under the Washington Main Street Program is restricted under provisions of RCW 82.73.030(5) or the tax credit incentive program is discontinued by the State of Washington, the City Reserves the right to reduce or terminate any and all fund allocation to the Association in the succeeding calendar year.
- F. Support the Second Street Market to be held on Second Street or a mutually agreed upon alternate location by providing for an annual permit for use of the street for the Second Street Market including a fee not to exceed \$50 per individual market event to paid in one annual lump sum with the parade permit application. The city will provide traffic control signs and staff to set up and take down the necessary signage.
- G. Support the Association in utilizing the publicly owned city property including parks, open spaces, lots, buildings and streets for events that promote the education, revitalization and celebration of the city's historic urban core.

Article II: The Association Agrees to:

- A. The Association shall implement a comprehensive approach to downtown revitalization following the Four-Point Approach recommended by the National Trust Main Street Center and Washington State Main Street. This includes the development of annual written work plans for the Association and the establishment of a strong, broad-based organizational system to include but not limited to the following committees: organization, promotion, design, and economic restructuring. The Association shall submit its work plan to the City for review at the time of the City's annual evaluation specified below.
- B. The Association shall keep the City well informed regarding ongoing activities by providing the City with one (1) copy of any materials and/or publications relating to the Langley Main Street Program. Materials include board meeting minutes, committee meeting minutes, approved budgets, local training flyers, newsletters, and other promotional materials, program of work, and membership lists.
- C. Maintain its National Main Street Accreditation, both its Washington State and federal 501(c)(3) status, and become designated by Washington State as a main street organization.
- D. Maintain broad-based community support for the program from public and private sectors through financial contributions and in-kind volunteer support.

- E. Develop and submit to the city for input and recommendations an annual written work plan with an adequate operating budget to carry out the work plan. The plan shall be presented to the City Council at a public meeting and allow for public input. The work plan must demonstrate compliance with the requirements of this Agreement and the National Mainstreet program.
- F. Assist the City in identifying public improvements which would support or facilitate commercial revitalization, including but not limited to:
 - 1. Streetscape and Landscape Improvements;
 - 2. Building/Landscape Maintenance;
 - 3. Parking;
 - 4. Parks;
 - 5. Lighting; and
 - 6. Sidewalk and pedestrian improvements
- G. Assist the City Planning Department and the City's Design Review Board in the development of new design review and commercial signage standards that encourage quality building, building rehabilitation, and compatible new contemporary infill development, all to enhance the appearance and attractiveness of the City.
- H. Cooperate with the Langley Chamber of Commerce and the City on the development of:
 - 1. A bicentennial celebration of Langley's 100 years of incorporation in 2013;
 - 2. Strategies to encourage private investments within the City that foster the preservation of the City's culture and history; and
 - 3. Strategies for marketing the historic seaside attributes of the City.
- I. Promote the retention of historic assets and maintenance of a historic preservation ethic, specifically:
 - 1. The Association must maintain an active, effective design management program;
 - 2. The Association must encourage through education appropriate building renovations, restoration and rehabilitation;
 - 3. The Association will support infill development that reflects a contemporary need and that is compatible in size and scale with the historic buildings.
 - 4. The Association will assist the City in the identification of incentives to help facilitate the maintenance and appearance of the historic commercial district;
 - 5. The Association will build public awareness for the commercial historic districts buildings.

- J. Provide Association members or volunteers that have signed a liability waiver and have been trained by the public works department to handle the set up and removal of street signage for the Second Street Market in the event city staff is unavailable.

Article IV: Evaluation. The City shall conduct an annual evaluation to review the Association's progress for the prior 12-month period. The evaluation shall include evaluation for accreditation as a National Main Street Program.

Article V: Insurance Requirements. Langley Main Street Program shall take out and maintain insurance as set forth below:

- A. The Association shall have in force the following insurance coverage, and shall provide the Clerk Treasurer of the City, or his/her designee, with Certificates of Insurance within thirty (30) days of the effective date of this Agreement to verify such coverage. The insurance coverage shall contain a provision which forbids any cancellation, changes or material alternations in the coverage without providing thirty (30) days written notice to the City:
 - a. Commercial General Liability – The Association shall provide commercial general liability coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will not be less than \$500,000 Combined Single Limit (CSL) bodily injury and property damage, or its equivalent. The City shall be named as an additional insured.
 - b. Commercial Automobile Liability – If the Association's activities include or require the hiring of a vehicle, the Association shall provide coverage for all owned, non-owned and hired vehicles utilized in the performance of this Agreement for limits of not less than \$500,000 Combined Single Limit (CSL) bodily injury and property damage, it its equivalent.
 - c. Workers' Compensation – The Association shall provide Workers' Compensation coverage for all employees in accordance with Washington State law at the site location and, in case any work is subcontracted, will require the subcontractor to provide Workers' Compensation for all its employees. The limits will be statutory for Workers' Compensation and \$100,000 for Employer's Liability.

Article VI. General Terms

A. Payment Schedule and Terms

- 1. The funds provided to the Association under this Agreement is a sum not to exceed the amount set forth on Article I of this Agreement for all services performed and expenses incurred under this Agreement. Payments shall be made quarterly in equal installments upon receipt of Langley Main Street Program's invoice/request for payment and reporting documentation.
- 2. The City's financial support includes the Associations' direct labor costs, overhead costs, and direct (expense) costs, including materials, supplies,

equipment, costs for travel, reproduction costs and telephone, facsimile and computer use incurred during the billing period.

3. The Association shall keep records pertaining to this Agreement available for inspection by the City's representative for four (4) years after final payment.
4. If the services rendered do not meet the requirements of the Agreement, the Association will, upon written notice given by the City, correct or modify the work to comply with the Agreement. The City may withhold a quarterly payment for such work until the work meets the requirements of the Agreement.

Article VII: Nonprofit Status. The Association shall maintain its non-profit status in the State of Washington and its status as a nonprofit organization under Internal Revenue Code sections 501(c)(3) throughout the term of this Agreement. If Association should, during the term of this Agreement, lose either non-profit status, it shall immediately notify the City within ten (10) days of the event. Upon such an event, the City reserves the right to immediately terminate this Agreement and discontinue distribution of Funds to the Association.

Article VIII: Duration

This Agreement shall be in full force and effect from and after January 1, 2012, through and including December 31, 2015.

Article IX: Renewal. Subject to the performance of the Association under this agreement, approval and the City's allocation of funding for the Mainstreet Program by City Council, this Agreement shall be renewed under the same terms and conditions contained herein by the first day of October of each fiscal year, unless written notice of termination is received by either party thirty (30) days prior to the date of expiration of this Agreement.

Article X: Termination. Any party may terminate this Agreement without cause upon sixty (60) days prior written notice to the other parties. If the City finds that the Association is not in compliance with the requirements of the Main Street Program, the City shall have the right to terminate this Agreement upon ten (10) days prior written notice and withhold further services. Reasons for a finding of noncompliance include, but are not limited to, finding that the Langley Main Street Association is using program funds for unauthorized activities, has failed to complete approved activities in a timely manner, has substantially failed to comply with the terms of the Agreement, has failed to comply with applicable laws and regulations, has demonstrated insufficient organizational capacity to carry out the purpose of the Main Street program, or fails to raise required private-sector funds sufficient to sustain the Main Street Program operation to the benefit of the City. The Association will be paid just and equitable compensation as provided in Article I for any satisfactory work completed prior to the date termination.

Article XI: Indemnification and Hold Harmless.

- A. The Association shall indemnify, defend and hold harmless the City, its officers, agents, employees, and volunteers, from and against any and all claims, demands, damages, judgments, losses, liability and expenses (including, attorney's fees),

including but not limited to those for personal injury, death or property damage suffered or incurred by any person, by reason of or in the course of performing this Agreement which is or alleged to be caused by or may directly or indirectly arise out of any act or omission of the Association, its officers, employees, agents and volunteers. This Agreement shall also include all costs and attorney's fees incurred by the City in defending the same.

- B. The City shall indemnify, defend and hold harmless the Association, its officers, agents, employees, and volunteers, from and against any and all claims, demands, damages, judgments, losses, liability and expenses (including attorney's fees), including but not limited to those for personal injury, death or property damage suffered or incurred by any person, by reason of or in the course of performing this Agreement which is or alleged to be caused by or may directly or indirectly arise out of any act or omission of the City, its officers, employees, agents and volunteers. This Agreement shall also include all costs and attorney's fees incurred by the Association in defending the same.
- C. The parties, by mutual negotiation, waive, as respects the other party, any immunity that would otherwise be available against such claims under industrial insurance provisions of Title 51 RCW.
- D. All Association members or volunteers working on city property, including street right of ways, shall sign a waiver form that shall indemnify, defend and hold harmless the City, its officers, agents, employees, and volunteers, from and against any and all claims, demands, damages, judgments, losses, liability and expenses (including, attorney's fees), including but not limited to those for personal injury, death or property damage suffered or incurred by any person, by reason of or in the course of performing this Agreement which is or alleged to be caused by or may directly or indirectly arise out of any act or omission of the Association, its officers, employees, agents and volunteers. This Agreement shall also include all costs and attorney's fees incurred by the City in defending the same.

Article XII: No Partnership. It is understood and agreed that nothing contained in this Agreement shall be considered as in any way constituting a partnership between the City and the Association.

Article XIII: Independent Contractor. For the purposes of this agreement the Association is, and shall be at all times during the term of this Agreement, an independent contractor and not an employee of the City. The parties fully understand the nature of independent contractor status and intend to create an independent contract or relationship. The Association, and not the City, shall have the right to control the manner and means by which the work or services is accomplished. The City shall retain the right, however, to ensure that the work or services is being performed according to agreed-upon requirements. Consistent with this relationship, the Association shall not be covered by any City benefit programs, such as health and welfare benefit plans, social security, workers compensation or unemployment compensation, and shall not be treated as an employee for federal or state tax purposes or any other purpose. The Association shall be responsible for paying all taxes related to payments City makes to the Association,

including federal income taxes, self-employment (Social Security and Medicaid) taxes, local and state business and occupation taxes, and the City is not responsible for withholding for or paying any of those taxes.

Article XIV: Non-discrimination. The Association and its employees, agents and subcontractors, if any, shall at all times comply with any and all federal, state or local laws, ordinances, rules or regulations with respect to non-discrimination and equal employment opportunity, which may at any time be applicable to the City by law, contract or otherwise, including but not limited to all such requirements which may apply in connection with employment or the provision of services to the public. The Association agrees that all contractors, subcontractors, or others with whom it arranges to provide services to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of this provision. Upon receipt of evidence of such discrimination, the City reserves the right to immediately terminate this Agreement.

Article XV. Compliance with all applicable laws. The Association shall at all times in connection with performance of this Agreement comply with any and all other applicable federal, state and local laws, rules, ordinances and regulation.

Article XVI Notices. All notices shall be delivered personally or may be mailed by certified mail, return receipt requested, to the other party as their address appears of record with the City or State. In the case of notice by mail, notice shall be deemed given on the date of postmark.

Article XVII: Nonwaiver. Any failure by the City to enforce strict performance of any proviso of this Agreement will not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of this Agreement

Article XVIII: Severability. If any term or provision of this Agreement is held invalid, the remainder of such terms or provision of this Agreement shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

Article XIX: Legal Fees In any lawsuit between the parties with respect to matters covered by this Agreement, the prevailing party will be entitled to receive its reasonable attorney fees and costs of the lawsuit, in addition to any other relief that may be awarded.

Article XX: Applicable Law; Venue This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action shall be in the Superior Court of Island County.

Article XXI: Assignment or Delegation. The Association shall not assign any of its rights or interest in this Agreement, nor delegate any of its duties hereunder to any oilier person, firm or entity without the express written consent of the City first being obtained.

Article XXII: Modification. No modification of this Agreement shall be effective unless agreed to in writing and signed by the Parties.

Article XXIII. Complete Agreement. This Agreement together with the Attachments reflects the entire agreement of the parties relating to the subject matter thereof, supersedes all prior or contemporaneous oral or written agreements, or any

understandings, statements, representation or promises, and is intended fully to integrate the agreement, between the parties with respect to the matters described in this Agreement.

Article XXIV: Review. The Association and the City shall conduct a written annual program review of the Association, at the end of year of operation, which review shall promptly be presented to the Council for its review.

Article XXV: Savings Clause. If any term or provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.

Article XXVI: Other Terms. Additional Terms (if any) are set forth in an Attachment that will be numbered and initialed and dated by the parties.

IN WITNESS WHEREOF, the City of Langley, Washington and Langley Mainstreet Association have caused their hands and seals to be affixed below, and have duly executed this Agreement on the date and year first above written.

City of Langley, Washington

By: _____

Mayor

ATTEST:

City Clerk

APPROVED as to form and legality, for the use and reliance of the City of Langley, Washington only.

_____, 2011.

City Attorney

City of Langley

Langley Mainstreet Association

a Washington State non-profit corporation,
and a Federally Designated 501 (c) (3)