Memo

To: City Council
From: Katy Hainla – Community Planning Intern
Date: April 2, 2014
Re: Agreement with Main Street Association for Services in the Main Street Program

Background

The Washington State Main Street Program is an effort to help communities revive and maintain the economy, appearance, and image of downtown commercial districts. The Main Street Approach provides a flexible framework that puts the traditional assets of Langley’s downtown to work as a catalyst for sustainable economic development and community pride.

The City desires the Association to design, landscape, and install the Second Street Streetscape Project. The City has determined that these services are for a “public purpose” and are related to economic development, revitalization, and historic preservation. To these ends, the Langley Main Street Association is a sole source provider of these services under the National Trust for Historic Preservation and the Washington State Main Street Program.

The Agreement does not constitute a partnership between the City and the Association. The Association will be an independent contractor. Under the Agreement, the Association assumes responsibility for carrying out and accomplishing the services required.

Terms of Agreement

The City agrees to pay $20,000 to purchase landscaping to be used in accordance with an approved landscape plan for Second Street Streetscape Project. The City will support the Association in utilizing publicly owned city property, such as parks, open spaces, lots, and streets, for special events that promote the City’s historic urban core; this includes the Second Street Market. The City will consider additional funding related to the maintenance of landscaping on public property in the main street district upon request.

The Association agrees to design, purchase and install landscaping in accordance with an approved landscape plan. The Association shall maintain the landscaping, other than general mowing of grass.

The Association assumes all liability for employees and volunteers while releasing the City from any liability. The Association shall take out and maintain the following insurance: commercial general liability, commercial automobile liability, and workers compensation. Records of direct and indirect costs related to the performance of the Agreement shall be maintained Association must maintain records of direct and indirect costs related to the performance of the Agreement.

In addition, the Association must comply with federal and state laws and retain nonprofit status and designation by Washington State as a Main Street organization, and maintain community support.

The City shall conduct an annual evaluation of the Association’s performance to ensure compliance with the Agreement. Allocation of funding for the Main Street Program shall be renewed under the same terms and conditions by the City Council each fiscal year, subject to the performance of the Association under the agreement.
Either party may terminate the Agreement without cause with sixty days prior notice to other parties. The City has right to terminate the Agreement if the Association is found to in compliant with the requirements.

The Agreement shall be in effect from January 1, 2014 through December 31, 2017.

**Recommendation:**

Staff recommends the City Council approve the Agreement for Services and Participation in the Main Street Program Between the City of Langley and the Langley Main Street Association.
AGREEMENT FOR SERVICES AND PARTICIPATION IN THE MAIN STREET PROGRAM
BETWEEN THE CITY OF LANGLEY AND
THE LANGLEY MAIN STREET ASSOCIATION

This Agreement is entered into by and between the CITY OF LANGLEY, WASHINGTON, a municipal corporation hereinafter referred to as "City", and LANGLEY MAIN STREET ASSOCIATION hereinafter referred to as “Association”, a Washington nonprofit corporation and a nonprofit organization under internal revenue code section 501(c)(3), Federal Tax ID # ; and

RECITALS

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, 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 City has determined that the services of Association provided for in this agreement are for a "public purpose," related to economic development, revitalization and historic preservation; and

WHEREAS, the Association is a sole source provider of services under the National Trust for Historic Preservation and Washington State Main Street Program; and

WHEREAS, the City desires the Association to design, landscape and install the Second Street Streetscape Project in furtherance of this goal; and

WHEREAS, it is in the best interest of the City to contract with the Association for such services;
NOW, THEREFORE, in consideration of the terms, condition, covenants, and performance contained herein, the parties hereto agree as follows:

TERMS

Article I: The City agrees to:

A. Pay the Association $20,000.00 to purchase landscaping to be used/installed in accordance with an approved landscape plan for the Second Street Streetscape Project and for no other purpose.

B. 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 including the Second Street Market, which takes place from June through September on Second Street in Downtown Langley.

C. Upon request consider funding related to the maintenance of landscaping on public property in the main street district.

Article II: The Association Agrees to:

A. Design, purchase and install landscaping in accordance with an approved landscape plan for the Second Street Streetscape Project.

B. Obtain approval from the Design Review Board for the landscaping plan prior to commencing any work on the Second Street Project.

C. Obtain any necessary right-of-way permits from the City before commencing any work.

D. Maintain all landscaping as part of the Second Street Project in accordance with the approved landscaping plan excluding general mowing of grass and open space areas.

E. Maintain on-street planter areas on Second Street and Anthes, the hanging flower baskets and flower pots in Boy and Dog Park in Downtown Langley.

F. Accept all liability for its employees and volunteers that perform work on city owned property, including public street right of ways, in accordance with the terms of this Agreement.

In the performance of this Agreement, comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, any other standards or criteria as described in this Agreement to assure quality of services. Specifically, the Association shall maintain its National Main Street Accreditation, both its Washington State nonprofit and federal 501(c)(3) status, and designation by Washington State as a main street organization pursuant to Chapter 43.360 and 82.73 RCW.

G. Perform the work set forth in this Agreement diligently and completely.

H. Maintain broad-based community support for the program from public and private sectors through financial contributions and in-kind volunteer support.
**Article III: Evaluation.** The City shall conduct an annual evaluation to review the Association’s progress for the prior 12-month period.

**Article IV: Insurance Requirements.** The Association 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. In the event that the Association receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated or material alteration of coverage, the Association shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City:

1. **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. $1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; $12,000,000 general aggregate, or its equivalent. The City shall be named as an additional insured.

2. **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, its equivalent.

3. **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.

B. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

C. **Verification of Coverage.** In signing this agreement, the Association is acknowledging and representing that required insurance is active and current. Further, throughout the term of this Agreement, the Association shall provide the City with proof of insurance upon request by the City.

D. **Notice of Cancellation.** The Association shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

E. **Failure to Maintain Insurance.** Failure on the part of the Association to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days’ notice to the Association to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be
repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Association from the City.

F. **Insurance shall be Primary.** The Association’s insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Association’s insurance and shall not contribute with it.

G. **No Limitation.** The Association’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Association to the coverage provided by such insurance or otherwise limit the recourse to any remedy available at law or in equity.

**Article V. General Terms**

A. **Payment Schedule and Terms**

1. The City shall pay the Association for all allowable expenses incurred after a receipt of an invoice separately detailing such service rendered and expenses incurred during the applicable period.

2. The Association shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

3. The Association shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The Association agrees that the City or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

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 immediately withhold a quarterly payment for such work until the work meets the requirements of the Agreement or terminate this agreement pursuant to Article 10 of this Agreement.

**Article VI: 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 payment of Funds to the Association.

**Article VII: Duration**

This Agreement shall be in full force and effect from and after January 1, 2014, through and including December 31, 2017. If the city decides not to provide or reduces funding for Main
Street during the annual budget process this agreement shall terminate on January 1st of the year funding is reduced or ceases.

**Article VIII: Renewal.** Subject to the performance of the Association under this agreement, approval and the City’s allocation of funding for the Main Street 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 IX: Termination.** Either 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 X: Indemnification and Hold Harmless.**

A. The Association shall indemnify, defend and hold the City, its officers, agents, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, demands, damages, judgments, losses, liability and expenses (including, attorney’s fees) arising out of or resulting from the acts, errors or omissions of the Association, its officers, employees, agents and volunteers in performance of this Agreement, except for injuries caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Association and the City, its officers, officials, employees, and volunteers, the Association’s liability, including the duty and cost to defend, hereunder shall be only to the extent of the Association’s negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Association’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

C. The Association and its members agree to 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 XI: 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 XII: Independent Contractor.

A. The Association and the City understand and expressly agree that an independent contractor relationship will be created by this Agreement. The Association is an independent contractor in the performance of each and every part of this Agreement. The Association expressly represents, warrants and agrees that its status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Association, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Association shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

The Association will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. The Association shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Association shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Association performs hereunder.

D. Prior to commencement of work, the Association shall obtain a business license from the City.

Article XIII: Non-discrimination.

A. The City is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the Association will not discriminate against any employee or applicant for employment on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law; unless based upon a bona fide occupational qualification. The Association shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. Nondiscrimination in Services. The Association will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race,
religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law.

D. If any assignment and/or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Association shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

Article XIV: Political Activity Prohibited

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

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. Notices to the City shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF CITY PERSON]

Notices to the Association shall be sent to the following address:

[INSERT NAME, TITLE AND ADDRESS OF ASSOCIATION PERSON]

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

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 other 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.

Article XXVII: AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT. The undersigned represent that they have authority to enter into this Agreement and to bind the parties.

DATED this _____ day of ______________, 2014.

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.

_____________________________, 2014.

_____________________________

City Attorney

City of Langley
Langley Main street Association

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

By: ______________________________

Title: ______________________________