

**PUBLIC SERVICE AGREEMENT
BETWEEN THE CITY OF INDEPENDENCE AND
THE INDEPENDENCE SQUARE ASSOCIATION**

THIS Public Service Agreement ("Agreement") is entered into by and between the City of Independence, Missouri ("City"), a Missouri municipal corporation, and Independence Square Main Street ("Main Street"). The City and Main Street may be referred to individually as the "Party" and collectively as the "Parties."

WHEREAS, in 1957 a group of business and civic leaders joined together to maintain and revitalize historic downtown Independence due to the new open-air Blue Ridge Crossing shopping center and growth and sprawl on the edges of the community nearer the highways and interstates, and;

WHEREAS, in 2016 the non-profit Independence Square Association joined with Missouri Main Street Connection and Main Street USA and began training and education on historic preservation and economic revitalization, and;

WHEREAS, the organization has adopted the Four-Point Approach to economic revitalization and the business community in partnership with the City, incorporated the not-for-profit Independence Square Main Street, Inc., (dba Independence Square Association), obtained its Section 501 (c)(3) educational and charitable designation, and;

WHEREAS, Independence Square Association (ISA) continues to challenge itself and the community with the continued use of the Four-Point Approach of:

- i. Organization (encouraging cooperation, recruiting partners, and building leadership in the community);
- ii. Promotion (creating a positive image for downtown and promoting it as a viable place to live, work, shop, visit, and invest);
- iii. Economic Vitality (developing business retention, expansion, and recruitment strategies);
- iv. Design (providing design education and assistance to improve the appearance of downtown and promote and foster historic preservation), and;

WHEREAS, as a result of focus and execution of these four points, ISA has grown to an Associate Tier community in Missouri, and;

WHEREAS, ISA has a successful history of advertising historic spaces, developing placemaking spaces and creating community gathering events, and;

WHEREAS, the Mayor and City Council have determined that it is in the best interests of the Independence community, and important to the promotion of the general economic welfare of Historic Downtown Independence, to continue to financially support the work of Main Street in its continued focus with the Main Street Four-Point Approach.

NOW THEREFORE, the Parties, in consideration of the above recitals and the following mutual covenants and stipulations, agree as follows:

I. Main Street Scope of Services

Independence Square Main Street shall:

- A. Perform the following scope of services for the City:
 - i. *Organization:* Independence Main Street shall provide unified management and coordination for the Downtown Core Area, through Main Street's interaction with its investors, volunteers, the City, businesses and property owners in the Downtown Area, and community partners to contribute toward the economic revitalization of the Downtown Area.
 - ii. *Promotion:* Main Street shall develop, review, and update a consistent marketing and promotion program for the Downtown Area. The marketing and promotion program shall include producing quality marketing pieces, coordinating advertisements, and organizing new events/activities that attract visitors to the Downtown Area. The Parks, Recreation and Tourism Department logo shall be visible on all promotional, marketing and advertising material. Whenever possible, the marketing and promotion program should be coordinated with other community marketing partners to support community branding efforts. A Neighborhood Tourism Development Fund budget shall be overseen by Main Street. (Budget outlined in Section II).
 - iii. *Economic Vitality:* Main Street shall continue to strengthen the existing economic assets of the Downtown Area while diversifying its economic base, including recruiting new businesses, assisting with expansion of existing businesses, facilitating redevelopment, marketing available or underutilized commercial space, and strengthening the management capabilities and competitiveness of individual businesses. Main Street shall track key statistics, including rate of return of promotions, effectiveness of promotions, job growth and new businesses in the Downtown Core Area, and host business development seminars based on the needs of the downtown business community. Social media statistics to be reported include total reach, impressions, engagement, followers, and click-through rates for Facebook and Instagram posts; impressions, tweets, new followers and profile visits on X (formerly Twitter); and number of visits connected to campaigns, number of leads generated, and number of requests for tours, visitor guides, and other promotion materials from the Main Street website.
 - iv. *Design.* Main Street shall initiate and develop new design proposals for the continued evolution of the overall aesthetic look of the Downtown Core Area. Main Street will assist City staff with the implementation and education of the City's Design Standards for the Downtown Core Area.
- B. Only use the Funds, as defined below, for the development and promotion of new programs and initiatives designed to increase tourism visits and increase length of tourist stays as set forth in Subsection A - Scope of Services . Any use of the Funds for a purpose other than authorized in this Agreement shall be a material breach of this Agreement, and Main Street shall return any unspent Funds and an amount equal to the amount used for an unauthorized purpose.
- C. Maintain accurate records of all monies received from the City and the itemized use and disbursement of all such monies. Main Street shall maintain an accounting system which complies with generally accepted accounting principles, and with the American Institute of Certified Public Accountants Audit Guide for Non-Profit Corporations and shall separately account for the Funds provided by the City pursuant to this Agreement.
- D. Provide the City with its approved budget for the upcoming fiscal year, the names of the officers or directors of Main Street.
- E. At execution of this Agreement, provide the City a copy of the current Main Street bylaws, articles of incorporation and any amendments thereto. In the event of any change of officer and/or director, bylaws, or amendments to the articles of incorporation, during the term of this Agreement, Main Street shall provide the City a copy of the updated documents and/or information.
- F. Main Street shall submit biannual program status reports documenting activities from July 1 to December 31 ("First Report") and January 1st to June 30th ("Second Report"). The reports shall document the revenue and disbursements of monies received from the City, and shall contain analytical memoranda which:
 - i. Describes results of activities and expected achievements;
 - ii. Describes program effectiveness; and
 - iii. Lists capital expenditures, if applicable.

The First Report shall be submitted to the City on or before January 15, 2024. The Second Report shall be submitted to the City on or before July 15, 2024. Main Street shall also provide a semi-annual in-person presentation to the City Council. The dates of such in-person presentation shall be determined by the City Administration.

II. FINANCIAL SUPPORT AND TERM OF AGREEMENT

- A. The term of this Agreement shall be for one year commencing on July 1st, 2023, and ending on June 30th, 2024.
- B. The City agrees to pay Main Street \$100,000.00 ("Agreement Funds") for services rendered listed above.
- C. The City shall distribute the Funds in four (4) equal quarterly installments on or before the 15th day of January, April, July and October starting in July, 2023, subject to appropriation by the City Council. Nothing in this Agreement shall preclude the City from contracting separately with Main Street for services upon terms and conditions agreed to by the City and Main Street.
- D. In no event shall Main Street use any monies received from the City under this Agreement to increase the compensation of any Main Street employee or officer. "Compensation" as used herein includes salary, commissions, bonuses, or other monies, but does not include reimbursements for expenses, such as travel, materials or supplies if expenses are incurred while furthering the objectives of this Agreement.
- E. Main Street shall issue a one-year honorary membership to the City during the term of this Agreement.

III. TERMINATION

- A. This Agreement may be terminated by the City at any time by written, mutual agreement of the parties. The City may terminate the Agreement immediately if funds are not appropriated for the Services described herein. The City shall have the right to terminate this Agreement in the event that Main Street is in default or violation of the terms or provisions of this Agreement and fails to cure such default or violation in the manner specified in Subsection B below.
- B. In the event of a default or violation by Main Street, the City shall send to Main Street by certified mail a notice demand to cure default, explaining the specific nature and extent of the default or violation. Main Street shall cure, or remedy said violation or default within twenty (20) working days after receipt of said Notice, unless a longer time is agreed upon by both parties in writing. In case the default is not cured or remedied within twenty (20) working days or a longer period of time if agreed upon, the City may exercise its option to terminate this Agreement upon five (5) days written notice thereafter. Main Street shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Main Street.
- C. In the event of termination, Main Street shall refund to the City a pro-rated portion of the compensation paid pursuant to Section II above. The pro-rated amount shall be determined by dividing the monthly payment recited in Section II by 30 ("Daily Amount") and multiplying the Daily Amount by the number of days remaining in the month from and after the effective date of termination. Main Street shall refund the pro-rated amount to the City within 30 days of the effective date of termination.

IV. INDEMNIFICATION

To the fullest extent permitted by law, Main Street shall defend, indemnify and hold harmless the City, and the City's council member, officer, director, employee or agent thereof (the City and any such person being herein called an "Indemnified Party") for, from, and against all claims, liabilities, demands, damages, losses, fines, penalties, injuries to property or persons (including death), and expenses (including attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively "Claims") to the extent that such Claims relate to, result from and/or arise out of Main Street's acts, errors, directives, or omissions, in performance of this Agreement. The obligations of this Section include the acts, errors, mistakes, directives, or omissions of Main Street's employees, agents, advertisers, contractors, subcontractors, or any other person for which Main Street may be legally liable, in the performance of this Agreement, provided that this obligation shall not apply to the City's negligence in the performance of this Agreement. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section. The indemnity requirements set forth in this Agreement will in no way be construed as limiting the insurance required in this Agreement or waiving the City's sovereign immunity.

V. INSURANCE

A. General.

- i. *Insurer Qualifications.* Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
- ii. *No Representation of Coverage Adequacy.* The City shall have the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Main Street from, nor be construed or deemed a waiver of, its obligation to always maintain the required insurance during the performance of this Agreement.
- iii. *Coverage Term.* All required insurance shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed, and formally accepted by the City, unless specified otherwise in this Agreement.
- iv. *Primary Insurance.* Main Street's insurance shall be, or endorsed to be, primary, noncontributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.
- v. *Claims Made.* The parties agree that no policies required under this Section shall be made in a claim made basis.
- vi. *Policy Deductibles and/or Self-Insured Retentions.* The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Main Street shall be solely responsible for any such deductible or self-insured retention amount.
- vii. *Use of Subcontractors.* If any of the services under this Agreement is subcontracted in any way, Main Street shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Main Street. Main Street shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- viii. *Evidence of Insurance.* Prior to receiving any Funds, or commencing any work or services under this Agreement, Main Street will provide the City with suitable evidence of insurance in the form of certificates of insurance, endorsements, and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Main Street's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance, endorsements, and declaration page(s) of the insurance policies as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Main Street shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:
 - The City, its agents, representatives, officers, directors, officials, and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
 - Main Street's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.

- All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials, and employees for any claims arising out of work or services performed by Main Street under this Agreement.
- All Certificates of Insurance shall name the City of Independence as the certificate holder and send the certificate and any endorsements to:

City of Independence
 Attn: City Administration
 111 E Maple Ave
 Independence, MO 64050

- ix. *Endorsements.* Main Street shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Section.
- x. *Required Insurance Coverage.* Main Street shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury, and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers, and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- xi. *Cancellation and Expiration Notice.* Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.
- xii. *Workers Compensation:* Main Street understands and agrees that Main Street's employees, agents, contractors, volunteers, and directors, are not serving as an employee of the City in any manner and therefore are not entitled to any of the City's industrial benefit coverages, including Workers' Compensation coverages. Main Street acknowledges that any injury its employees sustain in the performance of this Agreement will not be eligible for industrial benefits through the City and any necessary treatment will be Main Street, or Main Street's insurer's, sole responsibility.

VI. GENERAL CONDITIONS

- A. *Non-Discrimination Laws.* Main Street shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability, and with the Americans with Disability Act of 1990. In addition, Main Street shall include similar requirements of subcontractors in any written contracts entered into for performance of Main Street's obligations under this Agreement.
- B. *Financial Review.* Main Street shall make all financial records related to the Funds available for inspection by the City, or its designee, upon reasonable notice during normal business hours of the City. If the City desires a financial audit by an independent certified public accountant of the Main Street's financial records to verify use of the Funds according to the terms and conditions of this Agreement, Main Street shall cooperate fully in the performance of such audit. If the audit reveals that Main Street misappropriated the Funds received from the City, the City may require Main Street to cover the cost of such an audit. Main Street is entitled to a copy of any resulting reports that are received by the City.

- C. Compliance with Laws. Main Street shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, Main Street shall include similar requirements of its contractors in any written contracts entered into for performance of Main Street obligations under this agreement.
- D. Successors and Assigns. This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties. The requirements of this Agreement are binding upon the successors and assigns of both Parties.
- E. Attorney Fees and Costs. In the event any action, suit or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration, and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
- F. Laws Governing Venue. This Agreement shall be governed by the laws of the State of Missouri, as to validity, interpretation, and performance. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in State Court in eastern Jackson County, Missouri.
- G. Non-Waiver. The failure or delay of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.
- H. Severability. If any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Missouri, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- I. Entire Agreement and Amendments. This instrument contains the entire Agreement between the Parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement, or specifically referred to in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by both Parties.
- J. Relationship of Parties. The Parties understand and expressly agree that Main Street is an independent contractor and is not an employee of the City. Nothing in this Agreement constitutes a partnership or joint venture between the Parties and neither Party is the principal or agent of the other.
- K. Rights/Obligations of Parties Only. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing in this Agreement shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency, or organization.
- L. Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of Main Street of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.
- M. Work Authorization/E-verify. Pursuant § 285.530, RSMo., if Agreement exceeds five thousand dollars (\$5,000.00), Main Street warrants and affirms to the City that:
 - (i) Main Street is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services;
 - (ii) Main Street does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Main Street shall swear to and sign an affidavit declaring such affirmation and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. Attached hereto and incorporated herein as Exhibit B, the Main Street E-Verify Affidavit.
- N. Political Activities. Main Street shall not use the compensation paid through this Agreement for political activities or legislative activities. For the purpose of this Agreement, the terms "political activities" and "legislative activities" shall have the meanings ascribed to them by the Internal Revenue Service.

- O. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, if this Agreement has a total potential value of \$100,000 or more and Main Street has 10 or more employees, Main Street certifies that Main Street is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.
- P. Notices. Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, and other communications (collectively "Notices") required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or five (5) calendar days after mailing, whichever comes first, in the case of notices that are mailed.:

To City:
 City of Independence
 Attn: City Manager
 111 E Maple Ave
 Independence, Missouri 64050

To Main Street:
 Independence Square Association
 Attn: Executive Director
 106 S Liberty St
 Independence, Missouri 64050

- Q. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.
- R. E-Signature and Counterparts. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the _____ day of _____, 2023.

CITY OF INDEPENDENCE, MISSOURI

By _____
 Zachary C. Walker

Title City Manager

INDEPENDENCE SQUARE ASSOCIATION

By _____

Title _____