

**SERVICES AGREEMENT BETWEEN THE TOWN OF PITTSBORO
AND MAIN STREET PITTSBORO, INC.**

THIS AGREEMENT made and entered into as of the ___ first ___ day of _July_____, 2018, by and between the TOWN OF PITTSBORO, a municipal corporation organized and existing under the laws of the State of North Carolina ("Town") and MAIN STREET PITTSBORO, INC., a nonprofit corporation organized and existing under the laws of the State of North Carolina ("MSPBO").

WITNESSETH:

WHEREAS, the MSPBO is a non-profit corporation which promotes the improvement of the Mainstreet Project Area of Pittsboro and assists in the revitalization thereof; and

WHEREAS, the Town desires to provide services, facilities, functions, promotional activities, and/or developmental activities in the Mainstreet Project Area through a contract with MSPBO, as a private agency, and to compensate the MSPBO for its services in furtherance of these purposes from the Town's General Fund revenues; and

WHEREAS, the MSPBO desires to enter into a contract with the Town for the foregoing purposes; and

WHEREAS, the parties desire to set forth the terms and conditions of their contract in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties agree as follows:

1. SCOPE OF SERVICES:

a. During the term hereof the MSPBO will provide services, facilities, functions, promotional activities, and/or developmental activities in the Mainstreet Project Area (collectively, "Services") directed toward achieving the following goals:

(i) Positively influencing the continued preservation, enhancement, and commercial vitality of Pittsboro's Main Street Project Area as a distinctive destination that engages and inspires both residents and visitors.

(ii) Being a catalyst for the continued revitalization, preservation and economic health of the Mainstreet Project Area.

(iii) Guided by the National and NC Main Street programs' Four-Point Approach of organization, design, promotion, and economic vitality, to continue positively transforming the Mainstreet Project Area and to enhance Pittsboro's status as a North Carolina Main Street community

b. The parties acknowledge that the foregoing goals are long-term goals for the revitalization of the Mainstreet Project Area which extend beyond the Town's current fiscal year. Therefore, it is understood and agreed that the MSPBO will provide the Services within the reasonable bounds of its resources and budgetary considerations as shall be determined by its Board of Directors and as funded by the Town and others.

2. SCHEDULE OF PERFORMANCE:

a. The Services to be provided by the MSPBO under this Agreement are to commence upon the approval of the Agreement by the Town, and shall be undertaken and completed in such sequence and in such manner as shall be determined by the Board of Directors of the MSPBO to assure the success thereof in light of the purpose of this Agreement and Town's commitment to revitalizing the Main Street Project Area.

b. Prior to the effective date of this Agreement or any renewal thereof, MSPBO shall submit to the Town current versions of the following:

- (i) Articles of incorporation
- (ii) Bylaws
- (iii) Current solicitation license
- (iv) IRS confirmation of 501c3 status.
- (v) Current annual budget
- (vi) Current board roster
- (vii) Statement of non-discrimination
- (viii) Conflict of interest policy

3. ACHIEVEMENT AND PERFORMANCE MONITORING:

a. MSPBO shall prepare and submit to the Town a quarterly progress report outlining its year to date progress on the Current Year Program. Such report shall outline any substantial changes in or modifications to the Current Year Program desired by MSPBO.

b. Within forty-five (45) days following the end of the fiscal year, the MSPBO shall prepare and submit to the Town a final progress report for the fiscal year. The report shall accurately and comprehensively reflect MSPBO's progress in fulfilling requirements outlined herein and the extent to which achievement and performance objectives have been met. The report shall also include an appropriate accounting for the moneys received from the Town hereunder. This progress report shall provide both qualitative and quantitative information and be provided in a form suitable for reproduction.

c. MSPBO shall provide such other reports and information regarding the Services provided under this Agreement as the Town may reasonably request from time to time. The Town or its duly authorized representatives shall have access to any books, documents, papers and records of MSPBO during the term hereof.

4. COMPENSATION AND METHOD OF PAYMENT:

a. Town agrees to compensate MSPBO for its Services pursuant to the approved initial Current Year Program the sum of _____ (\$_____). Upon approval of this Agreement by the Town, the Town's Finance Director shall disburse to MSPBO said funds within 15 days thereafter.

b. Upon renewal hereof, MSPBO shall be compensated for its Services by the funds appropriated by the Town for such purposes. In the event no Town funds or insufficient Town funds are appropriated in any fiscal year for any payment due under this Agreement, then the Town will immediately notify MSBO of such occurrence and this Agreement shall create no further obligation of the Town as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the Town of any kind whatsoever.

c. It is understood that the Town may make other allocations to MSPBO for use by the MSPBO in providing Services hereunder or for designated revitalization projects or activities as the Town Board may approve from time to time. Any such allocations shall be used or applied by the MSPBO as designated in the specific allocations.

d. Funds appropriated by the Town for Services to be rendered by MSPBO shall be disbursed in semi-annual installments.

5. ACCOUNTING AND FISCAL MANAGEMENT PROCEDURES:

a. MSPBO agrees to provide the Town the anticipated Services to be provided by MSPBO under this Agreement for the initial term hereof together with a proposed budget (program plans and funding requirements (the "Current Year Program"). A copy thereof shall be attached hereto as Exhibit A.

b. MSPBO agrees to provide the Town Manager and Town Finance Director the anticipated Services to be provided by MSPBO under this Agreement together with a proposed budget (program plans and funding requirements) by April 1 for the next fiscal year (the "Current Year Program"). MSPBO shall also furnish the following:

- i. an annual audit by a Certified Public Accountant for its most recent fiscal year.
- ii. its latest Financial Statements including a balance sheet as of the end of the fiscal year and a statement of operations for that year.
- iii. its most recently filed IRS Form 990, Form 990 EZ or Form 990-N.

c. MSPBO representative(s) will make a budget presentation in support of its Current Year Program to the Pittsboro Town Board in advance of the Board adopting the Town's annual operating budget.

6. TERM:

This Agreement shall continue in effect for a term commencing as of the date approved by the Town and ending at midnight on June 30, 2019 and shall be extended automatically without further action of the parties for subsequent terms of one (1) year each; provided, however, either party may terminate this Agreement by giving written notice of such termination to the other at least six (6) months prior to the end of the then current term. Upon the giving of such notice to terminate, this Agreement shall terminate at the end of the then current term and, thereafter, neither party shall have any further liability or obligation to the other hereunder. This Agreement may also be terminated for cause without prior notice to MSPBO if the Services provided by the MSPBO under this Agreement are determined to be unsatisfactory or unacceptable by the Town. Upon default, any unencumbered funds from the Town held by MSPBO shall be refunded and neither party shall have any further liability or obligation to the other.

7. TOWN'S REPRESENTATION ON MSPBO'S BOARD OF DIRECTORS:

The MSPBO agrees to cause two (2) nominees of the Town Board, one of whom shall be an elected official of the Town and the other the Town Manager, or his designee, to be appointed to its Board of Directors to serve thereon during the term of this Agreement. It is understood and agreed that the Town appointees hereunder shall meet all requirements expected of other Directors of MSPBO. The initial Town appointees to MSPBO's Board of Directors are designated on Exhibit B attached hereto and made a part hereof.

8. INSURANCE:

The MSPBO shall keep and maintain insurance coverage in the following amounts:

a. Worker's Compensation Insurance: Coverage shall be in accordance with statutory requirements and employer's liability insurance with limits of not less than \$100,000 for each accident.

b. General Liability: Insurance shall be in an amount not less than \$1,000,000 each occurrence; \$1,000,000 aggregate; with a \$2,000,000 umbrella or \$2,000,000 excess liability coverage per occurrence, per aggregate.

c. Automobile Property Damage Liability: Insurance shall be in an amount not less than \$1,000,000 each occurrence; with a \$2,000,000 umbrella or \$2,000,000 excess liability coverage per occurrence.

d. Errors and Omissions: Insurance shall be in an amount not less than \$1,000,000.

MSPBO agrees to furnish Town proof of compliance with the insurance coverage requirements of this Agreement upon request. MSPBO, upon request by Town, shall furnish a certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to Town, verifying the existence of any insurance coverage required by Town. Town shall be designated as an additional insured on the certificate of insurance. The certificate shall provide for sixty (60) days advance notice to Town in the event of termination or cancellation of coverage.

9. OWNERSHIP OF DOCUMENTS:

MSPBO agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the Town, and the MSPBO shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the MSPBO shall deliver to the Town all records, notes, memorandum, data, documents or any other materials received or

obtained from the Town in connection with services rendered pursuant to this Agreement (except in case of a restricted donation to Main Street Pittsboro that requires the return of all materials and documents developed using such restricted donation to the donor).

10. STATUS OF PARTIES:

Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between MSPBO and the Town. MSPBO and its employees and representatives are independent contractors, solely responsible for its or their performance under this Agreement and shall have no legal authority to bind the Town.

11. INDEMNITY:

MSPBO agrees to indemnify and hold harmless the Town, its agents, servants and employees from any and all claims, actions, lawsuits, damages, judgments or liabilities of any kind whatsoever arising out of the provision of Services under this Agreement.

12. NOTICES:

Any notices required or permitted in this Agreement, including address changes, shall be made in writing and shall be made either by mailing registered or certified mail, return receipt requested, and postage prepaid, to the other party at the address shown herein for that party or at such different address for that party, notice of which has been properly given hereunder, or by personally delivering such notice to an officer of such party. The notice, if mailed as provided for herein, shall be deemed given on the day of receipt or refusal to accept receipts, and if personally delivered, on the date of delivery. The addresses are as follows:

TO THE TOWN

Town Manager
Town of Pittsboro
P.O. Box 759
Pittsboro, NC 27312

TO MSPBO

President
Main Street Pittsboro, Inc.
P.O. Box _____
Pittsboro, NC 27312

13. GOVERNING LAW:

This Agreement and the rights and obligations to the parties hereunder shall be construed and governed by the laws of the State of North Carolina and venue for any proceedings arising hereunder shall be in the state court of appropriate jurisdiction located in Chatham County, North Carolina.

14. DISSOLUTION:

In the event the MSPBO (i) dissolves or (ii) ceases to provide any Services within the Town, then MSPBO shall deliver, release, and convey to the Town all of its equipment, cash, real estate, and other assets owned by MSPBO (collectively "MSPBO Property") to be used by the Town exclusively for the provision of similar services within the Town.

15. MISCELLANEOUS:

a. This Agreement constitutes the entire agreement between the parties concerning the services and obligations specified herein.

b. No amendment, modification or waiver of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties to this Agreement.

c. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and permitted assigned. This Agreement may not be assigned by any party without the prior written consent of the other party.

IN WITNESS WHEREOF, the Town and MSPBO have entered into this Agreement as of the date first above written.

TOWN:

MSPBO:

TOWN OF PITTSBORO

MAIN STREET PITTSBORO, INC.

By: Cindy S. Perry
Mayor

By: _____
President

Attest: Alice F. Lloyd
Town Clerk

Attest: _____
(Asst.) Secretary

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Hester E. McLaughlin
FINANCE DIRECTOR

EXHIBIT A

CURRENT YEAR PROGRAM

(July, 2018 through June, 2019)

EXHIBIT B

TOWN REPRESENTATIVES ON MSPBO BOARD

Michael Fiocco
Victoria Bailiff