



# City of Palo Alto

## City Council Staff Report

(ID # 10315)

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**Report Type: Action Items**

**Meeting Date: 6/24/2019**

**Summary Title: Downtown Palo Alto Business Improvement District**

**Title: PUBLIC HEARING: to Hear Objections to the Levy of Proposed Assessments on the Palo Alto Downtown Business Improvement District; Adoption of a Resolution Confirming the Report of the Advisory Board and Levying Assessments for Fiscal Year 2020 on the Downtown Palo Alto Business Improvement District and Adoption of a Budget Amendment in the Business Improvement District Fund**

**From: City Manager**

**Lead Department: City Manager**

### **Recommendation**

1. Hold a public hearing on the levy of proposed assessments in Fiscal Year 2020 in connection with the Downtown Palo Alto Business Improvement District (BID); and
2. Approve the resolution (Attachment B) confirming the report of the Advisory Board and levying an assessment for Fiscal Year 2020 on the Downtown Palo Alto Business Improvement District.
3. Amend the Fiscal Year 2020 Budget Appropriation Ordinance for the Business Improvement District (BID) Fund by:
  - a. Decreasing the revenue estimate by \$52,500; and,
  - b. Decreasing the expense appropriation by \$60,500; and,
  - c. Increase the ending fund balance by \$8,000.

### **Background**

On June 3, 2019, the Council preliminarily approved the BID Advisory Board's 2020 Annual Report and adopted a Resolution of Intention to Levy Assessments in the BID for Fiscal Year 2020, setting a date and time for the public hearing on the levy of the proposed assessments for June 24, 2019, at 6:00 PM, or thereafter, in the City Council Chambers ([link to staff report](#)).

The City contracts with Palo Alto Downtown Business and Professional Association (PADBPA) to provide services to businesses in the BID. (A copy of the contract between the City and PADBPA is attached as Attachment F). PADBPA addresses issues facing downtown businesses such as cleanliness, safety, and attractiveness. PADBPA also assists downtown businesses with

communication about the City's capital improvement projects such as Upgrade Downtown, the new parking garage, mobility projects and other City policy matters affecting downtown businesses. Assessments for BID businesses are based on the size, type and location of the business. Assessments range from \$50 for individually owned professional businesses to \$500 annually for financial institutions.

The BID was established by the City Council in 2004 pursuant to the California Parking and Business Improvement Area Law to promote the economic revitalization and physical maintenance of the Palo Alto Downtown business district. The Council appointed the Board of Directors of PADBPA, a non-profit corporation, as the Advisory Board for the BID. The Board's purpose is to advise the Council on the method and basis for levy of assessments in the BID and the expenditure of revenues derived from the assessments. PADBPA in its capacity as the BID Advisory Board has monthly open meetings governed by the Brown Act which any business or individual can attend.

After an initial 10-year term, running from 2004 to 2014, the agreement between the City and PADBPA has been renewed annually for a one-year period through approval of the Annual Report (subject to termination by either party on 90 days written notice). If Council declines to approve PADBPA's Annual Report as filed, Council may propose amendments to PADBPA's budget and proposed activities for FY 2020. If the Council proposes modifications to the Annual Report, the agreement between the City and PADBPA provides that final approval should be stayed for a period of up to 30 days to provide time for PADBPA to respond to Council's concerns and for City staff and PADBPA to confer.

### **Discussion**

The PADBPA Annual Report is attached and provides a summary of activities from Fiscal Year 2019 and presents the proposed activities and budget for Fiscal Year 2020. The PADBPA Annual Report includes \$104,500 in revenue and a corresponding amount of expenses. Included in this amount is an expense appropriation of \$17,000 for the cost of collecting the BID assessments. In FY 2019, the City's General Fund covered these costs. The FY 2020 budget also proposes the City's General Fund continue to cover collection costs through an operating transfer of \$17,000 in order to ensure that all revenues generated by the assessment are committed to the goods, services, and programs that serve businesses within the boundaries of the BID. In future years, staff anticipate the BID Fund will be able to pay for these costs as a result of operational adjustments and more effective collection efforts. PADBPA will explore operating models in the coming year in order to determine the most sustainable operating model that will allow PADPBA and the BID to serve the downtown business community now and into the future.

BID fee collection has been conducted by MuniServices, LLC for the last several years. To save costs, streamline efforts and provide businesses with one annual invoice, PADBPA and city staff aligned the BID and Business Registry Certificate (BRC) fee collection timeline. In Fiscal Year 2019, the BID invoice was sent in late April along with the BRC invoice to businesses within the BID boundaries. Through this streamlined collection process, the City anticipates increased

revenue. In FY2020, the City plans to identify means and methods to further enhance collection of the assessment in order to increase revenues.

Absent a majority protest at the public hearing, the Council may adopt the attached resolution approving the report for Fiscal Year 2020 as filed or as modified by the Council at the conclusion of the public hearing. (As noted above, if PADBA requires time to respond to any modification, the Council action would be deferred.) The adoption of the resolution constitutes the levying of the BID assessments for Fiscal Year 2020.

### **Resource Impacts**

At the timing of the development of the FY 2020 Budget the assessments and proposed PADBPA budget for the BID was not yet available. For budgeting purposes staff maintained FY 2019 funding levels, pending the submission of the PADBPA Annual Report for City Council review and approval. The action recommended in this report will amend the FY 2020 Budget to align the revenue and expense appropriations to \$104,500, as outlined in the 2019-2020 PADBPA Annual Report. This amount assumes a \$17,000 transfer from the General Fund to the BID Fund in FY 2020 for the cost of collecting the BID assessments, which was recommended as an amendment to the FY 2020 Proposed Budget at the May 28<sup>th</sup>, 2019 Finance Committee meeting. The FY 2020 Budget, including budgetary actions for the General Fund transfer and corresponding expense appropriation is scheduled for adoption by the City Council on June 17<sup>th</sup>, 2019.

Adoption of the proposed BID budget does not impact City revenue. BID assessments are restricted for use exclusively by the BID. A healthy BID will encourage vitality in the retail community and consequently result in additional sales tax revenue for the City.

Staff time from the City Manager's Office and Development Services Department will be utilized to provide oversight to the BID, administer the contract with MuniServices, liaise with stakeholders and prepare the annual reauthorization. The Attorney's Office will continue to provide legal oversight to the BID during the annual reauthorization process.

### **Attachments:**

- Attachment A - Annual Report
- Attachment B - Resolution Confirming Report and Levying Assessment for Downtown Business Improvement District Fiscal Year 2020
- Attachment C - Exhibit A - BID Map
- Attachment D - Exhibit B - BID Fee Schedule
- Attachment E - BID Agreement



# Downtown Palo Alto



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## Palo Alto Downtown Business and Professional Association Annual Report 2019-20

Prepared by  
Brad Ehlkian, Chairman  
Board of Directors

## **Introduction**

This report from the Advisory Board of the Palo Alto Downtown Business & Professional Association (“PADB&PA”) was prepared for City Council to review for the annual reauthorization of the Downtown Palo Alto Business Improvement District (“BID”) pursuant to Section 36533 of the Parking and Business Improvement Law of 1989 (Section 36500 and following of the California Streets and Highways code) (the “Law”). This report is for the proposed fiscal year for the BID commencing July 1, 2019 and ending June 30, 2020. (“Fiscal Year 2019-20”).

As required by the Law, this report contains the following information:

- I. Any proposed changes in BID boundaries and benefit zones within the BID;
- II. The improvements and activities to be provided for Fiscal Year 2019-20;
- III. An estimate of the cost of providing the improvements and the activities for Fiscal Year 2019-20;
- IV. The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for Fiscal Year 2019-20.
- V. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- VI. The amount of any contributions to be made from sources other than assessments levied pursuant to the Law.

Submitted by Brad Ehikian, Chair of the Advisory Board (“Advisory Board”) of the Palo Alto Downtown Business & Professional Association (“PADB&PA”).

The Advisory Board approved this report on May 8, 2019. Received on file in the Office of the City Clerk of the City of Palo Alto on May 8, 2019.

## **The Immediate Future**

Upon the departure of the Executive Director in June of 2018, the Palo Alto Business and Professional Association Board of Directors developed several forward-looking scenarios, which are described below in no particular order:

1. Replace the existing full time Executive Director position with another full-time Executive Director
2. Replace the existing full-time Executive Director position with a part-time Executive Director
3. Form a partnership with the City of Palo Alto, in which the City would provide some administrative support and the PADBPA board would provide guidance of downtown programs and improvements
4. Form a partnership with the Palo Alto Chamber of Commerce in which the Chamber would provide administrative support and the PADB&PA board would provide leadership and funding for downtown improvements and programs
5. Do not have paid staff, use assessments to fund projects in the downtown that would support retail businesses

PADB&PA proposes to use the next year to thoroughly assess these options in order to determine which model is the most sustainable. This assessment will include identifying the goals of the BID and PADB&PA, understanding the revenue generation and expenses of each

model, the impact of each model on achieving the stated goals, and the feasibility of each model in the local context.

During the coming months it is the board's intention to pursue and engage in a consultative approach to determine the most appropriate course of action. At the same time, we will continue identifying and executing programs, special projects, and partners that can enhance the downtown experience.

### **Historical Perspective**

PADB&PA's takes great pride in the programs and services that it has contributed since inception. Several are listed here:

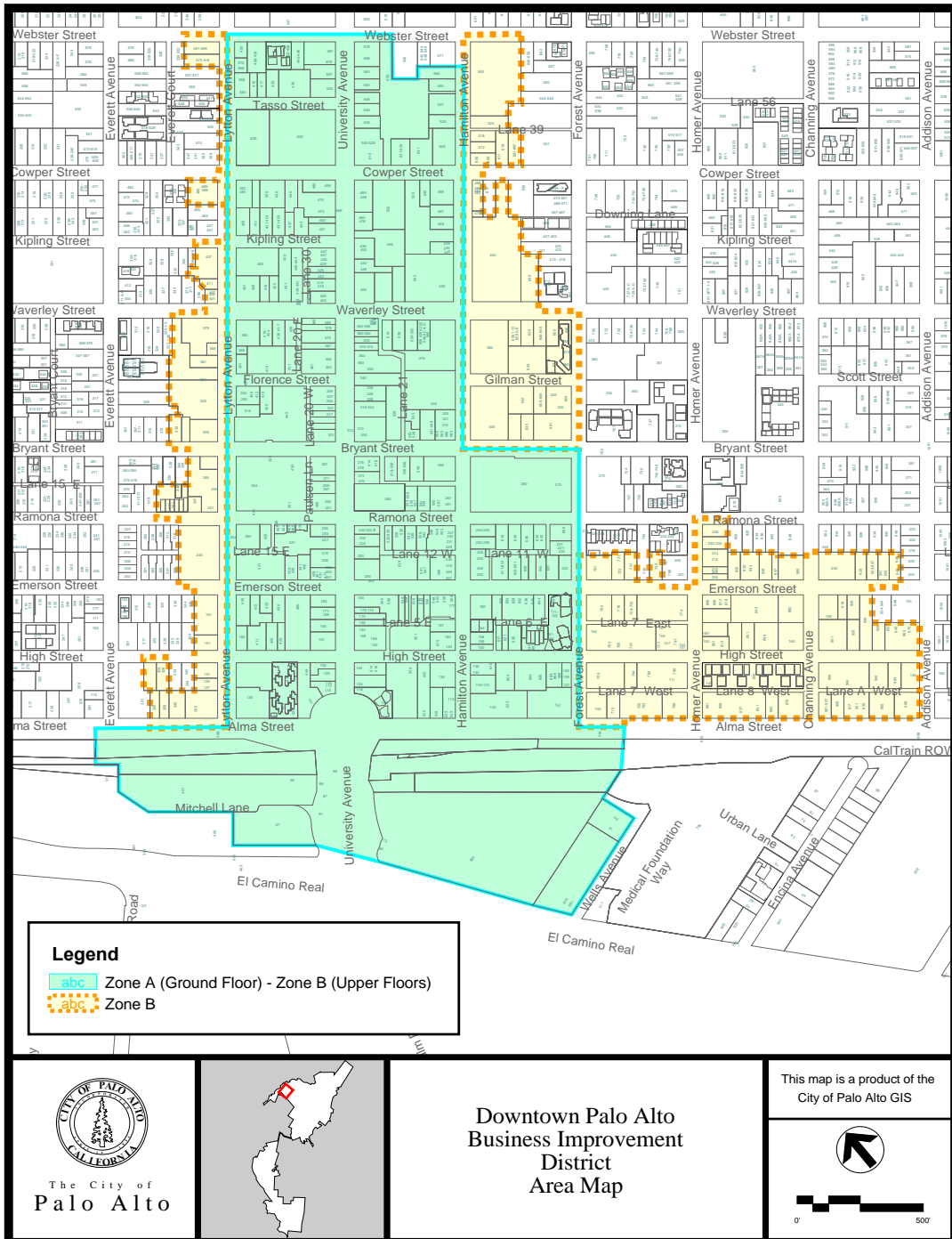
- Creation of the Downtown Streets Team (PADB&PA started the effort in 2005) with continued support through 2019
- Display of American Flags during national holidays ( began in 2012) and continues to present.
- Holiday Tree Lighting (this program was brought back in 2011 after a long hiatus.)
- "Art" benches and replacement of the over twenty year old utilitarian benches (these programs were initiated with both Public Works and Public Arts in 2015.)
- Free summer concerts (began in 2013) and continued through 2018
- Increase the frequency of steam-cleaning sidewalks, replacement of trashcans and increase in patrols of the parking garages (all programs initiated by PAd in conjunction with Public Works, PAPD, Downtown Streets Team and the Parking Assessment District.)
- Streetlight banner program branding and promoting downtown as a great destination (began in 2012) and continues to present
- Collaborated on "No smoking" ordinance and "no amplified music" ordinance (both initiated in 2014)
- Lytton Plaza umbrellas and new foliage (partnership with the PAd, City and the Friends of Lytton Plaza, beginning in 2014) and continues to present.
- University Avenue Tunnels repainting. ( initiated and completed in 2013)
- Additional partnerships between the City of Palo Alto and the business community for communications about encroachment permit enforcement, downtown infrastructure improvement impacts, Residential Permit Parking issues, TMA, World Music Day and other street closure events.

PADB&PA's contribution illustrates the ongoing benefit of an organization dedicated to enhancing the quality of life for residents and patrons of Downtown Palo Alto. Further accomplishments for Fiscal Year 2019 are listed below in the Annual Report.

# Section I: BID boundaries and Benefit Zones

There have been no changes in the BID boundaries or benefit zones within the BID and no changes are proposed. The current boundaries are depicted on the map below. The area of the BID is referred to as “Downtown.”

EXHIBIT A



rivera, 2012-04-30 16:57:54  
CPA BID (locmapgisadmin/Personal/rivera.mdb)

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## **Section II: Improvements & Activities**

Downtown Palo Alto is a far different place than it was when the organization was founded in 2004. Downtown is a dynamic, entrepreneurial neighborhood that boasts clean and safe walkable streets, a well balanced confluence of small, medium and large businesses and an almost even balance of independently owned retail and restaurants operating along side national chains. It is a globally recognized mecca for innovating the social and the technical.

However, we are currently noticing difficulty in attracting retail businesses. We have heard from several sources that retail spaces are not filling due to lack of parking, the tenant improvement process and higher than anticipated rent. Restaurants are also suffering due to the increased number of restaurants at the Stanford Shopping Center competing for our business. Several restaurants have closed while others have reduced hours. Despite these challenges, PADBPA operate a number of programs and activities in the past year.

### ***2018-19 Programs that help the public good as well as members:***

- Spearheaded the effort on the systematic replacement of downtown benches to both enhance the esthetics of downtown and inhibit loitering. A combination of a more utilitarian bench design along with a small variety of artful benches have been installed, this in partnership with City of Palo Alto Public Works Division and the Public Arts Commission. Funding to keep and maintain these benches has been secured through a partnership with the Arts Commission and the Public Utilities Department. This project is complete.
- Worked with a variety of city staff to help communicate and mitigate the impacts of downtown construction related to the Upgrade Downtown Utilities project.
- Initiated a plan to partner with Zero Waste to enhance the cleanliness of the alleyways throughout downtown.
- Designed and managed the downtown lamppost banner program which provided Holiday, Spring and Summer banners along University, Lytton and Hamilton as well as site specific banners for Bryant, Emerson, Waverly and Ramona as well as Lytton Plaza. Downtown now has compiled a library of banner designs that can be used in years to come. This brand building program continues to promote downtown as the special place it is. No new banner designs are planned for 2019-20.
- Initiated, developed, managed and promoted the 6 week long Summer concert series, “Music On the Plaza” including the development and design of social media, web and print efforts as well as raising the \$20K in sponsorships needed to execute the series. We have moved the series to Lytton Plaza and closed a small section of Emerson to accommodate staging in order to accommodate participants. This move resulted in larger crowds and even larger crowds are anticipated this year. Continuing the series in 2019-20 is under consideration but not likely given the absence of leadership.
- Partnered with the Friends of Lytton Plaza and the City of Palo Alto to maintain umbrellas, foliage, public art and banners to the plaza to enliven and soften the hardscape of the plaza. Further efforts will continue in 2019-20.
- Initiated a comprehensive review of all newsrack conditions. Provided City Engineering staff with this report. Met with other municipalities to compare those city’s newsrack ordinances in order to make recommendations regarding how to refine our current ordinance.



***Looking ahead to Fiscal Year 2019-2020***

As previously stated, PADBPA and the City will work together to identify and implement a sustainable operating model for both PADBPA and the BID Fund. While the strategic planning is underway, PADBPA will continue programs and activities that benefit the businesses within the BID boundaries.

These programs and activities include:

- Improvement and maintenance of public spaces, including public plazas, streets, and sidewalks;
- Acquisition, construction, installation or maintenance of physical property intended to improve the public spaces of downtown;
- Collaborating with the City to redesign and refresh the public newsracks;
- Marketing activities, including the downtown banner program and consideration of events to promote and market downtown Palo Alto;
- Activities and programs that benefit the member businesses.

**Section III. Budget for 2019-20**

The total funds available for activities for this fiscal year are estimated to be \$104,500. The budget for providing the activities is set forth as follows:

<b>BID 2019/20 Budget</b>		
<b>INCOME</b>	<b>Total</b>	<b>Non-Assessment Sources</b>
Assessments	\$112,500	
Allowance for Uncollectible Assessments	(\$25,000)	
Other Revenue	\$0	\$0
City of Palo Alto	\$17,000	\$17,000
<b>TOTAL INCOME</b>	<b>\$104,500</b>	
<b>EXPENSES</b>		
<b>Operating Expenses</b>		
Staff Salaries		
Executive Director Salary - Part Time	\$35,000	
Payroll taxes and expense	\$3,500	
Invoicing	\$17,000	\$17,000
Office Supplies & Expenses	\$150	
Internet/Website/ Phone Maintenance	\$1,000	
Reauthorization Advertising	\$2,690	
Audit-Tax Returns	\$6,500	
Legal	\$1,000	\$1,000
Insurance - Liability	\$2,300	
Nominating	\$1,500	
Contingencies	\$500	
<b>Subtotal -- Operating Expenses</b>	<b>\$71,140</b>	<b>\$35,000</b>
<b>Programs, Marketing and Events</b>		
Banners	\$1,000	
Location Specific Banners	\$0	
Outreach & Communication	\$0	
Downtown Streets Team	\$3,000	
District Opportunity Reserve	\$29,360	
<b>Subtotal --Programs, Marketing &amp; Events</b>	<b>\$33,360</b>	<b>\$35,000</b>
<b>Total Expenses</b>	<b>\$104,500</b>	

## Section IV: Method and Basis of Levying the Assessment

### Cost Benefit Analysis / Bid Assessments

The method and basis of levying the assessment is provided in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for Fiscal Year 2018-19 and is not changed from the FY 2019-20 assessment.

There have been no changes made to the Cost-Benefit Analysis or to the BID Assessments since they were approved by City Council on February 2, 2004. Any change to the assessment would require a formal vote of all businesses in the district. We are confident that our reasonable approach to this subject is thoughtful and well valued.

The method of calculation used to determine the cost and benefit to each business located in the BID is described below. The BID assessments are based on three criteria: the type of business, the location of the business and the size of the business.

It has been consistently demonstrated that the typical BID program places a higher priority on activities such as commercial marketing. As a result, the retail and restaurant establishments in the BID are assessed more than service and professional businesses in the district.

While service-oriented businesses benefit from a BID less than retailers and restaurateurs, they benefit more than professional businesses such as medical, dental, architectural, consultant and legal offices with their minimal advertising and promotion needs.

For these reasons, various business types are assessed according to the benefit that they receive from the BID, as follows:

- Retail and Restaurant      100% of base amount
- Service                              75% of base amount
- Professional                      50% of base amount

Exceptions to this rule include financial institutions that are traditionally charged a flat rate regardless of location or size and lodging businesses that are typically charged by total rooms.

The location of a business also determines the degree of benefit that accrues to that business. Centrally located businesses tend to benefit more, as do businesses located on the ground floor.

For this reason, A and B benefit zones have been identified for the BID.

In Palo Alto, Zone A benefit businesses are assessed 100% of the base benefit assessment while Zone B businesses are assessed 75%.

A third criterion is used in the BID to determine benefit. This criterion, the size of the business, takes into consideration the number of full time employees employed by the business. Please refer to *Attachment 1* for a more complete understanding of the application of these three variables to establish BID benefit.

*Attachment 2* is the BID assessment for each business located within the BID boundaries. Applying the criteria identified in Attachment 1, a summary of the assessment that applies to each business by size, type and location is outlined. In addition to the Cost-Benefit Analysis, the assessments include the following criteria:

- *An exemption for “single person professional businesses” that have 25% or fewer full time equivalent (“FTE”), including the business owner. This covers employees who work less than 10 hours a week (based on a 40 hour work week; an FTE equals approximately 2000 hours annually)*
- *An assessment specifically for “single person businesses” that have 26% FTE to 1 FTE in the professional business category of the BID (An FTE equals approximately 2000 hours annually)*
- *The tiering of other professional businesses by size based (according to benefit) on the “single person business” criteria*

This outline provides information by which a business can determine its annual assessment based on objective criteria.

Except where otherwise defined, all terms shall have the meanings identified below:

#### Definitions of Business Types in the Downtown Business Improvement District

*Retailers and Restaurants:* Businesses that buy or resell goods such as clothing stores, shoe stores, office supplies as well as businesses that sell prepared food and drink.

*Service Businesses:* Businesses that sell services such as beauty or barber shops, repair shops, most automotive businesses, dry cleaners, art and dance studios, printing firms, film processing companies, travel agencies, entertainment businesses such as theatres, etc.

*Hotel and Lodging:* These include businesses that have as their main business the lodging of customers. This is restricted to residential businesses that provide lodging services to customers for less than 30 days.

*Professional Businesses:* Businesses that require advanced and/or specialized licenses or academic degrees such as architects, engineers, attorneys, chiropractors, dentists, doctors, accountants, optometrists, realtors, insurance brokers, venture capital firms, consultants, advertising and marketing professionals and mortgage brokers and similar professions.

*Financial Institutions:* Includes banking, savings and loan institutions and credit unions.

Additional clarification on business definitions will be defined according to Section 18.04.030 (Definitions) of the Palo Alto Municipal Code.

The Advisory Board recommends that the following businesses be exempt from the BID assessment:

- New businesses established in the BID area following the annual assessment for the year in which they locate in the BID area
- Non-profit organizations
- Newspapers
- “Single person professional businesses” that have 25% or less FTE, including the business owner

**Section V: Revenue Deficit**

The Assessment calculated shall be paid to the City no later 30 days after receipt of the invoice with the amount of the annual assessment sent by the City. A second notice will be mailed as a reminder to businesses that have not remitted payment by that date. Late payment will be subject to a 10% late fee.

Expected expenses for the remainder of FY 2019 are as follows:

<b>Operating Expenses</b>	
Staff Salaries	\$0
Invoicing	\$17,000
Office Supplies & Expenses	\$0
Internet/Website/ Phone Maintenance	\$0
Reauthorization Advertising	\$2,690
Audit- Tax Returns	\$6,500
Legal	\$1,000
Insurance - Liability	\$2,300
Nominating	\$0
Contingencies	\$0
<b>Subtotal -- Operating Expenses</b>	<b>\$29,490</b>
<b>Programs, Marketing and Events</b>	
Banners	\$0
Location Specific Banners	\$0
Outreach & Communication	\$0
Downtown Streets Team	\$0
District Opportunity Reserve	\$0
<b>Subtotal --Programs, Marketing &amp; Events</b>	<b>\$0</b>
<b>Total Remaining Expenses</b>	<b>\$29,490</b>

**Section VI: Non-assessment Income:**

It is estimated that \$1,000.00 will be raised in fundraising, and sponsor support. Additionally, we anticipate in kind contribution towards expenses for fiscal year 2019-20.

<b>Projected Additional/In-kind Income for Fiscal Year 2019-20</b>	
Legal (donation)	\$1,000
Banners	\$0
Summer Concert Series	\$
Events	\$0
<b>Total</b>	<b>\$1,000</b>

## Section VI: PADB&PA Board of Directors by Business Type

### Retailers and Restaurants

Georgie Gleim, *Gleim the Jeweler*

Jill Bibo, *McRoskey Mattress*

Rob George, *Lemonade*

Jeff Selzer, *Palo Alto Bicycles*

Nancy Coupal, *Coupa Cafe*

### Hospitality

Barbara Gross, *Palo Alto Hotel Council*

Stephanie Wansek, *Cardinal Hotel*

### Financial Institutions

Ali Agah, *Boston Private Bank & Trust Company*

Katie Seedman, *Presidio Private Bank and Trust*

### Professional Organizations

Brad Ehikian, *Premier Properties*

Patty McGuigan, *Cornish & Carey Commercial*

### Non Profit Organizations

[vacant], *Downtown Street Team*

## COMMUNITY PARTNERS

### Palo Alto Chamber of Commerce

Judy Kleinberg, *President & CEO*

### Downtown Streets Team

Eileen Richardson, *Executive Director*

### City Of Palo Alto

Greg Tanaka, *Palo Alto City Council Liaison*

Michelle Flaherty, *Deputy City Manager, City Manager's Office*

Rachael Tanner, *Assistant to the City Manager, City Manager's Office*

## ATTACHMENT 1

### A General Statement Regarding Cost-Benefit Analysis For BID Businesses Using The Traditional Three Criteria Formula

#### **Criteria 1) Type of Business:**

##### **Statement Concerning Cost-Benefit Formula For BID Businesses Regarding Type Of Business:**

In a review of 200 California Business Improvement Districts, it is consistently demonstrated that the typical BID Program places a higher priority on Commercial Marketing Programs than on Civic Beautification and Commercial Recruitment Programs. With that trend in mind, retail and restaurant businesses, with their emphasis on, and need for, commercial marketing, are traditionally assessed more than less marketing-sensitive service-oriented or professional-oriented businesses.

However, while service-oriented businesses benefit from a BID less than retailers and restaurateurs, they benefit more, (from commercial marketing programs), than professional businesses such as medical, dental and legal offices with their minimal advertising and promotion needs.

Therefore, set forth below, is an example of how various business types might be considered regarding the computation of the annual benefit assessment.

- Retail and Restaurant:                   100% of base amount
- Service:                                   75% of base amount
- Professional:                            50% of base amount

Exceptions to this rule include financial institutions that are traditionally charged a flat rate regardless of location or size and lodging businesses that are typically charged by total rooms. Lodging businesses are assessed based on the total number of rooms because it is a more equitable manner of determining size. Many lodging businesses have many part time employees, but revenues are based on the room occupancies of the hotel, not the goods sold or serviced provided by employees.

#### **Criteria 2) Location of Business:**

##### **Statement Concerning Cost-Benefit Formula For BID Businesses Regarding Location of Business:**

It has also been consistently demonstrated that the more centrally located businesses tend to benefit from BID activities and services to a greater degree than businesses located toward the periphery of the proposed BID boundaries. Events and activities tend to originate in the central core of the Downtown area and spread benefit to the outer areas with diminishing energy and impact, much like the ripple effect of a stone tossed into a body of calm water.

Furthermore, ground floor businesses tend to benefit to a greater degree than businesses located in upper floors. Therefore, in some cases, a new BID's annual benefit assessment formula also takes these street level criteria into account.

As mentioned above, special events, fairs, festivals and other activities tend to take place within, or along, the Main Street core rather than in the areas at the periphery of the Downtown core. Additionally, BID-sponsored seasonal decorations, public art projects, street banners and street furniture tend to be located within the immediate core area.

Therefore, businesses located within the most central area of the proposed BID are considered to be within "Zone A" which should be considered the primary benefit zone. There is typically a "secondary zone" or

"Zone B" within most proposed BID areas. This area receives less benefit than Zone A and should be assessed accordingly.

An example of how different zones might be treated regarding the computation of the annual benefit assessment is as follows.

- Zone A: 100% of base benefit assessment
- Zone B: 75% of base benefit assessment

In the case of Downtown Palo Alto, it is recommended that all Zone A upper floor businesses, as well as any other businesses located at the periphery of the proposed BID, be considered as Zone B businesses. Please refer to the map in Attachment I.

**Criteria 3) Size of Business:**

**Statement Concerning Cost-Benefit Formula For BID Businesses Regarding Size of Business:**

In approximately 50% of newly established BIDs, a third assessment criterion is used. This criterion involves the size of each individual business that is based upon the businesses' total number of full-time employees. Full-time employees are those working a total of 2,000 hours per year. Part-time employees are grouped into full-time job positions, i.e., two half-time employees total one full-time. Fractions are rounded down to the nearest whole number with no less than one person as a minimum for business.

An example of how various business sizes might be treated regarding the computation of the annual benefit assessment is as follows:

		<b>Retail/Restaurants</b>	<b>Service Businesses</b>
<b>Small</b>	50% of base amount	Under 6 FTE*	Under 4 FTE
<b>Medium</b>	75% of base amount	6 to under 11 FTE	4 to under 7 FTE
<b>Large</b>	100% of base amount	11 or more FTE	7 or more FTE

\* FTE = full time employees

Additionally, an exemption was established for "single person professional businesses" that have 25% or less FTE, including the business owner. This covers employees who work less 10 hours a week (based on a 40 hour work week)

Since "single person businesses" that have 26% FTE to 1 FTE in the professional business category of the BID benefit the very least from the assessment, their assessments have been tiered by size based (according to benefit) on the new "single person business" criteria.



## ATTACHMENT 2

### Downtown Palo Alto Business Improvement District Annual BID Assessments

	<b>ZONE A</b>	<b>ZONE B (75% of Zone A amount)</b>
<b>Restaurants &amp; Retailers</b>		
Under 6 FTE (50% of base amount)	\$225	\$170
6 to under 11 FTE (75% of base amount)	\$340	\$260
11 or more FTE (100% of base amount)	\$450	\$340
<b>Service Businesses</b>		
Under 4 FTE (50% of base amount)	\$170	\$130
4 to under 7 FTE (75% of base amount)	\$260	\$200
Over 7 FTE (100% of base amount)	\$340	\$260
<b>Professional Businesses</b>		
25% or fewer FTE, including owner (0% of base amount)	Exempt	Exempt
26% FTE to under 1 FTE (25% of base amount)	\$60	\$50
2 to 4 FTE (50% of base amount)	\$110	\$90
5 to 9 FTE (75% of base amount)	\$170	\$130
10+ FTE (100% of base amount)	\$225	\$170
<b>Lodging Businesses</b>		
Up to 20 rooms (50% of base amount)	\$225	\$170
21 to 40 rooms (75% of base amount)	\$340	\$260
41+ rooms (100% of base amount)	\$450	\$340
<b>Financial Institutions</b>	\$500	\$500

**Note 1:** For retail, restaurant, service, and professional businesses, size will be determined by number of employees either full-time or equivalent (FTE) made up of multiples of part-time employees. A full FTE equals approximately 2000 hours annually. Lodging facilities will be charged by number of rooms available and financial institutions will be charged a flat fee.

Note 2: Second floor (and higher) businesses located within Zone A will be assessed the same as similar street-level businesses located within Zone B.

Note 3: Assessment amounts are rounded to the nearest ten dollars. The minimum assessment will be \$50.00.

Not Yet Approved

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Confirming the Report of the Advisory Board and Levying an Assessment for Fiscal Year 2020 on the Downtown Palo Alto Business Improvement District

R E C I T A L S

The Council of the City of Palo Alto hereby DECLARES as follows:

SECTION 1. The Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Sections 36500 et seq. (the "Law"), authorizes the City Council to levy an assessment against businesses within a parking and business improvement area which is in addition to any assessments, fees, charges, or taxes imposed in the City.

SECTION 2. Pursuant to the Law, the City Council adopted Ordinance No. 4819 establishing the Downtown Palo Alto Business Improvement District (the "District") in the City of Palo Alto.

SECTION 3. The City Council, by Resolution No. 8416, appointed the Board of Directors of the Palo Alto Downtown Business & Professional Association, a California nonprofit mutual benefit corporation, to serve as the Advisory Board for the District (the "Advisory Board").

SECTION 4. In accordance with Section 36533 of the Law, the Advisory Board prepared and filed with the City Clerk a report entitled "Downtown Palo Alto Business and Professional Association Annual Report 2019-20" regarding the District (the "Report"), and, by Resolution No. \_\_\_\_\_ [insert number after resolution approved on consent], the City Council preliminarily approved such report as filed.

SECTION 5. The boundaries of the District are within the City limits of the City of Palo Alto (the "City") and encompass the greater downtown area of the City, generally extending from El Camino Real to the West, Webster Street to the East, Lytton Avenue to the North and Addison Avenue to the South (east of Emerson Street, the boundaries extend only to Forest Avenue to the South). Reference is hereby made to the map of the District attached hereto as **Exhibit "A"** and incorporated herein by reference for a complete description of the boundaries of the District.

SECTION 6. The City Council has adopted a Resolution of Intention, Resolution No. \_\_\_\_\_ [insert number after resolution approved on consent], declaring its intention to levy and collect an assessment for fiscal year 2020 against the businesses in the District.

SECTION 7. Following notice duly given pursuant to law, the City Council has held a full and fair public hearing regarding the levy and collection of an assessment within the District for fiscal year 2020. All interested persons were afforded the opportunity to hear and be heard regarding protests and objections to the levy and collection of the assessment for fiscal year 2020. The City Council finds that there was no majority protest within the meaning of the Law. All protests and objections to the levy and collection of the assessment and any and all protests and objections are hereby overruled by the City Council.

SECTION 8. Based on its review of the Report, a copy of which has been presented to the City Council and has been filed with the City Clerk, and other reports and information, the City Council hereby finds and determines that (i) the businesses in the District will be benefited by the expenditure of funds raised by the assessment (ii) the District includes all of the businesses so benefited; and (iii) the net amount of the assessment levied within the District for the 2020 fiscal year in accordance with the Report is apportioned by a formula and method which fairly distributes the net amount in proportion to the estimated benefits to be received by each such business.

SECTION 9. The City Council hereby confirms the Report as filed by the Advisory Board. New businesses established in the District after the beginning of any fiscal year shall be exempt from the levy of the assessment for that fiscal year. In addition, non-profit organizations, newspapers and professional "single-person businesses," defined as those businesses which have 25% or less full time equivalent employees, including the business owner, shall be exempt from the assessment.

SECTION 10. The adoption of this Resolution constitutes a levy of an assessment for the fiscal year 2020 (commencing July 1, 2019, and ending June 30, 2020). The assessment formula, including the method and basis of levying the assessment, is set forth **Exhibit "B"** attached hereto and incorporated herein by reference. New businesses established in the District after the beginning of any fiscal year shall be exempt from the levy of the assessment for that fiscal year. In addition, non-profit organizations, newspapers and professional "single-person businesses," defined as those businesses which have 25% or less full time equivalent employees, including the business owner, shall be exempt from the assessment.

SECTION 11. The City Council hereby declares that the proposed uses of the revenues derived from the assessments levied against the businesses in the District are for the following facilities and activities: The types of improvements to be funded by the levy of an assessment against businesses within the District are the acquisition, construction, installation or maintenance of any tangible property with an estimated useful life of five years or more. The types of activities to be funded by the levy of an assessment against businesses within the District are marketing activities which benefit businesses in the area and which take place on or in public places within the District; improvement and maintenance of public spaces; and activities which benefit businesses locating and operating in the District.

SECTION 12. The Council finds that the adoption of this Resolution does not meet the definition of a project under Section 21065 of the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

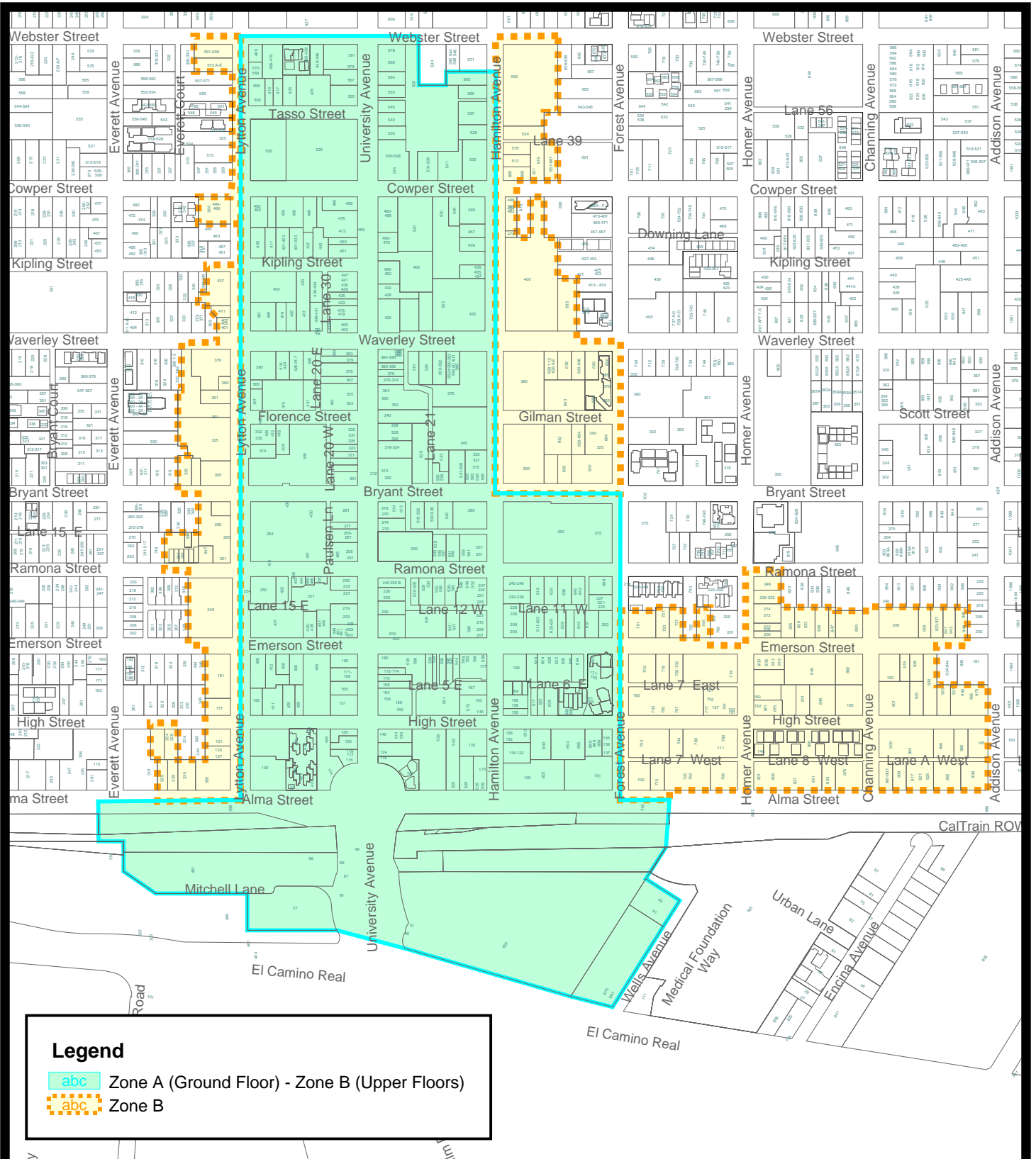
APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Assistant City Attorney

\_\_\_\_\_  
City Manager

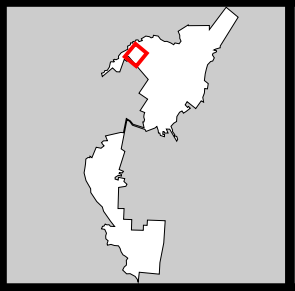
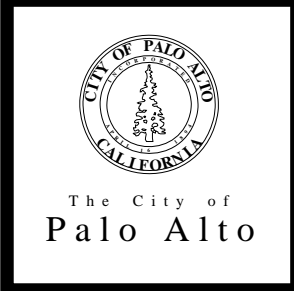
\_\_\_\_\_  
Director of Administrative Services



**Legend**

abc Zone A (Ground Floor) - Zone B (Upper Floors)

abc Zone B



Downtown Palo Alto  
Business Improvement  
District  
Area Map

This map is a product of the  
City of Palo Alto GIS

**Downtown Palo Alto Business Improvement District**  
**Annual BID Assessments**

	<b>ZONE A</b>	<b>ZONE B</b>
		<i>(75%)</i>
<b>Retailers and Restaurants</b> <i>(100%)</i>	\$225.00 (Under 6 FTE employees) <i>(50%)</i> \$340.00 (6 to under 11 FTE employees) <i>(75%)</i> \$450.00 (11+ FTE employees) <i>(100%)</i>	\$170.00 \$260.00 \$340.00
<b>Service Businesses</b> <i>(75%)</i>	\$170.00 (Under 4 FTE employees) <i>(50%)</i> \$260.00 (4 to under 7 FTE employees) <i>(75%)</i> \$340.00 (7+ FTE employees) <i>(100%)</i>	\$130.00 \$200.00 \$260.00
<b>Professional Businesses</b> <i>(50%)</i>	EXEMPT (25% or fewer FTE employees, including the business owner) \$ 60.00 (26% to under 1 FTE employees) <i>(25%)</i> \$110.00 (2 to 4 FTE employees) <i>(50%)</i> \$170.00 (5 to 9 FTE employees) <i>(75%)</i> \$225.00 (10+ FTE employees) <i>(100%)</i>	\$ 50.00 \$ 90.00 \$130.00 \$170.00
<b>Lodging Businesses</b> <i>(100%)</i>	\$225.00 (up to 20 rooms) <i>(50%)</i> \$340.00 (21 to 40 rooms) <i>(75%)</i> \$450.00 (41+ rooms) <i>(100%)</i>	\$170.00 \$260.00 \$340.00
<b>Financial Institutions</b>	\$500.00	\$500.00

**Note 1:** For retail, restaurant, service, and professional businesses, size will be determined by number of employees either full-time or equivalent (FTE) made up of multiples of part-time employees. A full FTE equals approximately 2000 hours annually. Lodging facilities will be charged by number of rooms available and financial institutions will be charged a flat fee.

**Note 2:** Second floor (and higher) businesses located within Zone A, will be assessed the same as similar street-level businesses located within Zone B.

**Note 3:** Assessment amounts are rounded to the nearest ten dollars. The minimum assessment will be \$50.00.

505108600

**AGREEMENT  
BETWEEN THE CITY OF PALO ALTO  
AND  
THE PALO ALTO DOWNTOWN BUSINESS & PROFESSIONAL ASSOCIATION  
FOR THE OPERATION AND ADMINISTRATION OF THE PALO ALTO  
DOWNTOWN BUSINESS IMPROVEMENT DISTRICT**

THIS AGREEMENT is made and entered into on the 25<sup>th</sup> day June, 2004, by and between the CITY OF PALO ALTO, a municipal corporation ("City") and the Palo Alto Downtown Business & Professional Association, a California nonprofit mutual benefit corporation (the "Corporation").

WHEREAS City Ordinance No. 4819, adopted February 2, 2004 (the "Ordinance"), established the Palo Alto Downtown Business Improvement District (the "District") under the provisions of the Parking and Business Improvement Area Law of 1989, Section 36500 et seq. of the California Streets and Highways Code (the "Law"); and

WHEREAS, pursuant to the Law and the Ordinance, the City is authorized to levy and collect an annual assessment (the Assessment") from non-exempt businesses in the District for the purpose of acquiring, constructing, installing or maintaining improvements and promoting activities which will benefit the business located and operating within the District; and

WHEREAS, the City has appointed the Board of Directors of the Corporation (the "Board of Directors") as the advisory board for the District; and

WHEREAS the Corporation has available personnel, resources and expertise to undertake improvements and implement activities within the District which are permitted under the Law and the Ordinance to be funded with proceeds of the Assessment; and

WHEREAS, the Corporation is qualified to undertake and administer such improvements and activities within the District and is willing to do so.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the City and the Corporation hereby agree as follows:

1. CONTRACT ADMINISTRATION.

A. Except as expressly provided herein, the City's Economic Development Manager or his or her designated representative shall be the City's representative for the administration of this Agreement. All activities performed by the Corporation shall be coordinated with this person.

B. The Corporation shall designate a person, to be the Corporation's representative for the administration of this Agreement and, subject to the direction and authorization of the Board of Directors, to be the contact person for and in charge of all actions to be taken on behalf of the Corporation pursuant to this Agreement.

2. TERM.

A. Initial Term. The term of this Agreement commences on the date first written above and shall continue until June 30, 2004, inclusive, unless earlier terminated or renewed in accordance with this Agreement.

B. Automatic Renewal. Approval by the City Council of the Corporation's Annual Report (defined in Section 3, below), including the proposed District budget, for each subsequent July 1st - June 30th fiscal year shall automatically renew this Agreement with respect to such fiscal year.

C. Termination. The City may terminate this Agreement immediately upon any breach of Sections 15 (Insurance Requirements or 17 (Conflict of Interest). In addition, either the City or the Corporation, upon at least 90 days prior written notice, may terminate this Agreement with or without cause. Within 45 days of the effective date of any termination, the City shall reimburse the Corporation for work which has been performed as of the termination date or which is in progress and cannot prematurely be terminated by virtue of contractual commitments. Unexpended and unencumbered funds provided to the Corporation by the City pursuant to this Agreement and all tangible assets purchased wholly with such funds shall be immediately returned to the City. It is the intent of the Corporation not to purchase assets using a combination of funds derived from Assessments and other resources available to the Corporation (a "Mixed Purchase"). In the event, however, that any Mixed Purchase shall be made, the Corporation shall provide the City with prior notice of the Mixed Purchase, and the City and the Corporation shall agree, prior to the Mixed Purchase, on how such asset shall be allocated in the event of a termination of this Agreement.

3. SERVICES TO BE RENDERED; ANNUAL REPORT AND BUDGET.

A. Except as provided in Section 3.B. below, on or before May 1<sup>st</sup> of each calendar year the Corporation shall submit to the Economic Development Manager, on a form approved by the City, a report setting forth in general terms: the proposed improvements, activities, programs and events for the ensuing fiscal year commencing on the following July 1<sup>st</sup>; the proposed Assessments for the ensuing fiscal year; a budget for the ensuing fiscal year; and any other information required by the Law (each collectively, an "Annual Report"). To the extent feasible, specific improvements, activities, programs and events shall be identified. The proposed



budget for the District for the ensuing fiscal year shall list the proposed expenditures and the amount designated for each proposed improvement, activity, program and event. Pursuant to the Law, the City Council may accept or modify the proposed Annual Report, including the budget. The Corporation agrees to carry out such improvements, activities, programs and events as are contained in the City Council approved Annual Report, including the budget, in accordance with all applicable laws. The Corporation shall not spend any funds derived from Assessments except in accordance with the Annual Report approved by the City Council. If funds are disbursed to the Corporation in any fiscal year on other than a reimbursement basis, the Corporation shall submit to the Economic Development Manager by the 15<sup>th</sup> of the first month of each quarter, beginning October 2004 a progress report containing a description of activities for the previous quarter and an expenditure report for the previous quarter.

B. In any year when the Corporation proposes that the City Council increase the Assessment and/or expand the boundaries of the District for the ensuing fiscal year, the Annual Report shall be submitted to the Economic Development Manager on or before February 1st of the calendar year preceding the start of such ensuing fiscal year.

#### 4. MODIFICATION OF ANNUAL REPORT.

The parties understand and acknowledge that the Law requires that each year:

A. The City Council approve the Annual Report as filed by the Corporation or as modified by the City Council prior to adopting the resolution of intention to levy Assessments and setting the public hearing on the levy of Assessments; and

B. The City Council confirm the Annual Report as originally filed by the Corporation or modified by the City Council following the public hearing on the levy of the Assessments.

In the event it appears at any stage of the proceedings (initial approval of an Annual Report or confirmation of an Annual Report) that the City Council intends to modify the Annual Report submitted by the Corporation, the City Manager shall recommend to the City Council that further action be stayed in order to allow time for the Corporation to respond to the City Council's concerns and for City staff and Corporation's staff to meet and discuss the matter. It is understood and agreed that the public hearing to confirm the Annual Report shall not be continued beyond a total of 30 days from the initial date set for the hearing. The foregoing shall not apply to a case in which a majority protest against the furnishing of a specified type or types of improvement or activity within the District has been made which requires elimination of the improvement or activity.

5. REPORT ON APPROVED ASSESSMENTS.

Each year, within 10 days following adoption by the City Council of a resolution levying Assessments, the Corporation shall submit to and in a form approved by the Economic Development Manager, a list of the Assessments, by business type, approved by the City Council for levy in the then-commencing July 1 - June 30 fiscal year together with a complete and updated list, in electronic form or database, of businesses, with business name and address, in the District for use by the City in the preparation of the Assessment invoices.

6. CORPORATION AN INDEPENDENT CONTRACTOR.

The Corporation, in the performance of the rights and obligations existing pursuant to this Agreement, shall act as and be an independent contractor and not an agent or employee of the City. The City shall not exercise control over the Corporation's method of performance of its obligations or duties, except as set forth herein, and desires to obtain only an end result. The City shall have no liability or responsibility for payments of any wages or benefits to the Corporation's employees, for whom the Corporation shall bear sole responsibility and liability.

7. BOOKS AND RECORDS.

The Corporation shall keep all related books and records in connection with the services performed under this Agreement for a period of at least three years, and agrees, upon the City's request, to make them available to the City or any authorized representative of the City for inspection during normal business hours.

8. PUBLIC MEETINGS.

A. All meetings of the Board of Directors or any group of representatives of the Corporation that would constitute a "legislative body" as defined in California Government code section 54952 (a "committee or subcommittee") where proposed or approved District activities and/or expenditures (collectively, "District Matters") will be discussed shall be open to the public, including without limitation meetings held at District businesses, as required by the Ralph M. Brown Act, Government Code Section 54950, et seq. (the "Brown Act"). Prior notice of such meetings, including an agenda prepared and posted in accordance with the Brown Act, of the District Matters to be discussed and the time and location of the meeting, shall be given in accordance with the Brown Act. No District Matters shall be discussed at any meeting of the Board of Directors or a committee or subcommittee unless such public notice has been given.

B. Notwithstanding the foregoing, the Board of Directors shall be permitted to meet in sessions closed to the public, so

long as nay such closed session conforms with the requirements of the Brown Act.

C. The City shall, at the request of the Corporation, post notices and agendas prepared and provided by the Corporation for Corporation meetings on the City's website and other locations along with notices of other City meetings.

9. DATABASE OF DISTRICT BUSINESS.

A. Upon the reasonable request of the City, the Corporation shall provide the City with the most current list, in electronic form or database, of all businesses located within the District. The Corporation shall make reports regarding closed businesses and delinquencies available upon request by the City. The Corporation shall provide the City with street and address ranges within the District.

B. The Corporation agrees that it shall be the responsibility of the Corporation to maintain a database of District Businesses. The Corporation shall use reasonable efforts to maintain a complete and accurate database, but the Corporation and City acknowledge and agree that constant updating of such database could require an unreasonable use of Corporation resources. Accordingly, the City and the Corporation agree that the Corporation shall update such database on at least a semi-annual basis.

C. Each party, upon the request of the other shall make available to the other any additional information in their possession as may be reasonably necessary to operate and administer activities within the District.

10. COLLECTION OF ASSESSMENTS.

A. The Corporation understands and agrees that the levy of Assessments by the City shall be in the sole discretion of the City Council. No provision of this Agreement shall be construed as a promise, warranty or agreement by the City to levy Assessments against businesses in the District. The City shall have no liability to the Corporation for its decision to not levy Assessments or in connection with the amounts of any Assessments levied. The Corporation understands and agrees that the Ordinance may be amended from time to time by the City Council.

B. In any fiscal year, if the City levies Assessments against businesses in the District, pursuant to the terms of the Ordinance, the City shall bill and collect Assessments from businesses in the District to finance District improvements and activities. For each fiscal year subsequent to fiscal year 2003-2004, the City shall, prior to each July 1<sup>st</sup> generate and print a written invoice for each assessable business within the District for that fiscal year. Each invoice shall provide the amount of the Assessment, that the Assessment is due and payable on or before

July 10<sup>th</sup> of that fiscal year and that the Assessment shall become delinquent 30 days thereafter. The City shall provide such invoices to the Corporation, and the Corporation shall collate and mail such invoices, along with any notices requested by the City, by July 10<sup>th</sup> of each year. Each fiscal year, the City will prepare and send a second invoice to those business owners within the District that have not paid their Assessment by the 30<sup>th</sup> day following the date of the original invoice. Any costs incurred by the City or the Corporation to be borne by the District for the generation, printing and mailing of such invoices shall be included in the District's annual budget submitted and approved in accordance with Section 3.

C. After 90 days of delinquency upon the written request of the Corporation, the City shall assign past due Assessments to the Corporation for collection action by the Corporation, and shall assign the right to receive any amounts so collected (net of reasonable expenses incurred in such collection) to the Corporation for benefit of the District.

To the extent any past due Assessments are assigned to the Corporation pursuant to this Subsection 9.C, the Corporation shall submit a written report to the City detailing the status of all then-on-going collection actions undertaken by the Corporation upon the City's reasonable request, but no more frequently than quarterly. At the City's option, to be exercised by written notice to the Corporation, the Corporation's authority from the City over any collection action that has continued for more than 12 months without resolution of the delinquent Assessments may be terminated by the City.

#### 11. DISBURSEMENT OF FUNDS; AUDIT REQUIREMENT.

A. So long as the Corporation is not in breach of this Agreement, the City (i) shall disburse at least quarterly to the Corporation all collected Assessments, or (ii) alternatively, if the Corporation so requests, the City shall disburse such funds to the Corporation on a reimbursement basis upon proof of expenditures by the Corporation satisfactory to the City. Disbursements shall be made in such manner and timeframe as the parties shall mutually agree in writing. The Corporation may expend any funds received pursuant to this Agreement only for the purposes authorized by the Ordinance and only in accordance with the Annual Report, including the budget, as approved by the City Council for the applicable fiscal year.

B. If funds are disbursed to the Corporation in any fiscal year on other than a reimbursement basis, the Corporation will establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to the District under this Agreement and shall substantiate all such costs, meeting acceptable standards for major

public entities in Northern California and complying with any applicable Federal standards. The system shall meet the minimum fiscal and internal control requirements as reasonably determined by the City. In addition, within 120 days after the end of such fiscal year or the effective date of a termination pursuant to Section 2 above, the Corporation shall submit to the Economic Development Manager an audit report, prepared by a person or company reasonably approved by the City in accordance with the City's policies, of the District's expenditures and completed activities for the preceding fiscal year.

12. ASSIGNMENT.

The parties agree that the identity, expertise and experience of the Corporation are material considerations for this Agreement. The Corporation shall not assign or transfer any interest in this Agreement nor the performance of any of the Corporation's obligations hereunder without the prior written consent of the City.

13. NO OTHER CONTRACTS.

During the term of this Agreement, City agrees that it shall not contract with any other person or entity to operate and administer the District.

14. INDEMNIFICATION OF CITY.

The Corporation agrees to indemnify the City, its officers and employees against any and all claims, damages or liability arising out of or resulting in any way from activities or improvements undertaken by the Corporation pursuant to this Agreement. Acceptance of any work or services of the Corporation by the City shall not operate as a waiver of such right of indemnification

15. INSURANCE REQUIREMENTS.

Without limiting the Corporation's indemnification of the City, the Corporation agrees to have and maintain the policies set forth in Exhibit "A", entitled INSURANCE which is attached hereto and incorporated herein by this reference. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The Corporation agrees to provide the City with copies of said policies, certificates and/or endorsements before work commences under this Agreement. The City shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate this Agreement immediately and pursue any and all legal or equitable remedies for such breach.

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16. NONDISCRIMINATION.

The Corporation shall not discriminate, in any way, against any person on the basis of age, sex, race, color, creed, sexual orientation or national origin in connection with or related to the performance of this Agreement.

17. CONFLICT OF INTEREST.

The Corporation shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement. The Corporation shall disclose to the City any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Agreement within a reasonable time after discovery of such conflict of interest by the Corporation. The City shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate this Agreement immediately and pursue any and all legal or equitable remedies for such breach.

18. WAIVER.

The City and the Corporation agree that waiver by the City or the Corporation of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

19. NOTICES.

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City: Office of the City Manager  
City of Palo Alto  
250 Hamilton Avenue, 7<sup>th</sup> Floor  
Palo Alto, CA 94303

With a copy to:

Office of the City Clerk  
City of Palo Alto  
250 Hamilton Avenue, 7<sup>th</sup> Floor  
Palo Alto, CA 94301

To Corporation: Palo Alto Downtown Business &  
Professional Association  
542 High Street  
Palo Alto, CA 94301  
Attention: President

With a copy to:

Palo Alto Downtown Business &  
Professional Association  
542 High Street  
Palo Alto, CA 94301  
Attention: Chairman of the Board

With a copy to:

Thoits, Love, Hershberger & McLean, P.C.  
245 Lytton Ave., Suite 300  
Palo Alto, CA 94301  
Attn: Anne E. Senti-Willis, Esq.

or to such other address or addressee as may be designated by notice in accordance with this Section. Notice shall be deemed effective on the date personally delivered or, if mailed, upon receipt.

A copy of any notice of a legal nature, including, but not limited to, any claims against the City, its officers or employees shall also be served in the manner specified above to the following address:

City of Palo Alto  
City Attorney  
250 Hamilton Avenue, 8<sup>th</sup> Floor  
Palo Alto, CA 94301

20. PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to the matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to the matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by both parties to this Agreement.

21. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of California.

22. TIME OF ESSENCE.

Time is of the essence of each and every provision of this Agreement.

23. ATTORNEY'S FEES.

If a legal action or proceeding is brought by any party because of default under this Agreement, or to enforce a provision

hereof, the prevailing party therein shall be entitled, in addition to any other relief, to recover reasonable attorney's fees and court costs from the losing party as determined by the court in which said action or proceeding is pending.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove written.

ATTEST:

Donna J. Rogers  
City Clerk

CITY OF PALO ALTO

Ben Beekman  
Mayor

APPROVED AS TO FORM:

Allie Ince  
Senior Asst. City Attorney

APPROVED:

[Signature]  
Assistant City Manager

[Signature]  
Director of Administrative Services

[Signature]  
Risk Manager

"CORPORATION"  
PALO ALTO DOWNTOWN BUSINESS &  
PROFESSIONAL ASSOCIATION

By: [Signature]

Stephanie Warsek  
Print Name

Chair  
Print Title

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

Exhibit "A" - INSURANCE