



Agenda Item # _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Bruce Moe, Finance Director

DATE: June 17, 2008

SUBJECT: Renewal of Downtown Business Improvement District (BID) for FY 2008-2009:

- a) Consideration of Resolution No. 6149 Providing for the Collection of Assessments for the Downtown BID;
- b) Ratification of the 2008-2009 BID Advisory Board Members;
- c) Authorization for the BID Advisory Chair to Enter into an Agreement with the Downtown Business & Professional Association to Provide Services to the District;
- d) Authorization to Disburse FY 2007-2008 Assessments.

RECOMMENDATION:

The Downtown Business Improvement District Advisory Board and City staff recommend that the City Council take the following actions:

1. Conduct a public hearing;
2. Adopt Resolution No. 6149 authorizing the collection of assessments;
3. Ratify the nominees for the FY 2008-2009 BID advisory board;
4. Authorize the BID Advisory Board Chair to enter into an agreement with the Downtown Business & Professional Association to provide services to the District;
5. Authorize disbursement of all assessments collected for FY 2007-2008 (approximately \$90,000)

FISCAL IMPLICATION:

The Downtown Business Improvement District is funded through an 80% surcharge on the business license tax to a maximum of \$600. Since the business license and BID surcharge is not collected until April/May of a given year, the BID is funded by assessments generated during the previous fiscal year.

The total 2008-2009 operating budget for the Downtown Improvement District projects revenues of \$174,600 and expenses of \$175,734 (the slight difference is funded through reserves). Funds to implement the operating budget will be generated primarily from the BID assessments, the Farmer's Market, and Downtown Business and Professional Association activities. The budget maintains reserves of approximately \$16,450, slightly above the \$15,000 level set by policy.

BACKGROUND:

In 1996, during the downtown strategic planning process, the creation of a new business improvement district for the downtown area was identified as a desired project. At that time, there was an existing Business Improvement District (BID) in place. However, this BID was very restrictive with respect to the use of funds. The funds generated through the former BID could only be used for "the acquisition and construction of additional parking facilities" per Ordinance No. 1173.

There was a desire on the part of the downtown business owners to create a more flexible BID so that the funds could be used for additional purposes as defined by the business owners. Therefore, the downtown businesses requested the City assist with the creation of a new BID. In October 1998, the City Council adopted Ordinance 1989 which created a new, more flexible, with respect to the use of funds, Business Improvement District.

DISCUSSION:

The Downtown BID and the associated assessments used to fund the activities of the BID must be renewed annually. As required by law, the City Council adopted a resolution at its meeting of May 20, 2008 that set tonight's meeting, June 17, 2008, as the public hearing date to hear testimony in support of, and against, the proposed assessments. This public hearing has been properly noticed in accordance with State law. The resolution of intent was circulated to all downtown businesses and was published in *The Beach Reporter*. If adopted by the City Council tonight, the resolution would become effective immediately and would set the assessment of an 80% surcharge on the business license tax, to a maximum of \$600, for downtown businesses.

A necessary requirement of the Business Improvement District is the establishment of an Advisory Board. This Board must be established prior to receiving any funding. Attachment "B" is a list of nominees for the 2008-2009 advisory board. These nominees are all subject to the BID assessment and were selected by the Downtown businesses. As required by State law, the City Council is required to ratify the nominees.

A primary role of the BID Advisory Board is to review and approve the operating plan for the District. The District's operating plan (Attachment "C") contains all information relative to projected revenues and expenses, and outlines the services and programs to be funded by the BID. This year, the operating plan identifies the following programs for FY 2008-2009:

- Parking, Transportation, Beautification & Community programs
- Marketing & Advertising
- Promotions & Special Events
- Professional Management & Communications

For the past several years, the District contracted with the Downtown Manhattan Beach Business & Professional Association (DMBBPA) to provide these services and implement the various programs identified in the operating plan. This relationship has been successful with such programs as the downtown valet parking program, advertising campaign (newspapers, banners and television ads), sidewalk sales, and support for the Ocean Express shuttle service which brings visitors from the airport hotel corridor to Manhattan Beach. A new video promoting Manhattan Beach as a destination is also being produced (with some financial assistance from the City).

During FY 2006-2007, the DMBBPA introduced and sponsored the new Farmers' Market. This has been extremely successful and has drawn many people to downtown each Tuesday to enjoy the festive atmosphere.

The DMBBPA has retained the services of an Executive Director, Ms. Mary Ann Varni, to provide management support. It is recommended that the City Council authorize the Chairperson of the Advisory Board (Ron Koch) to enter into an agreement (Attachment "D") with the DMBBPA to provide the services to the District for FY 2008-2009.

CONCLUSION:

If the City Council performs the following actions tonight, the BID and associated assessments will remain in place for the Fiscal Year 2008-2009:

1. Adopt Resolution 6149;
2. Ratify the nominees for the FY 2008-2009 BID Advisory Board;
3. Authorize the Chair of the BID Advisory Board (Ron Koch) to enter into an agreement with the Downtown Manhattan Beach Business & Professional Association to provide the services and implement the programs identified in the Downtown Manhattan Beach Property & Business Improvement District Plan.
4. Authorize the disbursement of funds collected for the BID for FY 2007-2008.

Attachments:

- A. Resolution No. 6149 - Resolution setting assessments
- B. List of 2008-2009 BID Advisory Board Member Nominees
- C. Downtown Manhattan Beach Property & Business Improvement District Plan - July 2008
- D. Contract between BID and Downtown Manhattan Beach Business & Professional Association
- E. Boundary Map of the Downtown BID

RESOLUTION NO. 6149

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, OVERRULING PROTESTS AND PROVIDING FOR THE ANNUAL LEVY AND COLLECTING OF ASSESSMENTS FOR THE EXISTING DOWNTOWN MANHATTAN BEACH BUSINESS IMPROVEMENT DISTRICT, PURSUANT TO THE STREETS AND HIGHWAYS CODE SECTION 36500 ET. SEQ. (SB 1424 - PARKING & BUSINESS IMPROVEMENT LAW OF 1989, CHAPTER 2) OF THE STATE OF CALIFORNIA

SECTION 1. The City Council hereby makes the following findings:

A. The City Council has previously formed a Property & Business Improvement District pursuant to the provisions of Section 36500 of the Streets and Highways Code of the State of California, the Parking & Business Improvement Law of 1989, for providing services to the businesses within the area designated as the Downtown Manhattan Beach Business Improvement District (hereinafter referred to as the "District"); and

B. This City Council, on the 20th day of May, 2008, adopted Resolution 6138 declaring its intention to authorize the collection of assessments to provide services in accordance with the July 2008 Downtown Manhattan Beach Property & Business Improvement District Plan for the period beginning July 1, 2008, and ending June 30, 2009, with said services to be performed within the "District;" and

C. Said Resolution did fix the time and place for a hearing of any and all protests in relation to said proposed assessment; and

D. The public hearing took place on June 17, 2008, and all interested persons were given full opportunity to present their protests or objections; and

E. Evidence has been received as to the publication and mailing of notice of said hearing in the time, form and manner required by law; and

F. This Resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines Section 15061(3) in that it has no potential for causing a significant impact to the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

SECTION 2. The City Council, after due consideration of all objections and protests, does hereby overrule and deny any such protests and objections and authorizes the proposed services to be performed within said "District," and authorizes the proposed assessment to be collected.

SECTION 3. The public interest and convenience demands and requires, and this City Council does hereby order, the said contemplated services to be performed in accordance with the Downtown Manhattan Beach Property & Business Improvement District Plan for the period beginning July 1, 2008, and ending June 30, 2009, and the City Council does hereby levy said proposed assessment to pay for the services outlined in the said Plan.

SECTION 4. The City Clerk shall certify the passage and adoption of this resolution; shall cause the same to be entered among the original resolutions of said City; and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council of said City in the minutes of the meeting at which the same is passed and adopted.

PASSED, APPROVED and ADOPTED this 17th day of June, 2008.

Ayes:
Noes:
Abstain:
Absent:

Mayor, City of Manhattan Beach California

ATTEST:

City Clerk



D O W N T O W N
M A N H A T T A N B E A C H

Mr. Bruce Moe
Director of Finance
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

4/15/08

Dear Bruce:

We have scheduled our annual Business Improvement District (BID) Advisory Board Meeting for Wednesday, April 30, 2008 at 9a.m. The meeting will take place at the DBPA conference room at 1104 Highland, Suite J.

The following are the BID Members, current and new at this time:

Ron Koch, President – Autorite
Dana McFarland – Wright's, The Beehive & Lulu's
Barbie Falconer – Barbie K
Julie Hantzarides – Old Venice
David Levin – Lulu's & The Beehive
Scott McColgan – Shark's Cove
Kevin Barry - Towne Restaurant
Mike Zislis - Shade Hotel, Mucho, Rock N' Fish
Maureen McBride – Tabula Rasa Essentials

Please let me know if I can provide you with any further information that you require or need at this time.

Sincerely,

Mary Ann Varni
Executive Director
Downtown Manhattan Beach Business & Professional Association
P.O. Box 3298
Manhattan Beach, CA 90266
310-379-9901
maryann@downtownmanhattanbeach.com
cc: Ron Koch, President

DOWNTOWN MANHATTAN BEACH
Business & Professional Association

2008-2009 Business Improvement & Activity Plan

Office Management

- Purchase New Chair for office

Special Events

- Sidewalk Sales - August 22-24, 2008; January 9-11, 2009; April 24-26, 2009
- Surf Festival 6-Man Volleyball – August 2&3, 2008
- National Lifeguard Championship – August 7-9, 2008
- 53rd Annual Catalina-MB Paddleboard Race – August 24, 2008
- Arts Festival - Sept 7, 2008
- AVP Tournament – Sept. 19-21, 2008
- Halloween Trick-or-Treat – October 26, 2008
- Holiday Open House - November 19, 2008
- Fireworks Festival – December 14, 2008

Community Programs

- Farmers' Market – 2nd Anniversary - July 11, 2008; Community support through Growing Great sponsorship. Continuing marketing Farmer's Market through strategic advertising; utility bill insertions; distribute flyers at local 5&10K races; Junior Guard day (offer something special) during the summer; continue sale of merchandise at market that features logo.
- Landscape & Street Improvements – Parking lot & structure lighting improvement; planters upgraded with blooming annuals.
- 13th Street & Morningside Drive Crosswalk Project – 4/30/08-5/19/08
- Parking Study Promotion – cash keys dispensing machines, raise some meter rates, increase time limits lower level Metlox- ongoing
- Valet Parking

Marketing & Promotions

- Web Site – Update photos and look to reflect downtown Manhattan Beach. Listings, searches, information, links, advertising opportunities. Tourist information.
- Tourism Video – 3-3-1/2 minute video promoting Manhattan Beach as a great destination. – Projected delivery - 5/31/08
- Public Relations Firm - Triple a- Press Slumber Party – 5/4/08-5/5/08
- Hotel Kiosk Concierge Program - Showcase International : currently available in 22 local hotels
- Business Listing & Outdoor Map- Brochure & directory maps updated 2009-2010
- Visitor Guide Brochure – Updated annually
- Permanent Way-finding Directories/Maps – Updated annually.
- Ocean Express - Trolley service, advertising opportunities –
- LA Inc. Coupon Book – Free opportunity offered to Downtown businesses. 175,000 will be printed and distributed to airport area hotels, convention centers and at the LA Tourist Bureau.
- Advertising Campaign – on-going (Beach Reporter, Chamber Directory)
- Cable Commercial – Public Access channel to show tourism video upon completion

2008-2009 Proposed Budget

	INCOME	EXPENSES	NET FUNDS
General Administration			
BID Contribution	98,000.00		98,000.00
Interest income			-
Operating Expenses		66,000.00	(66,000.00)
SUBTOTAL	98,000.00	66,000.00	32,000.00
Fundraising			
AVP Water Sales	2,000.00		2,000.00
Downtown Dollars			-
SUBTOTAL	2,000.00	-	2,000.00
Special Events			
Halloween Trick or Treat		3,500.00	(3,500.00)
Holiday Open House*	3,200.00	9,700.00	(6,500.00)
January Sidewalk Sale	2,800.00	2,800.00	-
April Sidewalk Sale	2,800.00	2,800.00	-
August Sidewalk Sale	2,800.00	2,800.00	-
Slumber Party/Invitations		410.00	(410.00)
SUBTOTAL	11,600.00	22,010.00	(10,410.00)
Community Relations			
Donations		600.00	(600.00) Catalina
Fireworks Festival		1,000.00	(1,000.00)
Farmers' Market	60,000.00	48,853.00	11,147.00
Valet Program	3,000.00		3,000.00
SUBTOTAL	63,000.00	50,453.00	12,547.00
Marketing & Promotion			
Advertising			
December Ad		1,357.00	(1,357.00)
double A/PR (\$1500/month)		9,000.00	(9,000.00)
Tourist Video		2,000.00	(2,000.00)
Mother's Day		1,357.00	(1,357.00)
Father's Day		1,357.00	(1,357.00)
Chamber Directory		900.00	(900.00)
New Banners for Sdww. Sale		1,400.00	(1,400.00)
Visitor's Guide Brochure		8,000.00	(8,000.00)
Concierge Program		500.00	(500.00)
Downtown Maps/Directory		(Update 7/2009)	(Update 7/2009)
Ocean Express		10,000.00	(10,000.00)
			-
			-
Website		1,400.00	(1,400.00)
SUBTOTAL	-	37,271.00	(37,271.00)
TOTAL	174,600.00	175,734.00	(1,134.00)

Estimated Cash Reserve as of 6/31/07

17,589.54

Estimated Projected Reserve as of 6/31/08

16,455.54

* Includes 90 Posters, 1 F/P Ad, revision of ad dates ,banner revisions/hanging and entertainment

2008-2009 Proposed Budget

	INCOME	EXPENSES	NET FUNDS
General Administration			
BID Contribution	98,000.00		98,000.00
Interest income			-
Operating Expenses		66,000.00	(66,000.00)
SUBTOTAL	98,000.00	66,000.00	32,000.00
Fundraising			
AVP Water Sales	2,000.00		
Downtown Dollars			-
SUBTOTAL	2,000.00	-	-
Special Events			
Halloween Trick or Treat		3,500.00	(3,500.00)
Holiday Open House*	3,200.00	9,700.00	(6,500.00)
January Sidewalk Sale		2,000.00	(2,000.00)
April Sidewalk Sale	-	2,000.00	(2,000.00)
August Sidewalk Sale	-	2,000.00	(2,000.00)
Slumber Party/Invitations		410.00	(410.00)
SUBTOTAL	3,200.00	19,610.00	(16,410.00)
Community Relations			
Donations		600.00	(600.00) Catalina
Fireworks Festival		1,000.00	(1,000.00)
Farmers' Market	60,000.00	48,853.00	11,147.00
Valet Program	3,000.00	-	3,000.00
SUBTOTAL	63,000.00	50,453.00	12,547.00
Marketing & Promotion			
Advertising			
December Ad		1,357.00	(1,357.00)
double A/PR (\$1500/month)		9,000.00	(9,000.00)
Tourist Video		2,000.00	(2,000.00)
Mother's Day		1,357.00	(1,357.00)
Father's Day		1,357.00	(1,357.00)
Easy Reader/Contract 5 X \$350		1,050.00	(1,050.00)
Chamber Directory		900.00	(900.00)
New Banners for Sdwk. Sale		1,400.00	(1,400.00)
Visitor's Guide Brochure		8,000.00	(8,000.00)
Conciege Program		500.00	(500.00)
Downtown Maps/Directory		(Update 7/2009)	(Update 7/2009)
Ocean Express		10,000.00	(10,000.00)
		-	-
Website		1,400.00	(1,400.00)
SUBTOTAL	-	38,321.00	(38,321.00)
TOTAL	166,200.00	174,384.00	(10,184.00)

Estimated Cash Reserve as of 6/31/08 16,000.00
 Estimated Projected Reserve as of 6/31/09 5,816.00

* Includes 90 Posters, 1 F/P Ad, revision of ad dates ,banner revisions/hanging and entertainment

MB Farmers Market 2008-2009 Proposed Budget

Account Amount Budget Weekly Notes

Income

Market	\$55,000		\$1,100 Based on 50 wks.
Merchandise	\$5,000		\$100 Based on 50 wks.
Total:	\$60,000		

Expenses

Permits

CFM Certificate	\$440		Yearly. Jan thru Dec.
Temp. Event Health Permit	\$399		Yearly. July thru June.
CFM Health Permit	\$302		Yearly. July thru June.
CDFA Fee	\$600	\$150	Quarterly.
Cal Fed. Of CFM Dues	\$50		
MB business license	\$400		

Labor

1 or Mkt. Mngr/Raise from last year	\$12,500		\$250 Based on 50 wks(\$25/hour 10hrs/wk)
Mkt Assist	\$3,750		\$75 Based on 50 wks.
Set up	\$14,500		\$290 Based on 50 wks.

Web Site

Supplies	\$1,250		\$25
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Insurance

Signs	\$500		
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Volunteers

Donation - Growing Great @ 5% Sales	\$2,750	\$688	
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Programs

Merchandise	\$4,000		
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Assumes 3 to 4 basket orders / yr @ \$550 ea. T-shirts, totes, aprons @ \$2300 + any additional merch. w/4/C logo

Advertising

Banner Hanging	\$810	\$810/\$400*	\$810 for Sepulveda/\$400 DMB
New Flyers/Utility Bill Insert	\$1,190		25,000 flyers (tax & shipping add'l)
Revise Flyer/time change on banner	\$412		*price is based on 2 consecutive

weeks for each banner

Promotions

Magnets or Wooden \$1 coins	\$500		
Vendor promotions	\$800	\$200	

Total: \$48,853

“D”

AGREEMENT BETWEEN THE DOWNTOWN MANHATTAN BEACH BUSINESS
IMPROVEMENT DISTRICT AND THE DOWNTOWN MANHATTAN BEACH
BUSINESS & PROFESSIONAL ASSOCIATION FOR PROFESSIONAL SERVICES

This agreement is entered into by and between the Downtown Manhattan Beach Business Improvement District, a public entity formed under the 1989 Business Improvement District Act (hereinafter “DISTRICT”) and the Downtown Manhattan Beach Business & Professional Association (hereinafter “ASSOCIATION”) with reference to the following facts:

RECITALS

- A. The City Council established a Business Improvement Area known as the Downtown Manhattan Beach Business Improvement District (hereinafter “DISTRICT”), pursuant to Section 36500 et seq. of the California Streets and Highway Code (hereinafter “Act”), by and through the adoption of Ordinance 1989 on October 6, 1998. Said Ordinance authorized the levy of a special assessment to support the DISTRICT'S operations.
- B. On June 17, 2008, the City Council adopted Resolution No. 6149 overriding protests and providing for the collection of assessments for FY 2008-2009.
- C. Pursuant to the aforementioned Ordinance and enabling law, assessments have been levied upon the various businesses located within the DISTRICT.
- D. Said assessments are collected by the City of Manhattan Beach (hereinafter "CITY") through an 80% surcharge on the Business License Tax and shall be used only for the benefit of the DISTRICT.
- E. The services, as identified in the Downtown Manhattan Beach Business & Professional Association 2008-2009 Business Improvement & Activity Plan (Attachment “A”), are to be funded through the assessment levied on businesses within the DISTRICT.
- F. It has been determined that the public necessity and convenience is best served through a contractual arrangement between the DISTRICT and the ASSOCIATION.

NOW THEREFORE, the DISTRICT and the ASSOCIATION in consideration of the recitals, mutual promises, covenants, representations and agreement set forth below, hereby promise, covenant, agree and represent as follows:

Section 1. TERM OF AGREEMENT

1.1 The term of this agreement shall be from July 1, 2008 to and including June 30, 2009.

Section 2. ASSOCIATION RESPONSIBILITIES.

- 2.1 The ASSOCIATION or an agent of the ASSOCIATION shall render professional services and shall utilize and cooperate with the DISTRICT to provide work program coordination consisting of program development and implementation, program administration, and financial reports.
- 2.2 The ASSOCIATION shall submit to the DISTRICT program plans and reports, including the following:

Proposed Program Report

A program plan detailing services to be provided and operational/program budgets for each fiscal year. The report shall be submitted 30 days prior to each fiscal year outlining the DISTRICT'S plans, goals and budgets for the ensuing fiscal year. The report shall include all documentation as required by Section 36533 of the Act, as well as all other pertinent provisions of the Act.

Quarterly Reports

The ASSOCIATION shall provide the DISTRICT with updated quarterly reports outlining revenue and expenditures for the quarter. These reports shall be submitted to, and reviewed by, the Chairperson of the Downtown Manhattan Beach Advisory Committee & the City of Manhattan Beach.

End of Year Report

By July 31, 2009 the ASSOCIATION shall submit to the DISTRICT a complete end-of-year report which includes the following:

- A) A full disclosure financial statement including supporting documentation of all expenditures covering the period from July 1, 2008 to June 30, 2009.
 - B) A statement by the President of the Downtown Manhattan Beach Business & Professional Association certifying that staff time expended and payment requested was for services performed in accordance with the provisions of this agreement.
- 2.3 The ASSOCIATION shall administer the entire program in a prudent manner, within the parameters of the work program and budget approved by the City Council through the adoption of Resolution No. 6138, a Resolution of Intention, on May 20, 2008. The ASSOCIATION assumes full responsibility for contracting support services as required, and paying for all such direct out-of-pocket expenses as may be necessary for the timely completion of work. Obligations or expenditures for items not budgeted shall not be paid through assessments collected by the DISTRICT.
- 2.4 The Chairperson of the Downtown Manhattan Beach Business Improvement District Advisory Committee or his or her designee shall have the authority to make reasonable budget and program adjustments, not to exceed fifteen (15) percent of the total budget, between the program elements as necessary, and as limited by the total annual budget for the DISTRICT. Any budgetary changes in excess of fifteen (15) percent must be reviewed and

approved by the Downtown Manhattan Beach Business Improvement District Advisory Committee.

For fiscal year 2008-2009 the program elements shall include:

- A. Parking, Transportation, Beautification & Community Programs
- B. Marketing & Advertising
- C. Promotions & Special Events
- D. Management & Communications

- 2.5 The disbursement of funds to the ASSOCIATION does not constitute approval by the CITY for any individual project or program that requires City Council and/or Planning Commission approval, requires use of City property or requires appropriate permits/approval from the City of Manhattan Beach or any other governmental agency.
- 2.6 The Advisory Board of the DISTRICT shall be responsible for preparation of a Resolution of Intent to continue the establishment of the Business Improvement District and the levying of assessments for that fiscal year. The Advisory Board shall participate in the public hearing process and make any recommendations to modify boundaries, benefit zones, methodology and activities.

Section 3. CITY RESPONSIBILITIES.

- 3.1 The CITY shall be responsible for collection of assessments, for effecting the collection of delinquent assessments, and for authorizing the disbursement of funds collected by the CITY, on behalf of the DISTRICT, to the ASSOCIATION.
- 3.2 The CITY shall review the ASSOCIATION'S quarterly progress reports and end-of-year financial report.

Section 4. DISBURSEMENTS.

- 4.1 Upon the execution of this agreement, the DISTRICT shall disburse FY 2007-2008 Downtown Business Improvement District assessments to the ASSOCIATION, as approved by the City Council on June 17, 2008.

Section 5. NOTICES.

5.1 Notice to the parties shall, unless otherwise requested in writing, be sent to:

DISTRICT: Chair, Downtown Manhattan Beach Business Improvement
District Advisory Committee
Attn: Mr. Ron Koch
1140 Highland Avenue, Suite C
Manhattan Beach, CA 90266

CITY City of Manhattan Beach
Attn: Bruce Moe, Finance Director
1400 Highland Avenue
Manhattan Beach, CA 90266

With one copy to: City of Manhattan Beach
Geoff Dolan, City Manager
1400 Highland Avenue
Manhattan Beach, CA 90266

ASSOCIATION: Downtown Manhattan Beach Business & Professional Assoc.
Attn: Mary Ann Varni
PO Box 3298
Manhattan Beach, CA 90266

Section 6. CONFLICT OF INTEREST

6.1 For the duration of this agreement, the DISTRICT or its employees will not act as consultant or perform services of any kind for any person or entity in regard to the CITY without the prior written consent of the CITY.

Section 7. COST RECORDS.

7.1 In accordance with Generally Accepted Accounting Principles, the ASSOCIATION shall maintain full and complete records of services performed under this agreement. Such records shall be open to inspection by the DISTRICT at any time.

7.2 The records maintained by the ASSOCIATION shall include all receipts for expenditures incurred. The DISTRICT reserves the right to perform a contract compliance audit at least once annually. The DISTRICT shall pay the cost of such an audit. The ASSOCIATION agrees to keep all receipts and other supporting documents available for inspection for a period of two (2) years.

Section 8. FINANCIAL POLICIES

8.1 To maintain fiduciary responsibility, the ASSOCIATION shall, at all times, comply with the established financial policies.

Section 9. EQUAL OPPORTUNITY PROGRAM

9.1 Nondiscrimination and Affirmative Action. The ASSOCIATION shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City of Manhattan Beach. In performing this Agreement, the ASSOCIATION shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex sexual orientation, age, physical handicap, marital status or medical conditions. The ASSOCIATION shall also comply with all rules, regulations, and policies of the United States of America, the State of California and the City of Manhattan Beach, relating to nondiscrimination and affirmative action, including the filing of all forms required by said agencies. Any subcontract entered into by the ASSOCIATION relating to the agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

Section 10. AMENDMENTS

10.1 The ASSOCIATION may periodically request a change in the scope of services of the contract to be performed hereunder. Such changes, which are mutually agreed upon by and between the DISTRICT and the ASSOCIATION, shall be incorporated in written amendments to this agreement. This agreement may not be amended except in writing by mutual agreement of both parties. A failure to object to a breach of this agreement shall not constitute an amendment thereof, and it shall not waive any future breach of the agreement.

Section 11 ASSIGNMENT

13.1 Neither this agreement, nor any portion thereof, shall be assigned by ASSOCIATION without prior written consent of DISTRICT.

Section 12 PRESERVATION OF AGREEMENT

13.1 Should any provisions of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

Section 13 ENTIRE AGREEMENT

13.1 This agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this

agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by all parties. Any issue with respect to the interpretation or construction of this Agreement are to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

IN WITNESS WHEREOF, this agreement is executed by DOWNTOWN MANHATTAN BEACH BUSINESS IMPROVEMENT DISTRICT and the DOWNTOWN MANHATTAN BEACH BUSINESS & PROFESSIONAL ASSOCIATION. The Chair of the Downtown Manhattan Beach Business Improvement District & the President of the Downtown Manhattan Beach Business & Professional Association declare that they are authorized to execute this agreement on behalf of the parties.

DISTRICT:

Chair, Downtown MB Business Improvement District

Date

ASSOCIATION:

President, DMBBPA

Date

Approved as to Form

City Attorney

City of Manhattan Beach

Downtown Business Improvement District



May 17, 2005