



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Richard Thompson, Interim City Manager

FROM: Bruce Moe, Finance Director

DATE: July 6, 2010

SUBJECT: Renewal of Downtown Business Improvement District (BID) for FY 2010-2011:

- a) Consideration of Resolution No.6263 Providing for the Collection of Assessments for the Downtown BID;
- b) Ratification of the 2010-2011 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 2009-2010 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. 6263 authorizing the collection of assessments;
3. Ratify the nominees for the FY 2010-2011 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 2009-2010 (\$100,575 as of June 14, 2010)

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 2010-2011 operating budget for the Downtown Improvement District projects revenues of \$190,947 and expenses of \$191,465 (the difference of \$518 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 \$45,760, well 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 18, 2010 that set June 15, 2010, as the public hearing date to hear testimony in support of, and against, the proposed assessments (due to a noticing error, the public hearing was continued to July 6). 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 2010-2011 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 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 2010-2011:

- 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.

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 2010-2011.

CONCLUSION:

If the City Council performs the following actions tonight, the BID and associated assessments will remain in place for the Fiscal Year 2010-2011:

1. Adopt Resolution 6263;
2. Ratify the nominees for the FY 2010-2011 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 Business Improvement District Plan.
4. Authorize the disbursement of funds collected for the BID for FY 2009-2010.

Attachments:

- A. Resolution No.6263 - Resolution setting assessments
- B. List of 2010-2011 BID Advisory Board Member Nominees
- C. Downtown Manhattan Beach Business Improvement District Plan - July 2010
- D. Contract between BID and Downtown Manhattan Beach Business & Professional Association

- E. Boundary Map of the Downtown BID

RESOLUTION NO. 6263

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 18th day of May, 2010, adopted Resolution 6252 declaring its intention to authorize the collection of assessments to provide services in accordance with the July 2010 Downtown Manhattan Beach Property & Business Improvement District Plan for the period beginning July 1, 2010, and ending June 30, 2011, 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 July 6, 2010, 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, 2010, and ending June 30, 2011, 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 6th day of July, 2010.

Ayes:
Noes:
Abstain:
Absent:

Mayor, City of Manhattan Beach California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By 

City Attorney

THE END TO FRONT

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**Downtown Manhattan Beach Business Improvement District
Advisory Board Nominees
FY 2010-2011**

The following individuals are presented to the Manhattan Beach City Council for ratification for the FY 2010-2011 Business Improvement District Advisory Board:

Ron Koch, President – Autorite

Dana McFarland – Baby Wright's, Wright's, The Beehive & Lulu's

Barbie Falconer – Barbie K

Julie Hantzarides – Old Venice

David Levin – Lulu's & The Beehive

David Arias – Morningside Business

Kevin Barry - Memphis Restaurant

Mike Zislis - Shade Hotel, Mucho Ultima, Rock N' Fish

Maureen McBride – Tabula Rasa Essentials

DOWNTOWN MANHATTAN BEACH BUSINESS IMPROVEMENT DISTRICT

Business Improvement & Activity Plan July 2010

*Prepared pursuant to the State of California
And The Parking and Business Improvement Area Law of 1989
to maintain the Business Improvement District for the
Downtown Manhattan Beach, California.*

Prepared by

Downtown Manhattan Beach Business and Professional Association

**DOWNTOWN MANHATTAN BEACH
BUSINESS IMPROVEMENT DISTRICT
INFORMATION AT-A-GLANCE**

This Business Improvement District has been in existence since April of 1969 under the authority of the "Parking and Business Improvement Area Law of 1965". This law was restrictive with respect to the use of funds. In 1989 the State Legislature adopted Senate Bill 1424, "Parking and Business Improvement Area Law of 1989". In 1998 a group of concerned merchants and a growing coalition of downtown stakeholders, developed the proposal to establish a new Downtown Manhattan Beach Business Improvement District (BID) under the new legislation. In October 1998, that legislation was approved and adopted as City Ordinance No. 1989. In January 1999, the BID contracted with the Downtown Manhattan Beach Business & Professional Association (DBPA), a 501 (c) 6 not-for-profit corporation established in 1985, to provide specific benefits to the members of the BID.

Location: The Existing Business District of Downtown Manhattan Beach.

Stakeholders: Downtown Businesses - All business license holders in the Downtown area except commercial property owners.

Improvements and Activities:

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

Method of Financing: Benefit-based assessments on City Business License Tax.

Assessment: Based on the existing assessment. An 80% surcharge on the City Business License Tax not to exceed \$600.

Collection of Assessment: The fees are collected in March/April of each year and disbursed through contract, to the Downtown Manhattan Beach Business & Professional Association (DBPA).

Governance: **Advisory Board:** Annual recommendations on Downtown Manhattan Beach Business Improvement District (BID) budgets and assessments will be submitted to the Manhattan Beach City Council by a seven-nine (7-9) member Advisory Board composed of business owners located within the boundaries of the BID. The Advisory Board will also monitor the delivery of

improvements and activities, which will be the day-to-day responsibility of the Downtown Manhattan Beach Business and Professional Association (DBPA).

Members of the Advisory Board can be nominated by business owners that are assessed within the BID, and, per State law, appointed by the Manhattan Beach City Council.

Representation should consist of business on Manhattan Beach Boulevard, Manhattan Avenue and Highland Avenue. It should also contain a mix of retail, service and restaurants.

It is anticipated that the Advisory Board will meet at least once annually.

Downtown Association: The BID will contract with the DBPA to carry out improvements and activities described in the Plan, as well as the day-to-day operations.

In delivering BID improvements and activities, the DBPA will aim to meet the following objectives:

- Maximize coordination with the City and other civic organizations to leverage resources;
- Deliver programs through a cost-effective and non-bureaucratic organization that features one executive director that works for all Downtown Manhattan Beach stakeholders;
- Provide for accountability to business owners who pay assessments.

Maintaining the District:

The City Council can maintain the district by adopting a Resolution of Intention. A public hearing shall be held not less than 20 or more than 30 days after the adoption of the Resolution of Intention. If there is not written protest from owners representing over 50% of the assessments to be paid, the BID assessment will continue.

Benefits Of the District:

The BID costs no more than the prior assessment and allows the district's funds to be self-governed and to go beyond parking issues.

The BID allows for integrated marketing efforts such as valet parking, cooperative promotions, banners throughout the area,

advertising and publishing downtown directories and calendars of events.

The DBPA provides key promotional and organizational support through a variety of functions that directly benefit its ratepayers as well as the City. Such as:

- Creating a public/private partnership to manage the Downtown environment to ensure high standards for signage, security, maintenance, parking and marketing;
- Increasing sales and revenues throughout the district as well as tax and parking revenue to the City;
- Advocating Downtown interests and for the City at large;
- Establishing and implementing a Downtown vision, an image of a thriving city center that reflects the good health and economic vitality of the entire city, making the city an attractive venue for businesses;
- Assisting the City in policy making, administration and implementation of City programs;
- Streamlining communications and saving time and energy, by providing the City with a single, unified Downtown entity.

BUSINESS IMPROVEMENT & ACTIVITY PLAN

As a result of the concerns identified through surveying business owners and the accomplishments of the DBPA since 1999, the DBPA Board of Directors proposes the following plan.

A. Parking, Transportation & Community Programs

- Work with the City to promote Downtown parking alternatives for both merchants and customers. Form parking committee to ensure that downtown parking is both convenient and reasonable for customers
- Maintain the valet parking service.
- Continue to work in supporting the **Ocean Express Shuttle Service**.
- Continue promoting and supporting the weekly **Farmers' Market in Downtown Manhattan Beach**
- Support non-profit organizations that benefit the community through proceeds from the Farmers' Market and other events.
- Continue to work with the Public Works Department to support the CART Trash & Recycling Programs for Downtown businesses.
- Continue to support the Fireworks Festival, Catalina Classic, and in-kind donations.
- Work with the MBPD & Public Works Department to improve the Downtown curb appeal through signage, flowers, etc.
- Work with City to improve parking signage downtown

B. Marketing & Advertising

Develop a new marketing campaign to increase spending downtown, particularly during these poor economic times.

- Continue & expand the Downtown marketing/advertising campaign to promote the Downtown as a whole especially within our community and to visitors.
- Maintain and distribute map/listing of Downtown businesses to customers, visitors, neighborhood hotels and new residents.
- Continue to work with the City to update the permanent Way-Finding directories/maps.
- Maintain www.DowntownManhattanBeach.com, which currently offers a complete listing of all businesses by category, directions, parking information, calendar of events and links to other prominent organizations.
- Continue advertising in neighboring hotels via touch screen kiosks.
- Continue to negotiate and make available discounted advertising opportunities
- Continue working with the Chamber of Commerce to promote commerce in Manhattan Beach.

C. Promotions & Special Events.

- Sponsor the “**Sidewalk Sales**” to promote Downtown merchants.
- Re-think the Downtown to Trick or Treat on “**Halloween**” (possibly not promote candy giveaway at each store, but at one location near the Pumpkin Races). Continue to sponsor the pumpkin races.
- Host the “**Holiday Open House**” together with the **Pier Lighting** to kick-off to the holiday shopping season and spirit of the season.
- Continue working with the City on voicing policy and planning recommendations regarding other area events and in particular the use of the **Metlox, 13th Street & Civic Plaza** areas.
- Continue to work with the **AVP** to ensure the volleyball tournament understand the concerns of local businesses.
- Develop new programs and promotions to ease the parking complaints (lack of change machines) and encourage spending downtown.

D. Professional Management & Communications

- Maintain professional management to ensure this cohesive Business Improvement and Activity Plan is implemented and continued.
- Continue emailed newsletter.
- Create a new welcome packet for businesses that is cohesive with our new campaign
- Maintain the Employee Parking Brochure.
- Provide representation to help mitigate traffic, construction and parking issues.
- Continue informing members of important issues affecting their businesses.
- Continue to inform businesses through the Crime Alert bulletins.
- Increase public relations opportunities for promoting the Downtown.
- Recruit participation of local business on committees and the DBPA Board.
- Meet with BID Board quarterly or as often as needed to strengthen communication with DBPA & its Board.

BUSINESS IMPROVEMENT & ACTIVITY PLAN BUDGET

I. EXPENSES

A. 2010-2011 Operating Budget

The 2010-2011 operating budget breakdowns of expenses for the Downtown Manhattan Beach BID are provided below. The total improvement and activity plan budget is projected at \$191,465 with the following components:

- **Parking, Transportation, Beautification & Community Programs:**
\$74,676 is provided which accounts for approximately 39% of the budget.

(This number is comprised of expenses under the Community Relations on the DBPA 2010-2011 Proposed Budget.)

- **Marketing & Advertising:**
\$29,689 is provided which accounts for 15% of the budget.

(This number is comprised of the expenses under the Marketing & Promotions heading on the DBPA 2010-2011 Proposed Budget.)

- **Promotions & Special Events:**
\$19,100 is provided which accounts for 10% of the budget.

(This number is solely comprised of the Special Events heading on the DBPA 2009-2010 Proposed Budget.)

- **Professional Mgt., Rent, Supplies, Insurance & Communications:**
\$68,000 is provided which accounts for 35% of the budget.

(This number is solely comprised of the Administration heading on the DBPA 2010-2011 Proposed Budget.)

II. INCOME

A. 2010-2011 Operating Budget

The 2010-2011 operating budget breakdown of income for the Downtown Manhattan Beach BID is provided in the following. The total improvement and activity plan budget is projected at approximately \$190,947.09 with the following components:

- **Assessments**

\$100,747 has been budgeted. The assessment methodology will remain the same, a surcharge on the City of Manhattan Beach Business License Tax. Calculation of individual assessments for one year is determined by one factor; an 80% surcharge on the business license tax, not to exceed \$600.00.

- **Interest Income**

\$1,200.

- **DBPA Contribution**

\$89,000 will be generated from the DBPA through special events fees and various programs. These programs include the Farmers Market and special event fees.

III. SURPLUS FROM PREVIOUS FISCAL YEAR

The 2009-2010 year-end projections indicate a deficit of approximately \$662 for the current fiscal year. Current retained earnings are \$46,422.99. Projected retained earnings for the end of this fiscal year are anticipated to be \$45,760. The reserve is above the mandated \$15,000.

XXX

Strategies & Goals Ongoing/Not Complete

2010/2011

- **Farmers Market – Tuesdays, 11am – 4pm Summer Hours 11am-5pm (Memorial-Labor Day)**
 - New opening will not affect set-up time or time that vendors enter the area. 95% of the vendors are ready to sell by 11am and all have removed their vehicles from the area. We will not and do not allow customers on the premises unless all moving vehicles are gone.
 - Continue trackless train during the market hours for kids to enjoy
 - **Parking & Community Programs**
 - Continue to push to get meter rates reduced for June 1, 2009 and encourage Council to rethink extending meter enforcement hours in morning (leave at 9am vs. moving to 8am)
 - Work closely with City to get Smart Meters in downtown and create a more convenient parking situation for our community and visitors
 - **Marketing & Promotions**
 - Continue to attract people to Metlox with seasonal décor (\$'s or sponsorships permitting)
 - Continue Trackless Train on Tuesdays during the Farmers Market & weekends in December. Other weekends as deemed beneficial and if approved by the tenants.
 - Chamber Directory (small branding ad)
 - Contribute to Ocean Express Trolley – reduce contribution in 2011 by half due to budget constraints.
 - Promote Downtown as destination in 'Where' Publication to reach visitors throughout L.A. & build more relations with Concierge in L.A.
 - Encourage downtown businesses to get an exhibitor's table during the Farmers Market to promote their business.
 - **Member Services**
 - Member e-mail newsletter
 - City Representation
 - Chamber Representation: Chamber Board of Directors, Legislative Advocacy Council, Holiday Decorations, Coordinating Council
 - School District Representation: MBEF Education Committee.
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- **DBPA Membership – 2009 Closings/Opening/Moving**
 - **Store Closings:** Ebizo's Skewer, Towne Restaurant, Salon Brit, Mettle Handmade Jewelry, Baby A, Mona, Space Studio
 - **Store Openings:** Simmzy's, Memphis Café at the Beach, Kasai Hair, d'Boutique Manhattan Beach, Cupcakes Couture, All Yoo, Crème de la Crepe, Mr. Cecil's Ribs, Bella Beach Kids, Cielo-a boutique Salon, Turquoise, Jolie Designs, ALMU Home Furnishings
 - **Re-Opened:** Old Venice, El Sombrero, Riley Arts
 - **Store Movings:** The Beehive to Metlox, Mandarine (2nd location on Manhattan Beach Blvd.), 23rd Street Jewelers in new building on Manhattan Ave.
 - **Name Changes:** Body Suite became Mosaic on Manhattan, MB Brewery became Brewco, WAMU became Chase
 - **2010 Openings:** Isaka Ya by Katsuya, Pages (a bookstore), Pasha Jewelers
 - **Coming Soon:** Tea Exchange, Petros Specialty Store
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"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 15, 2010, the City Council adopted Resolution No. 6258 overriding protests and providing for the collection of assessments for FY 2010-2011.
- 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 2010-2011 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, 2010 to and including June 30, 2011.

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, 2011 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, 2010 to June 30, 2011.
 - 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. 6252, a Resolution of Intention, on May 18, 2010. 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 2010-2011 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 2009-2010 Downtown Business Improvement District assessments to the ASSOCIATION, as approved by the City Council on June 15, 2010.

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
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

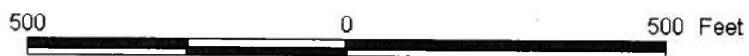
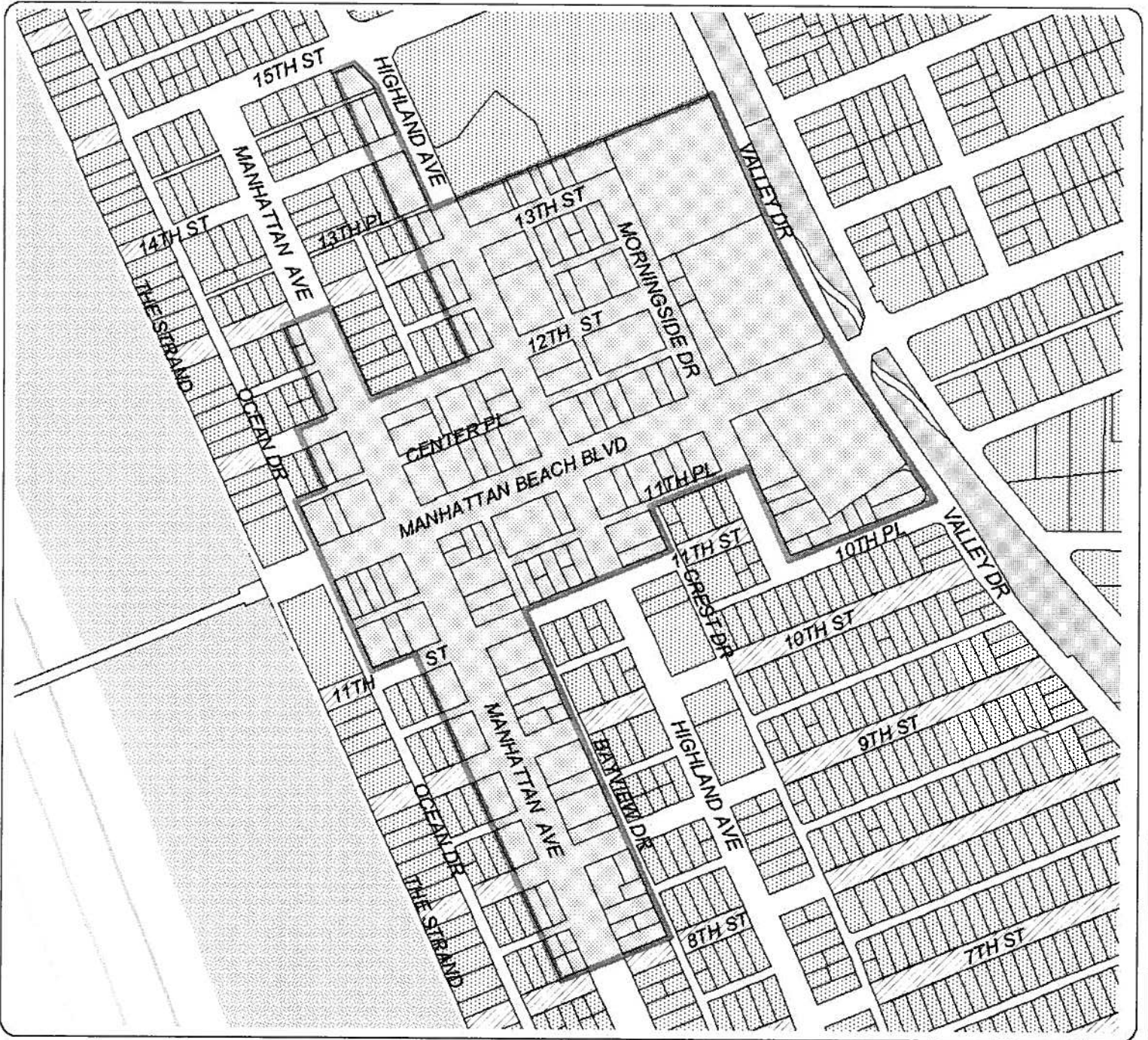
Approved as to Form



City Attorney

City of Manhattan Beach

Downtown Business Improvement District



May 17, 2005



