



Office of the City Manager

ACTION CALENDAR  
November 10, 2009

To: Honorable Mayor and Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Michael J. Caplan, Manager of Economic Development

Subject: Downtown Berkeley Business Improvement District Annual Assessment

RECOMMENDATION

1) Conduct a public hearing, and upon conclusion, adopt a Resolution confirming the 2010 Annual Report of the Downtown Business Improvement District (BID) and to levy an annual assessment for the Downtown Business Improvement District (BID) for calendar year 2010.

2) Adopt a Resolution authorizing the City Manager to execute a sole source contract and any amendments with the Downtown Berkeley Association (DBA) Main Street Program for \$425,000 of Downtown BID funds to support Downtown revitalization for the period January 1, 2010 to December 31, 2010.

FISCAL IMPACTS OF RECOMMENDATION

The FY 2010 Adopted Budget (budget code 476-8703-465.35-10) projects revenues and expenditures of \$250,000 for the Downtown BID. The BID Annual Report, approved for consideration on September 22, 2009 by Resolution 64,606--N.S., includes an additional \$175,000 of surplus funds now held in the Downtown BID fund balance. These funds will be transferred to the DBA this year for use in implanting their 2010 work plan. The appropriation of the additional \$175,000 will be included in the first amendment to the FY 2010 Annual Appropriations Ordinance.

The contract with the Downtown Berkeley Association has been entered into the City's contract management system and assigned CMS No. B1AZM.

BID assessment revenues constitute an independent funding source that must be targeted to Downtown organizational, promotional and other revitalization efforts that are recommended by the Advisory Board. To the extent that the work of the Downtown BID enhances the development of the Downtown and its business climate over the long term, the BID contributes towards enhanced City revenues through increased sales and property taxes.

### CURRENT SITUATION AND ITS EFFECTS

To finalize the BID reauthorization process for 2010 in compliance with State BID law, Council must hold a public hearing after having adopted a Resolution of Intent. During the course or upon conclusion of the public hearing, Council may order changes in any of the matters provided in the 2010 Annual Report submitted by the Downtown BID, including changes in the proposed assessments, the proposed improvements and activities to be funded with the revenues derived from the levy of the assessments, and the proposed boundaries of the area to be assessed. At the conclusion of the public hearing, Council may adopt a Resolution confirming the Annual Report as originally filed or as modified by Council. The adoption of that Resolution shall constitute the levy of an assessment for the BID's 2010 calendar year.

The Council is also asked to authorize the City Manager to execute a sole source contract with the Downtown Berkeley Association for \$425,000 to implement the BID Workplan as outlined in the 2010 Annual Report. Staff estimates that \$250,000 of these funds will be generated through new BID assessments. The remaining \$175,000 will come from existing surplus funds that currently rest in the Downtown BID Fund. These funds will need to be appropriated into the budget in the first amendment to FY 2010 Annual Appropriations Ordinance. Exhibit A of the attached Resolution on this matter provides the Scope of Services, and Exhibit B provides the payment schedule.

Council adoption of these two resolutions will reaffirm the City's commitment to the Downtown BID that was originally established to implement the Mainstreet program and assist the Downtown Berkeley Association (DBA) in becoming financially independent from City sources. The reauthorization of the BID will enable the continued implementation of the Downtown revitalization partnership between the DBA and the City.

### BACKGROUND

Over the past twelve years, the City has implemented the Downtown BID through a contract with the Downtown Berkeley Association. This is a business-based BID that assesses all businesses in the District. It must be renewed annually by the City Council.

On September 22, 2009, Council adopted Resolution No. 64,606--N.S. that approved for consideration the 2010 Annual Report submitted by the Downtown Berkeley Business Improvement District (BID) Advisory Board, declared Council's intention to levy an annual assessment for the District for year 2010, and set a public hearing for November 10, 2009 to consider this matter. After Council adopted this Resolution, it was published in a local paper of general circulation at least 7 days prior to the public hearing in accordance with State law requirements for public notice.

RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew Downtown BID by first passing a resolution stating Council's intention to levy an annual assessment and scheduling a public hearing on the proposed renewed assessment for the coming year. This action confirms the City's commitment to its partnership with the Downtown Berkeley Association towards the revitalization of the Downtown.

ALTERNATIVE ACTIONS CONSIDERED

The Downtown BID Advisory Board considered whether the assessment rates should be revised for 2010. The Board concluded that there should be no change in the rates at this time.

CONTACT PERSON

Michael J. Caplan, Office of Economic Development – 981-7530

Attachments:

- 1: Assessment Resolution
- 2: Contract Resolution
  - Exhibit A: Scope of Services
  - Exhibit B: Payment Schedule
- 3: Public Hearing Notice – Resolution of Intent (64,606-N.S.)

RESOLUTION NO. -N.S.

CONFIRMING THE 2010 ANNUAL REPORT OF THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (BID) AND LEVYING AN ANNUAL ASSESSMENT FOR THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (BID) FOR CALENDAR YEAR 2010

WHEREAS, the Downtown Berkeley Business Improvement District (BID) Advisory Board submitted an Annual Report to the Berkeley City Council outlining the activities of the District proposed for the year 2010 as required by California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report was found to be clear and complete and that the proposed activities will benefit businesses located and operating in the area as required under Streets and Highways Code, Section 36513; and

WHEREAS, on September 22, 2009 the Berkeley City Council adopted a Resolution of Intent which approved the Annual Report, declared its intent to levy assessments on businesses located within the boundaries of the District, and set a public hearing for November 10, 2009, where interested persons may be heard for or against levying the assessment; and

WHEREAS, the City Clerk published the Resolution of Intent in a local newspaper of general circulation in compliance with necessary public notice requirements; and

WHEREAS, a public hearing was held allowing all interested parties to speak on the matter; and

WHEREAS, there have not been protests by business owners in the District who collectively pay 50 percent or more of the assessment proposed to be levied.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the Downtown Berkeley BID Annual Report for the year 2010 as submitted to the City Clerk by the Downtown Berkeley BID Advisory Board is confirmed, thereby levying an annual assessment for the Downtown Berkeley BID for calendar year 2010.

RESOLUTION NO. -N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A SOLE SOURCE CONTRACT AND ANY AMENDMENTS WITH THE DOWNTOWN BERKELEY ASSOCIATION (DBA) MAIN STREET PROGRAM FOR \$425,000 OF DOWNTOWN BERKELEY BID FUNDS

WHEREAS, the Downtown Berkeley Association (DBA) has proven to be an effective partner with the City of Berkeley implementing various elements of the Downtown Plan; and

WHEREAS, the DBA is the one private sector organization that is taking comprehensive action to improve the economic vitality of the Downtown, as reflected in the DBA's approved Annual Work Plan 2010; and

WHEREAS, in 2009, the DBA has worked to develop and implement programs that address a wide range of important Downtown issues; and

WHEREAS, for the last twelve years the DBA has been independent of direct City funding, now deriving its operating resources from the Business Improvement District (BID) and from other revenue sources independent of the City; and

WHEREAS, on August 27, 2009, the Downtown Business Improvement District Advisory Board voted to recommend a \$425,000 budget for the Downtown BID to implement its 2010 BID Annual Report and Work Plan that includes \$250,000 of estimated new BID revenues and \$175,000 of existing surplus monies currently in the Downtown BID Fund; and

WHEREAS, on November 10, 2009 the City Council held a public hearing, after which it adopted a resolution confirming the Downtown Berkeley BID Annual Report for the year 2010 and levying an annual assessment for Calendar year 2010.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a sole source contract and any amendments with the Downtown Berkeley Association in the amount of \$425,000 (budget code 476-8703-465-35-10, CMS No. TBGA7) for services as outlined in Exhibit A hereof and a payment schedule as outlined in Exhibit B hereof. A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.

## EXHIBIT A

This Scope of Services outlines the work to be performed by the Downtown Berkeley Association/Main Street Program over the course of calendar year 2009.

### I. WORK PROGRAM IMPLEMENTATION

Contractor will implement the Work Plan that is a part of the 2010 Downtown Berkeley Business Improvement District Annual Report that was approved by the Downtown Business Improvement District (BID) Advisory Board on August 27, 2009 and approved by the Berkeley City Council on September 22, 2009. Contractor shall work diligently to implement all Work Plan Action Items including working on organizational development efforts, improving the cleanliness the district, enhancing the Downtown's safety, promoting the area through better electronic communications, attention to member meetings and services, special events, and working with other community partners on parking and transportations issues. Contractor shall also give particular attention to their long-term financial health and will work to generate new resources to enhance direct services. Such mechanisms may include establishment of Downtown parking management district or reincorporating their current BID as a PBID with a more focused on-the-street work program.

Contractor will implement its work plan over the course of its 2010 program year. Specific work program goals, objectives, and measures may be modified during the period of implementation by agreement of the BID Advisory Committee, the DBA Executive Director and Board and City Economic Development staff.

The DBA shall prepare a 2011 Annual Report and Work Plan in close coordination with the City's Office of Economic Development and the Downtown BID Advisory Board and in conformance with the requirements of the City and State law.

### III. REPORTING

Contractor shall submit the following:

1. Four (4) quarterly progress reports to be submitted every ninety days from the execution of this contract.
2. The year 2011 BID Annual Report covering both current activities for the DBA and the proposed work program for calendar year 2011 to be submitted to the City prior to September 01, 2010.

EXHIBIT B

PAYMENT

Billable upon execution of this Contract:	\$250,000
Billable on June 1, 2010, and after receipt by the City of two progress reports:	<u>\$175,000</u>
Total compensation under contract:	\$425,000

RESOLUTION NO. 64,606–N.S.

DOWNTOWN BERKELEY BUSINESS IMPROVEMENT DISTRICT 2010 ANNUAL  
REPORT AND ASSESSMENT

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on October 8, 1996, the Berkeley City Council established such an area known as the Downtown Berkeley Business Improvement District (the "District"); and

WHEREAS, the City Council at that time also established a Downtown Berkeley Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2010 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is accepted for consideration; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. The City Council hereby approves for consideration the Downtown Berkeley Business Improvement District Annual Report for the year 2010 (Exhibit A) as submitted to the City Clerk by the Downtown Berkeley Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual assessment for the parking and business improvement area known as the Downtown Berkeley Business Improvement District.

Section 3. There is no change in the boundaries of the District for 2010.

Section 4. The improvements and activities proposed for the District shall be funded by the levy of assessments on businesses within the District boundaries and may include the following:

- a. Public improvements, i.e., the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more.
- b. Promotion of public events which benefit businesses in the District and which take place on or in public places within the District, including an annual festival.
- c. Furnishing of music in any public place in the area.
- d. Promotion of tourism within the area.
- e. Activities that benefit businesses located and operating in the area.
- f. Mainstreet program efforts including commercial district revitalization, promotion, urban design, economic restructuring and a strong representative downtown organization.
- g. Representation of Downtown commercial interests working with City staff and elected officials to develop plans for the improvement of the physical character and economic vitality of the area.

Council intends that these funds be used principally for promotion and marketing activities for the Downtown area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City, particularly constructing, cleaning or maintaining public improvements or streetscapes, police-related or any other services targeted to public safety.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District in the amounts and on the business classifications set forth in Exhibit A3, which is attached hereto and incorporated herein by reference. The projected levied assessments for the year 2010 total \$250,000 (budget code 476-8703-465.35-10).

Section 6. **A public hearing shall be held before the City Council on the 10th day of November 2009** in the Council Chambers, 2134 Martin Luther King, Jr. Way, Berkeley, California. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Downtown Berkeley Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Downtown Berkeley Business Improvement District." Protests should also contain the following information: business name (printed),

business address (printed), City business license tax registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, at or before the time fixed for the hearing and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person submitting the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District, which will pay fifty percent or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by causing the Resolution of Intention to be published once in a newspaper of general circulation in the City of Berkeley not less than seven days before the public hearing.

The foregoing Resolution was adopted by the Berkeley City Council on September 22, 2009 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.