



Agenda Item No: 6.a  
Meeting Date: May 1, 2023

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**  
Department: Economic Development and Innovation  
Prepared by: Micah Hinkle,  
Economic Development Director  
City Manager Approval: 

**TOPIC: DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT**  
**SUBJECT: APPROVAL OF ACTIONS SUPPORTING THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT CAPACITY BUILDING AND MANAGEMENT:**  
I. RESOLUTION APPROPRIATING FUNDS AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AND ENHANCEMENT AGREEMENT WITH THE SAN RAFAEL CHAMBER OF COMMERCE IN AN AMOUNT OF \$100,000  
ii. RESOLUTION APPOINTING DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD MEMBERS  
iii. RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT TRANSITION AGREEMENT WITH THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT (BID CORPORATION) IN AN AMOUNT OF \$5,000  
IV. RESOLUTION ADOPTING THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ADMINISTRATIVE GUIDELINES

**RECOMMENDATION:**

It is recommended that the City Council take the following actions:  
1. Adopt Resolution Appropriating Funds and Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Management and Enhancement Agreement with the San Rafael Chamber of Commerce in an Amount of \$100,000  
2. Adopt Resolution Appointing Downtown Business Improvement District Advisory Board Members  
3. Adopt Resolution Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Transition Agreement with the Downtown San Rafael Business Improvement District (BID Corporation) in an Amount of \$5,000  
4. Adopt Resolution Adopting the Downtown Business Improvement District Administrative Guidelines

\_\_\_\_\_  
**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

**EXECUTIVE SUMMARY:**

Since 1979, the Downtown San Rafael business district has supported assessments to support economic vitality. The assessment has been collected through the provisions of the California Streets and Highways Code and are authorized by City Council on an annual basis. Business Improvement District funds are collected through the City's annual business license process and passed through to the San Rafael Business Improvement District, a California non-profit mutual benefit corporation (BID Corporation) for management, marketing, and support of business activities within the district boundaries.

The impacts of the COVID-19 pandemic have significantly reduced the businesses and collections of BID assessments in Downtown and have triggered the BID Corporation to modify operations and use reserve funds. With the uncertainty of business recovery from the pandemic and the shifting needs of the Downtown San Rafael, the BID Corporation, San Rafael Chamber of Commerce (Chamber), and the City have been working together to support a transition pathway for long-term growth of Downtown San Rafael.

For the next two years, the identified pathway to support Downtown BID operations and support the business community is to enter into a BID management and enhancement agreement with the Chamber. The Chamber would be able to provide management, fiscal oversight, operations, and annual reporting, build business support capacity, and explore BID enhancements through a contractual agreement with the City. The intent is to continue the Downtown BID program operations over the next two years and to evaluate the business and property owner needs and recommend modifications to the BID Program for long-term sustainability.

To retain BID programmatic consistencies, it is recommended that the current BID Corporation Board of Directors be appointed as the City's BID Advisory Board with an additional Board appointee recommended by the Chamber of Commerce and, if the agreement with the Chamber is approved, the City's BID Advisory Board would be supported by the Chamber. While there is a recommended change in the BID management entity, the business community stakeholders and interested parties would remain the same.

**BACKGROUND:**

Section 36500 of the California Streets and Highways Code allows for the creation of a business improvement district (BID) within a municipality, whereby businesses within the district self-assess an annual fee to pay for improvements and activities which benefit the overall business district. The intent of the state law is to provide a funding mechanism for business districts to promote economic vitality.

In 1979, businesses in Downtown San Rafael first voted to set up a business improvement district. This original district included approximately 125 businesses along Fourth Street between Lincoln Avenue and E Street. In 2013, the BID was expanded and now includes approximately 700 businesses along the downtown core anchored along the Fourth Street corridor (See Attachment with map of the BID district). The BID Corporation was created to receive the collected BID assessments and implement and manage programs supporting businesses within the district boundaries. Funds have been spent on program administration, marketing, physical improvements, and special events. Historically, special events have been the core program focus of collected assessment funds.

The BID Corporation is comprised of volunteer board of directors made up of primarily small business owners or business representatives within the BID boundaries. The BID Corporation currently employs a part-time executive director. The City Council has typically appointed the BID Corporation Board of Directors as the BID Advisory Board that is required by the San Rafael Municipal Code Section 10.09 (Downtown BID Ordinance).

On December 5, 2022, City Council authorized the 2023 annual business assessment for the Downtown BID pursuant to the Downtown BID Ordinance. As part of the 2022 BID annual report, the BID fiscal operations and underlying BID Corporation operations and structure were identified as areas for exploration for operational efficiencies and strategic partnership between the BID Corporation, Chamber, and the City. This expanded partnership exploration is a direct result of business recovery from the COVID-19 pandemic, evolving business needs, and resources available in Downtown San Rafael. The BID Corporation and Chamber have already moved toward some shared operational efficiencies with office space. Over the past four months, the BID Corporation, Chamber, and City staff have worked on developing a framework for operational efficiencies, continuance of Downtown BID programming, and exploration of a pathway for long-term feasibility to enhance Downtown San Rafael.

**ANALYSIS:**

After collaborating with the BID Corporation and Chamber representatives about shared goals, City staff have developed the following actions to support the downtown and utilize the synergies of the BID Corporation, Chamber and City:

**Business Improvement District Management and Enhancement Agreement – San Rafael Chamber of Commerce:**

The San Rafael Chamber of Commerce is the premier business organization in Marin County and has been a key partner supporting economic recovery and development initiatives, including small business support, economic development strategic planning, and support of economic vitality through business expansion, attraction, and retention. The cross-memberships and existing partnerships with downtown businesses and property owners allow the Chamber to have an in-depth understanding of business needs and growth opportunities. The Chamber's organizational capacity would allow them to step into BID management and implementation and allow a transitional partnership with the BID Corporation and the City. If approved by the Council, it is envisioned that the Chamber would be able to support the Council appointed BID Advisory Board, continue BID programming for the downtown business community and explore programmatic BID enhancements. Tasks would include engagement of property owners and business outreach associated with feasibility and needs analysis of a property-based improvement district or rate modifications to the business improvement district to establish a sustainable fiscal model for an enhanced San Rafael Downtown. The contract would be for an amount of \$100,000 (\$50,000 annually) for a two-year term, funded using City COVID-19 relief funds.

**Appointment of 2023 Business Improvement District Advisory Board:**

The City Council is required to appoint a BID Advisory Board. Listed below is the relevant text from the San Rafael Municipal Code:

*10.09.080 - Advisory board and annual report.*

*The city council shall appoint an advisory board pursuant to Streets and Highways Code Section 36501 et seq. to administer the affairs of the BID. Members of the advisory board must own or represent a business in the BID, or be a voluntary member. The advisory board shall prepare an annual report for each year for which assessments are to be levied. The report shall be filed with the city clerk and shall comply with all requirements as stated in Streets and Highways Code Section 36501 et seq.*

The City Council-appointed BID Advisory Board has historically been the same as the Board of Directors for the BID Corporation. The last City Council appointed BID Advisory Board was in 2017 with terms that expired during the COVID-19 Pandemic. The City has not appointed an updated 2023 BID Advisory Board as members of the BID Corporation Board have changed since the last Council BID Advisory Board appointments. It is recommended that the City Council appoint the current BID Corporation Board of Directors with an addition of a Chamber of Commerce recommended appointment to the Business Improvement District Advisory Board to maintain programmatic consistency, meet required membership, and serve as the Board advisors for the Business Improvement District. The recommended BID Advisory Board Members for 2023 are:

Name	Business
Terrance Thornton	San Rafael Martial Arts
Adam Dawson	Mike's Bikes
Erika Bowker	Pleasures of the Heart
Jeff Brusati	T & B Sports
Amy & Bishlam Bullock	Salon B Style Lab (1 Vote)
Joe McCallum	Newmark*
Jed Greene	Five Corners Consulting Group
Tobi Lessem	Bodywise Massage
Kelly Phu	Vin Antico
Morgan Schaffler	Youth in Arts
Elisabeth Setten	Artworks Downtown

\*Chamber Recommendation

The BID Advisory Board term is recommended to be for the calendar year 2023. This would allow the BID Board oversight to remain in place during the proposed transition and allow for the BID Board and Chamber of Commerce to query interested and eligible businesses owners, representatives, and volunteers to make recommendations to the City Council for the 2024 BID Board as part of the Annual reporting for the BID, which would return to City Council in November/December of 2023.

**BID Corporation Transition Agreement:**

The exploration of BID program enhancement, capacity building, and support has been over the past few years a focus of City staff given the growing and changing needs of the Downtown business community. The BID Corporation has been adapting to the pandemic impacts by evaluating and implementing operational efficiencies and seeking partnerships to strengthen shared targeted outcomes. Unfortunately, sustainable revenue generation continues to erode BID viability. The Chamber and BID Corporation share a cross membership of businesses and have aligned goals for supporting and enhancing the San Rafael downtown and business community. As a pathway for transitioning the administrative and operational burden of the BID program, the City, Chamber, and BID Corporation have developed a transition framework between the City and BID Corporation to shift administrative and operational responsibilities and complete financial reporting requirements. It is anticipated that the transition activities would be completed by June 2023. Transition tasks include completion of Special Events: 1) May Madness and Dining Under the lights for May and June 2023. In addition, a financial close out report will be provided. This timeframe would correspond with the proposed start of the Chamber Agreement for BID Management.

**BID Administrative Guidelines:**

Lastly, staff recommends the Council adopt BID Administrative Guidelines. The administrative guidelines provide the rules and procedures for the BID Advisory Board and the BID management entity to

administer and operate the affairs of the BID, including how the City Council appoints members of the Advisory Board, how meetings of the BID Advisory Board are conducted in conformance with the Brown Act, and requirements for the BID Advisory Board to submit an annual report and spend BID funds in conformance with law. These guidelines will provide clarity to the Chamber of Commerce, the BID Board, and the City on roles and responsibilities in administering assessments and affairs of the BID, and will be incorporated into the Management and Enhancement Agreement with the Chamber.

**FISCAL IMPACT:**

Chamber BID Management/Enhancement Agreement: To support the transition and enhancement of the Downtown BID, staff is recommending General Fund support of an amount of \$100,000 (\$50,000 annually) for a two-year term for the BID Management and Enhancement Agreement with the San Rafael Chamber of Commerce. Staff is requesting an appropriation of \$100,000 from the General Fund, using COVID-19 relief funds, to support the downtown economic vitality.

BID Corporation Transition Agreement: Prior to the COVID-19 pandemic, typical BID collected funds were approximately \$83,000 annually. In 2022, the BID received approximately 25% less in assessment collections in the amount of \$61,600 and is projecting \$60,000 for 2023. The BID Corporation is operating at a deficit and has limited operational fund reserves. The transition agreement with the BID Corporation would be funded using \$15,000 from 2023 BID assessment funds for operational expenses and \$5,000 from the Economic Development Department Professional Services budget to support financial closeout reporting. The remaining 2023 BID funds will be held by the City until a BID Management and Enhancement Agreement is authorized and executed with the Chamber of Commerce.

BID Advisory Board and BID Administrative Guidelines: There is no fiscal impact associated with appointing the BID Advisory Board and adopting administrative guidelines.

**OPTIONS:**

The Downtown BID is a longstanding program supported by the business community and City for over 40 years. The staff recommended actions support community partnership opportunities to achieve shared goals and outcomes and build business capacity with the business/community and partners.

The City Council has the following options to consider on this matter:

1. Approve staff's recommended actions.
2. Adopt resolutions with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

It is recommended that the City Council take the following actions:

1. Adopt Resolution Appropriating Funds and Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Management and Enhancement Agreement with the San Rafael Chamber of Commerce in an Amount of \$100,000
2. Adopt Resolution Appointing Downtown Business Improvement District Advisory Board Members
3. Adopt Resolution Authorizing the City Manager to Negotiate and Execute a Downtown Business Improvement District Transition Agreement with the Downtown San Rafael Business Improvement District (BID Corporation) in an Amount of \$5,000
4. Adopt Resolution Adopting the Downtown Business Improvement District Administrative Guidelines

**ATTACHMENTS:**

1. Resolution Approving BID Management and Enhancement Agreement with San Rafael Chamber of Commerce
2. Draft BID Management and Enhancement Agreement with San Rafael Chamber of Commerce
3. Resolution Appointing BID Advisory Board
4. Resolution Approving BID Transition Agreement with BID Corporation
5. Draft BID Transition Agreement with BID Corporation
6. Resolution Adopting BID Administrative Guidelines
7. BID Map

## RESOLUTION NO.

### **RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROPRIATING FUNDS AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AND ENHANCEMENT AGREEMENT WITH THE SAN RAFAEL CHAMBER OF COMMERCE IN AN AMOUNT OF \$100,000**

**WHEREAS**, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

**WHEREAS**, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

**WHEREAS**, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

**WHEREAS**, the revenues derived from the assessments are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

**WHEREAS**, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

**WHEREAS**, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

**WHEREAS**, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

**WHEREAS**, each year, the District Advisory Board administers those revenues and uses them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

**WHEREAS**, the Chamber is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

**WHEREAS**, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments and the District has operated with reserve funds; and

**WHEREAS**, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from assistance of the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

**WHEREAS**, the City and the Chamber desire to enter into an Agreement for the Chamber to provide management and enhancement services for the District.

**NOW, THEREFORE BE IT RESOLVED**, that the City Council hereby appropriates \$100,000 from the General Fund COVID-19 relief funds and authorizes the City Manager to negotiate and execute a downtown business improvement district management and enhancement agreement with the San Rafael Chamber of Commerce in an amount of \$100,000, subject to form approved by the City Attorney.

**I, LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 1<sup>st</sup> day of May 2023, by the following vote, to wit:

**AYES:**           **Councilmembers:**  
**NOES:**           **Councilmembers:**  
**ABSENT:**       **Councilmembers:**

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**Lindsay Lara, City Clerk**



**AGREEMENT FOR THE MANAGEMENT AND ENHANCEMENT  
OF THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT**

This Agreement (“Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”), between the CITY OF SAN RAFAEL, a municipal corporation of the State of California (“City”) and the SAN RAFAEL CHAMBER OF COMMERCE, a California nonprofit mutual benefit corporation (“Chamber”).

**RECITALS**

**WHEREAS**, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

**WHEREAS**, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing a reorganized Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

**WHEREAS**, the Ordinance extended the collection boundaries beyond ground floor retail and provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries including offices and financial institutions; and

**WHEREAS**, the revenues derived from the assessments are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

**WHEREAS**, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members who own or represent a business in the District or voluntary members; and

**WHEREAS**, the District Advisory Board primary function is to administer the affairs of the District and prepare an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

**WHEREAS**, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

**WHEREAS**, a separate California nonprofit mutual benefit corporation - the San

Rafael Business Improvement District – was established by representatives of businesses in the District in 2012. This private corporation is referred to herein as the “BID Corporation” and its Board of Directors is the “BID Corporation Board”; and

**WHEREAS**, the City Council from time to time has updated its appointments to the District Advisory Board to be the same as the members of the BID Corporation Board; and

**WHEREAS**, each year, the City has distributed the District’s assessment revenues to the BID Corporation, and the District Advisory Board administers those revenues to ensure that the BID Corporation uses them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

**WHEREAS**, the Chamber is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

**WHEREAS**, the Chamber has been operating and serving the business community for over one hundred years; and

**WHEREAS**, the Chamber staff has proven management skills, strong leadership and financial acumen and has worked closely with City staff and BID Corporation staff for over 30 years; and

**WHEREAS**, the BID Corporation now operates in the Chamber’s offices and has a close working relationship with the Chamber; and

**WHEREAS**, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments and the BID Corporation has operated with reserve funds; and

**WHEREAS**, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from assistance of the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

**WHEREAS**, the Chamber can provide leadership, governance and administrative services in the execution of the District’s activities; and

**WHEREAS**, the City and the Chamber desire to enter into this Agreement for the Chamber to support City staff by providing fiscal oversight, operations, and annual reporting of the District, and build capacity and explore District enhancements; and

**WHEREAS**, the Chamber is the best organization suited to provide this support during a time of transition and help create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

**WHEREAS**, coincident with this Agreement, the City and the BID Corporation are entering into a separate transition agreement under which the BID Corporation will transition its affairs related to administration of the District and transfer all remaining District Funds back to the City.

**NOW, THEREFORE**, in consideration of the above recitals and for other good and sufficient consideration, the City and the Chamber agree as set forth herein.

## **AGREEMENT**

### **1. The Chamber's Duties.**

The Chamber will furnish all technical and professional services, including labor, material, office space, equipment, transportation, supervision, and expertise to perform the following duties:

- a. *District Management Services.* The Chamber will perform the following management services to the District (collectively, the "District Management Services"):
  - i. Provide administrative oversight of the District and ensure that the affairs and duties of the District Advisory Board are conducted in conformance with the 1989 Act, Chapter 10.09 of the San Rafael Municipal Code (a copy of which is attached hereto as Exhibit A), and the District Administrative Guidelines (attached hereto as Exhibit B);
  - ii. Receive, hold and distribute District Funds, pursuant to paragraph 4 of this Agreement;
  - iii. Develop the Annual Report and Budget for review and approval by the District Advisory Board, and submit to the City Clerk;
  - iv. Monitor the Budget and ensure monthly financial reports are prepared and presented to the District Advisory Board (including income statement, balance sheet and budget performance);
  - v. Assist with annual planning calendar and preparation and implementation of the District's meetings, District Advisory Board member selection recommendations to the City Council, and annual reports;
  - vi. Schedule, plan and host meetings of the District Advisory Board, including a meeting of the District Advisory Board within one (1) month of the Chamber's receipt of the first payment of District Funds;
  - vii. Provide special event marketing support, as outlined in the annual scope of work;
  - viii. Provide administrative services and support to the District to implement District program activities within the approved budget as needed;
  - ix. Provide District member support related to District program activities as business issues may arise;
  - x. Award and administer contracts on behalf of the District for District activities;
  - xi. Market and promote the District's events and activities within budget;

- xii. Maintain a webpage dedicated to, promoting, and marketing the District, and events and activities of the District; and
  - xiii. Mail one delinquent notice annually to each business who has not paid the annual assessment, with instructions on how to pay the annual assessment. City will provide the Chamber with a list of delinquent businesses and their addresses for the notice.
- b. *District Enhancement Services.* The Chamber will provide the following enhancement services to the City related to the District (collectively, “District Enhancement Services”):
- i. Identify strategic partners, resources, and programs that could benefit San Rafael Downtown businesses and property owners for improved physical upgrades, safety, and marketing;
  - ii. Provide leadership training and orientation for hired staff supporting District activities;
  - iii. With City staff, liaison to the District to keep members informed of City issues and construction that may affect the District and its members;
  - iv. Building upon the Economic Development Strategic Plan Draft and Downtown Precise Plan, conduct needs assessment outreach to businesses and property owners within the downtown on desired programming and needs to enhance economic vitality with specific focus on safety, cleanliness, marketing, and physical upgrades; and
  - v. Develop a database of property, business owner, and representative contact information including mailing addresses, phone numbers, and emails; and
  - vi. Conduct outreach and host informational sessions with property owners and businesses to assist the City feasibility analysis of a property-based improvement district or modifications to the District business assessment rate structure to enhance economic vitality.

## 2. The City’s Duties.

- a. *Collection of assessments.* The City will bill and collect assessments from businesses within the boundaries of the District annually in conjunction with the City’s annual business license.
- b. *Distribution of District Funds to the Chamber.* The City will distribute to the Chamber the assessment funds actually collected by the City, with any interest that actually accrues upon such funds while in the City’s possession and control, plus interest and penalties actually received by the City with respect to delinquent District assessment payments (collectively, the “District Funds”). The City will disburse the District Funds held by the City for the 2023 assessments in a lump sum payment by no later than June 1, 2023; except that \$15,000 of the 2023 assessments will be disbursed to the BID Corporation to support their transition activities. Any District Funds collected by the City thereafter, including any remaining District Funds of the BID Corporation, will be disbursed to the Chamber when reasonably practical thereafter. Notwithstanding the forgoing, in the event of a legal challenge

against any District assessments, or threat thereof, the City will have the right to delay disbursement or impound the District Funds, so that the assessments are available for refunds or satisfaction of judgments. Such right shall extend through the expiration of the legal challenge or threat thereof.

c. *Annual renewal for levy of assessments.* The City Council will adopt a Resolution of Intention to Levy an Annual Assessment and hold a public hearing to confirm the District's annual report and renew the assessments for the next calendar year. The public hearing is expected to occur in December each year, following the District Advisory Board's submission of its annual report, as provided in the Administrative Guidelines (Exhibit B).

3) **Compensation.** For performance of District Management Services and District Enhancement Services by the Chamber described in paragraph 1a-b, the Chamber will be compensated by the City in the amount of \$100,000, in two annual payments as follows:

- i. \$50,000 for the period of the Effective Date of this Agreement through June 30, 2024, payable within 30 days of receipt of invoice from the Chamber; and
- ii. \$50,000 for the period of July 1, 2024 through June 30, 2025, payable within 30 days of receipt of invoice to be submitted by the Chamber after March 31, 2024.

The compensation described in this paragraph is not considered District Funds under this Agreement and upon payment by the City will be separate funds of the Chamber.

4) **District Funds Budgetary, Auditing, and Financial Obligations.**

- a. *District Funds Held in Restricted Funds Account.* All District Funds in the possession/control of the Chamber hereunder are the property of the District and shall be held in a separate bank account by the Chamber solely for the benefit of the District. Such District Funds shall only be expended as outlined in the annual report approved by the City Council at the direction of the District Advisory Board.
- b. *Chamber's Use of District Funds.* If the Chamber's actual costs exceed \$50,000 for each annual period listed above in paragraph 3, the Chamber will then be entitled to deduct its actual costs, to include overhead and staffing expenses, from any remaining District Funds, not to exceed 15% of the total amount of District Funds collected each year (based on 2023 assessments for the 2023-2024 period and 2024 assessments for the 2024-2025 period). The Chamber will provide an accounting of its costs to the District Advisory Board and the City to support such deductions.
- c. *Budget Compliance.* The Chamber will act as the fiscal agent of the District to administer District Funds in compliance with each annual report approved by the City Council and resolution adopted by the City Council levying the annual District assessment (collectively referred to as the "Budget"). All District Funds will be

separately accounted for by the Chamber, and segmented from other revenue collected by the Chamber in its accounting and financial records.

- d. *Records/Audit.* During the term of this Agreement, and for four years after this Agreement's term expires or terminates, the Chamber will maintain detailed financial records pertaining to District administration sufficient to provide the basis for an unqualified opinion by an independent auditor, including but not limited to records concerning budgeting, expenditures, subcontracts, insurance, permits, administrative expenses, and overhead. The Chamber agrees to make all such records available to the City upon request at all reasonable times.
- e. *Confidentiality.* The Chamber will comply with all laws governing the confidentiality of District assessment records, reports, and related information that may be provided to the Chamber by the City. A record of the total assessment of an individual business, or the fact that said business has allowed the assessment payment to become delinquent, is not deemed to be confidential.
- f. *Compensation for District Management and Enhancement Services.* The \$100,000 compensation paid by the City to the Chamber for District Management Services and District Enhancement Services described in paragraph 3 will not be considered District Funds and are not subject to the terms of this paragraph 4.

**5) Term and Termination.**

- a. *Term.* The term of this Agreement (the "Term") will be from the Effective Date through June 30, 2025, unless mutually extended by the parties in writing.
- b. *Termination for cause.* If the City determines that the Chamber has misappropriated District Funds, committed malfeasance, or violated any law in providing the activities identified in the approved Budget or otherwise conducted by or on behalf of the District, or in otherwise administering the District, the City will have the right to immediately terminate this Agreement via written notice to the Chamber.
- c. *Termination for convenience.* Either party will have the right to terminate this Agreement for any reason with 90 days' written notice to the other party.
- d. *Obligations on Termination.* Immediately following the expiration or earlier termination of this Agreement, the Chamber will do all of the following:
  - i. Terminate all activities of the Chamber covered by this Agreement;
  - ii. Pay all obligations it incurred on behalf of the District;
  - iii. Return to the City all remaining District Funds and all assets acquired with District Funds, together with an accounting thereof; and
  - iv. Reimburse the City the total amount of compensation paid to the Chamber for District Management Services and District Enhancement Services pro-rated for the period of time after the effective date of termination.

Immediately following any early termination of this Agreement, the City will pay

the Chamber any amount of compensation it may owe for District Management Services and District Enhancement Services pro-rated for the period of time up to the effective date of termination.

This provision will survive termination of this Agreement.

**6) Indemnity and Insurance.**

a. *Indemnity.*

- i. All work done and performed by the Chamber pursuant to this Agreement, and all events held or conducted pursuant hereto shall be solely the responsibility of the Chamber and in this connection the Chamber agrees to indemnify and hold the City and each of its officers, officials, employees, agents and volunteers harmless of and from all claims of any kind and character for injuries to person or property, the Chamber's use of the District Funds disbursed to it or debts which may be incurred arising out of or, in anywise connected, directly or indirectly, with the Chamber's performance under the terms of this Agreement. In this connection, it is understood that the City is solely a disbursing agency of the District Funds, for the account of the District, and said District Funds will not become a part of any general fund or any other special fund of the Chamber or the City of San Rafael.
- ii. Any and all obligations incurred by the Chamber hereunder, or otherwise, will be the sole obligation of the Chamber, and the Chamber shall have no authority to incur any obligations in the name of, or on behalf of, the City of San Rafael, or any department thereof. The City's obligations will be solely those described in paragraph 2.
- iii. The Chamber shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, the District Advisory Board, the District members, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of any of the terms of this Agreement or performance of this Agreement. The Chamber's obligations under the preceding sentence will not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of the City or any of its officers, officials, employees, agents or authorized volunteers.
- iv. If the Chamber subcontracts all or any portion of the services to be provided by the Chamber under this Agreement, the Chamber shall require each

subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

v. This subsection shall survive termination or expiration of this Agreement.

7) **Insurance.** The Chamber will maintain insurance and comply with the insurance requirements provided in Exhibit C on forms approved by the City.

8) **General Provisions**

a. *Notice.* To be effective, any notice concerning this Agreement must be served by placing it in the U.S. Mail with postage prepaid to the following addressees. Either party may change the addressee by providing written notice to the other party. Notice will be considered delivered two business days after the date of deposit in the U.S. Mail.

To City:  
City of San Rafael  
Director of Economic Development  
1400 Fifth Avenue  
San Rafael, CA 94901  
[micah.hinkle@cityofsanrafael.org](mailto:micah.hinkle@cityofsanrafael.org)

To Chamber:  
Chamber of Commerce  
President and CEO  
817 Mission Avenue  
San Rafael, CA 94901  
[jwebster@srchamber.com](mailto:jwebster@srchamber.com)

b. *Independent Contractor Status.* The Chamber will perform under this Agreement as an independent contractor and will be responsible for any federal, state, or local taxes or fees that apply to compensation the Chamber receives from the City under this Agreement. The Chamber's employees and subcontractors will not be employees of the City and will not be eligible for any benefits provided through the City, including but not limited to social security, health, workers' compensation, unemployment compensation, or retirement benefits. Neither the District nor any of its officers, employees, agents, volunteers, or subcontractors are or will be considered to be agents of the City in connection with the Chamber's performance under this Agreement.

c. *General Fund Not Liable for District Funds.* Neither the taxing authority, nor the bonding capacity, nor the general fund, nor any other fund or monies of the City other than actual District Funds received from businesses located within the District will be liable for payment of any obligations in connection with the District Funds arising from this Agreement. Obligations of the District Funds are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, or revenues. This Agreement embodies all of the Chamber's reimbursement rights with respect to the District Funds, and the City is not required to execute any additional note or document.

d. *Attorneys' Fees.* The prevailing party in any litigation or arbitration brought to enforce this Agreement will be entitled to recover reasonable attorneys' fees and



costs (including the reasonable costs of City Attorney staff) incurred in connection with the litigation or arbitration, through final resolution.

- e. *Interpretation and Venue.* This Agreement is to be interpreted in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Marin County Superior Court.
- f. *Waiver.* A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- g. *Entire Agreement.* Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement sets forth the parties' entire understanding regarding the subjects covered. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.
- h. *Counterparts.* The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
- i. *Precedence of Documents.* In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.
- j. *Amendment.* This Agreement may be modified only by written instrument duly authorized and executed by all the parties.
- k. *Successors and Assigns.* Subject to limitations on assignment provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The Chamber may not assign its rights or obligations under this Agreement without the prior written consent of City, which consent may be withheld at City's sole and absolute discretion. Any attempted assignment by the Chamber, its successors or assigns, shall be null and void unless approved in writing by the City.

1. *Authority to Sign.* Each individual executing this Agreement, or its counterpart, warrants that they are authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which they represent.

*[Signatures are on the following page.]*

DRAFT

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**CITY OF SAN RAFAEL:**

**CHAMBER OF COMMERCE:**

\_\_\_\_\_  
JIM SCHUTZ, City Manager

\_\_\_\_\_  
JOANNE WEBSTER, President  
and CEO

APPROVED AS TO FORM:  
**Office of the City Attorney**

\_\_\_\_\_  
By: GENEVIEVE COYLE,  
Assistant City Attorney

\_\_\_\_\_  
[Other Corporate Officer]

ATTEST:  
**City Clerk**

\_\_\_\_\_  
LINDSAY LARA, City Clerk

Exhibits (incorporated by this reference):

Exhibit A: Chapter 10.09 of the San Rafael Municipal Code

Exhibit B: San Rafael Improvement District Administrative Guidelines

Exhibit C: Insurance Requirements

# Exhibit A

## San Rafael Municipal Code, Chapter 10.09

Title 10 - BUSINESSES, PROFESSIONS, OCCUPATIONS, INDUSTRIES AND TRADES  
Chapter 10.09 DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT  
(Current through March 10, 2023)

### Chapter 10.09 DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT

#### 10.09.010 Purpose.

The purpose of this chapter is to authorize the city to impose assessments on business within a parking and business improvement area which are in addition to any assessments, fees, charges, or taxes imposed in the city, and to use such proceeds for the benefit of businesses within such area.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

#### 10.09.020 Definitions.

For the purposes of this chapter and for identifying businesses in the Downtown San Rafael Business Improvement District and for calculating and applying the assessments owed, the following definitions shall apply:

- A. "Financial institutions"—Banks (retail and full service), savings and loans, credit unions as allowed in the underlying zoning district.
- B. "Non-Profit organizations"—Organizations registered as a non-profit corporation with the State of California and fine artists.
- C. "Fine artists"—Artists that produce art that is intended primarily for beauty rather than utility or commercial purposes.
- D. "Offices"—Businesses providing administrative or business services such as company headquarters, employment agencies, management services as allowed in the underlying zoning district.
- E. "Personal services"—Businesses that sell services such as hair salons, nail salons and day spas as allowed in the underlying zoning district, and may combine some retail sales with product services, and may be associated with sole practitioners.
- F. "Personal services, not on ground floor"—Personal service businesses that are not located on the ground floor of a building and do not have a retail presence on the street.
- G. "Personal services sole practitioner"—Businesses that are sole practitioners in personal services businesses, including barbershop chairs, manicurists chairs, beauty shop chairs and miscellaneous personal care chairs.
- H. "Professionals"—Businesses that require advanced and/or specialized licenses and/or advanced academic degrees, such as architects, engineers, attorneys, accountants, therapists, counselors, realtors, mortgage brokers as allowed in the underlying zoning district. Professionals working as sole practitioners are in this category.
- I. "Restaurant"—Businesses that sell prepared foods and drinks as allowed in the underlying zoning district.
- J. "Retail"—Businesses that buy and sell goods, such as clothing stores, shoe stores, office supplies as allowed in the underlying zoning district.

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(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

### **10.09.030 District established.**

Pursuant to the provisions of Streets and Highways Code Section 36501 et seq., a parking and business improvement district is hereby established, named "Downtown San Rafael Business Improvement District" (the "BID").

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

### **10.09.040 Boundaries of district and benefit zones.**

The parking and business improvement area created herein includes businesses situated within the boundaries described as follows:

Those businesses situated on parcels fronting on the north side of Fourth Street from Second Street to E Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 010-291-57, 35, 34, 33, 49, 69; 011-192-18, 08, 07; 011-194-11, 13, 08, 07; 011-196-12, 11, 10, 09, 08, 07; 011-202-13, 12, 11, 14; those businesses situated on parcels bound by Fourth Street, Second Street and Ida Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-231-24, 25, 03, 04, 05, 06, 21, 17, 16; those businesses situated on parcels fronting on the south side of Fourth Street from Ida Street to E Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-232-01, 02, 03; 011-241-01, 30, 31, 32, 33; 011-242-01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11; 011-245-26; those businesses situated on parcels bound by E Street, Hetherton Street, Fifth Avenue and Third Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-204-01, 16, 15, 14, 13, 17, 09, 08, 20, 18, 19; 011-205-01, 15, 14, 13, 12, 11, 10, 09, 08, 16, 05, 04, 17; 011-212-15, 14, 16, 11, 06, 05, 04, 03; 011-214-10; 011-215-01, 02, 04, 05; 011-216-01; 011-222-08, 05; 011-224-01, 18, 17, 20, 15, 14, 13, 12, 11, 10, 19, 08, 06, 05, 04, 03, 02, 21; 011-227-01, 08, 07, 06, 05, 04, 10, 09, 02; 011-251-01, 13, 12, 11, 10, 09, 08, 07, 06, 05, 04, 03, 02; 011-253-01, 09, 08, 07, 06, 11, 10, 04, 03, 02; 011-255-27, 15, 14, 13, 18, 10, 29, 33, 19, 20, 07, 31, 30, 32, 23, 28, 03; 011-261-01, 13, 12, 20, 26, 29, 30, 17, 31; 011-263-20, 21, 02, 19, 04, 16, 22, 13, 11, 10, 09, 08, 07, 06, 05, 02; 011-271-01, 16, 15, 14, 13, 12, 11, 17, 07, 06, 05, 04, 03, 02, 01; 011-273-01, 17, 18, 12, 11, 10, 09, 08, 24, 06, 05, 04, 23, 02; 011-275-01, 12, 11, 10, 09, 13, 05, 04, 03, 02; 011-277-01; 014-084-13, 14, 02; 014-121-14; those businesses situated on parcels fronting on B Street from Third Street to Second Street, more particularly assessor's parcels as shown on the 2012 Assessor's Maps as follows: 011-256-26, 07, 08, 09, 32, 12; 011-262-01, 21, 22, 16, 15, 14, 23.

The standard benefit zone is that portion of the Downtown San Rafael Business Improvement District located to the west of E Street, that portion to the east of Lincoln Avenue, and that portion fronting on B Street from Third to Second Street.

The premium benefit zone is the remainder of the Downtown San Rafael Business Improvement District; specifically that portion located the east of E Street and west of Lincoln Avenue, between Fifth Avenue and Third Street.

Said area zones are reflected on a graphic, Exhibit A, attached to the ordinance codified in this chapter and incorporated in this chapter by reference.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

### **10.09.050 Calculation of assessments.**

All businesses in the BID shall, commencing on January 1, 2015 pay an annual benefit assessment to the BID in the amounts shown in Table 10.09.050-1.

Table 10.09.050-1

Type of Business	Annual Assessment	
	Standard	Premium
Retail on the ground floor, restaurant, personal services on ground floor	\$175	\$225
Retail on the ground floor, restaurant, personal services on ground floor—Businesses with less than \$100,000 in gross receipts	\$150	\$175
Offices, professional, personal services, not on ground floor, retail, not on ground floor	\$75	\$100
Personal services sole practitioner	\$25	\$50
Non-profit organization and fine artists	\$50	\$50
Financial institution	\$375	\$425

Assessments based upon 'gross receipts' shall be based upon the previous year's annualized gross receipts. An individual who has multiple business licenses in their name at a single address shall only pay one assessment fee. No person or business shall be required to pay an assessment for residential uses, residential businesses or home occupations. Any business outside the BID may voluntarily pay the standard zone assessment.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

**10.09.060 Use of revenue.**

The revenues derived from the assessments shall be used for the purposes as stated in Streets and Highways Code Section 36501 et seq. for the specific benefit of assessed businesses which may include:

- A. General promotion of businesses activities which provide a specific benefit to assessed businesses within the BID;
- B. Promotion of public events which provide a specific benefit to assessed businesses within the BID and which take place on or in public places within the BID;
- C. The acquisition, construction, installation and maintenance of any tangible property including but not limited to benches, trash receptacles, decorations and landscaping which provide a specific benefit to assessed businesses within the BID;
- D. Activities which provide a specific benefit to assessed businesses located and operating in the BID.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

**10.09.070 Collection of assessments.**

The benefit assessment shall be billed annually by the city in conjunction with the city's annual business license. Any business exempt from paying city business license fees shall be assessed in January of each year. All assessments collected shall be held in a separate account and expended in accordance with this chapter and any subsequent resolutions and funds management agreement.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

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### **10.09.080 Advisory board and annual report.**

The city council shall appoint an advisory board pursuant to Streets and Highways Code Section 36501 et seq. to administer the affairs of the BID. Members of the advisory board must own or represent a business in the BID, or be a voluntary member. The advisory board shall prepare an annual report for each year for which assessments are to be levied. The report shall be filed with the city clerk and shall comply with all requirements as stated in Streets and Highways Code Section 36501 et seq.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

### **10.09.090 District proceeds do not offset city services.**

Funds derived from the BID assessments shall not be used to offset or diminish current maintenance or capital improvement programs, including but not limited to public property and sidewalk cleaning and maintenance, street cleaning and maintenance, tree maintenance.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

### **10.09.100 Boundary and assessment modifications.**

The city council may, at the advisory board's recommendation, modify the boundaries or assessments. Such modifications shall be made pursuant to the requirements of Streets and Highways Code Section 36501 et seq.

(Ord. No. 1912, § 3, 6-3-2013; Ord. No. 1926, § 2, 12-1-2014 )

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## Exhibit B

# Downtown San Rafael Business Improvement District Administrative Guidelines

1. **District.** The Downtown San Rafael Business Improvement District (“District”) is a parking and business improvement district established pursuant to the provisions of Streets and Highways Code Section 36501 et seq., and codified in Chapter 10.09 of the San Rafael Municipal Code.
2. **Appointment of District Advisory Board.** The City Council, in its sole and absolute discretion, will appoint the District Advisory Board, pursuant to the Streets and Highways Code Section 36501 et seq. and San Rafael Municipal Code section 10.09.080, to administer the affairs of the District. The City Council will review and update the District Advisory Board appointments as it deems appropriate. The City Council may, but is not required to, appoint any members of the Board of Directors of the San Rafael Chamber of Commerce (“Chamber”) to the District Advisory Board, provided that such members meet the eligibility requirements under San Rafael Municipal Code section 10.09.080.
  - a. **District Advisory Board Nominations.** The District Advisory Board will conduct an annual meeting to select the nominations for District Advisory Board. The District Advisory Board nominations will be provided to the City Clerk at the time of the submittal of the District Annual Report. The Advisory Board nominations should reflect a balance of downtown business representation including retail businesses, non-retail businesses, and at least one district eligible Chamber business recommended by the Chamber.
3. **Management and Enhancement Services of the Chamber of Commerce.** The City has contracted with the Chamber to provide District management and enhancement services to the District, and act as the fiscal agent of District Funds. The Advisory Board will conduct all of its affairs consistent with the City’s agreement with the Chamber.
4. **Governance; meetings.** The District Advisory Board is a separate, standalone advisory board appointed by the City Council to administer the affairs of the District. To the extent determined necessary by the District Advisory Board, it will develop its own bylaws or operating rules, separate from the Chamber Board of Director’s bylaws. The District Advisory Board will conduct its meetings, and meet separately and at a different time than the Chamber Board of Directors. If these meeting are to occur on the same date, before or after each other, the meeting agendas will be clearly delineated to specify which organization is meeting at which time. In noticing and conducting its meetings as the District Advisory Board, the District Advisory Board will, in all respects, comply with the Brown Act, as specified below.
5. **Compliance with Brown Act and Public Records Act.** The District Advisory Board must comply with all federal, state, and local laws, including The Ralph M. Brown Act (Government Code § 54950 et seq.) (“Brown Act”) whenever matters within the subject matter of the District are heard, discussed, or deliberated, and the California Public Records Act (Government Code § 6250 et seq.) for all documents relating to activities of the District. See Exhibit B-1 for more information on the Brown Act.
6. **Conflicts of interest.** Members of the District Advisory Board will serve without compensation and may not have any interest in any agreement for compensation entered into by or on behalf of the District.
7. **District Funds.** District Funds (revenues derived from the assessments and transferred from the City to the Chamber) shall be used solely for the purposes as stated in Streets and Highways Code section



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36501 et seq. and San Rafael Municipal Code section 10.09.060.

8. **Annual Reports.** The District Advisory Board will submit annual reports to the City, no later than October 15 of each year. The annual report contents and filing will conform with the 1989 Act, Streets and Highways Code section 36533, as follows:

*§ 36533. Annual report; contents; filing*

*(a) The advisory board shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses, if a classification is used.*

*(b) The report shall be filed with the clerk and shall refer to the parking and business improvement area by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following:*

*(1) Any proposed changes in the boundaries of the parking and business improvement area or in any benefit zones within the area.*

*(2) The improvements and activities to be provided for that fiscal year.*

*(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.*

*(4) 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 that fiscal year.*

*(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.*

*(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.*

*(c) The city council may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified. The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.*

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## **Exhibit B-1**

### **Summary of The Brown Act Provisions**

The Advisory Board of the Downtown San Rafael Business Improvement District (“District”) is subject to the Ralph M. Brown Act when matters within the subject matter of the District are heard, discussed, or deliberated and shall comply with the California Public Records Act. The California Public Records Act requires that non-exempt records of the District be accessible by the public. The Brown Act is intended to ensure that “actions be taken openly and that deliberations be conducted openly” by boards who are created by formal action of city councils. Some of the more important requirements of the Brown Act are listed below.

The Advisory Board and any standing committees and committees comprised of at least a majority of the Board members are subject to the following requirements:

- Except for closed sessions which are expressly permitted under the Brown Act, all meetings must be open to the public and must allow public comment;
- Some closed sessions are allowed based on limited exceptions (litigation, employment issues, etc.);
- A meeting is defined as a congregation of a majority of Board members, or serial individual meetings involving a majority or more of the Board members wherein District business is discussed or conducted;
- Agendas for upcoming, regular meetings must be posted at least 72 hours in advance; and
- Action can only be taken on items listed on the posted agenda.

The above list provides a simple overview. The Brown Act is updated routinely by the State of California and has more requirements. City staff should be contacted for current Brown Act resources, information and training.

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## Exhibit C

### Insurance Requirements

During the term of this Agreement, and for any time period set forth below, the **CHAMBER OF COMMERCE (as CONSULTANT)** shall procure and maintain in full force and effect, at no cost to **CITY** insurance policies with respect to employees and vehicles assigned to the performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in this Exhibit B.

A. **Scope of Coverage.** During the term of this Agreement, **CONSULTANT** shall maintain, at no expense to **CITY**, the following insurance policies:

1. **Commercial general liability.** A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. **Automobile liability.** An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence.

3. **Professional liability.** If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover any claims arising out of the **CONSULTANT's** performance of services under this Agreement. Where **CONSULTANT** is a professional not required to have a professional license, **CITY** reserves the right to require **CONSULTANT** to provide professional liability insurance pursuant to this section.

4. **Workers' compensation.** If it employs any person, **CONSULTANT** shall maintain workers' compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **CONSULTANT's** workers' compensation insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

B. **Other Insurance Requirements.** The insurance coverage required of the **CONSULTANT** in subparagraph A of this section above shall also meet the following requirements:

1. Except for professional liability insurance or workers' compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONSULTANT's** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONSULTANT'S** policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or workers' compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONSULTANT** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONSULTANT** may acquire against **CITY** by virtue of the payment of any loss under such insurance. **CONSULTANT** agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not **CITY** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with

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the Effective Date of this Agreement.

7. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of **CITY** (if agreed to in a written contract or agreement) before **CITY'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the **CONSULTANT** under this Agreement.

9. **CONSULTANT** agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by **CONSULTANT**, provide the same minimum insurance coverage required of **CONSULTANT**, except as with respect to limits. **CONSULTANT** agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. **CONSULTANT** agrees that upon request by **CITY**, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the performance of Services will be submitted to **CITY** for review.

10. **CONSULTANT** agrees to be responsible for ensuring that no contract used by any party involved in any way with the Services reserves the right to charge **CITY** or **CONSULTANT** for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to **CITY**. It is not the intent of **CITY** to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against **CITY** for payment of premiums or other amounts with respect thereto.

C. **Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONSULTANT'S** insurance policies must be declared to and approved by the **CITY** and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **CITY** or other additional insured party. At **CITY'S** option, the deductibles or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY'S** satisfaction, or **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **Proof of Insurance.** **CONSULTANT** shall provide to the **PROJECT MANAGER** all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. **CITY** reserves the right to obtain a full certified copy of any insurance policy and endorsements from **CONSULTANT**. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by the **CITY**.

## RESOLUTION NO.

### RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPOINTING DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (BID) ADVISORY BOARD MEMBERS

**WHEREAS**, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

**WHEREAS**, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

**WHEREAS**, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

**WHEREAS**, the revenues derived from the assessments (further defined herein as “District Funds”) are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

**WHEREAS**, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

**WHEREAS**, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

**WHEREAS**, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

**WHEREAS**, the City Council has not made updated appointments to the District Advisory Board since 2018 given the COVID-19 Pandemic; and

**WHEREAS**, the City Council wishes to update its appointed members to the BID Advisory Board; and

**NOW, THEREFORE, BE IT RESOLVED** that the following persons shall be appointed to the BID Advisory Board effective immediately with terms expiring on December 31, 2023:

Terrence Thornton	San Rafael Martial Arts
Erika Bowker	Pleasures of the Heart
Adam Dawson	Mike's Bikes
Jed Greene	Five Corners Consulting Group
Tobi Lessem	Bodywise Massage
Jeff Brusati	T&B Sports
Amy & Bishlam Bullock (1 vote)	Salon B Style Lab
Morgan Schauffler	Youth in Arts
Elisabeth Setten	Artworks Downtown
Kelly Phu	Vin Antico
Joe McCallum	Newmark

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 1<sup>st</sup> day of May 2023, by the following vote, to wit:

**AYES:**           **Councilmembers:**  
**NOES:**           **Councilmembers:**  
**ABSENT:**       **Councilmembers:**

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**Lindsay Lara, City Clerk**

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT TRANSITION AGREEMENT WITH THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT (BID CORPORATION) IN THE AMOUNT OF \$5,000**

**WHEREAS**, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

**WHEREAS**, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

**WHEREAS**, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

**WHEREAS**, the revenues derived from the assessments ( “District Funds”) are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

**WHEREAS**, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

**WHEREAS**, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

**WHEREAS**, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

**WHEREAS**, the BID Corporation, which operates as a separate California nonprofit mutual benefit corporation under direction of its Board of Directors (the “BID Corporation Board”) was established by representatives of businesses in the District in 2012; and

**WHEREAS**, each year, the City has distributed the District Funds to the BID Corporation, and the District Advisory Board administers those revenues to use them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

**WHEREAS**, all District Funds in the possession/control of the BID Corporation are the property of the District and are held in trust by the BID Corporation solely for the benefit of the District; and

**WHEREAS**, the San Rafael Chamber of Commerce (“Chamber”) is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

**WHEREAS**, the BID Corporation now operates in the Chamber’s offices and has a close working relationship with the Chamber; and

**WHEREAS**, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments in 2022 and the District, in 2022, reduced its operations and operated with reserve funds; and

**WHEREAS**, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from administration by the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

**WHEREAS**, the City and the Chamber are entering into a separate agreement under which the Chamber will provide District management and enhancement services; and

**WHEREAS**, the City and the BID Corporation desire to enter into an Agreement for the BID Corporation to winddown its affairs related to administration of the District and transfer all remaining District Funds in its possession or control back to the City.

**NOW, THEREFORE BE IT RESOLVED**, that the City Council hereby authorizes the City Manager to negotiate and execute a downtown business improvement district transition agreement with the Downtown San Rafael Business Improvement District (BID Corporation) in an amount of \$5,000, subject to form approved by the City Attorney.

**I, LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the



City Council of the City of San Rafael, held on Monday, the 1<sup>st</sup> day of May 2023, by the following vote, to wit:

**AYES: Councilmembers:**  
**NOES: Councilmembers:**  
**ABSENT: Councilmembers:**

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**Lindsay Lara, City Clerk**

**AGREEMENT FOR TRANSITION  
OF THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT**

This Agreement (“Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”), between the CITY OF SAN RAFAEL, a municipal corporation of the State of California (“City”) and the SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT, a California nonprofit mutual benefit corporation (“BID Corporation”).

**RECITALS**

**WHEREAS**, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

**WHEREAS**, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing a reorganized Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

**WHEREAS**, the Ordinance extended the collection boundaries beyond ground floor retail and provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries including offices and financial institutions; and

**WHEREAS**, the revenues derived from the assessments (defined herein as “District Funds”) are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

**WHEREAS**, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members who own or represent a business in the District or voluntary members; and

**WHEREAS**, the District Advisory Board’s primary function is to administer the affairs of the District and prepare an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

**WHEREAS**, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

**WHEREAS**, the BID Corporation, which operates as a separate California nonprofit mutual benefit corporation under direction of its Board of Directors (the “BID Corporation Board”) was established by representatives of businesses in the District in 2012; and

**WHEREAS**, the City Council from time to time has updated its appointments to the District Advisory Board to be the same as the members of the BID Corporation Board; and

**WHEREAS**, each year, the City has distributed the District Funds to the BID Corporation, and the District Advisory Board administers those revenues to ensure that the BID Corporation uses them for authorized purposes that benefit the assessed businesses and to prepare and to submit the annual report to the City Clerk reporting activities and finances of the District; and

**WHEREAS**, all District Funds in the possession/control of the BID Corporation are the property of the District and are held in trust by the BID Corporation solely for the benefit of the District; and

**WHEREAS**, the San Rafael Chamber of Commerce (“Chamber”) is a California nonprofit mutual benefit corporation that is a member-based business advocacy organization supporting local businesses of San Rafael; and

**WHEREAS**, the Chamber has been operating and serving the business community for over one hundred years; and

**WHEREAS**, the Chamber staff has proven management skills, strong leadership and financial acumen and has worked closely with City staff and the BID Corporation staff for over 30 years; and

**WHEREAS**, the BID Corporation now operates in the Chamber’s offices and has a close working relationship with the Chamber; and

**WHEREAS**, the COVID-19 pandemic significantly reduced the businesses and collections of District assessments in 2022 and the BID Corporation, in 2022, reduced its operations and operated with reserve funds; and

**WHEREAS**, with the uncertainty of business recovery from the pandemic and improvement of economic conditions, the City believes that the District would benefit from administration by the Chamber to create capacity building and pathways for long-term sustainability to support Downtown San Rafael; and

**WHEREAS**, the Chamber can provide leadership, governance and administrative services in the execution of the District’s activities; and

**WHEREAS**, coincident with this Agreement, the City and the Chamber are entering into a separate agreement under which the Chamber will provide management and enhancement services for the District; and

**WHEREAS**, the City and the BID Corporation desire to enter into this Agreement for the BID Corporation to transition its affairs related to administration of the District and transfer all remaining District Funds back to the City.

**NOW, THEREFORE**, in consideration of the above recitals and for other good and sufficient consideration, the City and the BID Corporation agree as set forth herein.

## AGREEMENT

### 1. The BID Corporation's Duties.

- a. *Transition of District Activities.* Until such date that it returns the District Funds to the City in accordance with subparagraph (b), the BID Corporation will continue to administer ongoing activities of the District but will not enter into any new contracts or obligations on behalf of the District. The BID Corporation will complete the following District improvements and activities that are currently obligated:
  - i. Special Event Activities: 1) May Madness may 6, 2023 and 2) Dining Under the Lights May 12, 2023 and June 12, 2023.

The BID Corporation will not perform, schedule or obligate any other District improvements or activities.

- b. *Termination of District Activities.* No later than June 30, 2023, the BID Corporation will:
  - i. Terminate all administration, improvements and activities of the District;
  - ii. Pay all obligations and administration costs it incurred on behalf of the District; and
  - iii. Return to the City all remaining District Funds, including reserves, and all assets acquired with District Funds, together with an accounting thereof.
- b. *Closure Report.* No later than June 30, 2023, prepare and submit to the City a closure report ("Closure Report") detailing the activities and finances of the District, including:
  - i. The District improvements and activities completed or partially completed since the date of its 2022 annual report submitted to the City;
  - ii. Planned and scheduled improvements and activities of the District for the remainder of 2023; and
  - iii. Budget and accounting records pertaining to the District administration sufficient to provide the basis for an unqualified opinion by an independent auditor, including but not limited to budget, expenditures, subcontracts, insurance, permits, administrative expenses, overhead, and any contributions to District Funds made from sources other than assessments.
- c. *Supplemental Post-Closure Report and Payment.* No later than August 31, 2023, prepare and submit to the City a supplemental post-closure report ("Post-Closure Report") detailing any additions or changes to the information reported in the Closure Report. Said report will cover the time period of the date of the Closure Report through the date of the Post-Closure Report. The BID Corporation will further return to the City any remaining District Funds not previously accounted for.

### 2. The City's Duties.

- a. *Compensation.* In exchange for the BID Corporation's performance of services for the City in this Agreement, the City will compensate the BID Corporation in the amount of \$5,000, payable in one lump sum within ten (10) days of the Effective Date of this Agreement. This compensation is separate from the District Funds and is intended to compensate the BID Corporation directly for its services provided under this Agreement.

- b. *Distribution of District Funds.* The City will distribute \$15,000 of District Funds collected by the City through assessments levied in 2023 to the BID Corporation for District activities to be performed through June 30, 2023, payable in one lump sum within ten (10) days of the Effective Date of this Agreement. The BID Corporation may only use the District Funds for the purposes authorized under the 1989 Act and the Ordinance.
- 3) **Term.** The term of this Agreement (the “Term”) will be from the Effective Date through August 31, 2023.
- 4) **Obligations of the BID Corporation.** Any and all obligations incurred by the BID Corporation hereunder, or otherwise, will be the sole obligation of the BID Corporation, and the BID Corporation shall have no authority to incur any obligations in the name of, or on behalf of, the City of San Rafael, or any department thereof, or the District, except where expressly stated in paragraph 1 regarding obligations of the District.

5) **General provisions**

- a. *Notice.* To be effective, any notice concerning this Agreement must be served by placing it in the U.S. Mail with postage prepaid (registered or certified mail, return receipt requested) to the following addressees. Either party may change the addressee by providing written notice to the other party. Notice will be considered delivered two business days after the date of deposit in the U.S. Mail.

To City:  
City of San Rafael  
Director of Economic Development  
1400 Fifth Avenue  
San Rafael, CA 94901  
[micah.hinkle@cityofsanrafael.org](mailto:micah.hinkle@cityofsanrafael.org)

To BID Corporation:  
San Rafael Business Improvement District  
Terrence Thornton, President  
P.O. Box 151050  
San Rafael, CA 94915  
[terrance@sanrafaelmartialarts.com](mailto:terrance@sanrafaelmartialarts.com)

- b. *Independent Contractor Status.* The BID Corporation will perform under this Agreement as an independent contractor and will be responsible for any federal, state, or local taxes or fees that apply to compensation the BID Corporation receives from the City under this Agreement. The BID Corporation’s employees and subcontractors will not be employees of the City and will not be eligible for any benefits provided through the City, including but not limited to social security, health, workers' compensation, unemployment compensation, or retirement benefits. Neither the District nor any of its officers, employees, agents, volunteers, or subcontractors are or will be considered to be agents of the City in connection with the BID Corporation's performance under this Agreement.
- c. *General Fund Not Liable.* Neither the taxing authority, nor the bonding capacity, nor the general fund, nor any other fund or monies of the City other than actual District Funds received from businesses located within the District will be liable for payment of any obligations in connection with the District Funds arising from this Agreement. Obligations of the District Funds are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, or revenues. This Agreement embodies all of the BID Corporation’s reimbursement rights with respect to the District Funds, and the City is not required to execute any additional note or document.

- d. *Attorneys' Fees.* The prevailing party in any litigation or arbitration brought to enforce this Agreement will be entitled to recover reasonable attorneys' fees and costs (including the reasonable costs of City Attorney staff) incurred in connection with the litigation or arbitration, through final resolution.
- e. *Interpretation and Venue.* This Agreement is to be interpreted in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Marin County Superior Court.
- f. *Waiver.* A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- g. *Entire Agreement.* Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement sets forth the parties' entire understanding regarding the subjects covered. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.
- h. *Counterparts.* The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
- i. *Precedence of Documents.* In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.
- j. *Amendment.* This Agreement may be modified only by written instrument duly authorized and executed by all the parties.
- k. *Successors and Assigns.* Subject to limitations on assignment provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The BID Corporation may not assign its rights or obligations under this Agreement without the prior written consent of City, which consent may be withheld at City's sole and absolute discretion. Any attempted assignment by the BID Corporation, its successors or assigns, shall be null and void unless approved in writing by the City.
- l. *Authority to Sign.* Each individual executing this Agreement, or its counterpart, warrants that they are authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which they represent.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**CITY OF SAN RAFAEL:**

**SAN RAFAEL BUSINESS  
IMPROVEMENT DISTRICT:**

\_\_\_\_\_  
JIM SCHUTZ, City Manager

\_\_\_\_\_  
Terrance Thornton, President

APPROVED AS TO FORM:  
**Office of the City Attorney**

\_\_\_\_\_  
By: GENEVIEVE COYLE,  
Assistant City Attorney

\_\_\_\_\_  
Jed Greene, Acting Treasurer

ATTEST:  
**City Clerk**

\_\_\_\_\_  
LINDSAY LARA, City Clerk

DRAFT

DRAFT



## RESOLUTION NO.

### RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING THE DOWNTOWN SAN RAFAEL BUSINESS IMPROVEMENT DISTRICT ADMINISTRATIVE GUIDELINES

**WHEREAS**, the Parking and Business Improvement Area Law of 1989, Cal. Strs. & Hwys. Code § 36500 *et seq.* (“1989 Act”), authorizes cities to establish parking and business improvement areas for the purpose of promoting economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses and prevent erosion of business districts; and

**WHEREAS**, pursuant to the 1989 Act, in June 2013 the City Council of San Rafael adopted Ordinance No. 1912 (“Ordinance”), codified in the San Rafael Municipal Code (“SRMC”) Chapter 10.09, establishing the Downtown San Rafael Business Improvement District (“District”) to replace a former Parking and Business Improvements Area Business Improvement District established in 1979; and

**WHEREAS**, the Ordinance provides for the City’s collection of assessments on approximately 700 businesses that operate within the District’s boundaries; and

**WHEREAS**, the revenues derived from the assessments are used for the general promotion of business activities, public events, and other activities that provide a specific benefit to the assessed businesses; and the acquisition, construction, installation and maintenance of tangible property that provide a specific benefit to the assessed businesses; and

**WHEREAS**, pursuant to section 36530 of the 1989 Act and SRMC Section 10.09.080, the Council appoints a District Advisory Board consisting of members that own or represent a business in the District or voluntary members; and

**WHEREAS**, the District Advisory Board administers the affairs of the District and prepares an annual report each year describing which assessments are to be levied and files the report with the City Clerk; and

**WHEREAS**, the District Advisory Board is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code) at all times when matters within the subject matter of the District are heard, and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), for all records relating to activities of the District; and

**WHEREAS**, administrative guidelines provide the rules and procedures for the District Advisory Board and District management entity to administer and operate the affairs of the District, including how the City Council appoints members of the District Advisory Board, how meetings of the District Advisory Board are conducted in conformance with

the Brown Act, and requirements for the District Advisory Board to submit an annual report and spend District funds in conformance with law; and

**NOW, THEREFORE BE IT RESOLVED**, that the City Council hereby adopts the Downtown San Rafael Business Improvement District Administrative Guidelines attached hereto as Exhibit 1.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 1<sup>st</sup> day of May 2023, by the following vote, to wit:

**AYES:**           **Councilmembers:**  
**NOES:**           **Councilmembers:**  
**ABSENT:**       **Councilmembers:**

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**Lindsay Lara, City Clerk**

**Exhibit 1**  
**Downtown San Rafael Business Improvement District**  
**Administrative Guidelines**  
**(May 2023)**

1. **District.** The Downtown San Rafael Business Improvement District (“District”) is a parking and business improvement district established pursuant to the provisions of Streets and Highways Code Section 36501 et seq., and codified in Chapter 10.09 of the San Rafael Municipal Code.
2. **Appointment of District Advisory Board.** The City Council, in its sole and absolute discretion, will appoint the District Advisory Board, pursuant to the Streets and Highways Code Section 36501 et seq. and San Rafael Municipal Code section 10.09.080, to administer the affairs of the District. The City Council will review and update the District Advisory Board appointments as it deems appropriate. The City Council may, but is not required to, appoint any members of the Board of Directors of the San Rafael Chamber of Commerce (“Chamber”) to the District Advisory Board, provided that such members meet the eligibility requirements under San Rafael Municipal Code section 10.09.080.
  - a. **District Advisory Board Nominations.** The District Advisory Board will conduct an annual meeting to select the nominations for District Advisory Board. The District Advisory Board nominations will be provided to the City Clerk at the time of the submittal of the District Annual Report. The Advisory Board nominations should reflect a balance of downtown business representation including retail businesses, non-retail businesses, and at least one district eligible Chamber business recommended by the Chamber.
3. **Management and Enhancement Services of the Chamber of Commerce.** The City has contracted with the Chamber to provide District management and enhancement services to the District, and act as the fiscal agent of District Funds. The Advisory Board will conduct all of its affairs consistent with the City’s agreement with the Chamber.
4. **Governance; meetings.** The District Advisory Board is a separate, standalone advisory board appointed by the City Council to administer the affairs of the District. To the extent determined necessary by the District Advisory Board, it will develop its own bylaws or operating rules, separate from the Chamber Board of Director’s bylaws. The District Advisory Board will conduct its meetings, and meet separately and at a different time than the Chamber Board of Directors. If these meeting are to occur on the same date, before or after each other, the meeting agendas will be clearly delineated to specify which organization is meeting at which time. In noticing and conducting its meetings as the District Advisory Board, the District Advisory Board will, in all respects, comply with the Brown Act, as specified below.
5. **Compliance with Brown Act and Public Records Act.** The District Advisory Board must comply with all federal, state, and local laws, including The Ralph M. Brown Act (Government Code § 54950 et seq.) (“Brown Act”) whenever matters within the subject matter of the District are heard, discussed, or deliberated, and the

California Public Records Act (Government Code § 6250 et seq.) for all documents relating to activities of the District.

6. **Conflicts of interest.** Members of the District Advisory Board will serve without compensation and may not have any interest in any agreement for compensation entered into by or on behalf of the District.
7. **District Funds.** District Funds (revenues derived from the assessments and transferred from the City to the Chamber) shall be used solely for the purposes as stated in Streets and Highways Code section 36501 et seq. and San Rafael Municipal Code section 10.09.060.
8. **Annual Reports.** The District Advisory Board will submit annual reports to the City, no later than October 15 of each year. The annual report contents and filing will conform with the 1989 Act, Streets and Highways Code section 36533, as follows:

**§ 36533. Annual report; contents; filing**

*(a) The advisory board shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses, if a classification is used.*

*(b) The report shall be filed with the clerk and shall refer to the parking and business improvement area by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following:*

*(1) Any proposed changes in the boundaries of the parking and business improvement area or in any benefit zones within the area.*

*(2) The improvements and activities to be provided for that fiscal year.*

*(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.*

*(4) 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 that fiscal year.*

*(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.*

*(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.*

*(c) The city council may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified. The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.*



# San Rafael Business Improvement District (BID)

- PREMIUM BID
- STANDARD BID

