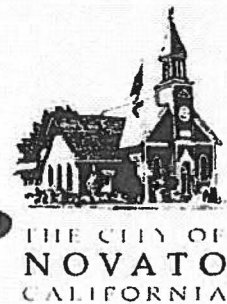


ATTACHMENT A

to the AGREEMENT FOR THE ADMINISTRATION OF THE
DOWNTOWN NOVATO BUSINESS IMPROVEMENT DISTRICT



Administrative Guidelines for the Annual Assessment Process

Novato Downtown Business Improvement District (BID)

Background

In 1999, a group of merchants (the BID Formation Committee) worked with the City to create the Business Improvement District (BID). The goal was to attract more business Downtown and enhance the customer and visitor experience. The BID was seen as an important part of the continued revitalization of Downtown Novato. In partnership with the merchants, the Novato City Council formed the Novato Downtown Business Improvement District (BID) in 1999 which was incorporated into the Novato Municipal Code as Section 2-25 'Downtown Novato Business Improvement District.' The Municipal Code allows the City and the BID Board of Directors to establish agreements for the administration of the district. This is a typical structure used by cities across the nation.

Since 1999, the City Council has contracted with the Downtown Novato Business Association (DNBA) to serve as the BID Advisory Board and to administer and manage BID activities and funding since the creation of the BID. The DNBA is a non-profit organization with a volunteer Board of Directors and historically has had no paid staff. It has adopted bylaws to govern the DNBA Board activities and functions. The DNBA, acting as the BID Advisory Board, may adopt supplemental rules governing BID Advisory Board activities and functions, which said rules must be consistent with these Administrative Guidelines. Said supplemental rules are subject to the approval of the City and, if approved by the City, shall be incorporated into the Agreement for the Administration of the BID between the City and the BID Board of Directors.

In order to fund the activities of the BID, the City Council levies an annual assessment on the businesses located within the BID's boundaries. The annual assessment covers the BID's activities for a full calendar year, beginning on January 1 of each year. Annually, the City mails the BID assessments in conjunction with the business license renewals in mid-December.

The purpose of these Administrative Guidelines is to outline the annual BID assessment process and clarify the protest process to ensure the accuracy, timeliness, security and transparency of the assessment hearing process.

1. BID Annual Report Components & Timing

As part of the BID annual assessment process, the BID Advisory Board is required to prepare an annual report to be submitted to the City Clerk each year on or before November 1. The DNBA serves as the BID Advisory Board ("BID Board") and prepares the Annual Report.

The City's Municipal Code (Section 2-25.11a) states that the Annual Report is to include the following items:

1. **Proposed Work Plan for Upcoming year** – The proposed Work Plan includes the “improvements and activities to be provided for [the following] calendar year”. It informs members of new initiatives, and goals of the organization for the upcoming year which form the basis for the proposed assessment.
2. **Budget** – This component of the Annual Report is an “estimate of the cost of providing the improvements and the activities for [the following] calendar year”.
 - a. The budget spreadsheet must show the proposed year budget.
 - b. The budget must include the current cash reserves, projected cash reserves, and the amount of any surplus or deficit revenues to be carried over from a previous calendar year.
 - c. The amount of any other revenue sources (grants, sponsorship, event income, etc.) anticipated to be made from sources other than BID assessments needs to also be included in the budget.
3. **Method and Basis of Levying the Assessment** – In order to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that calendar year, the Annual Report must include information outlining the method and basis for levying the assessment. As has been past practice, a copy of the BID map showing the boundaries will also to be included.
4. **Summary of Accomplishments** – The Summary of Accomplishments, although not required by the City's Municipal Code, is required as part of these Administrative Guidelines in order to outline what the BID has accomplished and what is planned for the remaining year.

Proposed Changes to the Boundaries, Assessments or Classification of the BID Assessments -- There may be times when the BID Board is interested in changing the boundaries, assessments or classification of the BID assessments. Per State law and the City's Municipal Code, the BID Board's Annual Report may propose changes, including, but not limited to, the boundaries of the District or any Benefit Zones within the District, the basis and method of levying the assessments, and any changes in the classification of businesses. If such changes are proposed in the report, the report shall also include a detailed description of any such proposed changes. The City Council would review these recommendations and make a determination as part of the annual assessment process.

2. Review Annual Report with DBID Members

BID Member Input – It is integral to the success of the BID, that members are included in the development of the budget and work plan for the upcoming year. A best practice would be for the BID to develop the Annual Report utilizing its board, committees', and membership feedback. This should occur beginning in July and conclude in September of each year.

Prior to the City Council receiving the Annual Report in October, the BID must hold a meeting with its General Membership to review the proposed Annual Report and obtain final input and feedback from members.

Notice and Annual Report for the General Membership meeting -- At a minimum, the notice for this meeting shall be as follows.

1. Notice shall be in writing and mailed at least 10 days before the meeting date and shall be addressed to each member entitled to vote at the address of that member appearing on the books of the BID Board or at the address given by the member to the BID Board for purposes of notice.
2. The notice shall specify the place, date, and time of the meeting.
3. The notice will outline the general nature of the business to be transacted.
4. The notice will also be posted on the DNBA's web site at least 5 days before the meeting date.
5. The BID Board will utilize any other economically feasible and practical means to actively promote this meeting.
6. The notice and agenda for this meeting shall also comply with the Brown Act.

Board Approval of BID Annual Report – After BID member input and prior to submitting the Annual Report to the City Clerk, the BID Board must take action to approve the Annual Report for submittal to the City staff by no later than October 15 of each year.

3. Annual Assessment Process @ City Council

The annual assessment process for the BID requires a number of actions by the City staff and City Council. Below is an outline of the City actions, related Council meetings and the components of each meeting. Attached in Exhibit E is a chart illustrating the typical timing of the annual assessment process.

BID "Information Mailing Packet" – City staff will mail an informational packet to each BID member which shall include a cover letter from the City, Annual Report, proposed budget, overview of the BID and annual assessment process. This mailing will inform BID members about the annual BID assessment process, protests, the Protest Period and how they can participate. This packet will be mailed prior to the 1st Council meeting. This mailing triggers the beginning of the "protest period." The Information Mailing Packet" will refer those that are interested to a dedicated DBID page on the City's web site where the 2015 Protest Form will be available for download.

Protest Period – The City will post the BID Information Mailing Packet on the web site along with a 2015 Protest Form which is to be used by any BID member that wishes to protest. The web site will also outline the Protest Period.

1st City Council Meeting (October of each year)

Presentation of the Annual Report by the BID Board.

- **Council Actions**
 - Council takes action to approve, modify or disapprove the BID Budget and Annual Report. Council reserves the right to make changes to the proposed budget and work plan/initiatives.
 - Council takes action on a *Resolution of Intention to Levy Assessments* for the following calendar year. This Resolution also sets the date for a future public hearing on the proposed assessment, which said hearing cannot be held less than 10 days after the adoption of the Resolution.

Public Notice -- Publish Resolution of Intention to Levy an Annual Assessment in newspaper (at least 7 days prior to the public hearing). This published public notice is a requirement of State law in order to hold the subsequent Public Hearing.

2nd City Council Meeting – Public Hearing (October/November of each year)

The second City Council meeting must be held at least ten days after the first Council meeting in order to meet the public notice requirements above. At this meeting, the City Council holds a Public Hearing ("Public Hearing") on the Annual Assessment and receives protests for the levy of assessments.

- **Council Actions**
 - Council action on Resolution Confirming the Annual Report

At the conclusion of the Public Hearing, the City Council may approve the report as filed by the Board, or modify any particular contained in the report and approve it as modified. During the course or upon the conclusion of the public hearing, the City Council may order changes in any of the matters provided in the report, including changes in the proposed assessments, the proposed improvements and activities to be funded with the revenues derived from the levy of the assessments, and the proposed boundaries of the area and any benefit zones within the area. The City Council shall not change the boundaries to include any territory that will not, in its judgment, benefit by the improvement or activity.

The adoption of the Resolution shall constitute a levy of an assessment for the calendar year referred to in the report.

If the assessments are approved, City finance staff will incorporate the BID levies into the business licenses bills which are distributed in mid-December to all members.

4. Public Hearing and Protest Submittals

"If written protests are received from the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than that 50 percent, no further proceedings to . . . levy the proposed assessment, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council."

*"If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the area, those types of improvements or activities shall be eliminated."
CA Streets & Highways Code § 36525.*

Prior to the Public Hearing, written comments for or against the benefit assessments to be levied can be mailed to the City Clerk of the City of Novato at 922 Machin Avenue, Novato, California 94945 or emailed to city@novato.org. At the Public Hearing, all members of the BID and public are welcome to speak to the City Council regarding the annual BID assessment and the Annual Report. An oral protest can be made at the Public Hearing, however, to count in calculating whether businesses paying 50% or more of the proposed assessments are against the assessments, a protest must be in writing. To be counted, all written protests must be received by the City Clerk no later than the close of the Public Hearing (the "End Date"). A written protest may be withdrawn from record at any time before the conclusion of the Public Hearing.

At the appropriate time during the public hearing on the levy of the assessments, the Mayor will ask that all written protests that have not been filed with the City Clerk be delivered to the City Clerk at that time. Upon the conclusion of public comment, the Mayor will close the Public Hearing. Protests previously filed with the City Clerk by owners wishing to withdraw their vote will be removed from tabulation.

If, after the initial tally (see Section #6), there is not a majority protest (the protests cast in opposition to the annual assessment do not equal or exceed 50% of the proposed assessment, when weighted by dollar amount), then City Council may take action to adopt the required assessment resolutions.

If there are a large number of written protests submitted on a timely basis, and the authenticity cannot be readily verified or some other factor precludes City staff from accurately calculating the number of valid protests during the meeting, the City Council has the option to close the Public Hearing and then continue the matter to a following Council meeting to allow for a thorough counting and verification of the submitted written protests.

5. Written Protest and Other Requirements

In order to be counted as a valid protest, a protest must (i) be in writing, (ii) be filed by an owner of a business located within the business improvement district and (iii) be signed by the person shown on the official records of the City as being the owner or designated agent of that business. For the purposes of the BID protests, the "official records" of the City shall be the City's business license database. From the City's business license database, staff will prepare a list of the BID businesses, including fields with designated agent and co-owners (if any are reflected in the database). This list will be called the Master Assessment List. For the purpose of determining the validity of protest, the Master Assessment List will be generated on the date of the Public Hearing. If there are questions about the validity of a protest filed by a particular business, staff reserves the right to review the more detailed business license database to gain additional information for final decision making.

Time Restrictions on Soliciting and Executing BID Protests -- No protest against an annual assessment levied by or proposed to be levied by the City Council and no protest against an Annual Report (or anything contained therein) proposed to be adopted by the City Council pursuant to the Parking and Business Improvement Area Law of 1989, Cal. Streets & Highways Code section 36500 et seq., and Novato Municipal Code section 2-25.11, shall be executed before, and no person shall solicit the execution of such protests before the date ("Start Date") specified for that purpose in the BID Information Mailing Packet described in Section 3, above. The purpose of setting a date before which protests cannot be executed or solicited is to assure that by the time such protests can be solicited and/or signed, the business owner who is considering making a protest has available to him/her/it the information relevant to that year's assessment and, thus, can make an informed decision as to whether s/he/it should object to the assessment or any individual activities, improvements or expenditures being proposed as part of that year's Annual Report. The period of time starting on the Start Date and terminating on the End Date shall be referred to as the "Protest Period."

Format of Written Protest - Each written protest shall be submitted on the City's Protest Form (available in English and Spanish) which contains the following items:

1. The name of the business;
2. Address of the business;
3. Printed name of the owner or designated agent as shown on the City's business license list, the official record for these purposes;
4. Printed title of the owner or designated agent as shown on the City's business license list, the official record for these purposes;
5. Signature of the owner or designated agent as shown on the City's business license list, the official record for these purposes;
6. Date as to when the owner/designated agent signed the protest; and,
7. If the person signing the protest is not shown on the official records of the City of Novato as the owner of the business, then the protest shall contain or be accompanied by written evidence that the person is the owner of the business in conformance with the requirements set forth below.

Form of Protest by Agent or Designee of Business Entity -- In order to be counted for purposes of determining whether protests filed with respect to any assessment and/or Annual Report meet the requisite percentage specified in Cal. Streets & Highways Code section 36525, a written protest filed by an owner of a business located within the business improvement district which said owner is shown on the official records of the City to be other than an individual (such as a corporation, partnership, limited partnership, limited liability company, etc., collectively "entity") must be :

- (a) signed by the person whose name appears on the City's official records as having the authority to act on behalf of said entity, or
- (b) accompanied by written evidence that the person signing the protest is authorized by the entity to do so. Such written evidence may take the form of a corporate or entity resolution or memorandum, properly attested and executed by an authorized ("entity authorization" or "entity authority") corporate or entity officer. The entity authorization or entity authority must be independently demonstrated by (i) the submittal of the entity's articles of incorporation, by-laws, operating agreement or other document(s) evidencing said entity authorization or authority, and/or (ii) circumstances and evidence that possess the persuasive effect of the sort upon which responsible persons rely in the conduct of serious affairs. This written evidence must state that the person signing the protest is authorized by the entity to do so and is acting as a "designated agent" for the corporation or entity. In addition, this written evidence will describe the scope of authority granted to the designated agent, including whether or not the agent has the authority to protest a BID assessment, to run for and assume a position on the BID Board, to run for and assume a position on the DNBA Board, to vote as a member of the BID, etc.

Protest Validation -- Protests will be inspected for the following items

- (a) *Completed Protest* -- If any of the above items (Section 5, paragraphs numbered 1-6 and 7 if necessary) are missing, then the protest will not be counted.
- (b) *Signature.*
 - a. Signatures must be original.
 - b. Signatures which appear to be photocopies or facsimiles will not be accepted.
 - c. If the signature and the printed name of the signatory are illegible and/or unintelligible and a proper determination can't be made, then the protest in question shall not be counted. If a reasonable person would concur that the signature matches the printed

name, then the benefit of the doubt will be given to the protest to allow it to be counted.

Additional Circumstances – Below are described additional circumstances that may arise in the examination of protests, and a description of how the issues that may flow from such circumstances will be resolved. Staff reserves the right to bring forward additional clarifying circumstances for Council review, interpretation, and determination if needed in the future.

1. **Co-owners** – There are some BID businesses that have co-owners and have registered both owners with the City and therefore are included in the City’s business license data base (the “official records” of the City). A properly filled out and signed protest form by either co-owner will count towards a protest; both are not required to sign a written protest. However, in the unlikely situation that one owner submits a valid protest and the other co-owner submits a valid vote/communication in support of the BID, then these two “votes” would cancel each other out and the protest filed by the one co-owner would not be counted on behalf of that business.
2. **Change in Business Ownership** – A situation could occur when the ownership of a business changes during the Protest Period. In this circumstance, the information regarding the ownership change may not have been sent to the City to update its official records however protests may be submitted by a new owner and/or prior owner. Under such circumstances and with proof of the change in business ownership, only the new business owner responsible for the assessment for the upcoming year is eligible to participate in the protest vote.
3. **New Business** – A new business is not required to pay BID assessments for the first year of its operations. The Streets and Highways Code Section 36525 states that the “owners of businesses in the” District have the right to protest. Therefore, a new business that is not going to be assessed BID assessments for the following calendar year is still eligible to file a protest vote.
4. **Non Profits, Residents and Governments** – Under Novato Municipal Code sec. 2-25.7, residential users, governments and specified non-profit organizations whose uses or operations are located within the District boundaries are exempt from paying the annual assessment. Section 36525 states that “owners of businesses” have the right to protest, whether or not they are current in the payment of their assessment or are exempt. Based on this background, the following guidelines for filing protests are outlined for these types of entities.
 - a. **Non-Profits** -- If an exempt non-profit is otherwise operating a “business” then it would be entitled to protest. A non-profit otherwise exempt from the assessment would not have the right to file a protest if it is not also operating a business within the BID.
 - b. **Residents** – Residents who use their residences strictly for residential uses do not have the right to file a protest. Owners of home occupations are entitled to protest and shall be subject to the annual BID assessment.
 - c. **Governmental Entities** – Governmental entities do not have the right to file a protest.

6. Protest Tabulation

Initial Tally after the Public Hearing at the Council Meeting - At the close of the public hearing, staff will conduct a preliminary tally of all timely-filed, written protests to see if the protests reach the 50% threshold required to halt the assessment for the following year. If the initial tally (without verifying same against the City's official records) reveals that the protests represent 50% or more of the total assessment, then staff will recommend that the agenda item be continued to a subsequent meeting to allow for a thorough verification and official count. If the tally count is not over 50%, but still significant, the Council can direct staff to take additional time and continue the item to a subsequent City Council meeting.

7. Elections and Appointment of BID Board

The Annual Meeting of the BID membership for the primary purpose of electing BID Board members is to be held within 60 days after levy of the annual assessment by the Novato City Council unless the Board chooses another date or time and so notifies members as provided by the BID Board's operating rules. Notice of this meeting shall be in writing and shall be given at least 10 but not more than 50 days before the meeting date. The notice shall specify the place, date and hour of the meeting, and the general nature of the business to be transacted. The notice shall be given either personally or by first-class, registered, or certified mail, or by other means of written communication, charges prepaid, or by electronic transmission and shall be addressed to each member entitled to vote, at the address of that member appearing on the books of the BID Board or at the address given by the member to the BID Board for purposes of notice. Notice is deemed given at the time it is delivered personally, delivered by electronic transmission, deposited in the mail or sent by other means of written communication. A notice may not be given to a member by electronic transmission if the BID is unable to deliver two consecutive notices to the member by that means.

All voting to elect the persons to serve on the BID Board of Directors and all voting which is solicited by the Board of Directors on items concerning District activities, improvements, operations, boundaries, and assessments shall be based on one (1) vote per assessed dollar. Any owner of a business within the District desiring to exercise the right to vote on Board memberships, run for a position on the Board or serve on the Board must be current in payment of its/his/her BID assessment.

The new businesses and those residents, governmental agencies and non-profit organizations which are exempt from paying the assessment pursuant to Nov. Muni. Code sections 2-25.8 and 2-25.7, respectively, and who elect not to pay the assessment, shall not be entitled to run for or serve on the BID Board in a voting capacity, nor shall they have the right to vote on the election of the BID Board members. However, the BID Board may appoint ex-officio members of the BID Board from non-profits or governmental entities. Alternatively, if a non-profit or a new business otherwise exempt from annual BID assessments wishes to serve on the Board of Directors, the organization must pay the levy assessment and therefore will become eligible to vote and participate in Board elections.

Within the Board there shall be a President, Vice-President, Secretary and Treasurer elected by the Board members, and other officers as deemed necessary by the Board. Such officers shall be appointed by the Board of Directors at its discretion. The Board shall also have the right to appoint ex-officio (non-voting) members as a means to encourage partnerships, communication or other BID goals.

Membership on the BID Board shall be subject to the approval of the City Council. The City Council shall make appointments to the Board only from District members who have been chosen by election to serve on the Board by the District members eligible to vote.

8. Modifications to the Administrative Guidelines

The City Council provides the City Manager or designee with the authority to modify and update these Administrative Guidelines as necessary to maintain transparency and clarity for the annual assessment process of the BID. Any modifications would be reviewed with the BID Board and at a General Membership meeting prior to implementation.