

AGREEMENT BETWEEN
THE PLEASANTON DOWNTOWN ASSOCIATION
AND THE CITY OF PLEASANTON TO
ADMINISTER THE DOWNTOWN PLEASANTON BUSINESS
IMPROVEMENT DISTRICT

THIS AGREEMENT, made and entered into this 19th day of ~~November~~March, ~~2019~~2024, between the CITY OF PLEASANTON, a municipal corporation (“City”), and the PLEASANTON DOWNTOWN ASSOCIATION, a non-profit corporation (“Association”);

WITNESSETH:

The parties hereto do agree as follows:

- (1) RECITALS. This agreement is made and entered into with respect to the following facts:
 - (a) The Pleasanton City Council has established the Downtown Pleasanton Business Improvement District (hereinafter “District”), pursuant to Section 36000 et seq. of the Streets and Highways Code of the State of California, by the adoption of Ordinance No. 1110 on December 6, 1983, as amended from time to time, and codified in Chapter 5.28 of the Pleasanton Municipal Code.
 - (b) The City and the Association wish to contract for the Association to administer the Downtown Pleasanton Business Improvement District on behalf of the City.
 - (c) All persons engaged in business within the District are members of said Association.
 - (d) Pursuant to said Ordinance a charge will be imposed on all businesses located within the District.
 - (e) The charges as levied are to be utilized exclusively for the purposes as set forth in said Ordinance.
 - (f) The Association has, as one of its primary purposes, the promotion of the District and the businesses located within.
 - (g) The Association is a qualified organization to establish, promote and conduct the programs of the District and has agreed to do so upon the terms and conditions as hereinafter set forth.
 - (h) The Pleasanton City Council has determined that the public interest, convenience and necessity require the execution of this Agreement to provide for the services of Association as hereinafter set forth.
- (2) TERM. The effective date of this Agreement shall commence on ~~November~~March 19,

~~2019~~2024, and the Agreement shall continue until December 31, ~~2024~~2029, or until terminated by either party as provided herein.

(3) PROMOTION OF THE DISTRICT. A primary role of the Association shall be to market and promote the Downtown so as to enhance the vitality of the District for the benefit of the businesses located within the District and the community.

(a) The Association shall identify its top priorities each year and communicate those to the City Council and City staff. These priorities shall be provided to the City Council annually during the 1st quarter of the year. Monthly updates will be provided to the City's Economic Development Manager at the Association's Board meetings.

(b) The Association shall focus a majority of its resources on marketing and promotional efforts that are intended to draw patrons to the Downtown and define specific goals that support those efforts and that further advance the identified top priorities. These may include, but are not limited to:

- i. Themed events targeted to a variety of attendees, such as Makers markets, antique shows, car shows, bicycle showcases, culinary events, family or youth-focused, i.e., egg hunts, scavenger hunts, arts, Pumpkins on Main, and adult-focused, i.e., wine, spirit, or beer strolls; and
- ii. Seasonal events, such as Concerts in the Park, First Weekends on Main, and Magical Holiday Evening; and
- iii. Community promotional partnerships such as Small Business Saturday, Tri-Valley Restaurant Week, and Pleasanton LIVE.

(c) The Association shall assume primary responsibility for marketing and promotion of the District and shall work with the City Economic Development ~~Director~~Manager to prepare and implement an annual marketing plan.

(d) The Association will focus on strategies to stimulate economic vitality and support the diverse mix of businesses in the District. Strategies will focus on strengthening existing downtown businesses while attracting new businesses that create a balance of commercial offerings within the District.

- i. The Association will provide informational business resources to existing businesses to sharpen competitiveness such as marketing tips or social media guidance.
- ii. Association will monitor vacant, unused, or underutilized spaces within the District and act as an information resource for prospective businesses to help boost the profitability of the District.
- iii. A summary of space availability or project status will be provided to the City's Economic Development Manager at the Association's monthly Board meetings.

~~(d)~~(e) The Association shall work to further the goals and initiatives set forth in the City's

Downtown Specific Plan and work collaboratively with the City on implementation of the Specific Plan as fiscally feasible. –At such time(s) as the Downtown Specific Plan is updated or amended, the Association will participate in the development of amended or new objectives and elements of the Specific Plan.

- (4) NATIONAL–MAIN STREET MODEL AMERICA. The Association previously will adopted and implemented the National Main Street Model as its governance and operational structure and actively maintain Main Street status as was conferred by as the a National Main Street Program. In 2015, the National Main Street Model was rebranded as Main Street America. The core values remain to help communities across the country bring economic vitality to downtowns while celebrating historic character, and bring communities together, therefore the Association will follow the Standards of Performance of Main Street America as an Accredited Program.

(a) The Association will take the necessary steps to remain an Accredited Main Street America Program. This accreditation recognizes that the Association is a part of a national movement with a proven track record for celebrating the community’s character, preserving local history, and generating notable economic returns.

(b) The Association will actively engage with the California Main Street Association for local and regional connectivity.

Committees may be added as deemed necessary and will generally undertake the following efforts:

(a)(c) Events and Marketing: Oversee all activities to ensure coordination and the best utilization of promotions and marketing.

(b)(d) Design and Historical Review: Advise the City regarding all design and maintenance issues for the Downtown, and Downtown and provide encouragement for individual property maintenance by merchants and property owners.

(e)(e) Downtown Vitality: Provide oversight of the Association’s annual priorities and policies and projects that directly affect the overall vitality of the Downtown, including review of potential development projects. Assist the City’s Economic Development Director/Manager, Economic Vitality Committee and City Council with issues affecting Downtown. The Association Board will may appoint a representative to serve as liaison to or to attend the City’s Economic Vitality Committee meetings.

(d)(f) Executive: Provide financial oversight, development and evaluation of work plans of the other committees and the Association; communicate with other agencies and with the membership, including encouraging and soliciting involvement through committees and general membership meetings; work with City staff and a City Council appointed Advisory Board, pursuant to Section 36000 et seq. of the California Streets and Highways Code, to review the changes in state law, and to consider the advantages and disadvantages of assessing property owners as part of the District.

(e)(g) City staff will meet with the Executive Director and the ~~Organization-Executive~~ Committee at the beginning and end of each fiscal year to review work plans, and accomplishments in accordance with this Agreement.

(5) BUDGET.

(a) The Association shall submit to the City Manager or City Finance Director a budget in a form approved by the City, for consideration by the City Council, no later than the thirtieth day of November of each year.

(1) The budget shall estimate overall revenues and expenditures for the fiscal year commencing the next January 1st.

(b) Said budget shall include the proposed expenditure of all revenues of the Association from sources other than the revenue received pursuant to this Agreement (e.g., contributions, events).

(c) City staff will meet at the beginning and end of each fiscal year, and as necessary, with the Executive Director and the Executive Committee to ensure funding is spent as authorized by the City Council.

(6) FINANCIAL REPORTS. The Association shall submit to the City Economic Development ~~Director~~ Manager, City Finance Director, or designee, as requested a monthly income statement and an updated balance sheet indicating the Association's current financial position. Said reports may be provided as part of the Association's monthly Board of Directors meeting materials.

(7) FUNDING OF DOWNTOWN ASSOCIATION.

(a) Assessments will be charged to each business within the District based upon a schedule of assessments reviewed and adopted by the Board of Directors and the City Council.

(1) The Association and City staff will initiate review of the existing assessment structure ~~by 2021~~ by 2025, from which to make a recommendation to the City Council for a revised assessment structure that helps to ensure the fiscal sustainability of the Association and support enhancement of the District.

(b) The City will provide a contribution to the Association equal to the annual Assessments, or as deemed appropriate based on any future revised assessment structures.

(c) The City and the Association have entered into a separate use agreement for the City-owned property at 333 Division Street so the Association can maintain an office in a central downtown location.

(d) The Association will also seek sponsorships, memberships, and other contributions to the Association to assist with the expenses of the organization.

(8) PAYMENTS.

(a) The City Finance Director is authorized to establish a mutually acceptable schedule for partial payments or advances to the Association based on anticipated revenues.

(b) If any provision stated herein is not satisfied by the Association, the City reserves the right to withhold payment to the Association, and if necessary, to take action to terminate this Agreement.

(9) INDEPENDENT AUDIT. The Association shall employ, at its sole expense, the services of a qualified independent Certified Public Accountant who shall annually examine the books, records, inventories and reports of the Association and its officers and employees who receive, ~~handle~~handle, or disburse funds obtained by the Association from City pursuant to this Agreement. A review may be performed, (rather than a full audit), provided that every third year a full audit shall be performed. The first full audit shall be performed for the year ending December 31, ~~2021~~2023. The City Finance Director shall request a full audit, however, whenever it is deemed necessary. A copy of such review/audit shall be submitted by May 31 of each year to the City Economic Development ~~Director~~Manager and City Finance Director.

(10) SPECIAL EVENTS AND STREET CLOSURES. Special events can be of mutual benefit to the community at large and to the Association, but too many special events can become a burden for downtown residents and surrounding property owners. To continue the cooperative working relationship between the Association and its surrounding neighbors, street closures by the Association will be limited to no more than ten (10), not to include the farmers market or Concerts in the Park. Events co-sponsored by the City or City approved street closures for other organizations are not included in this limitation.

Promotion companies may be used for special events as long as the use of the promoter continues to be mutually acceptable to the City and the Association.

(11) ENFORCEMENT. The City will pursue collection of past due charges to the Downtown Pleasanton Business Improvement District. The Association will cooperate with the City in the collection of any past due charges.

(12) INDEMNIFY AND HOLD HARMLESS. The Association shall defend, indemnify, and hold harmless, the City and its officers, and employees from and against all claims, losses, damage, injury, and liability for damages arising from errors, omissions, negligent or wrongful acts of the Association in the performance of its services under this Agreement, regardless of whether the City has reviewed and/or approved the services which have given rise to the claim, loss, damage, injury or liability for damages.

(13) INSURANCE. During the term of this Agreement, Association shall maintain in full force and effect, at its own cost and expense, insurance coverages with insurers with an A.M.

Best's rating of no less than A:VII. Association shall have the obligation to furnish City, as additional insured, the minimum coverages identified below, or such greater or broader coverage for City, if available in the Association's policies:

- (a) General Liability and Bodily Injury Insurance. General liability insurance with limits of at least \$1,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, ~~employees~~, and agents are named as additional insureds under the policy as evidenced by an additional insured endorsement satisfactory to the City Attorney. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Association or its contractors, and that no other insurance effected by City or other named insured will be called on to cover a loss.
- (b) Workers' Compensation Insurance. Workers' Compensation Insurance for all of ~~Association's~~ the Association's employees, in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.
- (c) Certificate of Insurance. Association shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing notice to the City in accordance with California Insurance Code section 677.2 which requires the notice of cancellation to: 1) include the effective date of the cancellation; 2) include the reasons for the cancellation; and 3) be given at least 30 days prior to the effective date of the cancellation, except that in the case of cancellation for nonpayment of premiums or for fraud, the notice shall be given no less than 10 days prior to the effective date of the cancellation. Notice shall be sent by certified mail, return receipt requested. In addition, the insured shall provide thirty (30) days prior written notice to the City of any cancellation, suspension, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.
- (d) Waiver of Subrogation. The insurer agrees to waive all rights of subrogation against the City, its officers, ~~employees~~, and agents.
- (e) Defense Costs. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusions.
- (14) ASSOCIATION'S STATUS. In the performance of the services set forth in this Agreement, the Association shall have the status of an independent contractor, and the Association and its members shall not be considered to be employees of the City for any purpose. All persons working for or under the direction of ~~Association~~ the Association are

its agents, servants, and employees and are not agents, servants, or employees of the City.

(15) TERMINATION OF AGREEMENT.

(a) The term of this Agreement will be for five (5) years, nine (9) months and ~~42~~eleven (11) days, expiring on December 31, ~~2024~~2029, but the City may terminate this Agreement at any time for failure of the Association to comply with this Agreement by mailing a notice in writing to the Association, giving the Association sixty (60) days' notice of the City's intent to so terminate. The termination shall be effective on the 61st day after providing such notice. This Agreement shall then be deemed terminated, and no further funding shall be allocated by the City to the Association. If the Agreement is terminated, the money allocated to the Association shall be limited only to the encumbrances at the time of termination.

(b) The Association may terminate this Agreement by giving City sixty (60) days' notice of intent to so terminate. The termination shall be effective on the 61st day after providing such notice.

(16) NOTICES. All notices herein required shall be in writing and shall be sent by certified mail, postage prepaid, addressed as follows:

Pleasanton Downtown Association
333 Division Street
Pleasanton, CA 94566
Attn: Executive Director

City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566-0802
Attn: Economic Development ~~Director~~Manager

(17) CONFORMANCE TO APPLICABLE LAWS. Association shall comply with all applicable Federal, State, and City laws, rules, and ordinances. No discrimination shall be made by Association in the employment of persons to work under this Agreement because of race, color, national origin, ancestry, ~~sex~~sex, or religion of such person.

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

PLEASANTON DOWNTOWN ASSOCIATION

By: _____
Laura Brooks, Interim Executive Director

CITY OF PLEASANTON

By: _____
Gerry Beaudin, City Manager

ATTEST:

Jocelyn Kwong, City Clerk

APPROVED AS TO FORM:

Daniel G. Sodergren, City Attorney