

2018 MAR 29 PM 5:02 OAKLAND CITY COUNCIL

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RESOLUTION No. _____ C.M.S.

**A RESOLUTION OF INTENTION TO ESTABLISH THE OAKLAND
TOURISM BUSINESS IMPROVEMENT DISTRICT 2018 (OTBID 2018)
AND SCHEDULING A RELATED PUBLIC MEETING FOR MAY 15,
2018 AND A RELATED PUBLIC HEARING FOR JUNE 19, 2018 AND
GIVING NOTICE THEREOF**

WHEREAS, the Property and Business Improvement Law of 1994, Streets and Highways Code § 36600 et seq., authorizes the City to establish business improvement districts for the purposes of promoting tourism; and

WHEREAS, pursuant to said authority, the Oakland Tourism Business Improvement District 2015 (OTBID 2015) was established by Oakland City Council Resolution No. 85725 on July 21, 2015 for a three-year initial term ending on July 31, 2018; and

WHEREAS, Visit Oakland, lodging business owners, members of the business community and representatives from the City of Oakland have met to consider the continuation of the OTBID 2015) by forming the Oakland Tourism Business Improvement District 2018 (OTBID 2018); and

WHEREAS, Visit Oakland has drafted a Management District Plan which sets forth the proposed boundary of the OTBID 2018, a service plan and budget, and a proposed means of governance; and

WHEREAS, lodging businesses which will pay more than fifty percent (50%) of the assessment under the OTBID 2018 have petitioned the City Council to establish the OTBID 2018.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF OAKLAND DOES HEREBY FIND THAT:

1. The recitals set forth herein are true and correct.
2. The City Council finds that lodging businesses that will pay more than fifty percent (50%) of the assessment proposed in the Management District Plan have signed and submitted petitions in support of the formation of the OTBID 2018, as required by Streets and Highways Code § 36621. The City Council accepts the petitions and adopts this Resolution of Intention to establish the OTBID 2018 and to levy an assessment on certain lodging businesses within the OTBID 2018 boundaries in accordance with the Property and Business Improvement District Law of 1994.

3. The City Council finds that the Management District Plan satisfies all requirements of Streets and Highways Code § 36622.
4. The City Council declares its intention to establish the OTBID 2018 and to levy and collect assessments on lodging businesses with fifty (50) or more rooms within the OTBID 2018 boundaries pursuant to the Property and Business Improvement District Law of 1994.
5. The OTBID 2018 shall include all lodging businesses with fifty (50) or more rooms located within the boundaries of the City of Oakland, as shown in the map, attached as Exhibit A. Lodging businesses fitting this description that come into existence after the OTBID 2018's formation will be subject to the assessment.
6. The name of the district shall be Oakland Tourism Business Improvement District 2018 (OTBID 2018).
7. The assessment rate is one dollar and fifty cents (\$1.50) per occupancy (as defined herein) per night. "Occupancy" means the compensated use of, or the unexercised right to use, a room in an assessed lodging business. Based on the benefit received, assessments will not be collected on the portion of stays exceeding thirty (30) consecutive days, nor on stays by any officer or employee of a foreign or domestic government on official business, provided billing is made directly to and payment is received from the government agency qualifying for this exemption. Assessments pursuant to the OTBID 2018 shall not include room rental revenue resulting from stays pursuant to contracts executed prior to August 1, 2015.
8. The assessments levied for the OTBID 2018 shall be applied toward marketing & advertising, sales, and special events programs to market assessed lodging businesses in Oakland as tourist, meeting, and event destinations, as described in the Plan. Funds remaining at the end of any year may be used in subsequent years in which OTBID 2018 assessments are levied as long as they are used consistent with the requirements of this resolution and the Plan.
9. The OTBID 2018 will have a seven (7) year term, beginning August 1, 2018 through July 31, 2025, unless renewed pursuant to Streets and Highways Code § 36660 et seq.
10. Bonds shall not be issued.
11. The time and place for the public meeting to receive testimony on establishing the OTBID 2018 and levying assessments is set for May 15, 2018, at 6:30 PM, or as soon thereafter as the matter may be heard, at the Council Chambers located at 1 Frank H Ogawa Plaza, 3rd Floor, Oakland, CA 94612. Notice will be provided pursuant to Government Code §54954.6 and Streets and Highways Code §36623.

12. The time and place for the public hearing to establish the OTBID 2018 and the levy of assessments is set for June 19, 2018, at 6:30 PM, or as soon thereafter as the matter may be heard, at the Council Chambers located at 1 Frank H Ogawa Plaza, 3rd Floor, Oakland, CA 94612. The City Clerk is directed to provide written notice to the lodging businesses subject to assessment of the date and time of the public meeting and hearing, and to provide that notice as required by Streets and Highways Code § 36623.
13. A protest may be made orally or in writing by any interested person. All written protests shall be mailed or delivered to the Oakland City Clerk at 1 Frank H Ogawa Plaza, 1st Floor, Oakland, CA 94612, Attn: Oakland Tourism BID 2018. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest.
13. At the public meeting and hearing the testimony of all interested persons for or against the establishment of the OTBID 2018 may be received. If at the conclusion of the public hearing, there is of record written protests by the owners of the lodging businesses within the proposed OTBID 2018 that will pay more than fifty percent (50%) of the estimated total assessment of the entire OTBID 2018, a majority protest will exist and no further proceedings to establish the OTBID 2018 shall occur for a period of one year.
14. The complete Management District Plan is on file with the City Clerk and may be reviewed upon request. To receive additional information regarding the OTBID 2018 or assessment, interested persons should contact Mark Everton at Visit Oakland, 481 Water Street, Oakland, CA 94607, (510) 839-9000.
15. This resolution shall take effect immediately upon its adoption by the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 17, 2018

PASSED BY THE FOLLOWING VOTE:

AYES- ~~WOMMS~~, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT ~~WOMMS~~ - 6

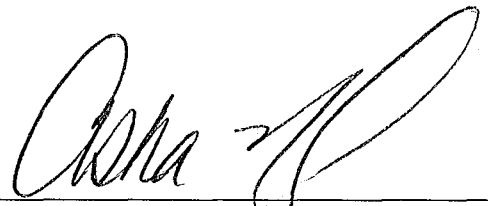
NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused - Brooks, Reed

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

(to the Resolution of Intention to Establish the OTBID 2018)

2018-2025

**OAKLAND TOURISM BUSINESS
IMPROVEMENT DISTRICT 2018
MANAGEMENT DISTRICT PLAN**

*Prepared pursuant to the Property and Business Improvement District Law of
1994, Streets and Highways Code section 36600 et seq.*

January 12, 2018

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I. OVERVIEW

The Oakland Tourism Business Improvement District 2015 (“OTBID 2015”) was created to secure stable funding for tourism promotion for a three (3) year term ending July 31, 2018. The OTBID 2015 funding has been used for sales and advertising programs directed towards attracting additional overnight stays in Oakland. The OTBID 2015 funds have also been used to attend trade shows, sales and PR missions and to host journalists and travel decision makers in the City of Oakland.

Visit Oakland now proposes the creation of a seven (7) year term Oakland Tourism Business Improvement District 2018 (“OTBID 2018”) to renew the OTBID 2015 after its term expires on July 31, 2018. The OTBID 2018, like the OTBID 2015 will provide specific benefits to assessed lodging businesses (“payors”), by funding targeted marketing and sales promotion efforts. Accomplishments from the OTBID 2015 are outlined in Section III.

Summary of the OTBID 2018

Name: The name of the renewed business improvement district shall be the “Oakland Tourism Business Improvement District 2018.”

Location: The OTBID 2018 will include all lodging businesses with fifty (50) rooms or more, located within the boundaries of the City of Oakland, as shown on the map in Section IV.

Services: The OTBID 2018 is designed to provide specific benefits directly to assessed lodging businesses by increasing room night sales and revenue therefrom. Marketing and advertising, sales, and special events programs will increase overnight tourism and market assessed lodging businesses as tourist, meeting and event destinations, thereby increasing room night sales and revenue therefrom. OTBID 2018 services will not duplicate services of other Business Improvement Districts (BIDs) or Community Benefit Districts (CBDs) in Oakland. However, the OTBID 2018 may partner with other BIDs or CBDs for promotional efforts.

Budget: The total OTBID 2018 annual budget for the initial year of its seven (7)-year operation is anticipated to be approximately \$1,542,000. This budget is expected to fluctuate as room sales do, but is not expected to significantly change over the life of the OTBID 2018.

Cost: The assessment rate shall be \$1.50 per paid occupancy per night. “Occupancy” means the compensated use of, or the unexercised right to use a room in an assessed lodging business. Based on the benefit received, the assessment shall not be collected on: the portion of stays that exceed thirty (30) consecutive days; stays by any officer or employee of a foreign or domestic government on official business, provided billing is made directly to and payment is received from the government agency qualifying for this exemption; and stays pursuant to contracts executed prior to August 1, 2015.

Collection: The City of Oakland will be responsible for receiving and redistributing on-time and late payments of the assessments from each lodging businesses located in the OTBID 2018 on a monthly, quarterly, or annual basis as described in Section VII C (including any delinquencies, penalties and interest). Visit Oakland, the designated OTBID 2018

Owners' Association shall be responsible for pursuing any delinquent payments, including related penalties and interest, as described in Section VII C.

Duration: The OTBID 2018 will have a seven (7) year life, beginning August 1, 2018 through July 31, 2025. Because this is a renewal of the OTBID established in 2015, the OTBID is allowed to have a term up to ten (10) years long per Streets and Highways Code sections 36622(h) and 36660(c).

Disestablishment: Once per year, beginning on August 1, there is a thirty (30) day period in which owners paying fifty percent (50%) or more of the assessment may petition the City Council to commence disestablishment of the OTBID 2018.

Management: Visit Oakland will serve as the OTBID 2018's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Plan, and must provide annual reports to the City Council.

II. BACKGROUND

The OTBID 2015 was formed August 1, 2015 for a three (3) year term, which will expire on July 31, 2018. The annual assessment rate for the OTBID 2015 is one dollar and fifty cents (\$1.50) per occupancy (as defined herein) per night. "Occupancy" means the compensated use of, or the unexercised right to use, a room in an assessed lodging business. The OTBID 2015 included all lodging businesses with fifty (50) or more rooms, existing and in the future, that were available for public occupancy within the boundaries of the City of Oakland.

A service plan budget was developed to deliver services that provided a specific benefit to assessed lodging businesses throughout the OTBID 2015. OTBID 2015 assessments are leveraged with Measure C tax revenues, administered by Visit Oakland, to promote tourism and hotel occupancy in Oakland.

The initial year estimated budget for OTBID 2015 was \$1,623,611. Actual collected assessments for 2015-2016 was \$1,258,668. Visit Oakland spent \$972,035. Visit Oakland's portion of Measure C revenues was \$2,727,324 for the same period. Visit Oakland spent \$2,973,858 combined to market Oakland to visitors and overnight guests. There were 3.7 million visitors to Oakland in 2017 with 41% or 1.5 million staying overnight. Visitors generated \$827 million in total business sales and was up 3.4% last year.

Hotels and Visit Oakland now desire to renew the OTBID 2015, via creation of the OTBID 2018, to continue building upon these successes.

Tourism Business Improvement Districts ("TBIDs") are an evolution of the traditional Business Improvement District. The first TBID was formed in West Hollywood, California in 1989. Since then, one hundred California destinations have followed suit.

California's TBIDs collectively raise over \$250 million for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Oakland lodging businesses continue to invest in stable, lodging-specific marketing programs.

TBIDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TBIDs allow lodging business owners to organize their efforts to increase room night sales. Lodging business owners within the TBID pay an assessment and those funds are used to provide services that increase room night sales.

In California, TBIDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. Unlike transient occupancy tax levies, TBID funds cannot be diverted to government programs.

There will be no significant changes for the proposed OTBID 2018, as compared to the OTBID 2015.

Comparison of OTBID 2018 and OTBID 2015

- OTBID 2018 has a term of seven (7) years, compared to three (3) years for the OTBID 2015.
- The boundaries of the OTBID 2018 will remain the same as before and include only those lodging businesses, existing and in the future, with fifty (50) rooms or more, located within the boundaries of the City of Oakland.
- The annual assessment rate shall remain unchanged at \$1.50 per paid occupancy per night.
- The OTBID 2018 annual budget for the initial year of its seven (7) year operation is anticipated to be approximately \$1,542,000. However, the budget will fluctuate as room sales do, and budget allocations will remain the same.
- The OTBID 2015 contingency fund budget allocation was three percent (3%) and will remain the same for OTBID 2018.
- Visit Oakland will continue to receive revenue from Measure C; there are no other significant revenue sources.

III. ACCOMPLISHMENTS

There are several reasons to renew the OTBID 2018 and to continue to secure stable funding for tourism promotion. Those reasons include:

- Visit Oakland cannot adequately market the City of Oakland with Measure C revenues alone. Without the assessment dollars raised by the OTBID 2015 and its proposed replacement, OTBID 2018, Visit Oakland would not be competitive with surrounding Bay Area markets that have more funding for their sales and marketing efforts. Losing the additional marketing dollars that OTBID 2015 provides would reduce the funds available for the sales and marketing dollars by more than fifty percent (50%).
- The OTBID 2015 has produced significant results with the additional dollars that the assessment has raised in the last year and a half (see Section II). By getting approval for the OTBID 2018, Visit Oakland can embrace the support and momentum that Visit Oakland's sales and marketing programs are generating today with the OTBID 2015, as well as proactively and confidently plan for future marketing and sales activities for OTBID 2018.

The information below provides statistics on Visit Oakland's levels of funding and marketing programs:

1. Current Funding

Visit Oakland is currently funded by OTBID 2015 assessments of approximately \$1.5 million per year and from the Measure C dedicated hotel tax, the latter of which was passed by voters in 2009. The Measure C funds provide Visit Oakland with 1.5% of all Oakland gross hotel revenues that are subject to the Transient Occupancy Tax. Dependent on the occupancy, the annual Measure C funds that Visit Oakland receives ranges from \$2.4 million to \$2.8 million. Visit Oakland's combined annual funding ranges from \$3.9 million to \$4.3 million.

2. Advertising, Marketing PR & Sales

Visit Oakland produces a complete strategic plan and annual report. All details on current marketing, sales and PR programs can be found at www.visitoakland.com/partner. Below are some key highlights of what has been accomplished in the first term of the OTBID 2015:

- Visit Oakland was able to introduce Oakland to several markets that had not been focus markets in the past. Visit Oakland's sales team attended travel trade shows in Canada and the United Kingdom. These shows have generated interest in Oakland from foreign travel trade managers. Visit Oakland has also deployed its public relations and media teams to meet with journalists in Canada and Mexico – two strong feeder markets for individual travelers. Those meetings resulted in more than a dozen journalists and digital influencers visiting Oakland to document and share their experiences.
- An awareness campaign was launched throughout Canada to 6,500 Canadian travel agents to familiarize them with what Oakland has to offer Canadian travelers. A similar awareness campaign was launched to 20,000 United Kingdom travel professionals to build awareness of Oakland in light of the British Airways non-stop flight from London to Oakland.
- Visit Oakland's involvement and collaboration with the Oakland airport (OAK) assisted in securing additional non-stop Southwest Airline destinations connecting OAK to the East Coast. Visit Oakland and OAK also secured additional non-stop European flights to Barcelona, London, Paris and Rome on Norwegian Airlines. An additional airline, Level Airlines now operates an OAK to Barcelona route.
- Oakland has experienced some of the highest growth in Average Daily Rate as a result of the increased demand for Oakland hotels.

3. Measurable Accomplishments

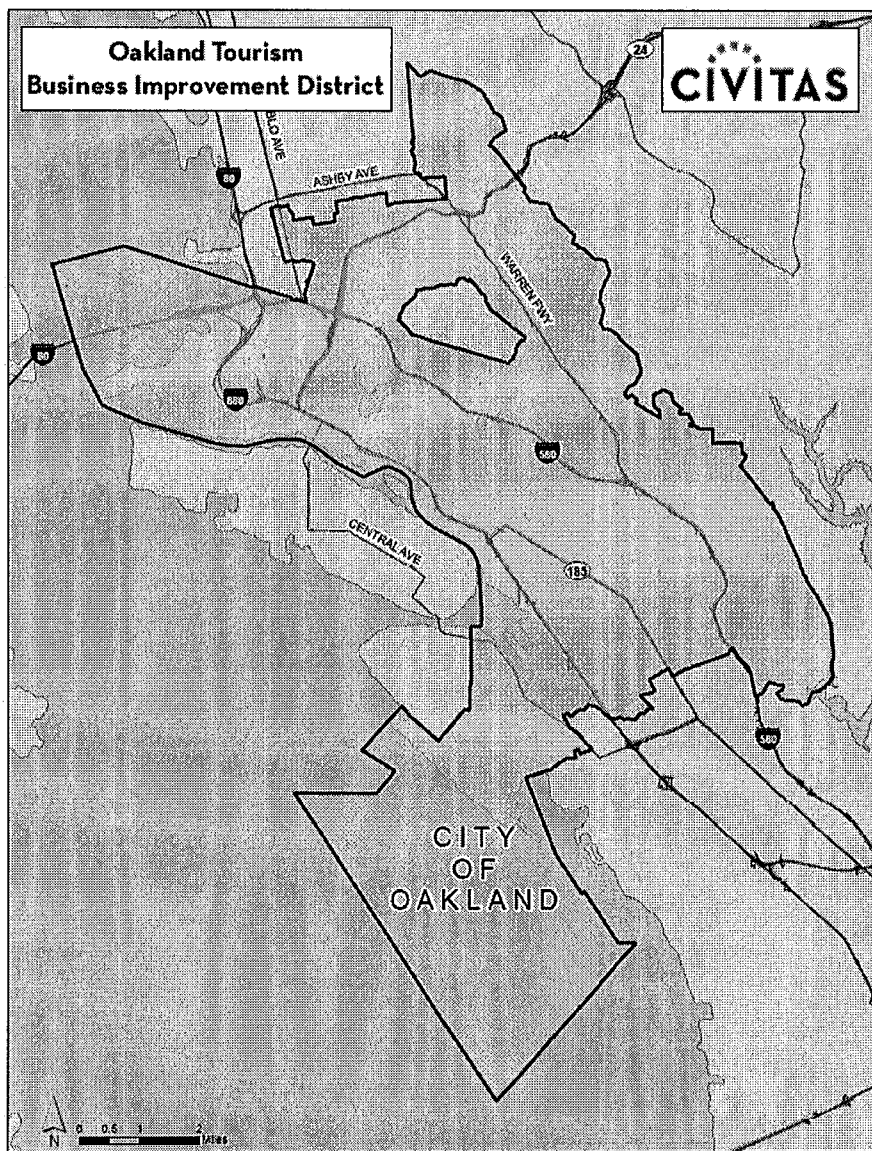
In 2011/12 the Measure C revenue received by Visit Oakland was \$1,467,103 (representing 1.5% of the total room revenue of \$97,806,866). In the 2015/2016 fiscal year the Measure C revenue received by Visit Oakland was \$2,727,324 (representing 1.5% of the total room revenue of \$181,821,600). In the four years between 2011/2012 and 2015/2016, Oakland's total hotel revenue has increased \$84,014,734 or 85% (a 21% annual average).

IV. BOUNDARY

The OTBID 2018 will include all lodging businesses, with fifty (50) or more rooms existing and in the future, available for public occupancy within the boundaries of Oakland. This is the same as the OTBID 2015.

As used herein, lodging business means: any public or private space or structure for living therein, including but not limited to any: inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place, offering the right to use such space for sleeping or overnight accommodations wherein the owner or operator thereof, for compensation, furnishes such right of occupancy to any transient.

The boundary, as shown in the map below, currently includes thirty (30) lodging businesses. A listing of lodging businesses within the OTBID 2018 can be found in Appendix 2. A map showing current business locations can be found in Appendix 3.



V. SERVICES

Assessment funds will be spent on specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the OTBID 2018 funds are marketing and advertising, sales, and special events programs available only to assessed businesses, which are designed to increase room night sales and revenue therefrom. A description of the proposed activities for the initial year of operation is below; the same activities are proposed for subsequent years.

Marketing & Advertising

A marketing and advertising program will promote assessed businesses as tourist, meeting, and event destinations. The marketing and advertising program will have a central theme of promoting Oakland as a desirable place for overnight visits. The program will have the goal of increasing overnight visitation and room night sales at assessed businesses, and may include the following activities:

- Assessed lodging businesses will have the benefit of being on the Visit Oakland website with a call to action to book through the website's booking engine;
- Assessed lodging businesses will be included in all sales and marketing materials for leisure and corporate bookings—driving room night bookings;
- Hosting large-scale events in Oakland that will generate significant room nights for assessed lodging businesses;
- Internet marketing efforts, including advertising and social media, to increase awareness and optimize Internet presence to drive overnight visitation and room sales to assessed lodging businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed lodging businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed lodging businesses;
- Visit Oakland sponsored familiarization tours, enabling decision makers to experience Oakland and in turn influence business to stay at assessed lodging businesses;
- Attendance of professional industry conferences and affiliation events to promote assessed lodging businesses;
- Sponsorship and promotion of events marketed to overnight visitors encouraging them to stay at assessed lodging businesses;
- Lead generation activities designed to attract tourists and group events to assessed lodging businesses;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed lodging businesses; and
- Development and maintenance of a website designed to promote assessed lodging businesses.

Sales

The sales program will be designed to secure direct bookings at assessed lodging businesses. Sales activities may include:

- Sales blitzes for assessed lodging businesses;
- Assessed lodging businesses will be included in Visit Oakland hosted familiarization tours and media visits;
- Sales staff dedicated to generating room night sales via group and event business;

- Attendance of trade shows to promote assessed lodging businesses; and
- Lead generation activities designed to attract tourists and group events to assessed lodging businesses.

Special Events

The special events portion of the budget will be used to obtain and promote special events that draw overnight visitors to assessed lodging businesses. Assessed lodging businesses shall be the only lodging businesses given the opportunity to sponsor these events and to receive direct booking opportunities.

Administration & Operations

In order to provide the marketing and advertising, sales, and special events services, Visit Oakland will incur various administrative costs, such as staffing, rent, advocacy, insurance, legal, and accounting fees.

City Administration Fee

The City of Oakland shall retain a fee equal to three percent (3%) of received assessments to cover its ordinary administrative costs.

Contingency/Reserve

In order to ensure effective provision of services, a contingency fund will be maintained to account for uncollected assessments or unanticipated program costs. Contingency funds collected, may be held in a reserve fund or utilized for other OTBID 2018 program, administration or renewal costs at the discretion of Visit Oakland. Policies relating to contributions to the reserve fund, and expenditure of the reserve fund shall be set by Visit Oakland. The amount of the reserve shall be in accordance with the OTBID 2018 budget described in Section VI below. If the reserve fund is used to form a renewed replacement district when the OTBID 2018 expires, and the replacement district includes businesses that are not in the current OTBID 2018, the portion of the costs of the replacement district renewal attributable to those new businesses may not be paid for from the above contingency/reserve fund.

VI. BUDGET

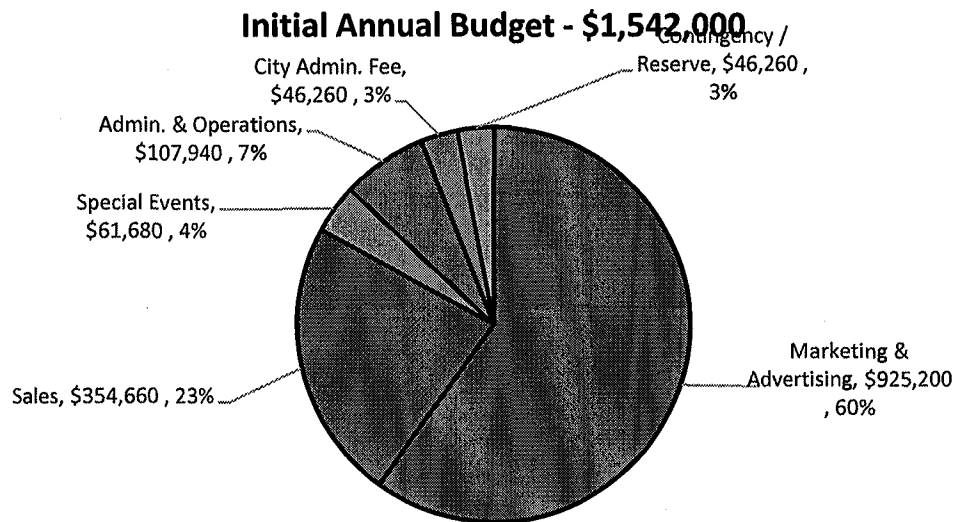
A. Total Annual Budget

The total seven (7) year budget is projected at approximately \$1,542,000 annually, or approximately \$10,794,000 through 2025. If however, room night occupancy volume were to increase, then OTBID 2018 revenues would increase proportionally. Therefore, the OTBID 2018 budget is expected to fluctuate as room sales do, but is not expected to significantly change over the life of the OTBID 2018.

B. Budget Allocations

The budget allocations for the initial year are shown below. Although actual annual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain consistent. However, with the exception of the three percent (3%) city administration fee, Visit Oakland shall have the authority to adjust categorical allocations by up to ten percent (10%) of the total budget each year. Any adjustments in excess of ten percent (10%) of the annual budget must also be approved by the Oakland City Council and may require modification of this Management District Plan. No reallocation of service category funds may cause a category to be eliminated. The Visit Oakland Board of Directors may annually recommend changes to the budget based upon service needs and such changes shall be included in the annual report submitted to the City for City Council approval (Streets and Highways Code section 36650). In the event of a legal challenge against the OTBID 2018, any and all assessment funds may be used for the costs of defending the OTBID 2018, the City, and Visit Oakland related to the OTBID 2018 upon authorization by the Visit Oakland Board of Directors.

The initial annual budget of \$1,542,000 will be allocated as follows:



C. GAAP Compliance

Each budget category includes all costs related to providing that service, in accordance with Generally Accepted Accounting Procedures (GAAP). For example, the sales and marketing budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of employing an individual staff member may be allocated to multiple budget categories, as

appropriate in accordance with GAAP. The staffing levels necessary to provide the services below will be determined by Visit Oakland on an as-needed basis.

VII. ASSESSMENT

A. Assessment

The annual assessment rate shall be \$1.50 per paid occupancy per night, which is the same rate as the OTBID 2015. "Occupancy" means the compensated use of, or the unexercised right to use, a room in an assessed lodging business. The assessment rate is a fixed amount, levied upon all assessed businesses at the same rate. Assessed lodging businesses will receive the same level of OTBID 2018 services irrespective of their location or size. Smaller assessed businesses will cumulatively pay less annually into the OTBID 2018 fund versus larger assessed businesses based on occupancy and available inventory. Based on the benefit received, the assessment shall not be collected on: the portion of stays that exceed thirty (30) consecutive days which is also exempt from Transient Occupancy Tax; stays by any officer or employee of a foreign or domestic government on official business, provided billing is made directly to and payment is received from the government agency qualifying for this exemption; and stays pursuant to contracts executed prior to August 1, 2015.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to customers. The amount of assessment, if passed on to each customer, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each customer shall receive a receipt for payment from the business. The assessment shall be disclosed as the "OTBID Assessment." The assessment is imposed solely upon, and is the sole obligation of the assessed lodging business even if it is passed on to customers. The assessment shall not be considered revenue for any purpose including calculation of transient occupancy taxes.

Bonds shall not be issued.

B. Penalties and Interest

Visit Oakland shall be responsible for collection of delinquent assessments and for costs associated with collecting unpaid assessments. If sums in excess of the delinquent OTBID 2018 assessment are sought to be recovered in the same collection action, the OTBID 2018 shall bear its pro rata share of such collection costs. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. Any lodging business which fails to remit any assessment imposed within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. If the City determines that the nonpayment of any assessment due is the result of fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in subsection 1 of this section.
3. In addition to the penalties imposed, any lodging business which fails to remit any assessment imposed shall pay interest at the rate of one half of one percent (0.50%) per month or fraction thereof on the amount of the assessment, inclusive of penalties, from the date on which the assessment first became delinquent until paid.

4. Every penalty imposed and such interest as accrues under the provision of this section shall become a part of the assessment herein required to be paid.
5. The City has the power to impose the penalties described above, and the power to take legal action to collect all delinquent assessments and penalties. However, the City does not have the obligation to take such legal action. Visit Oakland will have the primary responsibility for pursuing delinquent assessments and for taking legal action for such amounts, as the City may authorize. If the City takes collection or legal action on delinquent assessments and penalties, it will be entitled to compensation for its costs and expenses.

C. Time and Manner for Collecting Assessments

The OTBID 2018 assessment will become effective August 1, 2018 and will continue for seven (7) years through July 31, 2025. The City will be responsible for receiving and redistributing on-time and late payments of the assessment from effected lodging businesses located in the boundaries of the OTBID 2018 (including any penalties and interest). The City has the power to impose the penalties described in section VII B above, and the power to take legal action to collect all delinquent assessments and penalties. However, the City does not have the obligation to take such legal action here. The OTBID 2018 Owner's Association will have the primary responsibility for pursuing delinquent assessments and for taking legal action for such amounts. If the City takes collection or legal action on delinquent assessments and penalties, it will be entitled to compensation from the OTBID 2018 for its costs and expenses. The City will be responsible for receiving and redistributing on-time and late payments of the assessment from effected lodging businesses located in the boundaries of the OTBID 2018 (including any penalties and interest). The assessment shall be due on a quarterly, monthly, or annual basis depending on business revenue. Each business which received one hundred thousand dollars (\$100,000) in gross receipts during the previous calendar year shall on or before the tenth (10th) day following each month submit the amount of the assessment due. Each business which received between five thousand dollars (\$5,000) and ninety-nine thousand nine hundred ninety-nine dollars and ninety-nine cents (\$99,999.99) in gross receipts during the previous calendar year shall on or before the last day of the month following the close of each calendar quarter submit the amount of the assessment due. Each business which received under five thousand dollars (\$5,000) in gross receipts during the previous calendar year shall, on or before January 31st of each year, submit the amount of the assessment due. The City shall forward the assessments collected, less the City's administration fee, to the Owners' Association pursuant to the terms and conditions outlined in a written agreement to be executed between the City and the Owners' Association.

VIII. CALIFORNIA CONSTITUTIONAL COMPLIANCE

The OTBID 2018 is subject to certain provisions of the California Constitution. Although it levies an assessment, the OTBID 2018 is not a property-based assessment subject to the requirements of Article XIII D of the Constitution (“Proposition 218”). The Court has found, “Proposition 218 limited the term ‘assessments’ to levies on real property.”¹ Rather, the OTBID 2018 assessment is a business-based assessment, and is subject to Article XIII C of the Constitution (“Proposition 26”). Pursuant to Proposition 26 all City levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the OTBID 2018, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

A. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed lodging businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific lodging businesses within the OTBID 2018. The activities described in this Plan are specifically targeted to increase room night sales for assessed lodging businesses within the boundaries of the OTBID 2018, and are narrowly tailored. OTBID 2018 funds will be used exclusively to provide the specific benefit of increased room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in OTBID 2018 programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

The assessment imposed by the OTBID 2018 is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in room night sales and revenue therefrom. The specific benefit of an increase in room night sales for assessed lodging businesses will be directly provided only to lodging businesses paying the OTBID 2018 assessment, with marketing and sales programs promoting only those lodging businesses paying the assessment. The marketing and sales programs will be designed to increase room night sales at each assessed lodging business. Because they are necessary to provide the marketing and sales programs that specifically benefit the assessed lodging businesses, the administration, collection and contingency expenditures also provide the specific benefit of increased room night sales to the assessed lodging businesses.

Although the OTBID 2018, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.”³

¹ Jarvis v. the City of San Diego 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

³ Government Code § 53758(a)

B. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing and promotions services like those to be provided by the OTBID 2018 are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor.”⁶

C. Reasonable Cost

OTBID 2018 services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by Visit Oakland, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from district-funded activities, be featured in advertising campaigns, and directly benefit from other OTBID 2018-funded services. Non-assessed lodging businesses will not directly receive these, nor any other, OTBID 2018-funded services and benefits.

The OTBID 2018-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-OTBID 2018 funds, such as Measure C funds. OTBID 2018 funds shall only be spent to benefit the assessed businesses, and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

Visit Oakland is currently funded by OTBID 2015 assessments of approximately \$1.5 million per year and by dedicated hotel tax revenues, Measure C, which was passed by voters in 2009. The Measure C funds provide Visit Oakland with 1.5% of all Oakland gross hotel revenues that are subject to the Transient Occupancy Tax. Dependent on the occupancy, annual Measure C funds received by Visit Oakland ranges from \$2.4 million to \$2.8 million. These funds are available to contribute to any proposed activity that includes benefit to non-assessed lodging businesses, ensuring that assessments will not be used to provide benefit to non-payors.

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

IX. GOVERNANCE

A. Owners' Association

Pursuant to Streets and Highways Code Section 36621, the Owners' Association of the OTBID 2018, as defined in Streets and Highways Code Section 36612, will be the Oakland Convention and Visitors Bureau, doing business as Visit Oakland. Visit Oakland is a private, not-for-profit, 501(c)(6) organization, which currently has an 18-member Board of Directors and 10 full time staff. Nine of the current Directors are hoteliers, as required by the Visit Oakland bylaws. In addition to OTBID 2018 funds, Visit Oakland is supported by a dedicated hotel tax, Measure C, which was passed by voters in 2009, and the assessment revenues collected under the OTBID 2015 starting August 1, 2015. The mission of Visit Oakland is to increase tourism's economic impact to Oakland through destination development and brand management. Pursuant to a written agreement to be signed with the City, Visit Oakland will provide the services for the OTBID 2018.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of Visit Oakland board and certain committees wherein the OTBID 2018 is discussed must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

C. Annual Report

Visit Oakland shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- 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.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

D. Proposed Rules and Regulations

The following rules and regulations will be employed in the administration of the OTBID 2018.

Competitive Bidding

Visit Oakland will use a competitive bidding process to secure any contracted services for the OTBID 2018.

Conflict of Interest

Any member of the Board of Directors of Visit Oakland shall recuse him or herself from any vote in which a potential conflict of interest is apparent. Such potential conflicts include, but are not limited to, prioritizing projects which result in special benefit to specific business owners, prioritization of series to benefit a particular business owner or group of business owners, and hiring or selecting contractors.

Open Meetings

Meeting of the Board of Directors of Visit Oakland shall be open to all business owners that are paying into the district as well as the general public according to the Ralph M. Brown Act and any other applicable legislation. All OTBID 2018-related reports shall be available for review by any business owner in the district.

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APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2018 SUPPLEMENT ***
(ALL 2017 LEGISLATION)

STREETS AND HIGHWAYS CODE DIVISION 18. PARKING PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
 - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
 - (2) Job creation.
 - (3) Business attraction.
 - (4) Business retention.
 - (5) Economic growth.
 - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
 - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.
 - (2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed.

Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. “Activities”

“Activities” means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. “Assessment”

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

“Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
- (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a

statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that

the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that 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 50 percent, no further proceedings to levy the proposed assessment against such businesses, 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.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.
- (2) The number, date of adoption, and title of the resolution of intention.
- (3) The time and place where the public hearing was held concerning the establishment of the district.
- (4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.
- (5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.
- (6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.
- (7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

- (8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.
- (b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

- (a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.
- (b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.
- (c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

- (a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:
 - (1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.
 - (2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.
- (b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

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

- (1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
- (2) The improvements, maintenance, and activities to be provided for that fiscal year.
- (3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.
- (4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
- (5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- (6) The estimated 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 owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

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, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

- (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
- (b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
- (c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

- (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:
 - (1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
 - (2) During the operation of the district, there shall be a 30-day period each year in which assesseses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

- (a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

	Name	Address
1	AMERICANS BEST VALUE INN OAKLAND LAKE MERRITT	122 E 12 TH ST
2	BAY BREEZE INN	4919 COLISEUM WAY
3	BEST WESTERN AIRPORT INN & SUITE	170 HEGENBERGER LOOP
4	BEST WESTERN PLUS BAYSIDE HOTEL	1717 EMBARCADERO
5	CLAREMONT HOTEL CLUB & SPA	41 TUNNEL RD
6	CLARION HOTEL DOWNTON OAKLAND CITY CENTER	371 13 TH ST
7	COMFORT INN & SUITES OAKLAND	8452 EDES AVE
8	COURTYARD OAKLAND AIRPORT	350 HEGENBERGER RD
9	COURTYARD OAKLAND DOWNTOWN	988 BROADWAY
10	DAYS INN HOTEL SAN FRANCISCO OAKLAND AIRPORT COLISEUM	8350 EDES AVE
11	ECONO LODGE INN & SUITES OAKLAND AIRPORT	10 HEGENBERGER RD
12	EMPYREAN TOWERS	344 13 TH STREET
13	EXECUTIVE INN	1755 EMBARCADERO
14	EXTENDED STAY AMERICA OAKLAND EMERYVILLE	3650 MANDELA PKWY
15	HILTON OAKLAND AIRPORT	1 HEGENBERGER RD
16	HOLIDAY INN EXPRESS & SUITES OAKLAND AIRPORT	66 AIRPORT ACCESS RD
17	HOLIDAY INN HOTEL & SUITES OAKLAND AIRPORT	77 HEGENBERGER RD
18	HOMEWOOD SUITES OAKLAND WATERFRONT	1103 EMBARCADERO
19	HOTEL TRAVELERS	392 11 TH STREET
20	INN @ JACK LONDON SQUARE	233 BROADWAY
21	JACK LONDON INN	444 EMBARCADERO W
22	JOIE DE VIVRE WATERFRONT HOTEL	10 WASHINGTON ST
23	LA QUINTA INNS & SUITES OAKLAND AIRPORT COLISUEM	8465 ENTERPRISE WAY
24	MARRIOTT OAKLAND CITY CENTER	1001 BROADWAY
25	MOTEL 6 OAKLAND AIRPORT	8480 EDES AVE
26	MOTEL 6 OAKLAND EMBARCADERO	1801 EMBARCADERO
27	QUALITY INN OAKLAND	8471 ENTERPRISE WAY
28	RADISSON HOTEL OAKLAND AIRPORT	8400 EDES AVE
29	RED LION HOTEL OAKLAND INTERNATIONAL AIRPORT	150 HEGENBERGER RD
30	SUTTER HOTEL	584 14 TH STREET

