



Council Meeting: May 21, 2013

SUBJECT: Public Hearing, Discussion and Possible Action to Adopt a Resolution to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District for Fiscal Year 2013/2014

BACKGROUND

On April 9, 2013, the City Council adopted a Resolution of Intention ("ROI") to reauthorize the Downtown Sunnyvale Business Improvement District ("BID") and set the public hearing for May 21, 2013. The public hearing provides BID businesses an opportunity to express their comments to City Council. City Council will hear and consider any and all protests against the renewal of the BID, and/or any protest regarding the proposed activities of the proposed BID.

If, at the conclusion of the public hearing, businesses paying 50 percent or more of the total BID assessments file a protest, no further proceedings to reauthorize the BID can occur. If protests do not exceed 50 percent, staff recommends that Council adopt the Resolution to Levy an Annual Assessment for Fiscal Year 2013/2014 (Attachment A).

Downtown Sunnyvale BID

There are approximately 160 businesses located in the existing BID area, which is divided into three zones: Zone A, Zone B, and Zone C. The current BID boundaries are Sunnyvale, Iowa, Mathilda and Evelyn Avenues (Attachment A).

The current Board members are:

- Joe Antuzzi, Il Postale Restaurant
- Gary Hurd, French Quarter
- Johnny Sevey, Rok Bistro
- Kathy Johnson, Broadcom
- Leigh Odum, Leigh's Favorite Books
- Gary Gold, Dr. Gold & Associates
- Joel Wyrick, SDA/BID Executive Director (non-voting member)

EXISTING POLICY

Municipal Code Sections - Downtown Sunnyvale Business Improvement District:

- 3.60.050. Establishment of benefit assessments.
- 3.60.060. Purpose and use of benefit assessments.
- 3.60.090. Collection of benefit assessment.

General Plan-Land Use and Transportation - Economy

Policy LT-7.4 Create a strong, identifiable central business district that provide regional and citywide shopping opportunities.

DISCUSSION

Per Sunnyvale Municipal Code Section 3.60.050, Establishment of benefit assessments, the formula calculating the BID assessment amount is determined by the BID Board and enacted by the City. Assessments are levied on businesses on the basis of relative benefit from the activities to be funded. The City collects the assessment fee and forwards the collected funds to the BID. The City charges the BID a fee for administrative costs associated with this service. The cost is reviewed and adjusted annually as needed.

Process

Under Streets and Highways Code Section 36500-36504, business owners have the opportunity to protest against furnishings of specified types of activities or improvements. A protest may be made orally or in writing by any interested person. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from business owners in the BID who will pay 50 percent or more of the assessments proposed and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment, as contained in the ROI, shall be taken for a period of one year from the date of the finding of a majority protest by the city council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the area, those types of improvements or activities shall be eliminated.

The process for the public hearing is:

- Open the public hearing and hear public comments and protests that were not received prior to Council meeting.
- City staff will receive any written protests from registered business owners. Each written protest shall contain a description of the business in which the person is 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. A written protest which does not comply with this section shall not be counted in determining a majority protest.
- Staff will begin logging written, confirmed protests at the beginning of the public hearing. If the protests are tabulated before the end of the public hearing, staff will be able to convey the outcome and Council will be able to take action.

- If the protests are not tabulated before the end of the public hearing, Council may take a short break (5 minutes for tabulation) or continue this item and move on to the next agenda item. At the conclusion of the agenda item after the tabulation is complete, the Mayor will re-open the item and staff will then report the results of the ballot tabulation and Council can take action.
- If total protests do not exceed 50 percent or more of the BID's total assessments, Council may take action to adopt the Resolution to Levy an Annual Assessment for the BID.

If the Resolution to Levy an Annual Assessment (Attachment A) is adopted, the BID Board can adopt a list of activities to be funded by the BID. However, the final activities cannot be voted on by the BID board until the BID is funded.

The benefit assessment established for Sunnyvale businesses shall be billed and collected by July 15, 2013. Payments will be considered late if not received on or before the due date listed on the invoice. Businesses will accrue late fees for every 30 days delinquent after original due date. A 10 percent late penalty will be added to the assessment amount for every 30 days payment is late. The penalty fees will accrue for up to five months after the original due date. If payment is not received after five months, the City will forward delinquent accounts to a collections agency for further action. Once the business is assigned to the collections agency, additional fees will accrue.

FISCAL IMPACT

There is no impact to the General Fund. The City charges the BID for any costs associated with collecting the assessments. Finance staff has estimated a cost of \$2,500 annually.

Adoption of the resolution to levy an annual assessment for the Downtown Sunnyvale Business Improvement District does not constitute City endorsement of BID's budget (Attachment B), nor does it obligate the City to incur any of the expenses projected by that report.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website. Staff mailed and hand-delivered notices to BID members announcing the Public Hearing. Additional outreach was done by the BID Board through email communications to their members.

As required by state law, Resolution of Intention number 574-13 adopted on April 9, 2013 was mailed to all BID members and was also published in the legal ads section of the Sunnyvale Sun on May 3, 2013.

SECTION 4. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment. The City Council therefore directs that the Office of Economic Development may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the requirements of CEQA.

ALTERNATIVES

1. Adopt the Resolution to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District.
2. Do not approve Resolution of the City of Sunnyvale to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District.
3. Continue item and restart the legal process, beginning with re-noticing for a Resolution of Intention.

RECOMMENDATION

Staff recommends approval of Alternative #1.

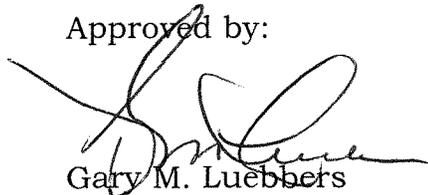
Reviewed by:



Robert Walker, Assistant City Manager

Prepared by: Connie Verceles, Economic Development Manager

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Resolution of the City of Sunnyvale to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District for Fiscal Year 2013/2014
- B. BID Annual Report for FY 2012/2013 and Proposed Annual BID Budget

ATTACHMENT A

RESOLUTION NO. ____-13

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE TO LEVY AN ANNUAL ASSESSMENT FOR
THE DOWNTOWN SUNNYVALE BUSINESS
IMPROVEMENT DISTRICT FOR FISCAL YEAR 2013-2014**

WHEREAS, on April 9, 2013, the City Council of the City of Sunnyvale (the "City") adopted Resolution of Intention to Reauthorize the Downtown Sunnyvale Business Improvement District (Resolution No. 574-13) (the "District"), to levy a benefit assessment on all businesses, trades, professions, and vendors within said District, the proceeds of which shall be used for the public purposes herein described in the Parking and Business Improvement Area Law of 1989, (commencing with Section 36500), of the California Streets and Highways Code (the "Act") and Title 3, Chapter 3.60 of the Sunnyvale Municipal Code; and

WHEREAS, the City Council conducted a public hearing on the reauthorization of the assessment, having given due notice thereof as required by law, on May 21, 2013, at 7:00 p.m. at City Hall, 456 West Olive Avenue, Sunnyvale, California, and every interested person was provided an opportunity to object to or protest the report, the proposed improvements and the activities to be funded from levy of the assessments.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE:

1. Report. The City Council hereby approves the Business Improvement District Annual Report for FY 2013-2014 ("Annual Report") attached as Exhibit ____.
2. Boundaries. The City Council hereby approves of the boundaries of the Business Improvement District and the benefit zones within the area as set forth in the Annual Report.
3. Assessment. The City Council finds that the amount of the assessments has fairly and properly apportioned the cost of the improvements to each business in the District in proportion to the estimated benefits to be received by each business. The City Council hereby confirms the assessment and levies each individual assessment, as provided for in the Annual Report, for fiscal year 2013-2014.
4. Protest Hearing. The City Council conducted a hearing concerning the reauthorization of the business improvement district. At the conclusion of the public hearing, the City Council considered comments from the affected businesses, considered modifications in the report, and confirmed the report as originally filed or as changed by it, which constitute the levy of the assessment for the fiscal year 2013-2014.

5. Method of Collection. The benefit assessment for Downtown Sunnyvale businesses shall be billed and collected by July 15, 2013. Payments will be considered late if not received on or before the due date listed on the invoice. The business will accrue late fees for every 30 days delinquent after the original due date. A 10% late penalty will be assessed to in addition to the assessment amount for every 30 days payment is late. The penalty fees will be accrued for up to five months after original due date. If payment is not received after five months, the City will forward delinquent accounts to collections agency for further action. Once the business is assigned to the collections agency, additional fees will accrue.

Adopted by the City Council at a regular meeting held on May 21, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

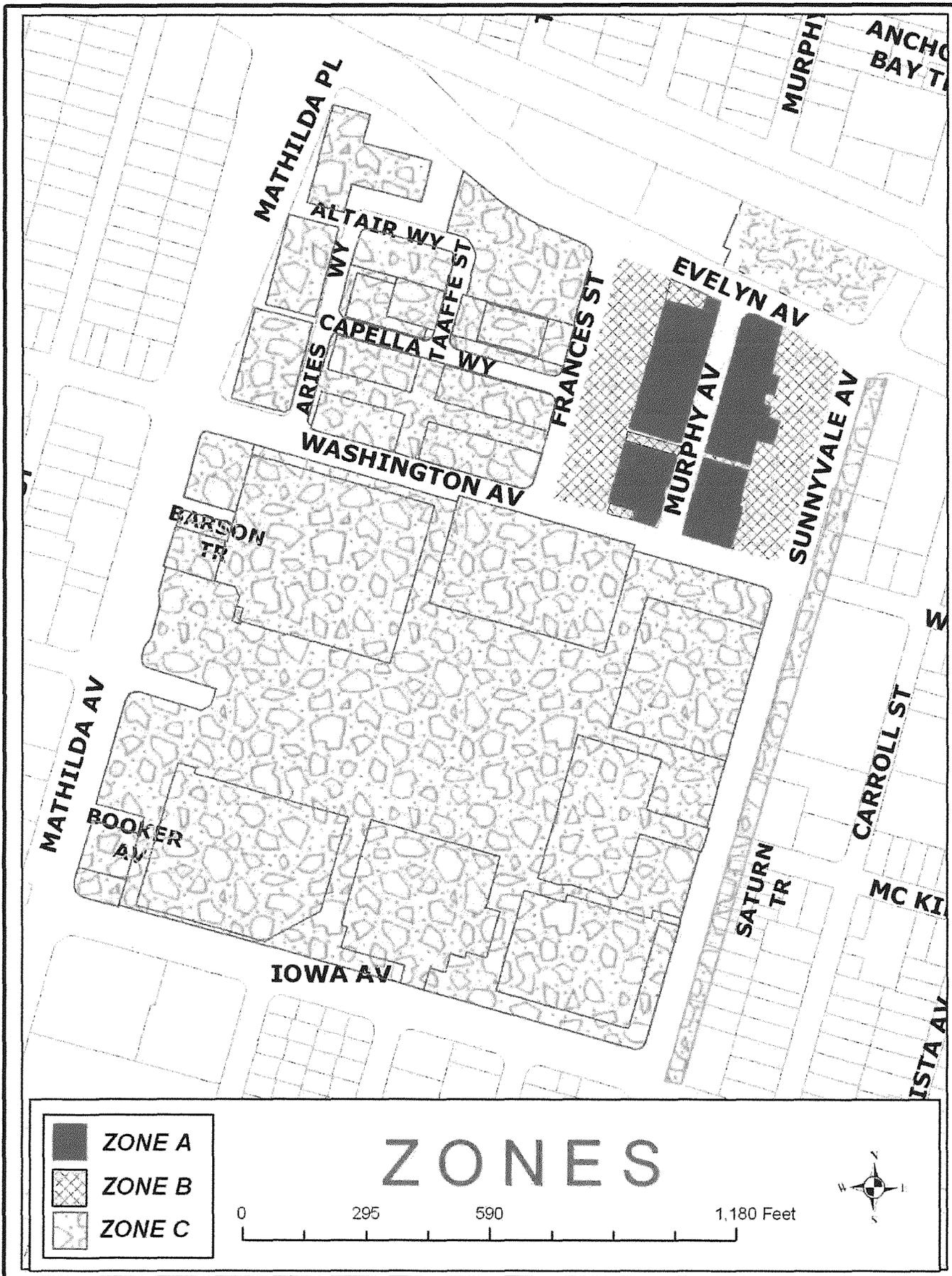
City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

Joan Borger, City Attorney

SUNNYVALE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT



ATTACHMENT B



March 6, 2013

TO: Mayor and City Council members
City of Sunnyvale

FROM: Joel Wyrick & The BID Board
Sunnyvale Downtown Association (SDA)

RE: State of the BID/SDA

Dear Sirs and Ma'am,

On February 6, 2013 the Board of Director's approved the renewal of the BID. Attached (Exhibit A) is a copy of the SDA's expense & revenue report for July 1, 2012 through June 30, 2013 along with projections for the 2013/14 fiscal year.

Past

Our start-up funding comes from the BID, which amounted to approximately \$28,197. For our 2013/14 fiscal year the SDA staff and Board decided to use the monies to produce The Magic of Sunnyvale Wine Stroll, Summer Series Music + Market, The Jazz & Beyond Series and the Holiday & Christmas Tree Lighting. The production of last year's events grossed 106k from the sales, sponsorships and grants.

Present/For the Year

The Board approved the Executive Director's annual budget and his recommendations for the upcoming 2013 year.

Event Revenue & Overview

All events stayed within budget. As in years past The Christmas Tree Lighting has no sales associated with the event but turns a profit due to very little City service fees attached to the event and good sponsorship support. The Magic of Sunnyvale Downtown Wine & Food Stroll took a little dip due to lack of promotion as we didn't hoist a banner on El Camino nor advertise in the Sun and Santa Clara Weekly's as years' past.

Event Sponsorships

Staff were able to secure strong sponsorships for last year's events. Continual support has come from Broadcom, BRE, Carmel Properties, and Palo Alto Medical Foundation.

Future

The BID Board strongly recommends that we continue the BID assessment. The BID serves as the SDA's seed money. Without the BID, we couldn't provide the services and events to our community. The BID will continue with producing quality events and promoting downtown Sunnyvale as a good place to visit, shop and do business. These events are especially important to continue to attract patrons to downtown.

As we know, the BID is a self-imposed tax of the downtown businesses. Outside of paying their standard fees, taxes and licenses associated with owning and operating a business these businesses have been and continue to reach into their pockets and come up with additional monies to: promote, market and create events for the City of Sunnyvale and our community.

Once again, we ask that the City Council consider matching the contribution made by the businesses. There are two fundamental reasons why. One, most of our events should be City partnered events. We are one of the few cities who doesn't partner or produce large community events for their downtown community. This has been our intent for a few years now, but past council members felt we needed to show that our organization was capable of marketing Sunnyvale. The last three years has proven that the SDA can create new events, market and produce events at a fraction of the cost of what the City would have to pay and still provide a safe quality event. Of course, the City would have direct input and final approval on where or what their contribution will be used for. Secondly, these matching dollars will enable us to compete with the other communities by producing yearlong quality events, retain quality staff and market our city/downtown through our website and visitors guide. As a downtown our initial marketing budget is \$28,000 (twenty-eight thousand). We as a city have to become more proactive when marketing ourselves. Our events and efforts bring new people to our downtown. Our visitors may come with intent on attending a certain event as advertised, but they soon discover the great amenities that set Sunnyvale apart from all of the other south bay cities. A real downtown that features great restaurants, retail stores and housing - a new place they can call home. .

All of the marketing, events and activities produced by the SDA is a direct reflection of our City. SDA would like the city of Sunnyvale to be a fiscal partner. We are not asking for a hand-out; we are asking for a hand. We recognize this as a true partnership, should the businesses decide to no longer pay into the BID the city shouldn't either. Our partnership becomes even more critical as were are the closest city with a downtown to the new 49er stadium. If done correctly we will be the downtown to go to before and after any event that comes to the stadium. We should be looking to create some kind of 49er celebration event during pre-season or at season opener in hopes of establishing downtown Sunnyvale as the downtown of the 49ers!

The last remaining piece to the BID would be the expansion of the BID footprint to include the west side of Mathilda Avenue and the south side of Iowa Ave. We feel this would be a logical move to include both sides of the street similar to what we include for Evelyn Avenue and Sunnyvale Avenue. We have done extensive outreach to the new businesses and have received no objections to becoming part of the BID. We have visited and mailed notices to those businesses. In addition, we hosted two public outreach meetings for those within the new boundaries to answer any questions regarding the expansion. It was explained to them that their benefits will include being listed both in the online and printed downtown directories.

Commercial marketing and promotion will continue. Resources for marketing will include local and regional publications. Maintenance of the SunnyvaleDowntown.com and Facebook sites will continue in order to maintain an internet presence.

Overview

I am proud to say we are arguably one of the most productive downtown associations in the bay area, considering the seed money we start with. Other associations are quite impressed with our efficiency and the amount of events and services we provide our BID members. We continually seek out ways to create an even more attractive downtown for the community and its visitors and give the patrons even more reasons to visit our downtown so that our existing businesses survive these competitive economic times.

We look forward to working with the new developer (of the former Town Center site) and hope that the City includes the SDA in its dialogue. The SDA strongly believes that mitigation fees should be part of this dialogue and be re-instituted as soon as a new developer takes over the project. Block 18 is paramount in the making a vibrant downtown Sunnyvale and allowing the SDA to be part of the process would only make it an even better place to live, work and play.

Proposed projects are based on the proposed budget for 2013. Projects/events will be modified based on budget actuals as assessments are made and sponsorships are received.

Thank you for your support and once again please support our request to continue the BID assessments.

If you have any questions please do not hesitate to call the SDA at 408-516-7217.

SDA ORGANIZATION EXPENSE & REVENUE				2012-13	2013-14	Notes & Comments
				Budget	Projected	Projected
EXPENSES						
	Advertising, Promotion & Marketing			\$ -	\$ 3,500.00	Visitor's Guide
	Commissions & Fees (memberships, etc.)			\$ -	\$ -	
	Conferences, meetings & seminars (attended)			\$ -	\$ -	
	Contract Labor			\$ 39,600.00	\$ 39,600.00	
	Dues/Subscriptions/Contributions			\$ -	\$ -	
	Employee Health Benefits			\$ -	\$ -	
	Events (costs directly associated with the event)					
	Magic of Sunnyvale Wine & Food Stroll			\$ 9,900.00	\$ 11,000.00	
	Summer Series Music + Market			\$ 51,000.00	\$ 48,000.00	
	Jazz & Beyond			\$ 25,225.00	\$ 26,000.00	
	Holiday Christmas Tree Lighting			\$ 4,300.00	\$ 5,000.00	
	Sunnyvale Downtown Cinema					subject to funding
	Finance Services Charges			\$ -	\$ -	
	Insurance					
	General			\$ 3,500.00	\$ 3,500.00	
	Directors & Officers			\$ -	\$ -	
	Workman's Compensation			\$ -	\$ -	
	Janitorial & Cleaning			\$ -	\$ -	
	Legal & Accounting			\$ 753.00	\$ 800.00	
	Audit			\$ -	\$ -	
	Legal			\$ -	\$ -	
	Maintenance, Beautification & Repair			\$ -	\$ 1,250.00	
	Office Supplies			\$ 450.00	\$ 450.00	
	Payroll Taxes			\$ -	\$ -	
	Postage			\$ -	\$ -	billed to individual projects
	Printing & Reproduction			\$ -	\$ -	billed to individual projects
	Purchases			\$ -	\$ -	
	Rent			\$ 2,500.00	\$ 3,000.00	(no office 2012 - PO box & Pod)
	Staff Salaries			\$ -	\$ -	none we subcontract everything
	Supplies (non office)			\$ 1,800.00	\$ 1,800.00	
	Taxes, Licenses & permits			\$ 291.00	\$ 300.00	
	Telephone/ Internet/Website			\$ 1,040.00	\$ 1,040.00	
	Travel & Entertainment			\$ -	\$ -	
	Utilities			\$ -	\$ -	
TOTAL EXPENSES				\$ 140,359.00	\$ 145,240.00	

