

RESOLUTION NUMBER R- 308097DATE OF FINAL PASSAGE APR 25 2013A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SAN DIEGO APPROVING THE FY 2013 REPORT OF  
ACTIVITIES – PART II FOR THE TOURISM  
MARKETING DISTRICT.

WHEREAS, the initial term of San Diego Tourism Marketing District (“TMD”) was set to expire on December 31, 2012; and

WHEREAS, on June 28, 2012, pursuant to San Diego Municipal Code section 61.2521, the San Diego Tourism Marketing District Corporation (“TMD Corporation”) prepared, and the City Council approved, a prospective report of activities for the first half of Fiscal Year 2013 describing the activities to be performed in Fiscal Year 2013 and the associated costs to be paid for by the assessments levied against business within the TMD from July 1, 2012 through December 31, 2012 (“FY 2013 Report of Activities – Part I”), on file in the Office of the City Clerk as Document No. RR-308026-1; and

WHEREAS, an additional \$1,646,616 of assessment revenue was collected by the City between July 1, 2012 and December 31, 2012 over the projected amount budgeted in the FY 2013 Report of Activities – Part I; and

WHEREAS, to reflect this additional revenue, TMD Corporation prepared a revised FY 2013 Report of Activities – Part I (“Revised FY 2013 Report of Activities – Part I”) showing actual revenue collected and making refinements to the activities to be performed in Fiscal Year 2013, on file in the Office of the City Clerk as Document No. RR- 308026-2; and

WHEREAS, on September 25, 2012, the City Council adopted Resolution No. R-307702, entitled "A Resolution of the Council of the City of San Diego Declaring the Intention of the City Council to Renew the San Diego Tourism Marketing District, and Associated Assessment, Through June 30, 2052, Directing the Mailing of Ballots to Identified Businesses, and Setting Dates for a Public Meeting and a Public Hearing with Respect to the Renewal" ("Resolution of Intention"), which among other things, stated the intention of the City Council to renew the TMD for a 39.5-year period from January 1, 2013 through June 30, 2052; and

WHEREAS, a proposed District Management Plan for the renewal period, including a description of the assessment to be levied in connection with the TMD, is on file with the City Clerk as Document No. RR- 307843 ("District Plan"); and

WHEREAS, as directed by the Resolution of Intention, notice of a public meeting and of a public hearing regarding the TMD renewal was mailed to identified lodging businesses, and an assessment ballot was enclosed with each mailed notice; and

WHEREAS, on October 23, 2012 at 2:00 p.m. in the City Council Chambers located at 202 "C" Street, 12th Floor, in San Diego, the City Council held a public meeting on the renewed TMD and received public testimony on the proposed assessment in connection with the renewed TMD; and

WHEREAS, on November 26, 2012 at 2:00 p.m. in the City Council Chambers located at 202 "C" Street, 12th Floor, in San Diego, the City Council held a public hearing at which all persons were permitted to present written and oral testimony regarding the TMD renewal and the assessment ("Public Hearing"); and

WHEREAS, the City Clerk tabulated the ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment and determined that no majority protest exists, as that term is defined in San Diego Municipal Code section 61.2508(a)(10); and

WHEREAS, on November 26, 2012, the City Council adopted Resolution R-307843, which among other things, renewed the TMD, levied the assessments within the renewed TMD beginning January 1, 2013, declared that the activities be provided to benefit businesses in the TMD, stated that the activities be funded by the levy of the assessments, and directed the City Clerk to record a notice of the levying of the assessments and map of the TMD; and

WHEREAS, the City and TMD Corporation have negotiated the operating agreement for operation of the TMD, a copy of which is included in the backup materials for City Council Agenda Item S501 approved by the City Council on March 26, 2013, and which will be placed on file in the Office of the City Clerk as Document No. RR- 308097<sup>-1</sup> (“Operating Agreement”); and

WHEREAS, TMD Corporation desires the City to disburse to TMD Corporation the assessment revenues collected in the renewed TMD from assessments levied between January 1, 2013 through June 30, 2013, to be spent in accordance with the District Plan; and

WHEREAS, TMD Corporation prepared a prospective report of activities for the second half of Fiscal Year 2013 describing the activities to be performed and the associated costs to be paid for by the assessments levied against businesses within the TMD from January 1, 2013 through June 30, 2013 (“FY 2013 Report of Activities – Part II”), a copy of which is attached to as part of the backup materials accompanying this resolution and will be placed on file in the Office of the City Clerk as Document No. RR- 308097<sup>-2</sup>; and

WHEREAS, there is ongoing litigation challenging the validity of the renewed TMD, and the City desires to protect and insulate the City’s General Fund should the renewed TMD be invalidated; and

WHEREAS, the City and TMD Corporation recognize the possibility of entering into an amendment to the Operating Agreement, which would include additional terms and restrictions with respect to indemnification for the City and the disbursement of assessment funds to the TMD Corporation; and

WHEREAS, the FY 2013 Report of Activities – Part II reflects a total estimated budget of \$11,659,987; NOW, THEREFORE,

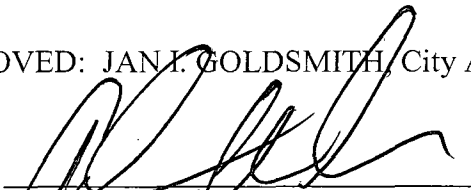
BE IT RESOLVED, by the City Council of the City of San Diego, as follows:

1. The FY 2013 Report of Activities – Part II for the San Diego Tourism Marketing District is approved. Such approval is subject to, and contingent upon, all terms and restrictions of the Operating Agreement, and any amendments thereto, regarding disbursement of assessment funds to TMD Corporation.

2. The Chief Financial Officer or designee is authorized to appropriate and expend an amount not to exceed \$11,659,987 on TMD activities for the period of January 1, 2013 through June 20, 2013, contingent upon the City Comptroller's certification that sufficient funds are available. Such authority is also subject to, and contingent upon, all terms and restrictions of the Operating Agreement, and any amendments thereto, regarding disbursement of assessment funds to the TMD Corporation.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

  
Adam R. Wander  
Deputy City Attorney

ARW:mm  
April 2, 2013  
April 3, 2013 Corr. Copy  
Or.Dept: Council District 3  
Doc. #540024

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 09 2013.

ELIZABETH S. MALAND  
City Clerk

By Mary Zumbado  
Deputy City Clerk

Approved: 4/25/13  
(date)

Bob Filner  
BOB FILNER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
BOB FILNER, Mayor