

RESOLUTION NUMBER R- 308588

DATE OF FINAL PASSAGE DEC 09 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE EXECUTION OF
THE SECOND AMENDMENT TO THE TOURISM
MARKETING DISTRICT OPERATING AGREEMENT.

WHEREAS, on November 26, 2012, in Resolution No. R-307843, the City Council renewed the San Diego Tourism Marketing District (TMD) for a period of thirty-nine and one-half (39 ½) years commencing January 1, 2013 (Resolution of Formation); and

WHEREAS, on or about December 19, 2012, petitioners Melvin Shapiro and San Diegans for Open Government initiated separate lawsuits in San Diego Superior Court challenging the validity of the TMD and associated assessment, styled *Shapiro v. City of San Diego et al.*, Case No. 37-2012-00087765-CU-MC-CTL, and *San Diegans for Open Government v. City of San Diego et al.*, Case No. 37-2012-00088065-CU-MC-CTL, and on February 25, 2013, Brigitte Browning, Sergio Gonzales, and UNITE HERE Local 30 filed a similar lawsuit styled *Browning et al. v. San Diego City Council*, Case No. 37-2013-00036413-CU-WM-CTL, and other similar lawsuits could be filed (collectively, the District Litigation); and

WHEREAS, the City Council approved an initial five-year operating agreement with the San Diego Tourism Marketing District Corporation (TMD Corporation) in Resolution No. R-308062, effective March 26, 2013 (Operating Agreement), and a First Amendment to the Operating Agreement in Resolution No. R-308065, effective April 23, 2013 (First Amendment); and

WHEREAS, the Operating Agreement and First Amendment include terms regarding indemnification in favor of the City and the disbursement of assessment funds to the TMD Corporation during the time that any District Litigation is pending; and

WHEREAS, those terms allow individual lodging businesses to indemnify the City against third-party claims for refunds and to waive rights to any refund, reimbursement, or payment from the City for the purpose of inducing the City to release assessment funds during the time of any pending District Litigation; and

WHEREAS, pursuant to the Operating Agreement and First Amendment, the City will retain, and will not disburse to the TMD Corporation, assessment funds collected from any lodging businesses which do not provide such indemnifications and waivers; and

WHEREAS, the City and TMD Corporation have negotiated a second amendment to the Operating Agreement for operation of the TMD, a copy of which is attached to the backup materials for the City Council agenda item adopting this Resolution (Second Amendment); and

WHEREAS, the Second Amendment, among other things, rescinds the First Amendment in its entirety and establishes a new plan for the release and withholding of TMD assessment funds; and

WHEREAS, Section 4.3 of the Second Amendment requires that prior to disbursement, TMD assessment funds must be part of a City Council approved TMD budget;

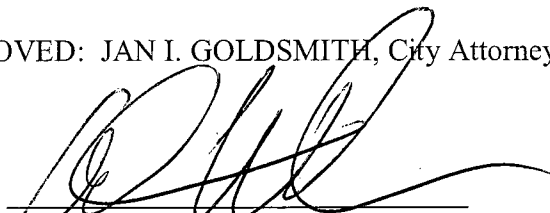
WHEREAS, on June 24, 2013, the City Council passed Resolution No. R-308297, approving the TMD Report of Activities, including a budget, for the period of July 1, 2013 through June 30, 2014 (FY 2014 Report of Activities); NOW, THEREFORE,

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

1. The City Council hereby approves the Second Amendment, a copy of which shall be placed on file with the Office of the City Clerk as Document No. RR- 308588.
2. The Council President in his capacity under Charter section 265(i), or his designee, is authorized and directed to execute the Second Amendment on behalf of the City.
3. The FY 2014 Report of Activities approved by Council on June 24, 2013 shall satisfy the requirements of Section 4.3 of the Second Amendment to the extent that the TMD Corporation approves disbursements, in whole or in part, for activities and vendors included in the approved FY 2014 Report of Activities.
4. The Chief Financial Officer is authorized to set up appropriate accounting structures as needed to implement the Second Amendment.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Adam R. Wander
Deputy City Attorney

ARW:mm
11/19/2013 Cor. Copy
Or.Dept: Econ. Devel.
Doc. No. 677598

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 21 2013

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved pursuant to Charter section 265(i):

(date)

TODD GLORIA, Council President

Passed by the Council of The City of San Diego on NOV 21 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 09 2013

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

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