

RESOLUTION NUMBER R- 310482

DATE OF FINAL PASSAGE JUN 01 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FISCAL YEAR 2017 REPORT OF ACTIVITIES FOR THE TOURISM MARKETING DISTRICT, AUTHORIZING THE RELATED EXPENDITURE OF FUNDS, AND AUTHORIZING THE EXECUTION OF A THIRD AMENDMENT TO THE TMD 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), a First Amendment to the Operating Agreement in Resolution No. R-308065, effective April 23, 2013 (First Amendment),

and a Second Amendment to the Operating Agreement in Resolution No. R-308588, effective December 9, 2013 (Second Amendment); and

WHEREAS, the Second Amendment, among other things, rescinds the First Amendment in its entirety and establishes a plan for the incremental release and withholding of TMD assessment funds pursuant to a District Reserve and Withholding Schedule, which was attached as Attachment 1 to the Second Amendment; and

WHEREAS, the goal of the District Reserve and Withholding Schedule is to balance the City's interest in funding TMD activities which help generate Transient Occupancy Tax and sales tax revenue against the City's need to build and retain appropriate reserves over the next few years in the event of adverse legal outcomes arising from the District Litigation; and

WHEREAS, the City and the TMD Corporation now desire to amend the District Reserve and Withholding Schedule pursuant to a third amendment to the Operating Agreement, a copy of which is attached as Document Number RR-310482-1 and included in the backup materials for the City Council agenda item adopting this Resolution (Third Amendment); 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; and

WHEREAS, \$66,309,769 of TMD assessments, interest, and fund balance is projected to be available during the period of July 1, 2016 through June 30, 2017 (FY 2017); and

WHEREAS, pursuant to section 61.2521 of the San Diego Municipal Code, the TMD Corporation has prepared a prospective report (Report of Activities) including a budget based on that projected \$66,309,769 for FY 2017; and

WHEREAS, \$29,000,000 of the \$66,309,769 budgeted in the FY 2017 Report of Activities represents the reserves held by the City pursuant to the Second Amendment in the event of adverse legal outcomes arising from the District Litigation; NOW, THEREFORE,

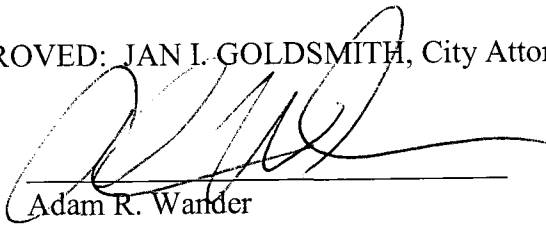
BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The City Council hereby approves the Third Amendment, a copy of which is on file with the Office of the City Clerk as Document No. RR-310482<sup>-1</sup>, and the Mayor, or his designee, is authorized and directed to execute the Third Amendment on behalf of the City.
2. The FY 2017 Report of Activities for the San Diego Tourism Marketing District is approved with an anticipated budget total of \$66,309,769. This budget figure includes anticipated TMD assessments for FY 2017 of \$38,433,257, projected carryover of \$27,843,436 from FY 2016, and projected TMD interest and penalties to be accrued in FY 2017 of \$33,076. The FY 2017 Report of Activities is on file in the office of the City Clerk as Document No. RR-310482<sup>-2</sup>.
3. In accordance with the FY 2017 Report of Activities, the Chief Financial Officer is authorized to appropriate and expend for FY 2017 TMD activities a total of \$66,309,769, which includes anticipated TMD assessments for FY 2017 of \$38,433,257, projected carryover of \$27,843,436 from FY 2016, and projected TMD interest and penalties to be accrued in FY 2017 of \$33,076. Such appropriation and expenditure is contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury and subject to the reserves requirement of the Second Amendment.
4. The Chief Financial Officer is authorized to appropriate and expend the TMD Fund Balance and TMD Interest Fund Balance from FY 2016 at year end closing (less the estimated TMD assessments and TMD interest carryover of \$27,843,436 to be included with the

FY 2017 budget) for FY 2016 expenditures consistent with the approved FY 2016 Report of Activities anticipated to be processed in FY 2017. Such appropriation and expenditure is contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury and subject to the reserves requirement of the Second Amendment.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Adam R. Wander  
Deputy City Attorney

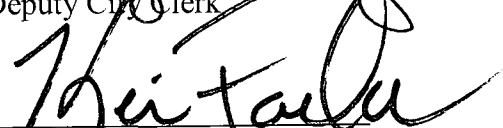
ARW:mm  
05/11/2016  
Or. Dept: Econ. Devel.  
Doc. #1286182

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 23 2016

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 5/31/16  
(date)

  
KEVIN L. FAULCONER, Mayor

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

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 23 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherrri Lightner	<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"/>
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"/>
Chris Cate	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 01 2016.

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

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

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

(Seal)

By *City Clerk*, Deputy

Office of the City Clerk, San Diego, California

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