

6/11/2018

(R-2018-592) #205

RESOLUTION NUMBER R- 311786

DATE OF FINAL PASSAGE JUN 21 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FISCAL YEAR 2019 MILESTONE REPORT, INCLUDING THE FISCAL YEAR 2019 REPORT OF ACTIVITIES FOR THE TOURISM MARKETING DISTRICT, AUTHORIZING THE RELATED EXPENDITURE OF FUNDS, AND AUTHORIZING THE SIGNATURE OF A SECOND AMENDMENT TO THE TMD OPERATING AGREEMENT.

WHEREAS, on November 26, 2012, in Resolution 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 City of San Diego et al.*, Case No. 37-2012-00088065-CU-MC-CTL (SDOG Case), 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

WHEREAS, the City Council approved currently operative five-year operating agreement between the City and the TMD Corporation in Resolution R-310731, effective November 1, 2017 (Operating Agreement); and

WHEREAS, the Operating Agreement carried forward a preexisting plan for the incremental release and withholding of TMD assessment funds pursuant to a District Reserve and Withholding Schedule (Litigation Reserve) and established a total Litigation Reserve amount of \$30,000,000 by the end of Fiscal Year 2018; and

WHEREAS, the City Council approved a first amendment to the Operating Agreement (First Amendment) in Resolution R-311182, which authorized the expenditure of \$3,000,000 from the Litigation Reserve during Fiscal Year 2018; and

WHEREAS, the goal of the Litigation Reserve 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 litigation challenging the TMD; and

WHEREAS, the SDOG Case, which was the last remaining lawsuit from the initial three lawsuits, was dismissed following the City Council's September 1, 2016, modification of the TMD and Management Plan, eliminating lodging businesses with fewer than 70 rooms, but that case is currently on appeal solely with respect to the issue of attorney's fees; and

WHEREAS, in 2016, new lawsuits challenging the TMD were filed, styled *California Taxpayers Action Network v. City of San Diego et al.*, Case No. 37-2016-00030603-CU-MC-CTL (CTAN Case) and *Reid et al v. City of San Diego*, Case No. 37-2016-00041207-CU-MC-CTL (Reid Case); and

WHEREAS, the CTAN Case was dismissed on demurrer at the trial court level, but the plaintiff has appealed that ruling; and

WHEREAS, the Reid Case was dismissed on demurrer at the trial court level, the plaintiff appealed that ruling, and the appellate court upheld the trial court's ruling; and

WHEREAS, Section 4.2.1.1 of the Operating Agreement requires that prior to disbursement, TMD assessment funds must be part of a City Council approved TMD budget; and

WHEREAS, \$44,747,389 of available TMD assessment funds, including interest and fund balance, is projected to be available during the period of July 1, 2018 through June 30, 2019 (FY 2019); and

WHEREAS, pursuant to the Operating Agreement, the TMD Corporation has prepared a five-year retroactive and prospective report (FY 2019 Milestone Report), which includes the annual prospective report and budget required by San Diego Municipal Code section 61.2521 (Report of Activities) based on that projected \$44,747,389 for FY 2019; and

WHEREAS, the \$44,747,389 of available TMD assessment funds does not include the required \$27,000,000 Litigation Reserve; and

WHEREAS, the TMD Corporation has requested an additional \$5,000,000 to be budgeted from the Litigation Reserve for additional marketing and promotional activities (FY 2019 Supplemental Request), effectively reducing the Litigation Reserve to \$22,000,000 at the end of Fiscal Year 2019; NOW, THEREFORE,

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

1. The FY 2019 Milestone Report, including the FY 2019 Report of Activities for the San Diego Tourism Marketing District, is approved with an anticipated budget total of \$44,747,389. The FY 2019 Milestone Report, including the FY 2019 Report of Activities, is on file in the office of the City Clerk as Document No. RR-311786-1

2. The Chief Financial Officer is authorized to appropriate and expend for FY 2019 TMD activities a total of \$44,672,389, which includes anticipated TMD assessments for FY 2019 of \$39,942,627, projected carryover of \$4,644,762 from FY 2018 (\$4,569,762 from Fund 200726 and \$75,000 from Fund 200000), and projected TMD interest and penalties to be accrued in FY 2019 of \$160,000. 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 Operating Agreement, as amended.

3. The FY 2019 Supplemental Request of \$5,000,000 from the Litigation Reserve is approved for additional marketing and promotional activities and, to effectuate this request, the Mayor or designee is authorized to sign a second amendment to the Operating Agreement. When signed, the second amendment will be on file in the Office of the City Clerk as Document No. RR- 311786-2

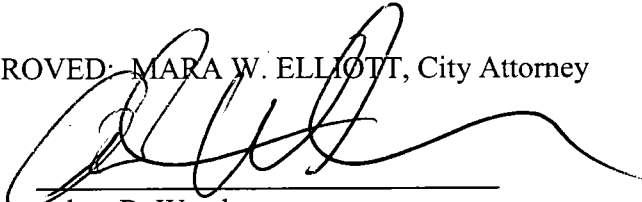
4. The Chief Financial Officer is authorized to appropriate and expend for FY 2019 supplemental TMD activities a total of \$5,000,000 from the Litigation Reserve, contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

5. The Chief Financial Officer is authorized to appropriate and expend the TMD Fund Balance and TMD Interest Fund Balance from FY 2018 at year end closing (less the estimated TMD assessments, interest, and penalties carryover of \$4,644,762 to be included with the FY 2019 budget) for FY 2018 expenditures consistent with the approved FY 2018 Report of Activities anticipated to be processed in FY 2019 and for cost recovery of additional FY 2019 City Treasurer audit and administration expenses for Funds 200704 and 200705. 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 Operating Agreement, as amended.

APPROVED: MARA W. ELLIOTT, City Attorney

By

  
Adam R. Wander  
Deputy City Attorney

ARW:

05/29/18

Or. Dept: Econ. Devel.

Doc.No.: 1760412\_3

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 6/11/2018

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved:

6/21/18  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed:

\_\_\_\_\_  
(date)

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

Passed by the Council of The City of San Diego on JUN 11 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<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"/>
Chris Ward	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 21 2018

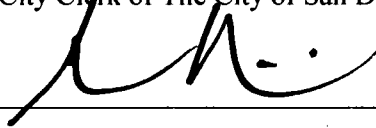
**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

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 , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311786