

ORDINANCE NUMBER O- 21082 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 21 2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (I) APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF (A) THE RESTATED ARTICLES OF INCORPORATION OF CIVIC SAN DIEGO, (B) THE AMENDED AND RESTATED BYLAWS OF CIVIC SAN DIEGO, AND (C) A NEW OPERATING AGREEMENT WITH CIVIC SAN DIEGO; (II) APPROVING AND AUTHORIZING THE TERMINATION OF (A) THE AGENCY AGREEMENT WITH CIVIC SAN DIEGO AND (B) THE CURRENT OPERATING AGREEMENT WITH CIVIC SAN DIEGO; AND (III) APPROVING CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego (City) is the sole member of Civic San Diego, a nonprofit public benefit corporation (Civic); and

WHEREAS, Civic performs City-wide special projects and economic development, certain functions related to the wind-down of redevelopment, permitting, planning and public works for downtown, and management of the downtown parking district; and

WHEREAS, both the City and Civic desire that Civic restate its Articles of Incorporation and amend and restate its Bylaws such that the City is no longer the sole member of Civic, thereby rendering Civic completely independent and separate from the City; and

WHEREAS, the City and Civic also desire to enter into a new agreement (New Operating Agreement) under which Civic, as an independent, separate entity, will continue to provide services to the City for certain wind-down and reporting activities (Wind-Down Services) required by the State Legislature following its adoption of legislation dissolving redevelopment agencies across the state; and

WHEREAS, because the Wind-Down Services do not include management of the downtown parking district, Civic desires to assign its rights and obligations under that certain Agreement by and between Civic, San Diego Free Ride, LLC and Tag-A-Long San Diego, LLC for Demand-Response Downtown Circulator Shuttle dated April 20, 2016 to the City (Assignment); and

WHEREAS, the City and Civic further desire to terminate as of July 1, 2019, that certain “Agency Agreement” between them dated as of December 2, 2016 (Agency Agreement) pursuant to section 3.2, which provides that the City may terminate the Agency Agreement for convenience by giving Civic at least 180 days prior written notice, which written notice was given on August 30, 2018; provided however, that the Agency Agreement shall remain in effect for projects which Civic must continue to process as a matter of law until such processing is completed; and

WHEREAS, the City and Civic further desire to terminate as of July 1, 2019, that certain “Operating Agreement” between them dated April 6, 2017 (Current Operating Agreement) pursuant to section 1.2.1, which provides that the City may terminate the Current Operating Agreement for convenience by giving Civic at least 180 days prior written notice, which written notice was given on August 30, 2018; provided however, that the Current Operating Agreement shall remain in effect (i) for projects which Civic must continue to process as a matter of law and (ii) until the New Operating Agreement is in full force and effect; and

WHEREAS, it is anticipated that six positions currently filled by Civic employees will be terminated, and that the City will create six new positions to be filled by City employees whose workspace will continue to be in Civic’s offices, requiring that the City enter into a sublease with Civic for space in Civic’s offices (Sublease) for the six new City employees; and

WHEREAS, the Council has held a meeting to consider the following documents (collectively, the Transaction Documents), forms of which relate to Civic's separation from, and delivery of ongoing services thereafter to, the City:

- a. A proposed form of Restated Articles of Incorporation of Civic San Diego (Articles), a copy of which Articles are on file in the Office of the City Clerk as Document No. O- 21082<sup>-1</sup>; and
- b. A proposed form of Amended and Restated Bylaws of Civic San Diego (Bylaws), a copy of which Bylaws are on file in the Office of the City Clerk as Document No. O- 21082<sup>-2</sup>; and
- c. A proposed form of the New Operating Agreement, a copy of which New Operating Agreement is on file in the Office of the City Clerk as Document No. O- 21082<sup>-3</sup>; and

WHEREAS, the City is authorized to undertake the actions described in this Ordinance pursuant to its Charter and applicable laws of the State of California; NOW, THEREFORE,

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

Section 1. The City Council hereby finds and determines that the statements set forth above in the recitals to this Ordinance are true and correct.

Section 2. The City Council hereby approves both the City's removal of itself as the sole member of Civic such that Civic will become and operate as a fully independent public benefit corporation, completely separate from the City.

Section 3. The form and content of the form of the Articles submitted for the Council's consideration, a copy of which Articles are on file in the Office of the City Clerk as Document No. O- 21082<sup>-1</sup>, and the execution, delivery and filing thereof by Civic with the

California Secretary of State and California Attorney General are hereby approved. Any of the Chief Operating Officer or the Chief Financial Officer of the City and each of them or any of their respective designees (each, an Authorized City Signatory), are each hereby authorized, and any one of the Authorized Signatory is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Articles, and each of the board of directors and officers of Civic or any respective designee (each, an Authorized Civic Signatory) is hereby authorized to execute, deliver and file the Articles with the California Secretary of State and California Attorney General, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The form and content of the form of the Bylaws submitted for the Council's consideration, a copy of which Bylaws are on file in the Office of the City Clerk as Document No. O- 21082<sup>2</sup>, and the execution and delivery thereof by Civic are hereby approved. The Authorized City Signatories are each hereby authorized, and any one of the Authorized City Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver any requested certificate or instrument evidencing the City's approval of the Bylaws, and each of the Authorized Civic Signatories is hereby authorized to execute and deliver the Bylaws, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the

City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The form and content of the form of the New Operating Agreement submitted for the Council's consideration, a copy of which New Operating Agreement is on file in the Office of the City Clerk as Document No. O- 21082<sup>3</sup>, and the execution and delivery thereof by the City is hereby approved. The Authorized City Signatories are each hereby authorized, and any one of the Authorized City Signatories is hereby directed, for and in the name and on behalf of the City, to execute and deliver the New Operating Agreement, substantially in the form presented for the Council's consideration, with such additions and changes therein as any Authorized City Signatory shall determine are necessary or desirable and approve as being in the best interests of the City, and as approved as to form by the City Attorney or her specified designee, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The City Council agrees and hereby gives notice to Civic, that each of the Agency Agreement and Current Operating Agreement shall be terminated as of the dates and in the manner presented above in this Ordinance.

Section 7. The Assignment is approved. The Mayor or designee is authorized and directed, on behalf of the City, to sign and enter into the Assignment, a copy of which is on file in the Office of the City Clerk as Document No. O- 21082<sup>4</sup>.

Section 8. All actions heretofore taken by any officers, employees, or agents of the City with respect to the agreements and documents related to Civic presented above are hereby approved, confirmed and ratified; and the Chief Operating Officer, the Chief Financial Officer, the City Attorney and any such other officers, employees, or agents of the City as may be

authorized by the Mayor of the City, the Chief Operating Officer or the Chief Financial Officer are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including, without limitation, pay necessary and appropriate fees and expenses, execute and deliver any and all certificates, additional agreements and other documents which they, or any of them, may deem necessary or desirable to consummate and/or assist in the transition of Civic from an agent of the City to a separate and independent service provider to the City with regard to Wind-Down Services (the Transition) in accordance with this Ordinance. In addition, any Authorized City Signatory is hereby specifically authorized to approve additions, changes and amendments to the Transaction Documents authorized by this Ordinance as any Authorized City Signatory shall determine are necessary or desirable and shall require or approve and that such Authorized City Signatory believes to be in the best interests of the City, such determination being conclusively evidenced by the execution and delivery of such Transaction Documents by the City. Such other officials, employees, and agents of the City as may be authorized by any Authorized City Signatory are hereby are each authorized, and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, additional agreements, and other documents which they, or any of them, may deem necessary or advisable in order to consummate the Transition in accordance with this Ordinance.

Section 9. The Mayor, or his designee, is authorized to execute and deliver the Sublease for a term not to exceed one year with total rent not to exceed \$125,000, on terms and conditions that the Mayor, or his designee, determine to be reasonable and in the public interest.

Section 10. The Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$125,000 to pay the base rent, utilities and all other charges and fees


incurred in connection with the Sublease, contingent upon the Chief Financial Officer furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

Section 11. This Ordinance is subject to the provisions of the San Diego Municipal Code and the San Diego Charter. Subject to those provisions, this Ordinance shall take effect and be in force on the thirtieth (30th) day from and after the date of its final passage and, prior to the expiration of fifteen (15) days from the final passage hereof, the City Clerk or her specified designee shall cause this Ordinance to be published at least once in a newspaper of general circulation, published and circulated in the City.

Section 12. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public prior to the day of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By

  
\_\_\_\_\_  
Bret A. Bartolotta  
Deputy City Attorney

BAB:jdf  
05/17/19  
06/04/19 REV.  
Or.Dept: Civic San Diego  
Doc. No.: 1888330\_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 18 2019.

ELIZABETH S. MALAND  
City Clerk

By Connie Patterson  
Deputy City Clerk

Approved: 6/21/19  
(date)

Kevin L. Faulconer  
KEVIN L. FAULCONER, Mayor

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

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



Passed by the Council of The City of San Diego on JUN 18 2019, 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"/>
Jennifer Campbell	<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"/>
Monica Montgomery	<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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 21 2019.

AUTHENTICATED BY:

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

(Seal)

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

By My Proxy for Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 04 2019

and on JUN 21 2019.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

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

By My Proxy for Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21082