

RESOLUTION NUMBER R- 312466

DATE OF FINAL PASSAGE MAY 23 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO APPROVING THE FISCAL YEAR 2020  
REPORT OF ACTIVITIES FOR THE TOURISM  
MARKETING DISTRICT, AUTHORIZING THE  
RELATED EXPENDITURE OF FUNDS, AND  
AUTHORIZING THE SIGNATURE OF A THIRD  
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, 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 City Council approved currently operative five-year operating agreement between the City and the TMD Corporation in Resolution R-310731, effective November 1, 2016 (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 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, there is no longer any outstanding litigation challenging the TMD; 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 City Council approved a second amendment to the Operating Agreement (Second Amendment) in Resolution R-311786, which authorized the expenditure of \$5,000,000 from the Litigation Reserve during Fiscal Year 2019; 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, \$46,476,679 of available TMD assessment funds, including interest and fund balance, is projected to be available during the period of July 1, 2019 through June 30, 2020 (FY 2020); and

WHEREAS, pursuant to the Operating Agreement, the TMD Corporation has prepared an annual prospective report and budget required by San Diego Municipal Code section 61.2521 (Report of Activities) based on that projected \$46,476,679 for FY 2020; and

WHEREAS, the \$46,476,679 of available TMD assessment funds does not include the required \$22,000,000 Litigation Reserve; and

WHEREAS, the TMD Corporation has requested an additional \$6,999,332 to be budgeted from the Litigation Reserve for additional marketing and promotional activities (FY 2020 Supplemental Request), effectively reducing the Litigation Reserve to \$15,000,668 at the end of Fiscal Year 2020; NOW, THEREFORE,

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

1. The FY 2020 Report of Activities for the San Diego Tourism Marketing District is approved with an anticipated budget total of \$46,476,679, including \$282,000 for partial recovery of City administration expenses and \$1,000,000 for the continuing Litigation Reserve. Funding sources for this budget figure include: anticipated TMD assessments for FY 2020 of \$41,040,340; projected TMD interest and penalties to be accrued in FY 2020 of \$160,000; projected carryover of unexpended funds of \$4,276,339; and \$1,000,000 of continuing Litigation Reserve. The FY 2020 Report of Activities, is on file in the office of the City Clerk as Document No. ~~203~~ 312466. Approving the Fiscal Year 2020 San Diego Tourism Marketing District Report of Activities.

2. The Chief Financial Officer is authorized to appropriate and expend from the Tourism Marketing District Fund No. 200726 for the FY 2020 San Diego Tourism Marketing District Report of Activities and recovery of City Administration costs in an amount not to exceed \$41,200,340 of FY 2020 estimated revenue. 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.

3. The Chief Financial Officer is authorized to appropriate and expend from the Tourism Marketing District Fund No. 200726 for the FY 2020 San Diego Tourism Marketing District Report of Activities and recovery of City Administration costs in an amount not to exceed \$4,276,339 of FY 2019 estimated ending fund balance. 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.

4. The FY 2020 Supplemental Request of \$6,999,332 is approved to utilize the prior year Litigation Reserve to fund national advertising campaigns in FY 2020 and the Mayor, or designee, is authorized to execute, for and on behalf of the City, a Third Amendment to the Operating Agreement to amend Attachment 1 – Amended District Reserve and Withholding Schedule to reflect the reduction of \$6,999,332 of the Litigation Reserve.

5. The Chief Financial Officer is authorized to appropriate and expend \$3,810,312 from Tourism Marketing District Fund No. 200704 and \$3,189,020 from Tourism Marketing District Fund No. 200705 for the FY 2020 San Diego Tourism Marketing District Report of Activities Supplemental Request. 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.

6. Cost recovery of actual City TMD administrations expenses estimated at \$112,000 in addition to the amount already budgeted in the FY 2020 Report of Activities is approved.

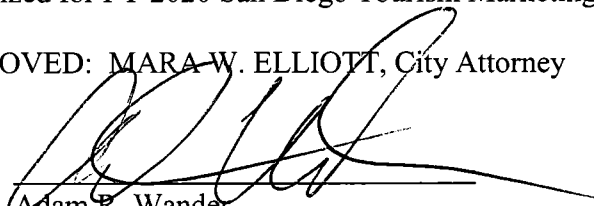
7. The Chief Financial Officer is authorized to appropriate and expend from the Tourism Marketing District Fund Nos. 200704 and 200705 FY 2019 estimated ending fund

balances for the recovery of actual City Administration costs in amounts estimated at \$74,000 and \$38,000, respectively. 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.

8. The Chief Financial Officer is authorized to appropriate and expend from the Tourism Marketing District Fund Nos. 200726, 200704, and 200705 for the FY 2019 San Diego Tourism Marketing District Report of Activities expenses that are processed in FY 2020 in amounts not to exceed Fund Balances less Litigation Reserve holdbacks less amounts authorized for FY 2020 San Diego Tourism Marketing District Report of Activities.

APPROVED: MARA W. ELLIOTT, City Attorney

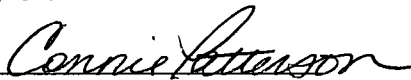
By

  
Adam R. Wander  
Deputy City Attorney

ARW:jdf  
04/30/19  
Or. Dept: Econ. Devel.  
Doc.No.: 1996068

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 20 2019

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 5/23/19  
(date)

  
KEVIN L. FAULCONER, Mayor

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

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

Passed by the Council of The City of San Diego on MAY 20 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 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"/>
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 MAY 23 2019.

**(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.

(Seal)

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

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 312466