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(R-2020-425 REV.) 6/9/2020

RESOLUTION NUMBER R- 313083

DATE OF FINAL PASSAGE JUN 11 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE FISCAL YEAR 2021
REPORT OF ACTIVITIES FOR THE TOURISM
MARKETING DISTRICT AND AUTHORIZING THE
RELATED EXPENDITURE OF FUNDS.

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 1/2) 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 the 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, the City Council approved a third amendment to the Operating Agreement (Third Amendment) in Resolution R-312466, which authorized the expenditure of \$6,999,332 from the Litigation Reserve during Fiscal Year 2020; and

WHEREAS, the current balance of the Litigation Reserve is \$15,000,668; 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, it is projected that \$24,928,250 TMD assessment funds will be collected during the period of July 1, 2020 through June 30, 2021 (FY 2021); and

WHEREAS, it is projected that \$1,645,796 of previously allocated funding from the Litigation Reserve will not be expended by the end of Fiscal Year 2020; and

WHEREAS, the TMD Corporation has requested an additional \$11,500,000 to be budgeted from the Litigation Reserve, \$3,000,000 to increase the TMD Opportunity/Catastrophe Fund, and \$8,500,000 to be allocated to TMD contractors in FY 2021; and

WHEREAS, the Litigation Reserve would then be reduced to \$5,146,464 at the end of FY 2021; 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 an anticipated budget of \$38,525,695 in TMD funds for FY 2021, which includes the projected TMD assessments in FY 2021, an allocation from the Litigation Reserve, interest and penalties, carryover of budgeted funds remaining from previous years, and other carryover funds; NOW, THEREFORE,

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

1. The FY 2021 Report of Activities for the San Diego Tourism Marketing District is approved with an anticipated budget total of \$38,525,695, including \$308,000 for recovery of City administration expenses. Funding sources for this budget figure include: anticipated TMD assessments for FY 2021 of \$24,928,250; projected TMD interest and penalties to be accrued in FY 2021 of \$50,000; carryover administrative and other budgeted funds from previous years of \$1,990,445; Litigation Reserve funds from previous years of \$11,500,000; and other carryover funds of \$57,000. The FY 2021 Report of Activities, is on file in the office of the City Clerk as Document No. RR-313083.

2. City Council strongly encourages local arts and cultural institutions that apply through the open and competitive application process be considered for funding from the \$3,000,000 to increase the TMD Opportunity/ Catastrophe Fund.

3. The Chief Financial Officer (CFO) is authorized and directed to appropriate and expend from the Tourism Marketing District Fund No. 200726 for implementation of the FY 2021 Report of Activities in amounts not to exceed: \$24,928,250 of FY 2021 estimated revenue, \$50,000 of estimated interest, \$1,990,445 of carryover administrative and other budgeted funds from previous years, and \$1,000,000 of Litigation Reserve funds. The implementation of the FY 2021 Report of Activities includes recovery of actual City administrative costs estimated at \$251,000. The appropriation and expenditure from the Tourism Marketing District Fund No. 200726 is contingent upon the Chief Financial Officer first certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

4. The CFO is authorized and directed to appropriate and expend from the Tourism Marketing District Fund No. 200704 for implementation of the FY 2021 Report of Activities in amounts not to exceed: \$10,500,000 of reserved funds from previous years. Such appropriation and expenditure is contingent upon the Chief Financial Officer first certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

5. The CFO is authorized and directed to appropriate and expend from the Fiscal Year 2020 estimated ending fund balance of Tourism Marketing District Fund Nos. 200704 and 200705 for the recovery of actual City Administration costs in amounts estimated at \$22,000 and \$35,000 respectively. Such appropriation and expenditure is contingent upon the Chief Financial Officer first certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

6. The CFO is authorized and directed to appropriate and expend from the Tourism Marketing District Fund Nos. 200726, 200704, and 200705 for the Fiscal Year 2020 San Diego Tourism Marketing District Report of Activities expenses that are processed in FY 2021 in amounts not to exceed fund balances less amounts authorized for the FY 2021 San Diego Tourism Marketing District Report of Activities. Such appropriation and expenditure is contingent upon the Chief Financial Officer first certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

7. The CFO is authorized and directed to transfer eligible expenses from Fund 200726 to Fund 200000 to utilize the remaining fund balance, which is currently estimated at \$4,232.08, and to then close Fund 200000, contingent upon the Chief Financial Officer first certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

8. The TMD Corporation shall come back to City Council in September 2020 with an updated FY 2021 Report of Activities which, among other things, reflects an appropriation of the remaining balance of the Litigation Reserve to increase the TMD Opportunity/ Catastrophe Fund for funding future competitive applications.

APPROVED: MARA W. ELLIOTT, City Attorney

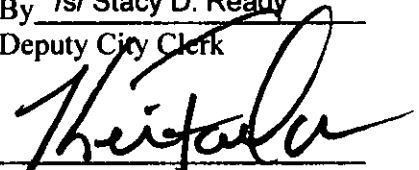
By /s/ Adam R. Wander
Adam R. Wander
Deputy City Attorney

ARW:jdf
06/02/2020
06/10/2020
Or. Dept: Econ. Devel.
Doc.No.: 2401014

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 06/09/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Stacy D. Ready
Deputy City Clerk


KEVIN L. FAULCONER, Mayor

Approved: 6/10/20
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 09 2020, 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: JUN 11 2020

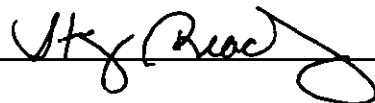
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

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 , Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 313083