

RESOLUTION NUMBER R- **314307**

DATE OF FINAL PASSAGE **SEP 13 2022**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE LEGAL SERVICES
AGREEMENT TO RETAIN JARVIS FAY LLP AS OUTSIDE
COUNSEL TO PROVIDE LEGAL SERVICES RELATING TO
THE COLLECTION OF TRANSIENT OCCUPANCY TAX AND
TOURISM MARKETING DISTRICT ASSESSMENTS.

WHEREAS, the City of San Diego (City) has been seeking to collect unremitted
Transient Occupancy Tax (TOT) and Tourism Marketing District assessments (TMD) from
online travel companies (OTCs) and hotels (Operators) for years; and

WHEREAS, in December 2016, the California Supreme Court (Supreme Court) ruled
against the City in a TOT-related lawsuit, finding that OTCs were not Operators under the San
Diego Municipal Code sections pertaining to TOT; and

WHEREAS, the Supreme Court did, however, conclude that an Operator is liable for
TOT on the minimum retail rate the Operator requires an OTC to charge hotel guests (Rate
Parity Amount) pursuant to any "Rate Parity Agreement" between the Operator and an OTC; and

WHEREAS, prior to the Supreme Court's decision, Operators had only remitted TOT to
the City on the wholesale room rate, resulting in an underpayment of taxes; and

WHEREAS, TOT law and its enforcement is a very specialized area of law, and the only
available and willing firm is Jarvis Fay LLP (Jarvis Fay), which firm is very highly regarded in
this niche practice area and is highly respected by its peers, meaning Jarvis Fay is ideally suited
to effectively and efficiently work closely with City Treasurer staff and the Office of the City
Attorney (OCA) as the City devises and implements strategies to pursue the remittance of all
TOT and TMD owing based on Rate Parity Amounts; and

WHEREAS, Jarvis Fay's hourly rate for work on behalf of the City is less than 40% of the hourly rate charged by firms that have represented the City in TOT-related matters in the past, representing a significant value; and

WHEREAS, based on the foregoing, the Purchasing and Contracting Director has executed a sole source certification memo to proceed with the retention of Jarvis Fay because the City receives no competitive advantage by conducting a more formal competitive solicitation; and

WHEREAS, the OCA has drafted this resolution based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; and

WHEREAS, pursuant to San Diego City Charter Article 5, section 40, the City Council is empowered to employ outside counsel when such assistance or advice is necessary; NOW, THEREFORE,

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

1. That the City Attorney's Office is authorized to retain Jarvis Fay as outside counsel to provide legal services to the City relating to the collection of TOT and TMD under a contract with an amount not to exceed \$250,000 for a term of up to five years.
2. That the contract to retain Jarvis Fay is approved and the Mayor or his designee is authorized to execute the contract.
3. That the Chief Financial Officer or his designee is authorized to appropriate and expend an amount not to exceed \$250,000 from the General Fund, Citywide Program Expenditures (Fund No. 100000-9912) to provide funds for the contract, contingent upon the adoption of the Appropriation Ordinance for the applicable

Fiscal Year, and contingent upon the Chief Financial Officer first furnishing one
or more certificates that the funds necessary are, or will be, on deposit in the City
Treasury.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Bret A. Bartolotta
Bret A. Bartolotta
Deputy City Attorney

BAB:jdf
08/22/2022
Or.Dept:City Attorney
Doc. No.: 3052577

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this
meeting of SEP 12 2022.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 9/13/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on SEP 12 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 13 2022.

(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:

TODD GLORIA

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Concise Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **314307**