

REQUEST FOR COUNCIL ACTION				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY)	
CITY OF SAN DIEGO				N/A	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): Economic Development		DATE: 9/2/2016	
SUBJECT: FY2017 Updated Tourism Marketing District Report of Activities (Part I and Part II) and Approval of Operating Agreement for Modified Tourism Marketing District					
PRIMARY CONTACT (NAME, PHONE): Meredith Dibden Brown,619-236-6485 MS 56-D			SECONDARY CONTACT (NAME, PHONE): ,		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
<p>COST SUMMARY (IF APPLICABLE): An estimated \$41,047,270 of TMD assessments, interest and penalties will be available in FY2017 Part I including \$29,362,603 from FY2016 of which \$29 million is reserved. Additionally, an estimated \$24,482,826 of new TMD assessments, interest and penalties will be collected in FY2017 – Part II. Both budget parts include designations for Opportunity /Catastrophe, and SDTMD Corporation and City administration expenses plus the reserve noted above from Part I.</p>					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Environmental Analysis		ORIG DEPT.	Caldwell, Erik	09/13/2016	
Equal Opportunity Contracting		CFO			
Financial Management		DEPUTY CHIEF	Graham, David	09/21/2016	
Comptroller		COO			
Liaison Office		CITY ATTORNEY			
		COUNCIL PRESIDENTS OFFICE			
PREPARATION OF:	<input type="checkbox"/> RESOLUTIONS	<input type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)	
<p>1. Approve the updated FY2017 – Part I Report of Activities for the renewed San Diego Tourism Marketing District with an anticipated budget of \$41,047,270 that reflects updated revenue and expenditure estimates and</p>					

anticipated reserves in order to close out the current activities and authorize the Chief Financial Officer (CFO) to appropriate and expend TMD assessments and interest and fund balance (contingent on availability).

2. Approve the updated FY2017 – Part II Report of Activities for the modified San Diego Tourism Marketing District II to cover the remainder of the fiscal year with an anticipated budget of \$24,482,826 anticipated to be available from TMD Assessments and interest and fund balance which will be matched with estimated non-TMD assessment funds of \$15,026,557. Authorize the Chief Financial Officer (CFO) to appropriate and expend TMD assessments and interest and fund balance (contingent on availability).

3. Authorize the Mayor or designee to enter into a new five-year Operating Agreement with the San Diego Tourism Marketing District (SDTMD) Corporation for administration of the modified San Diego Tourism Marketing District with a term of November 1, 2016 through October 31, 2021 and that once executed and effective as of the start date of the new Operating Agreement, the existing Agreement dated November 26, 2012 (with amendments) shall be terminated.

4. Authorize the Chief Financial Officer to appropriate and expend TMD Fund Balance and TMD Interest Fund Balance from FY2016 (less the estimated TMD assessments and TMD interest carryover included with the FY2017 Part I budget) for prior year expenditures anticipated to be processed in FY2017, contingent upon the Chief Financial Officer certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury but subject to any required hold backs.

STAFF RECOMMENDATIONS:

Approve the requested actions.

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S):	All
COMMUNITY AREA(S):	Citywide
ENVIRONMENTAL IMPACT:	This activity, FY2017 San Diego Tourism Marketing District Report of Activities, is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).
CITY CLERK INSTRUCTIONS:	

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 9/2/2016

ORIGINATING DEPARTMENT: Economic Development

SUBJECT: FY2017 Updated Tourism Marketing District Report of Activities (Part I and Part II) and Approval of Operating Agreement for Modified Tourism Marketing District

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Meredith Dibden Brown/619-236-6485 MS 56-D

DESCRIPTIVE SUMMARY OF ITEM:

Approve an updated Tourism Marketing District Report of Activities (budget) for FY2017 with Part I covering the renewed Tourism Marketing District for the period July 1 through October 31, 2016 and Part II covering the modified Tourism Marketing District for the period November 1, 2016 through June 30, 2017 and authorize the associated expenditures. Additionally, authorize a new five-year Operating Agreement with the San Diego Tourism Marketing District effective November 1, 2016 to supersede the existing agreement.

STAFF RECOMMENDATION:

Approve the requested actions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The San Diego Tourism Marketing District (TMD) was renewed effective January 1, 2013 for a period of 39 ½ years under a new TMD Management Plan (November 2012) with all lodging businesses in the City of San Diego being assessed. The assessment rate of 0.55% was levied on lodging businesses with 29 or fewer rooms and all larger lodging businesses were assessed two percent (2%) with assessments to be remitted monthly in arrears to the City. Pursuant to the TMD Management Plan, assessments are directed to programs and services to specifically benefit the assessed lodging businesses through such activities as: tourism marketing and promotion; and special events and programs.

After renewal, the City entered into a five year Operating Agreement (with three subsequent amendments) with the San Diego Tourism Marketing District (SDTMD) Corporation for operation of the TMD in accordance with the renewed TMD Management Plan from September 2012. The Operating Agreement term is November 26, 2012, through November 25, 2017.

As required for the annual process, the City Council received and approved the FY2017 Report of Activities for the TMD in May 2016. However, since then, the City Council approved a modification of the Tourism Marketing District and Management Plan effective September 1, 2016. This modification eliminated lodging businesses with fewer than 70 rooms from the District and from assessment. The remaining TMD lodging businesses with 70 rooms or more continue to be assessed at two percent (2%) in total of assessable rent.

Given this modification to assessed businesses and slightly lower anticipated assessments, the SDTMD Corporation, has submitted an updated budget for FY2017 broken into Part I and Part II. The proposed FY2017 Report of Activities – Part I, covers the use of the assessments levied from July 1, 2016 through August 31, 2016 which are due to the City no later than September 30,

2016 and reflects updated revenue and expenditure estimates and anticipated reserves. The proposed FY2017 Report of Activities – Part II, covers the use of the assessments levied for the remainder of the fiscal year under the modified TMD and Management Plan.

Funding to entities previously approved as part of the original FY2017 budget is included with Part I or Part II Reports or split between them depending on the timing of the activities and adjusted, as appropriate, for consistency with the modified Management Plan.

The City has received notice of a lawsuit filed against the modified TMD while the remaining lawsuit against the renewed TMD was dismissed in August 2016. The existing reserve requirements are proposed to be maintained and are identified in Part I of the FY2017 Report of Activities.

Also, given the changes to the TMD, a new five (5) year Operating Agreement with the SDTMD Corporation effective November 1, 2016 is proposed. As part of executing a new Operating Agreement, the existing Operating Agreement dated November 26, 2016 (and amendments) would be terminated when the new Operating Agreement becomes effective. Maintenance of a Litigation Reserve is also addressed in the proposed Operating Agreement.

The tourism industry is the third largest revenue generator for the San Diego economy and a key employment sector. Continued promotion and sales efforts to generate room night stays in San Diego are critical to maintaining or increasing hotel occupancy rates in TMD lodging businesses.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #3: Create and sustain a resilient and economically prosperous City

Objective #3. Diversify and grow the local economy

Objective #5. Enhance San Diego's global standing

FISCAL CONSIDERATIONS:

Pursuant to the renewed (Resolution R-307843) and then modified TMD (Resolution R-310664), approximately \$41,047,270 of TMD Assessments, interest and fund balance is projected to be available for FY2017- Part I and then approximately \$24,482,826 of TMD Assessments and interest is projected to be available for FY2017- Part II. Funds are disbursed to the SDTMD Corporation in accordance with the relevant Operating Agreement to implement the respective TMD Management Plans, except for those funds held for: unallocated Opportunity/Catastrophe reserve; City administration costs; and for potential future liability. Depending on the timing and outcome of litigation there may be no fiscal impact to the City however a Litigation Reserve is being maintained from TMD assessments to provide funding in the case of an adverse outcome and to minimize any fiscal impact to the General Fund.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

Contracts or agreement associated with this action are subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The TMD was renewed by Council on November 26, 2012 by Resolution R-307843. Council approved a five-year TMD Agreement by Resolutions R-307844, R-308062 and then amended that Agreement by Resolutions R-308065 (April 23, 2013), R-308588 (December 9, 2013) and R-310482 (June 1, 2016). The original FY2017 Report of Activities was approved by Council on May 23, 2016. The updated FY2017 Report of Activities Part I and Part II will be heard by the ED&IR Committee on October 20, 2016.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

SDTMD regularly conducts Brown Act compliant noticed open meetings which provide opportunity for public comment. Applicants are invited to make presentations on funding requests and board deliberations on ranking and budget are conducted openly at the board meetings.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are San Diego lodging businesses and funded contractors. Information was provided via mail, email blasts, website postings, and at open, noticed public meetings.

Caldwell, Erik

Originating Department

Graham, David

Deputy Chief/Chief Operating Officer

San Diego Tourism Marketing District



Report of Activities for FY 2017 – Part I

September 14, 2016

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Introduction



The renewed San Diego Tourism Marketing District (TMD) is an assessment district designed to facilitate the pooling of resources via the collection of assessments from San Diego lodging establishments to develop tourism within the City of San Diego to benefit the assessed businesses by increasing room night stays.



The boundaries of the renewed TMD coincide with the City boundaries and all lodging businesses within the City are assessed: effective January 1, 2013, those with 30 or more rooms are assessed two percent (2%) of eligible gross room revenues while those with 29 or fewer rooms are assessed 0.55% of eligible gross room revenues.



The guiding document for the renewed TMD is the Tourism Marketing District Management Plan (Plan) created by the assessed businesses and approved by City Council in September 2012. The Plan specifies how the assessments may be used and the general funding procedures and criteria. These uses are categorized as "A" and "B" according to activity type and benefit to assessed lodging businesses.



The Plan also outlines the process for oversight and administration. And, perhaps most importantly, it provides for the empowerment of assessed business owners with the local expertise and knowledge to evaluate and make recommendations on programs and services to specifically benefit the assessed lodging businesses through such activities as: marketing of the area; tourism promotion activities; and special events and programs.



The San Diego Tourism Marketing District (SDTMD) is the non-profit organization representing the assessed businesses which is under a five-year agreement through November 2017 to administer the renewed TMD.



The SDTMD brings management experience from the initial district to the renewed district but will also be funding activities in accordance with the renewal Plan which articulates how those that are assessed are benefitted while ensuring that those lodging businesses which are not assessed may not benefit from the TMD-funded activities.

This FY 2017 Report of Activities – Part I reflects the updated recommended allocations of assessments for FY2017 for July 1, 2016 through October 31, 2016.

Quick Facts

San Diego Tourism Marketing District:

Renewed by Resolution: R-307843 with Date of final passage November 27, 2012
Effective January 1, 2013 through June 30, 2052 (a term of 39 ½ years)

Agreement between City and TMD Management Corporation:

Approved by Resolution: R-307844 and amended by Resolutions R-308065
(Dated April 23, 2013) and R-308588 (Dated December 9, 2013).
Effective November 26, 2012 through November 25, 2017

Advisory Board and Contracted TMD Management Corporation:

San Diego Tourism Marketing District (SDTMD)
8880 Rio San Diego Drive, Suite 800, San Diego, CA 92108
(619) 209-6108 www.sdtmd.org

Assessment Methodology Authorized by Resolution No. R-307843:

All assessment rates are based on the privileges directly conferred and specific benefit directly received by assessed businesses from the activities provided within each category and is levied on "Assessable Rent" which is based on gross room rental revenue less exempt revenues, of those benefitting businesses.

Annual assessment rates are as follows:

- Benefit Category A Rate: 1.45% - applied to Assessable Rent of qualifying lodging businesses.
- Benefit Category B Rate: 0.55% - applied to Assessable Rent of qualifying lodging businesses.

Lodging businesses with 30 or more rooms will be assessed at a total rate of 2% (Category A + Category B) while those with 29 or fewer rooms will be assessed at a total rate of 0.55% (Category B only).

No Changes to Boundaries or Assessment Methodology:

For FY2015, no changes are proposed to the boundaries, which encompass the entire City of San Diego, or the benefit categories, or the basis / method of assessment for the renewed District.

Benefit Zones:

There are two (2) benefit categories in the District. Each benefit category is designed so that the activities provided in connection with that category will confer exclusive privileges and a specific benefit directly to assessed businesses.

Lodging businesses benefitting under category A include all lodging businesses in the District with thirty (30) or more rooms. Lodging businesses benefitting under category B include all lodging businesses in the District, regardless of size.

FY2017 – Part I Budget Total

Estimated Available Tourism Marketing District (TMD) Funds FY2017 – Part I: **\$41,047,270**

Budget Summary

CALCULATION OF AVAILABLE TOURISM MARKETING DISTRICT FUNDS FOR FY2017 –Part I

Projected Assessments	
Category A	\$ 8,413,384
Category B	\$ 3,191,283
Projected Interest and Penalties	\$ 80,000
Projected Carryover from FY2016 –	\$ 29,362,603
Contributions from Other Sources:	\$ 0
Total FY2017 – Part I Funds Available	\$ 41,047,270

PROPOSED ACTIVITIES FOR FY 2017 *

(Pursuant to San Diego Tourism Marketing District Management Plan September 2012)

Category A

A1.1 Hotel Meeting Sales	\$ 1,178,649
A1.2 Event Management and Group Sales Development	\$ 518,662
A1.3 Tourism Development Including Travel & Trade	\$ 608,444
A1.4 Group Meeting Direct Marketing	\$ 258,737
A1.5 Consumer Direct Sales and Marketing Program	\$ 4,207,565
Sub-Total A1.1-A1.5	\$ 6,772,057

A1.6 Multi-Year Tourism Development	\$ 30,000
A2 Sub-Regional Targeting	\$ 680,248
A3 Competitive Targeting <i>Programs of the type for benefit categories A.1.1-A1.6 awarded through a competitive process.</i>	\$ 280,759
Sub-Total	\$7,763,064

Litigation Reserve	\$ 22,008,746
Opportunity/Catastrophe Reserve	\$ 501,521
Administration	\$ 572,169
Total Category A	\$ 30,845,500

Category B

Destination Marketing with Specific Call to Action - SDTA	\$ 2,945,460
Litigation Reserve	\$ 6,991,254
Opportunity/Catastrophe Reserve	\$ 66,993
Administration	\$ 198,063
Total Category B	\$ 10,201,770

Total Allocations	\$ 41,047,270
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FY2017 – Part I Allocations

The FY2017 – Part I Allocations are estimated to total \$10,708,524. Per the FY2017 Application Guidelines, the deadline for the annual Applications was December 4, 2015. All submitted applications were reviewed, ranked, and allocations recommended. Ranking factors included time of year, new versus existing rooms, and potential for growth.

Category A1 & B - Destination Marketing Organization (DMO)

San Diego Tourism Authority (SDTA)* Funding Category A1	\$ 6,772,057
San Diego Tourism Authority (SDTA)* Funding Category B	\$ 2,945,460

Category A2 - Sub-Region Promotions (DMO)

San Diego Tourism Authority (SDTA)*	\$ 680,248
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DMO Sub-Total **\$ 10,397,765**

**SDTA formerly known as ConVis*

Category A3 – General Competitive Annual Applicants

California State Games - Summer & Winter Games	\$ 150,000
California State Games – USA Masters Games*	\$ 50,000
Craft Brewers Guild – San Diego Beer Week	\$ 74,900
San Diego Crew Classic	\$ 5,859

A3 Sub-Total **\$ 280,759**

Category A1.6 – Multi-Year Tourism Development

Tourism Study	\$ 30,000
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TOTAL FY2017 FUNDING ALLOCATIONS **\$ 10,708,524**

** New recommendation for allocation 8-26-2016*

San Diego Tourism Authority

Budget Summary

Category A

Wages, Taxes & Employee benefits	\$ 1,375,723
Advertising	\$ 3,337,311
Advertising agency fees	\$ 353,333
Bid fees/Attraction Ticket Sales Cost	\$ 59,400
Dues/ Subscriptions/Memberships	\$ 23,519
Entertainment	\$ 6,191
Event registration fees	\$ 62,087
Lead generation services	\$ 54,880
Marketing materials and brochures	\$ 3,183
Outside contractors	\$ 295,685
Promotional Items	\$ 23,891
Rentals – booth space	\$ 2,216
Rentals – remote space office	\$ 24,761
Research	\$ 82,491
Special event production	\$ 59,925
Sponsorships	\$ 2,544
Travel	\$ 139,737
Allocation of Indirect Costs	<u>\$ 865,180</u>
Total Category A Budget	\$ 6,772,057

Category A2 **\$ 680,248**

Category B

Wages, Taxes & Employee Benefits	\$ 64,456
Advertising	\$ 2,603,018
Advertising agency fees	\$ 205,834
Dues/ Subscriptions/Memberships	\$ 644
Event registration fees	\$ 816
Outside contractors	\$ 9,071
Research	\$ 20,512
Travel	\$ 636
Allocation of Indirect Costs	<u>\$ 40,473</u>
Total Category B Budget	\$ 2,945,460

Total Budget **\$10,397,765**

San Diego Tourism Authority previously known as San Diego Convention and Visitors Bureau

San Diego Tourism Authority

Program of Work

Overview:

The San Diego Tourism Authority (SDTA) is the sales and marketing engine for the San Diego region. The organization is charged with monitoring the health of the tourism industry, promoting all areas of the region, and driving inbound travel.

Incorporated in 1954, SDTA is a private not-for-profit 501(C)(6) organization governed by a 30-member board of directors. The SDTA is nimble in the marketplace. As market conditions shift, programs are updated in order to best capitalize on opportunities and maximize ROI. Investment of new marketing funds from the TMD have helped SDTA in its efforts to win market share and tout San Diego as a diverse tourism market, appealing to leisure and group travelers, international and domestic visitors.

Following the SDTA presentation of the FY2017 proposed budget and plan to the TMD Board of Directors on February 26, 2016, it was directed that the budget be set at \$29.2 million compared to \$30.2 million in the submitted application. The following summary reflects the \$1 million reduction in budget and program of work.

The SDTA mission is clear: To drive visitor demand to economically benefit the San Diego community. Based on the total FY2017 budget request for Tourism Marketing District funding, the FY 2017 program of work is projected to deliver the following:

1. Deliver maximum hotel room nights to the Tourism Marketing District hotels.
2. Deliver an overall organization return on investment of \$20 to \$1.
3. Produce over 900 million paid advertising gross impressions.
4. Generate an estimated 9.3 million visitor inquiries through the web site, social media, e-mail and phone.
5. Deliver over \$30 million in unpaid media exposure through earned media (unpaid editorial), unpaid media promotions and co-operative advertising partners.



FY2017 Key Strategies and Tactics:

The Leisure Market

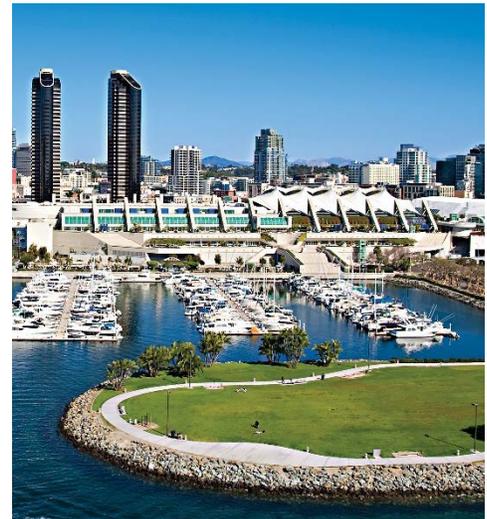
1. Align San Diego marketing programs with Visit California and Brand USA, capitalizing on their respective \$100 million and \$200 million global marketing programs. Position San Diego as the best of everything California has to offer all in one place.
2. Generate maximum hotel/motel visitor volume for the destination by protecting existing volume markets and building opportunity markets.
3. Invest in research and database analysis to focus marketing programs, dollars and timing against the destination's best travel prospects.
 - a. Conduct deeper analysis of the Los Angeles Designated Market Area to determine if a threat exists due to growing traffic and rise of competitive destinations.
 - b. Update the new market development matrix, evaluating market potential versus market cost.
 - c. Update the five-year San Diego Tourism forecast.
 - d. Continue to invest in core visitor industry performance intelligence such as the CIC Research San Diego County Visitor Profile, Smith Travel Research San Diego Hotel Market Analysis and OTTI Overseas Travel Arrivals.
 - e. Continue program measurement tracking, including TNS Return on Investment Advertising Studies and OTA Analysis.
 - f. Align database analysis with online marketing to profile customers across the OWNED and SHARED media channels (website, digital, destination blog, YouTube, social media).
4. Launch new advertising creative and media strategies based on findings from the Global Brand Research Project.
5. Build on the impact of the previous year's advertising campaign.
 - a. Incorporate national and regional layers to effectively reach the existing volume markets while building opportunity markets.
 - b. Due to declining effective media buying dollars, concentrate Brand Advertising media spending in the January–June time period to ensure strong peak travel seasons and run Promotional media during the September–December time period to support the shoulder seasons.
 - c. Utilize a multimedia mix (e.g., television, digital, out-of-home, print) to effectively break through the clutter and reach targeted audiences.
 - d. Target audiences through a persona-based approach and develop new content to build the brand story.
 - f. Adjust the advertising program based on insights from the Spring and Fall TNS Advertising Return-on-Investment Studies.
6. Increase San Diego's share of voice and leverage the paid media budget through unpaid EARNED media programs.
 - a. Public Relations—produce \$30+ million annually in unpaid editorial. Expand paid

- advertising's reach by targeting new markets and audiences. Continue to pitch the diversity of product as well as what's new in the destination. Continue to target the gay/lesbian niche and build upon U.S. Hispanic/Spanish-language outreach.
- b. Unpaid Media Promotions—generate over \$1 million annually in unpaid media promotions that extend the San Diego brand message in key geographic markets. Continue to target affinity audiences that align with the target personas.
7. Connect with travelers and communicate the depth of San Diego travel experiences through OWNED and SOCIAL media channels.
 - a. Move Sandiego.org to a responsive platform (converge desktop, tablet and mobile versions) while increasing the site's storytelling appeal.
 - b. Continue to build new content for all platforms, working with travel writers and users to generate compelling experiences.
 - c. Showcase the destination and SDTA members by driving more traffic to all channels.
 - d. Partner with outside publications to produce the San Diego Official Travel Guide (*San Diego Magazine*), San Diego Golf Map (San Diego Certified) and San Diego Pocket Map (*Where Magazine*).
 8. Deepen alliances with community partners to promote the breadth of San Diego's travel product:
 - a. Arts and Culture—City of San Diego Commission for Arts and Culture
 - b. Craft Beer—San Diego Brewer's Guild
 - c. Food—California Restaurant Association, San Diego Chapter
 - d. Cruises—Port of San Diego
 9. Partner with the major Online Travel Agencies to increase awareness of San Diego and grow sales of hotel room nights for the TMD.
 - a. Through RFP, select key OTAs to run paid media and promotions both domestically and internationally. Effectively reach travel prospects by running high-profile placements; deploying competitive destination targeting; developing geo-targeted campaigns; and affinity targeting.
 - b. Conduct reservation agent training on the San Diego travel product and experience.
 - c. Facilitate bringing together OTA market managers and SDTA members to grow San Diego product inclusion in OTA channels.
 10. Assist visitors with planning their San Diego trip through:
 - a. Sandiego.org and m.sandiego.org—The Official Travel Resource for the San Diego Region.
 - b. Visitor publications.
 - c. Visitor services in the form of phone and email responses to visitor inquiries.
 11. Continue to market to the Travel Trade as a means of influencing transient travel to the destination.
 - a. Major Travel Partners—continue to target the top-producing travel agencies through sales calls and direct marketing. Seek opportunities for partners to increase promotion of San Diego to their customers.

- b. Airline Vacation Offices—partner with key airlines such as Southwest, Alaska and American. Develop promotions that feature air/hotel/attraction packages and provide potential visitors with a price point for the destination.
 - c. Industry Support—continue to participate in major travel industry shows. Continue to offer the San Diego Travel Specialist online training program to educate and certify travel agents.
12. Increase international marketing programs and investment to capitalize on both the Visit California and Brand USA global marketing programs.
 - a. Create individual country plans for each major international market.
 - b. Ensure a foundational layer of international development with In-Country Representation, Travel Trade Development and Public Relations.
 - c. Build a layer of digital presence for San Diego through localized websites and social media.
 - d. Host travel trade and media FAMS to grow education among key influencers.
 - e. Seek incremental funding from the TMD to build promotional campaigns in key target markets.
 13. Partner with the San Diego Regional Airport Authority to develop and support new international air service.

The Citywide Conventions Market

1. Continue to advocate for contiguous expansion of the San Diego Convention Center in order to meet customer needs and ensure growth of citywide room nights for the destination.
2. Due to the expansion delay and uncertainty, shift sales and marketing to best maximize utilization of the existing facility and generate the greatest hotel room night demand.
 - a. Focus on filling open dates within the next five years (previously construction years).
 - b. Capitalize on MINT, Top Medical Meetings, Tradeshow Weekly, Competitive Calendars and top 250 Trade Shows List databases to uncover new accounts.
 - c. Bring prospective clients to San Diego to familiarize them with the convention center package.
 - d. Secure medical citywide rotations.
3. Monitor developments in the West Coast convention centers (such as San Francisco’s Moscone Convention Center, Anaheim, Los Angeles, and Seattle), as improvements in these centers pose a threat to our base of business. Evaluate developments at other centers (such as Boston Convention Center that offer key vertical segments an alternative destination.



4. Leverage SDTA sales teams' synergies to increase market intelligence, establish stronger sales presence and better service key customers.
 - a. Continue collaboration between the Citywide and Hotel Meetings sales teams in order to achieve new savings, garner business referrals, and identify new prospects and sales opportunities.
 - b. Work a collaborative plan to maximize trade show presence, sales trips and industry events.
 - c. Analyze each account to see if there is citywide potential (or single property potential).
5. Secure facility revenue through Group Contract Agreements and Guidelines. Offer reduced or discounted deviations from the standard license fee rates if needed to secure core business.
 - a. Continue to partner with the San Diego Convention Center facility team in site visits and negotiations to ensure that revenue and booking goals are achieved.
 - b. Develop deeper understanding of the center's operational costs in order to best qualify future business opportunities.
 - c. Maximize the catering food and beverage and audiovisual contracts, and hold clients responsible for meeting expectations.

Hotel Meetings Markets

1. Evolve the new business strategy by keeping the core sales team focused on new customer acquisition and the site and conference services teams focused on maintaining and assisting annual repeat business to remain good stewards of that business.
 - a. Prospects are defined as meetings that haven't met in San Diego previously and/or meetings that haven't met in San Diego in the last five years.
 - b. Assists are defined as supporting hotel members as they work with a meeting planner to sell San Diego versus another destination, regardless of how the lead was generated.
 - c. Repeats are defined as groups that return to San Diego annually and need our assistance in hotel consideration (e.g., Surf Cup, USMC graduation, Nomads Soccer, etc.).
2. Strategically place sales resources in key source markets in the West Coast, Midwest, Washington, D.C., and Southeast.
3. Continue to build upon the San Diego Meeting Certified program to ensure destination excellence across the hospitality community. Create a competitive selling advantage by touting the "only in San Diego" certification program.
4. Collaborate with meeting industry partners such as media companies and third-party planners to tap new audiences geographically and by industry segment.
5. Support members by broadening the responsibilities of the site services team to assist hotels and ensure we "keep it in San Diego".



6. Reimagine customer experience programs (a/k/a FAMS) to offer more personalized and creative options to entice and convert meeting planners.
7. Fully leverage social media platforms such as LinkedIn and Twitter to prospect new customers and maximize attendance.
8. Continue direct marketing programs, including lead generation promotions, monthly email campaigns and direct mail to top accounts and prospects.
9. Hold in-market events for San Diego in primary and secondary markets to introduce San Diego to new customers.
10. Capitalize on the National Geographic Channel "World's Smart Cities" program to reposition San Diego and its business culture.

Sub-Regional Marketing

As part of the SDTA program of work, specific efforts to support the sub-regions In the Tourism Marketing District, a benefit category has been established to develop programs that serve the needs of larger hotels (30 rooms or more) that are located in parts of the City other than Downtown. This benefit category is A2.

Overview:

From a lodging performance perspective, hotels that are located outside the Downtown core tend to realize less business travel and need more direct sales and marketing in order to drive hotel room night sales. Boosting room night demand in these areas boosts the overall San Diego lodging market performance, district lodging revenue and City TOT collections. According to Smith Travel Research, San Diego's sub-regions underperformed against the Downtown region in calendar year 2015, although the UTC area surpassed downtown in occupancy:

Sub-Region Hotel Performance

	Calendar Year 2015					
	% Occupancy	% Occupancy YOY Growth	ADR	% ADR YOY Growth	RevPAR	RevPAR YOY Growth
County	76.4%	2.41%	\$150.64	6.02%	\$115.04	8.57%
City of San Diego	78.5%	2.34%	\$157.41	6.52%	\$123.59	9.01%
Downtown	80.4%	0.98%	\$189.17	7.79%	\$152.18	8.84%
Mission Valley	77.6%	4.78%	\$115.01	6.46%	\$89.25	11.55%
Mission Bay	79.1%	1.39%	\$179.09	5.31%	\$141.75	6.78%
La Jolla Coastal	76.9%	1.28%	\$225.69	7.76%	\$173.46	9.14%
Pt. Loma - Airport	78.6%	1.41%	\$127.29	5.21%	\$100.05	6.70%
UTC	80.8%	3.04%	\$170.51	5.01%	\$137.74	8.20%
I-15 Corridor	72.8%	2.09%	\$126.92	5.21%	\$92.44	7.40%

Sub-Regional - Leisure Market

1. Advertise San Diego sub-regions through targeted regional media outlets that reach the upscale leisure and budget-conscious travel target. Alternate creative that promotes the unique nature of the sub-regions with event advertising geared to stimulate shoulder-season business.
2. Develop niche/experience OTA campaigns to focus on the luxury and budget travelers, specifically designed to drive room nights for sub-region TMD properties during need periods. Use the OTAs to provide creative allowing us to capitalize on their knowledge of the channel, change creative based on site wide themes (e.g., Fall Sale) and get into the marketplace quickly.
3. Continue with a dedicated public relations program to generate earned media exposure for sub-regions including pitches specifically matching neighborhood product offerings to media outlets.
4. Work in collaboration with the SDTA's International Marketing Manager to include sub-regions in international media pitches and hosting opportunities with Brand USA and Visit California where appropriate.
5. Expand social media campaigns that promote the sub-regions. Continue to engage hotel members from the sub-regions to participate in social campaigns and amplify messaging.
6. Continue building a library of rights-free marketing assets (photography, video and logo) that showcase the iconic beauty and vibe of each identified sub-region. Make these production assets accessible to participating lodging properties.
7. Distribute a promotional calendar of sub-region media campaigns, social media program and PR opportunities to all participating hotels and update quarterly with sub-region input.
8. Continue tour and travel development to build more sub-region opportunities in the U.S., Mexico and Latin America markets.



Sub-Regional - Group Sales Market

1. Beginning in FY 15, the SDTA hotel meetings sales team is goaled and rewarded only on finding new meetings for the destination. Meetings that are annual, repeat or may need assistance are generally handled by the site experience team and/or the conference services team, ensuring that our sales associates stay focused on finding meetings that would not have come to San Diego without their efforts.
2. We no longer duplicate leads that are sent directly to the hotels and are copied to us through Cvent and other third parties unless we can specifically demonstrate that the customer is sourcing San Diego due to our influence.
3. Continue our customer acquisition plan geared specifically to sub-regions to include more site experience programs (FAMS) and in-market presentations to non-summer, non-citywide, 35-500 peak room group meetings customers.
4. In FY 2017, we will continue to work with the expanded sub-region hotels to identify specific need dates for sales team focus.

SDTA – “Sports First San Diego” Department:

“Sports First San Diego”, a strategic sales and marketing department within the San Diego Tourism Authority, is dedicated to local economic development, specifically sports tourism and the delivery / implementation of sporting events and athletic programs that result in a measurable economic impact to the City of San Diego Hotels.

The future vision for the Sports First department is to continue to aggressively research and cultivate the sports events marketplace in order to identify those events that will deliver incremental new hotel rooms nights, and economic impact by recognizing those events that represent a “good fit” for San Diego through our geographic location, facilities and venue offerings, as well as available dates. And most importantly, to continue to maximize the resources of the TMD to create a competitive, incentivized bid package in order to capture future events, and continually replenish the sports event niche, filling the pipeline of the sports group meeting market, which has historically generated approximately 70,000 room nights per year. This historic performance is in addition to the individual sports events and programs separately funded by the TMD.

The multi-track sales strategy includes:

- The continuation of the current sales model that supports the annual repeat or historical business that is the core component of sports tourism in San Diego.
- Adding a strategic sales component to generate approximately 20,000 room nights annually in incremental, new business...in-the-year-for-the-year.
- Adding a strategy of event cultivation that can potentially add 50-100 percent annual growth to the sports marketing niche by identifying and pursuing long-range commitments to future business thereby filling the room night pipeline.

This strategy will be “sales only”, unencumbered by the necessity to provide after-sales services, so the focus will only be on the productivity of their sales efforts. It will be carried out by three full-time SDTA employees. All available sourcing and networking will be utilized to identify new sports events for San Diego.

SDTA – International Marketing Leverage (see Leisure Market above):

The core objective for international development is to create awareness of the San Diego brand and increase consideration to travel.

Key Strategies Overall

1. Identify priority markets for San Diego marketing investment
2. Align San Diego marketing programs with Visit California and Brand USA, capitalizing on their \$100 million and \$200 million respectively global marketing programs. Position San Diego as the best of everything California has to offer all in one place.
3. Partner with the San Diego Regional Airport Authority and other Southwestern regional transportation partners to increase access to San Diego.
4. Make San Diego travel product more easily available in international markets.
5. Build a communications foundation that delivers key messaging for each of the priority markets.
6. Invest in research and tracking to support the international program of work.

FY17 TOTAL SDTA Funding Request and Recommendation

PART I

Funding Request A1	\$6,772,057
Funding Request B	\$2,945,460
Funding Request A2 – Sub-Region	\$680,248
Sub-Total	\$10,397,765

PART II

\$19,830,126

TOTAL Funding Request & Recommendation

\$30,227,891

Ranking:

- Directors’ Aggregate Ranking: #1 of 16

Return on Investment (ROI) - Projected:

- Total hotel room nights 3,377,000
- Return @ \$160.11 ADR (average daily rate) \$578,932,920
- **ROI 20***

**International Marketing Leverage and Sub-Region programs are in development. The program expenses are included; however, the projected room night production for both programs are “to be determined” and not included.*

California State Games

Summer & Winter Games

The 2016 California State Games will be held in San Diego July 14-17, 2016 and will host over 9000 athletes who will be competing in 22 sports at venues throughout San Diego. Since a large majority of athletes are under the age of 18, they attend the State Games with their families and coaches. These athletes and their families are excited to come to San Diego to compete and take an extended vacation. An estimated 14,500 TMD hotel room nights will be booked in all parts of the Assessment District. The California State Game has a mandatory booking policy. Teams now have to stay at host SDTMD hotels to play in the Games.

The 2017 California Winter Games will be held in February & March 2016 and consists of Ice Hockey, Figure Skating & Gymnastics (new for 2016). The Winter Games are open to out of state competitors. Athletes are expected from Colorado, Texas, Arizona, Washington, and Utah. Exciting news this year is that San Diego now has a new ice rink in Poway. With the additional ice time, they will be able to accommodate more teams that may want to play, which means more TMD hotel rooms. Over 1,500 athletes and over 3,000 TMD hotel room nights are expected.

FY2017 TOTAL Funding Request and Recommendation

Funding to be used for Event Management & Group Sales/Consumer Direct Sales & Marketing.

Part I -Funding Request	<u>\$150,000</u>
Funding Recommendation	\$150,000

Ranking:

- Directors' Aggregate Ranking: #4 of 16

Return on Investment (ROI) - Projected:

- Total hotel room nights 17,500
- New hotel room nights of total 3,000
- Return @ \$140.00 ADR (average daily rate) \$2,450,000
- **ROI 16**



California State Games

USA Masters Games

The USA Masters Games is a new multi-sport event for competitive adult athletes providing both a “national-championships-level” competitive experience in each sport and a fun, entertaining environment conducive to meeting and socializing with fellow Masters athletes from across the U.S. and other countries of the world – a Sports Festival for Masters athletes.

2018 USA Masters Games will be held in San Diego in May of 2018. The Games will host over 5,000 athletes ages 21 and older in 20 different sports at venues throughout San Diego. These athletes will be coming from across the United States as well as around the world. The USA Masters Games will feature Opening and Closing Ceremonies, and other events and activities showcasing San Diego amenities. California State Games will be managing the event with marketing cooperation from the San Diego Tourism Authority and San Diego Exploratory Committee. An estimated 10,000 rooms nights are expected in 2018.

FY2017 TOTAL Funding Request and Recommendation

Funding to be used for Event Management & Group Sales/Consumer Direct Sales & Marketing.

Part I	\$50,000
Part II	<u>\$100,000</u>
Funding Recommendation	\$150,000

Ranking:

- Opportunity/Catastrophe Request:
N/A

Return on Investment (ROI) - Projected:

- Total hotel room nights
10,000
- New hotel room nights of total
10,000
- Return @ \$149.00 ADR (average daily rate)
\$1,490,000
- ROI**
14.9

Craft Brewers Guild – SD Beer Week

San Diego Beer Week has been designed to be a tourism-oriented, ten-day signature celebration in November 2016 of craft beer. San Diego is uniquely positioned to successfully execute and benefit from a well-designed beer week. Not only is our region already a major tourist destination, unlike other cities which have started their own beer weeks, San Diego is already recognized as a Mecca for craft brewing – it has even been named the #1 Beer City in America. There are more Craft Breweries in San Diego than in most countries. San Diego’s reputation incentivizes great brewers to want to live and work here in San Diego and make and produce a product that’s world class. That, in turn, brings more tourists to San Diego to tour our more than 115 breweries and enjoy the diverse and numerous Beer Week events.

San Diego Beer Week leverages San Diego’s existing craft brewing infrastructure advantage and the organizational power of the San Diego Brewers Guild to create the best annual Beer Week in America, and do it in a way that maximizes the benefits not just for local brewers, but also for the region’s hotels. Focused promotion of San Diego Beer Week will have the ancillary benefit of increasing beer tourism to San Diego during the rest of the year, as well. The craft beer segment represents a highly desirable demographic of relatively young, educated, affluent, mobile beer enthusiasts, looking for opportunities to experience the local craft culture of San Diego for their vacations.

FY2017 TOTAL Funding Request and Recommendation

Funding for A1.4 – Group Meeting Direct Marketing and A1.5 – Consumer Direct Marketing

Funding Request	<u>\$74,900</u>
Funding Recommendation	\$74,900

Ranking:

- Directors’ Aggregate Ranking: #3 of 16

Return on Investment (ROI) - Projected:

- Total hotel room nights 7,900
- New hotel room nights of total 1,000
- Return @ \$148.97 ADR (average daily rate) \$1,256,811
- **ROI 16.7**



San Diego Crew Classic

The San Diego Crew Classic is the world's largest annual rowing regatta held primarily for eight-oared shells (boats). Occurring in the spring, the Crew Classic heralds the start of the rowing season in the United States. Since 1973, this well-regarded event, organized by a not-for-profit organization, has showcased the city of San Diego to generations of rowers and spectators, nationally and internationally. The San Diego Crew Classic is a two-day regatta in March of 120+ races and 4,000+ athletes – a marked increase since FY2009 when first receiving TMD funding. For 2017, they expect 450 boats from 76 cities, 24 states plus Canada, Mexico, Great Britain, and Hong Kong. In 2008 there were only 340 boats.

TMD funding helps the organizer broaden the scope nationally and to continue to attract the top-level college programs to their invitational races. Paramount to their success will be those efforts that grow the event's attendance, visibility and revenue through advertising nationally as well as regionally. They plan on increasing their use of pay-per-click advertising online as it is more directed to their target audiences from out-of-town with a greater ROI. They have identified the junior market as an important growth market, as well.

Another goal for 2017 is to "fill every lane" of each Master's race. The Master events have become a reunion of old teammates returning to San Diego from across the country to race against their peers. The Master competitors are the demographic that spend a significant amount of money to travel, race, and recreate in San Diego. They continue to explore ways to facilitate January winter rowing training in San Diego collegiate programs such as the University of Minnesota.

FY2017 TOTAL Funding Request and Recommendation

Funding for A1.2 – Event Management and Group Sales Development and A1.4 Group Meeting Direct Marketing.

Funding Request	<u>\$300,000</u>
Part I – Recommendation	\$5,859
Part II - Recommendation	<u>\$194,141</u>
Total Recommendation	\$200,000

Ranking:

- Directors' Aggregate Ranking: #5 of 16

Return on Investment (ROI) - Projected:

- Total hotel room nights 10,500
- New hotel room nights of total 1,000
- Return @ \$148.97ADR (average daily rate) \$1,743,525
- **ROI 8.71**



Administration

San Diego Tourism Marketing District Corporation

	Category A	Category B	Total
Personnel			
Employee Benefits	\$ 4,048	\$ 1,535	\$ 5,583
Executive Director Wages	54,375	20,625	75,000
Payroll tax	4,350	1,650	6,000
Workers Comp	<u>1,088</u>	<u>413</u>	<u>1,501</u>
Total Personnel	63,861	24,223	88,084
Contract Services			
Accounting	68,000	12,000	80,000
Audits	17,000	3,000	20,000
Legal	212,500	37,500	250,000
Research and compliance	22,667	4,000	26,667
Communications	<u>35,258</u>	<u>6,222</u>	<u>41,480</u>
Total Contract Services	355,425	62,722	418,147
Overhead			
Dues and subscriptions	261	99	360
Insurance	11,216	4,255	15,471
Meals, Travel & Entertainment	145	55	200
Occupancy	5,800	2,200	8,000
Office Supplies	1,208	458	1,666
Parking	97	40	137
Payroll processing	725	275	1,000
Postage and shipping	483	183	666
Printing and reproduction	483	183	666
Telephone	<u>580</u>	<u>220</u>	<u>800</u>
Total Overhead	20,998	7,968	28,966
Contingency	31,885	3,150	35,035
Total SDTMD Operations	472,169	98,063	570,232
Administration Fees to City	<u>100,000</u>	<u>100,000</u>	<u>200,000</u>
Total Administration	\$ 572,169	\$ 198,063	\$ 770,232

Opportunity & Catastrophe / Litigation Reserve

Part I - Opportunity & Catastrophe Reserve by Fund: 0% of assessment revenue

	<u>Category A</u>	<u>Category B</u>	<u>Total</u>
Carryover from FY2016	\$ 4,001,573	\$ 509,242	\$ 4,510,815
less \$ moved to Litigation Reserve	(3,638,970)	(509,242)	(4,148,212)
Projected FY2017 Opp/Cat Allocation	<u>138,918</u>	<u>66,993</u>	<u>205,911</u>
Total Opportunity/Catastrophe Reserve	\$ 501,521	\$ 66,993	\$ 568,514

Second Amendment Litigation Reserve

Required fixed amount, allocation by category based on current budgeted funding obligations.

	<u>Category A</u>	<u>Category B</u>	<u>Total</u>
FY2014 Funding requirement	\$ 3,987,500	\$ 1,512,500	\$ 5,500,000
FY2015 Funding requirement	4,712,500	1,787,500	6,500,000
FY2016 Funding requirement	<u>5,437,500</u>	<u>2,062,500</u>	<u>7,500,000</u>
FY2016 Balance	<u>14,137,500</u>	<u>5,362,500</u>	<u>19,500,000</u>
Plus \$ moved from FY2016 balance of Opportunity/ Catastrophe reserve	3,638,970	509,242	4,148,212
Plus \$ moved from FY2016 balance of Undistributed funds/Admin interest	<u>4,232,276</u>	<u>1,119,512</u>	<u>5,351,788</u>
Sub-Total of FY17 Required Litigation Reserve allocations	<u>7,871,246</u>	<u>1,628,754</u>	<u>9,500,000</u>

Total FY17 Litigation Reserve	\$22,008,746	\$ 6,991,254	\$ 29,000,000
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Net Opportunity & Catastrophe/Litigation Reserve			\$ 29,568,514
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Administrative/Interest Income

Part I - Administrative: 5% of assessment revenue plus interest income:

	<u>Category A</u>	<u>Category B</u>	<u>Total</u>
Assessment Revenue	\$ 420,668	\$ 159,564	\$ 580,232
FY2017-Part I	58,000	22,000	80,000
Legal Services (Litigation)	<u>93,501</u>	<u>16,499</u>	<u>110,000</u>
Total	\$ 572,169	\$ 198,063	\$ 770,232

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FY2017 Report of Activities – Part I

San Diego Tourism Marketing District



Report of Activities for FY 2017 – Part II

September 14, 2016

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Introduction



The San Diego Tourism Marketing District (TMD) is an assessment district designed to facilitate the pooling of resources via the collection of assessments from San Diego lodging establishments to develop tourism within the City of San Diego to benefit the assessed businesses by increasing room night stays.



The boundaries of the TMD coincide with the City boundaries and effective September 1, 2016 all lodging businesses within the City with 70 or more rooms are assessed two percent (2%) of eligible gross room revenues.



The guiding document for the TMD is the Tourism Marketing District Management Plan (Plan) created by the assessed businesses and approved by City Council in August 2016. The Plan specifies how the assessments may be used and the general funding procedures and criteria.



The Plan also outlines the process for oversight and administration. And, perhaps most importantly, it provides for the empowerment of assessed business owners with the local expertise and knowledge to evaluate and make recommendations on programs and services to specifically benefit the assessed lodging businesses through such activities as: marketing of the area; tourism promotion activities; and special events and programs.



The San Diego Tourism Marketing District (SDTMD) Corporation is the non-profit organization representing the assessed businesses that works with the City through an Operating Agreement to implement the TMD Management Plan.

This FY 2017 Report of Activities – Part II reflects the updated recommended allocations of assessments for FY2017 effective November 1, 2016 through June 30, 2017.

Quick Facts

San Diego Tourism Marketing District:

Renewed by Resolution: R-307843 (November 27, 2012) effective January 1, 2013.

Modified by Resolution R-310664 (August 3, 2016) effective September 1, 2016

District ends June 30, 2052

Agreement between City and TMD Management Corporation:

Pending – to be effective November 1, 2016 through October 31, 2021

Advisory Board and Contracted TMD Management Corporation:

San Diego Tourism Marketing District (SDTMD)

8880 Rio San Diego Drive, Suite 800, San Diego, CA 92108

(619) 209-6108

www.sdtmd.org

Assessment Methodology Authorized by Resolution No. R-310664:

The assessment rate of two percent (2%) is based on the privileges directly conferred and specific benefit directly received by assessed businesses from the activities provided and is levied on "Assessable Rent" which is based on gross room rental revenue less exempt revenues, of those benefitting businesses.

No Changes to Boundaries or Assessment Methodology:

No changes are proposed to the boundaries, which encompass the entire City of San Diego.

Benefit Zones:

None

FY2017 – Part II Budget Total

Estimated Available Tourism Marketing District (TMD) Funds FY2017 – Part II: **\$24,482,826**

Budget Summary

CALCULATION OF AVAILABLE TOURISM MARKETING DISTRICT FUNDS FOR FY2017 –PART II

Projected Assessments	\$ 23,242,826
Projected Interest and Penalties	\$ 160,000
Utilization of Original District remaining funds	\$ 1,080,000
Contributions from Other Sources of Funding*:	\$ <u>0</u>
Total FY2017 – Part II Funds Available	\$24,482,826

* Please see Page 6 for required Matching Funds for funded entities

PROPOSED ACTIVITIES FOR FY 2017 *

(Pursuant to San Diego Tourism Marketing District Management Plan August 2016)

Competitive Applications

Targeted Marketing and Sales Programs	\$ 11,634,868
Destination Marketing	\$ <u>8,939,399</u>
Sub-Total	\$20,574,267

Administration	\$ <u>1,320,466</u>
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Total Allocations	\$21,894,733
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Opportunity/Catastrophe Reserve	\$ <u>2,588,093</u>
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Total	\$24,482,826
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FY2017 – Part II Allocations

The FY2017 – Part II Allocations are estimated to total \$20,574,267. Per the FY2017 Application Guidelines, the deadline for the annual Applications was December 4, 2015. All submitted applications were reviewed, ranked, and allocations recommended. Ranking factors included time of year, new versus existing rooms, and potential for growth. The information below reflects the recommended amounts that are associated with Part II of FY2017.

ENTITY	TMD FUNDS	NON-TMD FUNDS
San Diego Tourism Authority	\$ 19,830,126	\$ 3,303,454
California State Games – USA Masters Games*	\$ 100,000	\$ 1,014,500
San Diego Bowl Games	\$ 450,000	\$ 9,814,320
San Diego Crew Classic	\$ 194,141	\$ 894,283
TOTAL	\$ 20,574,267	\$ 15,026,557

* New recommendation for allocation 8-26-2016

San Diego Tourism Authority

Budget Summary

Targeted Marketing and Sales Programs

Wages, Taxes & Employee benefits	\$ 3,066,953
Advertising	\$ 4,577,650
Advertising agency fees	\$ 190,257
Bid fees/Attraction Ticket Sales Cost	\$ 102,862
Dues/ Subscriptions/Memberships	\$ 58,233
Entertainment	\$ 40,636
Event registration fees	\$ 131,093
Lead generation services	\$ 58,653
Marketing materials and brochures	\$ 5,741
Outside contractors	\$ 541,501
Promotional Items	\$ 31,492
Rentals – remote space office	\$ 52,773
Research	\$ 123,202
Special event production	\$ 32,528
Sponsorships	\$ 124,754
Travel	\$ 236,081
Allocation of Indirect Costs	<u>\$ 1,543,318</u>
Total Targeted Marketing and Sales Programs	<u>\$10,917,727</u>

Destination Marketing

Wages, Taxes & Employee Benefits	\$ 681,836
Advertising	\$ 4,672,907
Advertising agency fees	\$ 1,028,418
Dues/ Subscriptions/Memberships	\$ 1,069
Event registration fees	\$ 43,392
Marketing Materials & Brochures	\$ 5,586
Outside contractors	\$ 964,310
Promotional items	\$ 12,413
Rentals – booth space	\$ 4,345
Research	\$ 151,288
Special Event production	\$ 13,716
Sponsorships	\$ 3,599
Travel	\$ 57,909
Allocation of Indirect Costs	<u>\$ 1,271,611</u>
Total Destination Marketing	<u>\$ 8,912,399</u>

Total	<u>\$19,830,126</u>
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SDTA was previously known as San Diego Convention and Visitors Bureau

San Diego Tourism Authority

Program of Work

Overview:

The San Diego Tourism Authority (SDTA) is the sales and marketing engine for the San Diego region. The organization is charged with monitoring the health of the tourism industry, promoting all areas of the region, and driving inbound travel.

Incorporated in 1954, SDTA is a private not-for-profit 501(C)(6) organization governed by a 30-member board of directors. The SDTA is nimble in the marketplace. As market conditions shift, programs are updated in order to best capitalize on opportunities and maximize ROI. Investment of new marketing funds from the TMD have helped SDTA in its efforts to win market share and tout San Diego as a diverse tourism market, appealing to leisure and group travelers, international and domestic visitors.

The SDTA mission is clear: To drive visitor demand to economically benefit the San Diego community. Based on the total FY2017 budget request for Tourism Marketing District funding, the FY 2017 program of work is projected to deliver the following:

1. Deliver maximum hotel room nights to the Tourism Marketing District hotels.
2. Deliver an overall organization return on investment of \$20 to \$1.
3. Produce over 900 million paid advertising gross impressions.
4. Generate an estimated 9.3 million visitor inquiries through the web site, social media, e-mail and phone.
5. Deliver over \$30 million in unpaid media exposure through earned media (unpaid editorial), unpaid media promotions and co-operative advertising partners.



FY2017 Key Strategies and Tactics:

The Leisure Market

1. Align San Diego marketing programs with Visit California and Brand USA, capitalizing on their respective \$100 million and \$200 million global marketing programs. Position San Diego as the best of everything California has to offer all in one place.
2. Generate maximum hotel/motel visitor volume for the destination by protecting existing

volume markets and building opportunity markets.

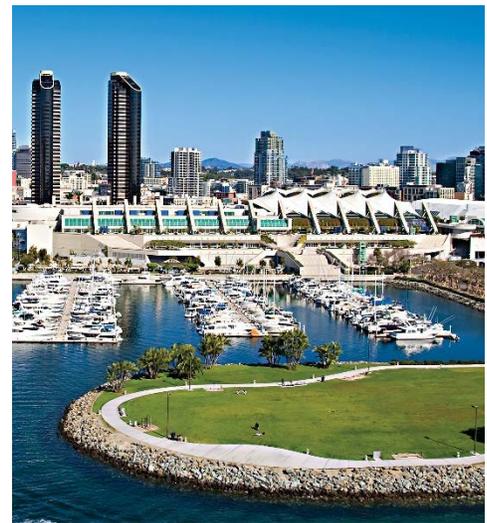
3. Invest in research and database analysis to focus marketing programs, dollars and timing against the destination's best travel prospects.
 - a. Conduct deeper analysis of the Los Angeles Designated Market Area to determine if a threat exists due to growing traffic and rise of competitive destinations.
 - b. Update the new market development matrix, evaluating market potential versus market cost.
 - c. Update the five-year San Diego Tourism forecast.
 - d. Continue to invest in core visitor industry performance intelligence such as the CIC Research San Diego County Visitor Profile, Smith Travel Research San Diego Hotel Market Analysis and OTTI Overseas Travel Arrivals.
 - e. Continue program measurement tracking, including TNS Return on Investment Advertising Studies and OTA Analysis.
 - f. Align database analysis with online marketing to profile customers across the OWNED and SHARED media channels (website, digital, destination blog, YouTube, social media).
4. Launch new advertising creative and media strategies based on findings from the Global Brand Research Project.
5. Build on the impact of the previous year's advertising campaign.
 - a. Incorporate national and regional layers to effectively reach the existing volume markets while building opportunity markets.
 - b. Due to declining effective media buying dollars, concentrate Brand Advertising media spending in the January–June time period to ensure strong peak travel seasons and run Promotional media during the September–December time period to support the shoulder seasons.
 - c. Utilize a multimedia mix (e.g., television, digital, out-of-home, print) to effectively break through the clutter and reach targeted audiences.
 - d. Target audiences through a persona-based approach and develop new content to build the brand story.
 - f. Adjust the advertising program based on insights from the Spring and Fall TNS Advertising Return-on-Investment Studies.
6. Increase San Diego's share of voice and leverage the paid media budget through unpaid EARNED media programs.
 - a. Public Relations—produce \$30+ million annually in unpaid editorial. Expand paid advertising's reach by targeting new markets and audiences. Continue to pitch the diversity of product as well as what's new in the destination. Continue to target the gay/lesbian niche and build upon U.S. Hispanic/Spanish-language outreach.
 - b. Unpaid Media Promotions—generate over \$1 million annually in unpaid media promotions that extend the San Diego brand message in key geographic markets. Continue to target affinity audiences that align with the target personas.
7. Connect with travelers and communicate the depth of San Diego travel experiences through OWNED and SOCIAL media channels.

- a. Move Sandiego.org to a responsive platform (converge desktop, tablet and mobile versions) while increasing the site's storytelling appeal.
 - b. Continue to build new content for all platforms, working with travel writers and users to generate compelling experiences.
 - c. Showcase the destination and SDTA members by driving more traffic to all channels.
 - d. Partner with outside publications to produce the San Diego Official Travel Guide (*San Diego Magazine*), San Diego Golf Map (San Diego Certified) and San Diego Pocket Map (*Where Magazine*).
8. Deepen alliances with community partners to promote the breadth of San Diego's travel product:
 - a. Arts and Culture—City of San Diego Commission for Arts and Culture
 - b. Craft Beer—San Diego Brewer's Guild
 - c. Food—California Restaurant Association, San Diego Chapter
 - d. Cruises—Port of San Diego
 9. Partner with the major Online Travel Agencies to increase awareness of San Diego and grow sales of hotel room nights for the TMD.
 - a. Through RFP, select key OTAs to run paid media and promotions both domestically and internationally. Effectively reach travel prospects by running high-profile placements; deploying competitive destination targeting; developing geo-targeted campaigns; and affinity targeting.
 - b. Conduct reservation agent training on the San Diego travel product and experience.
 - c. Facilitate bringing together OTA market managers and SDTA members to grow San Diego product inclusion in OTA channels.
 10. Assist visitors with planning their San Diego trip through:
 - a. Sandiego.org and m.sandiego.org—The Official Travel Resource for the San Diego Region.
 - b. Visitor publications.
 - c. Visitor services in the form of phone and email responses to visitor inquiries.
 11. Continue to market to the Travel Trade as a means of influencing transient travel to the destination.
 - a. Major Travel Partners—continue to target the top-producing travel agencies through sales calls and direct marketing. Seek opportunities for partners to increase promotion of San Diego to their customers.
 - b. Airline Vacation Offices—partner with key airlines such as Southwest, Alaska and American. Develop promotions that feature air/hotel/attraction packages and provide potential visitors with a price point for the destination.
 - c. Industry Support—continue to participate in major travel industry shows. Continue to offer the San Diego Travel Specialist online training program to educate and certify travel agents.
 12. Increase international marketing programs and investment to capitalize on both the Visit California and Brand USA global marketing programs.

- a. Create individual country plans for each major international market.
 - b. Ensure a foundational layer of international development with In-Country Representation, Travel Trade Development and Public Relations.
 - c. Build a layer of digital presence for San Diego through localized websites and social media.
 - d. Host travel trade and media FAMS to grow education among key influencers.
 - e. Seek incremental funding from the TMD to build promotional campaigns in key target markets.
13. Partner with the San Diego Regional Airport Authority to develop and support new international air service.

The Citywide Conventions Market

1. Continue to advocate for contiguous expansion of the San Diego Convention Center in order to meet customer needs and ensure growth of citywide room nights for the destination.
2. Due to the expansion delay and uncertainty, shift sales and marketing to best maximize utilization of the existing facility and generate the greatest hotel room night demand.
 - a. Focus on filling open dates within the next five years (previously construction years).
 - b. Capitalize on MINT, Top Medical Meetings, Tradeshow Weekly, Competitive Calendars and top 250 Trade Shows List databases to uncover new accounts.
 - c. Bring prospective clients to San Diego to familiarize them with the convention center package.
 - d. Secure medical citywide rotations.
3. Monitor developments in the West Coast convention centers (such as San Francisco's Moscone Convention Center, Anaheim, Los Angeles, and Seattle), as improvements in these centers pose a threat to our base of business. Evaluate developments at other centers (such as Boston Convention Center that offer key vertical segments an alternative destination.
4. Leverage SDTA sales teams' synergies to increase market intelligence, establish stronger sales presence and better service key customers.
 - a. Continue collaboration between the Citywide and Hotel Meetings sales teams in order to achieve new savings, garner business referrals, and identify new prospects and sales opportunities.
 - b. Work a collaborative plan to maximize trade show presence, sales trips and industry events.
 - c. Analyze each account to see if there is citywide potential (or single property potential).



5. Secure facility revenue through Group Contract Agreements and Guidelines. Offer reduced or discounted deviations from the standard license fee rates if needed to secure core business.
 - a. Continue to partner with the San Diego Convention Center facility team in site visits and negotiations to ensure that revenue and booking goals are achieved.
 - b. Develop deeper understanding of the center’s operational costs in order to best qualify future business opportunities.
 - c. Maximize the catering food and beverage and audiovisual contracts, and hold clients responsible for meeting expectations.

Hotel Meetings Markets

1. Evolve the new business strategy by keeping the core sales team focused on new customer acquisition and the site and conference services teams focused on maintaining and assisting annual repeat business to remain good stewards of that business.
 - a. Prospects are defined as meetings that haven’t met in San Diego previously and/or meetings that haven’t met in San Diego in the last five years.
 - b. Assists are defined as supporting hotel members as they work with a meeting planner to sell San Diego versus another destination, regardless of how the lead was generated.
 - c. Repeats are defined as groups that return to San Diego annually and need our assistance in hotel consideration (e.g., Surf Cup, USMC graduation, Nomads Soccer, etc.).
2. Strategically place sales resources in key source markets in the West Coast, Midwest, Washington, D.C., and Southeast.
3. Continue to build upon the San Diego Meeting Certified program to ensure destination excellence across the hospitality community. Create a competitive selling advantage by touting the “only in San Diego” certification program.
4. Collaborate with meeting industry partners such as media companies and third-party planners to tap new audiences geographically and by industry segment.
5. Support members by broadening the responsibilities of the site services team to assist hotels and ensure we “keep it in San Diego”.
6. Reimagine customer experience programs (a/k/a FAMS) to offer more personalized and creative options to entice and convert meeting planners.
7. Fully leverage social media platforms such as LinkedIn and Twitter to prospect new customers and maximize attendance.



8. Continue direct marketing programs, including lead generation promotions, monthly email campaigns and direct mail to top accounts and prospects.

9. Hold in-market events for San Diego in primary and secondary markets to introduce San Diego to new customers.
10. Capitalize on the National Geographic Channel "World's Smart Cities" program to reposition San Diego and its business culture.

Sub-Regional Marketing

As part of the SDTA program of work, specific efforts will be undertaken to support the sub-regions within the TMD

Overview:

From a lodging performance perspective, hotels that are located outside the Downtown core tend to realize less business travel and need more direct sales and marketing in order to drive hotel room night sales. Boosting room night demand in these areas boosts the overall San Diego lodging market performance, district lodging revenue and City TOT collections. According to Smith Travel Research, San Diego's sub-regions underperformed against the Downtown region in calendar year 2015, although the UTC area surpassed downtown in occupancy:

Sub-Region Hotel Performance

	Calendar Year 2015					
	% Occupancy	% Occupancy YOY Growth	ADR	% ADR YOY Growth	RevPAR	RevPAR YOY Growth
County	76.4%	2.41%	\$150.64	6.02%	\$115.04	8.57%
City of San Diego	78.5%	2.34%	\$157.41	6.52%	\$123.59	9.01%
Downtown	80.4%	0.98%	\$189.17	7.79%	\$152.18	8.84%
Mission Valley	77.6%	4.78%	\$115.01	6.46%	\$89.25	11.55%
Mission Bay	79.1%	1.39%	\$179.09	5.31%	\$141.75	6.78%
La Jolla Coastal	76.9%	1.28%	\$225.69	7.76%	\$173.46	9.14%
Pt. Loma - Airport	78.6%	1.41%	\$127.29	5.21%	\$100.05	6.70%
UTC	80.8%	3.04%	\$170.51	5.01%	\$137.74	8.20%
I-15 Corridor	72.8%	2.09%	\$126.92	5.21%	\$92.44	7.40%

Sub-Regional - Leisure Market

1. Advertise San Diego sub-regions through targeted regional media outlets that reach the upscale leisure and budget-conscious travel target. Alternate creative that promotes the unique nature of the sub-regions with event advertising geared to stimulate shoulder-season business.
2. Develop niche/experience OTA campaigns to focus on the luxury and budget travelers, specifically designed to drive room nights for sub-region TMD properties during need periods. Use the OTAs to provide creative allowing us to capitalize on their knowledge of the

channel, change creative based on site wide themes (e.g., Fall Sale) and get into the marketplace quickly.

3. Continue with a dedicated public relations program to generate earned media exposure for sub-regions including pitches specifically matching neighborhood product offerings to media outlets.
4. Work in collaboration with the SDTA's International Marketing Manager to include sub-regions in international media pitches and hosting opportunities with Brand USA and Visit California where appropriate.
5. Expand social media campaigns that promote the sub-regions. Continue to engage hotel members from the sub-regions to participate in social campaigns and amplify messaging.
6. Continue building a library of rights-free marketing assets (photography, video and logo) that showcase the iconic beauty and vibe of each identified sub-region. Make these production assets accessible to participating lodging properties.
7. Distribute a promotional calendar of sub-region media campaigns, social media program and PR opportunities to all participating hotels and update quarterly with sub-region input.
8. Continue tour and travel development to build more sub-region opportunities in the U.S., Mexico and Latin America markets.



Sub-Regional - Group Sales Market

1. The SDTA hotel meetings sales team is goaled and rewarded only on finding new meetings for the destination. Meetings that are annual, repeat or may need assistance are generally handled by the site experience team and/or the conference services team, ensuring that our sales associates stay focused on finding meetings that would not have come to San Diego without their efforts.
2. We no longer duplicate leads that are sent directly to the hotels and are copied to us through Cvent and other third parties unless we can specifically demonstrate that the customer is sourcing San Diego due to our influence.
3. Continue our customer acquisition plan geared specifically to sub-regions to include more site experience programs (FAMS) and in-market presentations to non-summer, non-citywide, 35-500 peak room group meetings customers.

4. In FY 2017, we will continue to work with the expanded sub-region hotels to identify specific need dates for sales team focus.

SDTA – “Sports First San Diego” Department:

“Sports First San Diego”, a strategic sales and marketing department within the San Diego Tourism Authority, is dedicated to local economic development, specifically sports tourism and the delivery / implementation of sporting events and athletic programs that result in a measurable economic impact to the City of San Diego Hotels.

The future vision for the Sports First department is to continue to aggressively research and cultivate the sports events marketplace in order to identify those events that will deliver incremental new hotel rooms nights, and economic impact by recognizing those events that represent a “good fit” for San Diego through our geographic location, facilities and venue offerings, as well as available dates. And most importantly, to continue to maximize the resources of the TMD to create a competitive, incentivized bid package in order to capture future events, and continually replenish the sports event niche, filling the pipeline of the sports group meeting market, which has historically generated approximately 70,000 room nights per year. This historic performance is in addition to the individual sports events and programs separately funded by the TMD.

The multi-track sales strategy includes:

- The continuation of the current sales model that supports the annual repeat or historical business that is the core component of sports tourism in San Diego.
- Adding a strategic sales component to generate approximately 20,000 room nights annually in incremental, new business...in-the-year-for-the-year.
- Adding a strategy of event cultivation that can potentially add 50-100 percent annual growth to the sports marketing niche by identifying and pursuing long-range commitments to future business thereby filling the room night pipeline.

This strategy will be “sales only”, unencumbered by the necessity to provide after-sales services, so the focus will only be on the productivity of their sales efforts. It will be carried out by three full-time SDTA employees. All available sourcing and networking will be utilized to identify new sports events for San Diego.

SDTA – International Marketing Leverage *(see Leisure Market above):*

The core objective for international development is to create awareness of the San Diego brand and increase consideration to travel.

Key Strategies Overall

1. Identify priority markets for San Diego marketing investment
2. Align San Diego marketing programs with Visit California and Brand USA, capitalizing on their \$100 million and \$200 million respectively global marketing programs. Position San Diego as

the best of everything California has to offer all in one place.

3. Partner with the San Diego Regional Airport Authority and other Southwestern regional transportation partners to increase access to San Diego.
4. Make San Diego travel product more easily available in international markets.
5. Build a communications foundation that delivers key messaging for each of the priority markets.
6. Invest in research and tracking to support the international program of work.

FY17 TOTAL SDTA Funding Request and Recommendation

PART I	\$10,397,765
PART II	<u>\$19,830,126</u>
TOTAL Funding Request & Recommendation	\$30,227,891

Ranking:

- Directors' Aggregate Ranking: #1 of 16

Return on Investment (ROI) - Projected:

- Total hotel room nights 3,377,000
- Return @ \$160.11 ADR (average daily rate) \$578,932,920
- **ROI 20***

**International Marketing Leverage and Sub-Region programs are in development. The program expenses are included; however, the projected room night production for both programs are "to be determined" and not included.*

California State Games

USA Masters Games

The USA Masters Games is a new multi-sport event for competitive adult athletes providing both a “national-championships-level” competitive experience in each sport and a fun, entertaining environment conducive to meeting and socializing with fellow Masters athletes from across the U.S. and other countries of the world – a Sports Festival for Masters athletes.

2018 USA Masters Games will be held in San Diego in May of 2018. The Games will host over 5,000 athletes ages 21 and older in 20 different sports at venues throughout San Diego. These athletes will be coming from across the United States as well as around the world. The USA Masters Games will feature Opening and Closing Ceremonies, and other events and activities showcasing San Diego amenities. California State Games will be managing the event with marketing cooperation from the San Diego Tourism Authority and San Diego Exploratory Committee. An estimated 10,000 rooms nights are expected in 2018.

FY2017 TOTAL Funding Request and Recommendation

Funding to be used for Event Management & Group Sales/Consumer Direct Sales & Marketing.

Part I	\$50,000
Part II	<u>\$100,000</u>
Funding Recommendation	\$150,000

Ranking:

- Opportunity/Catastrophe Request:
N/A

Return on Investment (ROI) - Projected:

- Total hotel room nights
10,000
- New hotel room nights of total
10,000
- Return @ \$149.00 ADR (average daily rate)
\$1,490,000
- **ROI**
14.9

San Diego Bowl Game Association

The San Diego Bowl Game Association produces two college football bowl games in December at Qualcomm Stadium: The Holiday Bowl and the Poinsettia Bowl. Beginning in 2014 the Holiday Bowl Game features the third selection of the eligible Pac-12 teams and fourth selection in the Big 10. The tentative dates of the 2016 Holiday Bowl are December 27th, 28th, or 29th. In the past four years, the Holiday Bowl games have generated an average of 25,543 TMD room nights.

The Holiday Bowl is televised nationally on ESPN and annually the game attracts 5 to 6 million viewers. The "beauty shots" of San Diego will again be part of the ESPN telecasts in 2016. Additionally, the game is broadcast nationally on ESPN radio and the Port of San Diego Big Bay Balloon Parade, a Holiday Bowl production, is televised nationally. The parade takes place either on game day or the day before the Holiday Bowl.

The possible date of the 2016 Poinsettia Bowl is December 20th, 21st, or 22nd. The 2016 game will feature a team from the Mountain West against a bowl-eligible Brigham Young University (BYU). In the last four years, the Poinsettia Bowl has generated an average of over 8,935 room night reservations the week before Christmas. The Poinsettia Bowl is televised nationally on ESPN and the San Diego "beauty shots" are also included in the telecast. The game is also broadcast on ESPN radio.

Funding to be used for Event Management and Group Sales Development

Funding Request	<u>\$450,000</u>
Funding Recommendation	\$450,000

Ranking:

- Directors' Aggregate Ranking: #2 of 16

Return on Investment (ROI) - Projected:

- Total hotel room nights 34,478
- ADR \$140
- Return @ \$140. ADR (average daily rate) \$4,826,920
- **ROI 10.7**



San Diego Crew Classic

The San Diego Crew Classic is the world’s largest annual rowing regatta held primarily for eight-oared shells (boats). Occurring in the spring, the Crew Classic heralds the start of the rowing season in the United States. Since 1973, this well-regarded event, organized by a not-for-profit organization, has showcased the city of San Diego to generations of rowers and spectators, nationally and internationally. The San Diego Crew Classic is a two-day regatta in March of 120+ races and 4,000+ athletes – a marked increase since FY2009 when first receiving TMD funding. For 2017, they expect 450 boats from 76 cities, 24 states plus Canada, Mexico, Great Britain, and Hong Kong. In 2008 there were only 340 boats.

TMD funding helps the organizer broaden the scope nationally and to continue to attract the top-level college programs to their invitational races. Paramount to their success will be those efforts that grow the event’s attendance, visibility and revenue through advertising nationally as well as regionally. They plan on increasing their use of pay-per-click advertising online as it is more directed to their target audiences from out-of-town with a greater ROI. They have identified the junior market as an important growth market, as well.

Another goal for 2017 is to “fill every lane” of each Master’s race. The Master events have become a reunion of old teammates returning to San Diego from across the country to race against their peers. The Master competitors are the demographic that spend a significant amount of money to travel, race, and recreate in San Diego. They continue to explore ways to facilitate January winter rowing training in San Diego collegiate programs such as the University of Minnesota.

FY2017 TOTAL Funding Request and Recommendation

Funding for A1.2 – Event Management and Group Sales Development and A1.4 Group Meeting Direct Marketing.

Funding Request	<u>\$300,000</u>
Part I – Recommendation	\$5,859
Part II - Recommendation	<u>\$194,141</u>
Total Recommendation	\$200,000

Ranking:

- Directors’ Aggregate Ranking: #5 of 16

Return on Investment (ROI) - Projected:

- Total hotel room nights 10,500
- New hotel room nights of total 1,000
- Return @ \$148.97ADR (average daily rate) \$1,743,525
- **ROI 8.71**



Administration

San Diego Tourism Marketing District Corporation

Personnel	
Employee Benefits	\$ 11,166
Executive Director Wages	\$ 150,000
Payroll tax	\$ 12,000
Workers Comp	\$ <u>3,001</u>
Total Personnel	\$ 176,167
Contract Services	
Accounting	\$ 160,000
Legal	\$ 96,667
Research and compliance	\$ 53,333
Communications	\$ <u>64,000</u>
Total Contract Services	\$ 374,000
Overhead	
Dues and subscriptions	\$ 440
Meals, Travel & Entertainment	\$ 400
Occupancy	\$ 16,000
Office Supplies	\$ 3,333
Parking	\$ 267
Payroll processing	\$ 2,000
Postage and shipping	\$ 1,333
Printing and reproduction	\$ 1,333
Telephone	\$ <u>1,600</u>
Total Overhead	\$ 26,706
Contingency	\$ <u>343,593</u>
Total SDTMD Operations	\$ 920,466
Administration Fees to the City	\$ 400,000
Total Administration	\$ 1,320,466

Opportunity & Catastrophe / Litigation Reserve Summary

Opportunity & Catastrophe Reserve:

5% of assessment revenue

5% Assessment revenue	\$ 1,160,466
Projected unallocated funds	\$ <u>1,427,627</u>

Total Opportunity/Catastrophe Reserve	\$ 2,588,093
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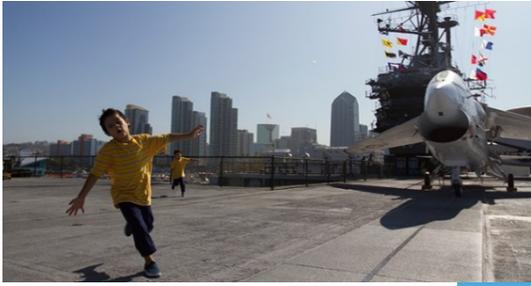
Administrative/Interest Income

Administrative:

5% of assessment revenue plus interest income

5% Assessment revenue	\$ 1,160,466
Projected interest income	\$ <u>160,000</u>

Total Administrative/Interest Income	\$ 1,320,466
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DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:
September 16, 2016

SUBJECT: FY2017 Updated Tourism Marketing District Report of Activities (Part I and Part II) and Approval of Operating Agreement for Modified Tourism Marketing District

GENERAL CONSULTANT INFORMATION

Recommended Consultant: San Diego Tourism Marketing District Corp (Non-profit agency)

Amount of this Action: \$ 65,530,096. (FY2017)

Funding Source: Revenue

Goals: N/A

SUBCONSULTANT PARTICIPATION

There is no subconsultant activity associated with this action. Any future action or agreement is subject to Agency requirements.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Contracts or agreements associated with this action are subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

An estimated \$41,047,270 of Tourism Marketing District (TMD) assessments, interest and penalties will be available in FY2017 Part I including \$29,362,603 from FY2016 of which \$29 million is reserved.

Additionally, an estimated \$24,482,826 of New TMD assessments, interest and penalties will be collected in FY2017 – Part II. Both budget parts include designations for Opportunity/Catastrophe, and SDTMD Corporation and City administration expenses plus the reserve noted from Part I.

RW

**AGREEMENT FOR THE OPERATION OF
THE SAN DIEGO TOURISM MARKETING DISTRICT**

This Agreement [Agreement] is made between the City of San Diego, a municipal corporation [City], and the San Diego Tourism Marketing District Corporation [Corporation], a non-profit mutual benefit corporation registered with the Secretary of State of the State of California, hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on May 22, 2007, the Council of the City of San Diego adopted Ordinance Number 0-19622 N. S. [Ordinance], an ordinance amending Chapter 6, Article 1 of the San Diego Municipal Code [Code] by adding Division 25, the San Diego Tourism Marketing District Procedural Ordinance; and

WHEREAS, on October 6, 2011, the Council adopted Ordinance Number 0-20096, an ordinance amending Chapter 6, Article 1, Division 25, of the Code; and

WHEREAS, following the procedures included in the Ordinance, the Council initiated renewal of the Tourism Marketing District [District] and held a public hearing on November 26, 2012, wherein a weighted majority of the proposed business assessees were verified as not casting ballots in opposition to the establishment of the District; and

WHEREAS, the Council of the City of San Diego ordered: 1) the renewal of the District; 2) the levying of assessments on assessed businesses; and 3) authorized the Mayor to enter into a contract with a non-profit corporation for the operation of the District; and

WHEREAS, in 2007 the tourism industry formed the San Diego Tourism Marketing District Corporation (formerly the San Diego Tourism Promotion Corporation), a non-profit mutual benefit corporation, for the purpose, among other things, of contracting with the City to operate the District;

WHEREAS, on August 2, 2016, the Council of the City of San Diego adopted Resolution Number R-310664 modifying the District Management Plan, eliminating the A and B funding categories, and defining lodging business as those with seventy (70) or more rooms;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 1.1 **Plan** - The Tourism Marketing District Management Plan, prepared by the industry proponents of the District pursuant to San Diego Municipal Code section 61.2507, outlining the anticipated operations of the District and establishing a set of budgetary guidelines, including proposed budget line items, for the thirty-nine-and-one-half year duration of the District. The Plan was approved by the San Diego City Council on November 26, 2012, by Resolution Number R-307843. The Plan was modified by the San Diego City Council on

August 2, 2016, by Resolution Number R-310664.

- 1.2 **Tourism Marketing District or District** - The San Diego Tourism Marketing District, as renewed by City Council Resolution No. R-307843.
- 1.3 **Annual Report of Activities** - A prospective report, as defined in the Plan, due for submission to the City each year during operation of the District, detailing the proposed activities and budget for the following fiscal year, submitted by Corporation and approved by the City Council. This Report of Activities shall be accompanied by an Interim Performance Report detailing performance up through the quarter immediately preceding the date on which the Interim Report is submitted to the City.
- 1.4 **Annual Performance Report** - Report prepared by the Corporation, which summarizes the Corporation's goals, accomplishments, returns on investment, and expenditures for the preceding fiscal year or part thereof. Separate due dates for a preliminary version of the report and a final version of the report shall annually be established in accordance with Sections 3.5.1 (i) and (j).
- 1.5 **Subcontractor** - Any entity or contractor to the Corporation, other than the City, that furnishes supplies and/or services (other than office space, standard commercial supplies, or printing services) to Corporation in connection with this Agreement. It is anticipated that the Corporation will engage subcontractors for the marketing, promotional and outreach activities undertaken in furtherance of the goals of the District. Subcontractor goods and services may be solicited either through a competitive application process or through an open procurement process in accordance with SDMC §22,3203 et. seq. and as specified in Exhibit B.
- 1.6 **District Fund** - A City of San Diego fund, established and administered by the City for the receipt of District revenue (assessments, penalties and interest) and from which revenue may be disbursed to the Corporation for activities and to the City for eligible City oversight and administrative functions.
- 1.7 **Funding Allocations** - Funding Allocations are delineated in the Plan's Budget Guidelines. Funding allocations may only be adjusted as provided for in the Plan.
- 1.8 **Milestone Report** - A retroactive and prospective report to be prepared by the Corporation every five fiscal years. The Milestone Report shall be inclusive of the required annual report for the immediately preceding fiscal year. The report shall include any proposed changes to benefit categories; general activities to be provided for the next five years; an estimate of the cost of providing activities over the next five years; the method and basis of levying the assessment; the estimated amount of any surplus or deficit revenues to be carried over from one report to the next; and the estimated amount of contributions from sources other than the assessment. The due date for Milestone Reports shall be agreed upon by the Corporation and City, and shall provide sufficient time for review and submission to city committees. Separate due dates for a preliminary version of the report and a final version of the report may be established.
- 1.9 **Reconciliation Report** - A report accounting for the use of District revenue, described in Exhibit A. Reconciliation Reports shall be submitted to the City no less than 45 days after the first disbursement and on no less than a monthly basis thereafter.

ARTICLE II

EFFECTIVE DATE; TERM OF AGREEMENT

- 2.1 Upon the execution of this Agreement by the Parties and approval of this Agreement by the City Attorney in accordance with Charter Section 40, this Agreement shall be effective as of November 1, 2016 [Effective Date] and continue for five years until October 31, 2021[Term], unless terminated earlier in accordance with the terms of this Agreement.
- 2.2 The Parties hereby agree to terminate the Operating Agreement dated November 26, 2012.

ARTICLE III

OBLIGATIONS OF CORPORATION

- 3.1 **General Obligations**
 - 3.1.1 Corporation shall perform all services necessary for the proper management of the District. Specifically, Corporation shall perform in a professional and prudent manner, and in accordance with the provisions of this Agreement, the Plan (attached hereto as Exhibit C and incorporated herein) and the Annual Report of Activities and Milestone Report, under the direction of the Board of Directors of Corporation.
 - 3.1.2 The total amount that may be disbursed to Corporation by City under this Agreement shall not exceed the amount of District assessments collected plus penalties collected on delinquent assessments by City and interest earned in the City's pooled investment fund on assessments held by the City less recovery of City Administration costs and any required litigation reserve, and shall conform with the Plan's Budget Guidelines.
 - 3.1.3 Any request for modifications to the Plan shall be submitted to the San Diego City Council for consideration in accordance with San Diego Municipal Code section 61.2501, et.seq, as amended from time to time.
 - 3.1.4 Corporation shall follow the Budget Guidelines set forth in the Plan.
- 3.2 **Funding Allocations.** Corporation shall make Funding Allocations in accordance with the Plan. Administrative costs to be recovered by City shall be billed directly to the District Fund administered by the City. City shall provide Corporation a summary of and accounting for the administrative costs billed to District on a monthly basis. Any modification of these Funding Allocations may only be accomplished as provided for in the Plan. Any modification of the Plan may only be accomplished pursuant to San Diego Municipal Code sections 61.2519 and 61.2520, as amended from time to time.
- 3.3 **Funding Exclusions.** Corporation shall not fund any acquisition, construction, maintenance or installation of any tangible property, facilities, equipment, programs, or any other items specifically prohibited in the Plan. Notwithstanding any other provision of this Agreement, Corporation shall not be obligated to provide services nor make payments to relieve the City of obligations that are not expressly covered by this Agreement and the Plan. Corporation's obligations are solely to provide the services enumerated in the Plan, and under this

Agreement, and such obligations exist solely to the extent District assessment revenues are fully available for expenditure for those purposes.

- 3.4 **Renewal / Modification Costs.** Corporation shall allow City to recover renewal and modification costs from the District Fund for mutually agreed upon costs justified by a business case analysis by allowing the City or Corporation to be reimbursed from the District assessments. Such reimbursement shall be completed no later than six months after the effective date of the renewal or modification. Litigation costs pertaining to the defense of the District may be paid from District funds in addition to the recovery of administration and oversight costs.

3.5 **Specific Obligations**

3.5.1 Notwithstanding any and all obligations in the Plan or elsewhere in this Agreement, Corporation shall do the following to the reasonable satisfaction of City:

- a) Establish measurable target outcomes for marketing programs and services, including return-on-investment and other criteria;
- b) Establish and regularly update a clearly defined process to be used in soliciting written applications or proposals from, and awarding funds to, various entities for marketing and sales promotions to increase hotel room night consumption and market District lodging businesses as tourist, meeting, and event destinations. The process will articulate the required qualifications of applicants or proposers, the targeted return-on-investment, and the measurement of results, among other criteria. All funding requests must be submitted in writing using a standard form which incorporates the required process information;
- c) Establish a clearly defined process for reviewing and evaluating the success of marketing programs and services and the degree to which these programs and services are of benefit to all assessed businesses;
- d) Make available on at least a quarterly basis, reports to City on the target and actual outcomes for the period to date (by type of activities, specific marketing initiative, entity funded, and detailing the way in which assessed businesses are benefited) along with details of funds expended;
- e) Allocate assessment revenue on an annualized basis in accordance with the Plan and as outlined herein;
- f) Allocate, on an annualized basis in accordance with the Plan, all other revenue (interest and penalties deposited by the City into the District Fund, and Incidental Revenue, as defined in section 4.7 of this Agreement, generated by Corporation on disbursed District funds)
- g) Distribute an electronic or other form of communication, at least quarterly to every business assessed in the District announcing news, reports and other documents available on the Corporation's website, and include on the website, among other things, a directory of Corporation's current Board Members. If

requested by an assessed business, the communication shall be made available in appropriate alternative formats.

- h) Hold no fewer than six regularly scheduled open meetings each year, noticed and conducted in compliance with the Ralph M. Brown Act, that afford assessed businesses an opportunity to provide input to the Board. Such meetings shall include one meeting at which the election of officers is held and one meeting at which results of Board elections are ratified;
- i) Prepare an Annual Performance Report, summarizing Corporation's goals, accomplishments, return-on-investments, and expenditures for the preceding fiscal year or part thereof, to be distributed to each assessed business in the District, by December 31 (or as otherwise mutually agreed upon annually by the Corporation and City but providing sufficient time to meet Council/Committee docketing deadlines) for each year following the District's first full fiscal year of operations. Every fifth year a Milestone Report is to be prepared and submitted in lieu of the Annual Performance Report;
- j) Prepare a prospective Report of Activities, as required under the San Diego Municipal Code section 61.2521 as amended from time to time, to be delivered to the City by March 1 each year (or as otherwise mutually agreed upon annually by the Corporation and City but providing sufficient time to meet Council/Committee docketing and budgeting deadlines) during the duration of the Agreement, along with an Interim Performance Report in keeping with the Corporation's obligations to District assessed businesses and the City. Every fifth year a Milestone Report is to be prepared in lieu of the Report of Activities;
- k) A cost allocation methodology shall be approved periodically by the Corporation and made known to its contractors to be used in determining eligible Direct, Indirect, and General & Administration expenses and appropriate per diem, travel, and overhead rates.

The cost allocation methodology approved by the Corporation shall be modeled on OMB Circular A-122 (or successor document) in determining the Direct, Indirect, and General & Administrative expenses to be applied to District funding, notwithstanding that certain District specific expense may be treated as exceptions to OMB Circular A-122 with supporting analysis.

- l) Ensure that District funds are applied only toward the equivalent of coach airfare, and only when use of public air carrier transport is required in order to perform the Corporation's obligations under the Plan and this Agreement. District funds may not be applied toward any upgrades;
- m) Ensure that District funds are applied using the Federal Travel Regulation (FTR) and U.S General Services Administration rates (GSA rates) per day, per person, for meals, incidentals, and lodging while on official travel (when the provision for travel is required in order to perform the Corporation's obligations under the Plan and this Agreement. District funds may not be used to pay for any alcoholic beverages. These same limitations shall apply when lodging in San Diego is provided for out-of-town visitors on District business.
- n) Ensure that in the event meals are provided to hosted individuals within

the scope of business development, or sales and marketing, documentation of the following shall be included with the reconciliation report provided to City: (i) the purpose of the meeting, (ii) conformance to the Plan, (iii) the benefit or anticipated benefit to assessed businesses and (iv) a list of hosted individuals. All expenditures for meals shall comply with the approved cost allocation methodology.

- o) Ensure that should Corporation or Corporation's subcontractors decide to provide financial sponsorship of events, Corporation's Board makes a determination of the need for the sponsorship, that the amount of the sponsorship is a just and reasonable expenditure of District funds at the time it is authorized, approved or ratified, that the expenditure is in conformance with the Plan, and that the benefit or anticipated benefit to assessed businesses is identified and documented. However, if the financial sponsorship is \$10,000 or less and subcontractor funding has already been approved by Corporation's Board in subcontractor's budget, no separate Board approval, authorization, or ratification will be required; but the written determination and justification by the subcontractor shall be maintained with the proof of expenditure. If alcoholic beverages are consumed during event sponsorships, they may not be paid for with District assessment funds; and
- p) Ensure that should Corporation's subcontractors request reimbursement from District funds for travel, meals, the hosting of meals, out-of-town and in-town lodging and sponsorships, as discussed herein, these costs shall have been anticipated in any scope of work, statement of activities or budget materials submitted to Corporation prior to the execution of a subcontract. All pre-authorized subcontractor expenditures are limited in the same manner as Corporation's expenditures are limited herein.
- q) Ensure that Corporation adheres to the Operating Manual for Economic Development Programs, produced by the City of San Diego administering department (e.g. Economic Development Department), as amended from time to time. However, Contractor is authorized to expend district funds on gratuities in an amount not to exceed twenty percent (20%).

3.5.2 Promotional Materials And Obligations

3.5.2.1 **Promotion Material Requirements.** Corporation shall include the following language on all promotional materials (including, but not limited to, brochures, newsletters, advertising, facts sheets, news releases, and Internet web sites but not items where such attribution is impractical e.g. pens, flash drives): "Funded in part with City of San Diego Tourism Marketing District Assessment Funds." Such acknowledgment shall be prominently displayed on all such promotional materials. A copy of page or pages, of promotional material displaying required language, or other equivalent proof, is required to be included in reconciliation report.

3.5.2.2 **Product Endorsements.** To the extent applicable, Corporation shall comply with the provisions of City Administrative Regulation 95.65, as amended from time to time regarding product endorsements. Corporation shall not create any advertisement or writing that identifies or refers to the City as the user of a

product or service, without first obtaining the prior written approval of the City.

3.5.2.3 **City's Promotional Obligations.** City shall make available an annual statement of TOT revenues consistent and in compliance with San Diego Municipal Code section 35.0128 and shall provide monthly reports on TOT revenue to Corporation.

3.6 **Obligations Regarding Budget Preparation**

3.6.1 City and Corporation agree to timely carry out all actions reasonably necessary to process the annual budget for the Corporation's operations. The Parties shall also cooperate on an ongoing basis to ensure that the functions of the Corporation, as identified in this Agreement, are timely and adequately funded, so as to avoid disruption in programs and services.

3.6.2 Pursuant to the Plan, the Board shall develop and adopt annually a budget for the Corporation for all TMD funds and Incidental Revenue proposed to be expended during the fiscal year(s), including amounts proposed to be provided to sub-contractors and amounts reserved for opportunity/catastrophe, reserves and contingencies. Said budget shall be adopted by the Board and annually incorporated into the Annual Report of Activities or Milestone Report, for consideration by the San Diego City Council. The budget shall be filed with the City in accordance with section 3.5.1 (j) of this Agreement. The City fiscal year begins on July 1st of each calendar year.

3.6.3. Prior to adoption by the Board and submission to the City for City Council consideration, Corporation shall consult with City to ensure that appropriate amounts are budgeted for City administration and any required reserves. Nothing in this section shall prevent the Parties from agreeing to subsequent modifications to the individual line items in each category within the District budget in any given year, as long as the parties mutually agree to such modification in writing, and so long as the modifications do not require a modification of the Plan pursuant to San Diego Municipal Code sections 61.2521 and 61.2522, as amended from time to time, and so long as the City, at its sole discretion, does not consider such an adjustment an amendment to the Report of Activities and require City Council authorization for approval.

ARTICLE IV

REVENUES, DISBURSEMENTS, ADVANCES, RECONCILIATION INELIGIBLE EXPENDITURES

4.1 **Revenues.** All funds collected pursuant to the District Resolution shall be timely deposited and appropriately credited by City to the District Fund.

4.1.1 City shall provide, on a mutually agreed upon monthly cycle, reports of District activity processed by the City. Reports shall include the following: assessment revenues collected by month; assessment revenues earned by month; penalty revenues collected, interest earned on District fund through City's pooled investments, detailed breakdown of City administrative expenses; any advances or transfers from District Fund; any adjustments posted to the District Fund; and reconciliation of funds held by City to Fund balance.

Information provided by City shall be adequate to allow for an independent calculation and estimate of the District's monthly earnings.

- 4.1.2 The total assessment revenues from the District will vary depending upon the gross room revenues, minus exempt revenues, collected by hotel businesses subject to the District assessment. Assessment revenues are projected under the Plan throughout the term of the Agreement.
- 4.1.3 City shall provide no less than annually a report of revenue audit outcomes including the number of businesses audited and the amounts of deficiencies and overpayments, along with the number of accounts and amounts referred to Collections and the outcomes.

4.2 **Disbursements.**

- 4.2.1 City will disburse District funds to Corporation on a monthly basis and with a payment term of no more than Net 20. On the first business day after the 15th of each month, the City will determine the revenue posted during the preceding month from assessments, penalties, and interest in the District fund. The City will disburse that amount from the District Fund less: the City's monthly administrative expenses pro-rated (or reasonable estimate thereof), any specified withholding amount for a Litigation Reserve required to be held in the TMD Fund(s) at the City as specified in Exhibit D; and all other budgeted contingency or reserve amounts as required or authorized by City Council through the Annual Report of Activities or Milestone Report as applicable. The disbursement shall occur no later than the end of the month. At fiscal year end June revenue shall be estimated no later than the first Friday after July 4 in order to meet City year-end payment processing deadlines.
 - 4.2.1.1 Prior to disbursement to Corporation, the District assessment funds to be disbursed must be part of a City Council approved District budget, detailing Corporation's proposed expenditure of those District assessment funds. To the extent known, the District budget should include any anticipated implementation dates of the programs proposed to be funded. The District budget will be prepared and submitted to Council for approval following the procedures set forth in Section 3.6 of this Agreement.
- 4.2.2 Any expenditures by Corporation which are not within the prescribed limitations of this Agreement, the Plan, San Diego Municipal Code sections 61.2501, et seq., and applicable laws, rules, and regulations governing this Agreement, as amended from time to time, are not chargeable to the District Fund and shall be borne solely by Corporation.
- 4.2.3 Upon written request from Corporation, the City may make additional disbursements of District funds to Corporation for up to 100% of a documented expense to implement any activity specified within the approved Report of Activities or for an eligible activity under Opportunity / Catastrophe utilizing assessments withheld for that purpose, subject to availability of funds. The written request for use of Opportunity / Catastrophe funds shall indicate a vote in the affirmative by the Board to allocate such funding. All requests for such an additional disbursement must include detail of the amount, timing, and proposed use of such funds. Any such disbursement will be based on available cash at the time of the request, subject to certification of funds availability by the City Comptroller.

- 4.2.4 Corporation shall submit a Reconciliation Report accounting for the use of the additional disbursement, as described in Exhibit A within 45 days of the receipt of the additional disbursement. If the Reconciliation Report is not submitted within this timeframe then the disbursed funds must be returned to the City in the form of a check marked payable to the City Treasurer, noting the District's name in the memo line, and City staff will deposit the check back into the District Fund. If neither the Reconciliation Report nor the repayment check is received by the City then the monthly disbursements may be suspended upon notice by email pending receipt of the required Reconciliation Report or repayment check. In the case of an extraordinary event or circumstance beyond the control of the Parties, such as an act of God, then City may, at its sole discretion, establish a new timeline and/or repayment process.
- 4.2.5 Corporation may advance District funds to recipient organizations subject to City's receipt of the funding agreement which shall provide for each of the following:
- a) Language specifying the permitted use of such advances, and any other language required by this Agreement;
 - b) Authorization by Corporation and recipient organization for the City to audit the use of any advanced funds;
 - c) Receipt by the Corporation and City of a full accounting by recipient organization and verified by Corporation of any District funds previously advanced to recipient organization; and
 - d) Advances to recipient organizations shall be returned or accounted for annually but no later than on or before the expiration of this Agreement or the expiration of the agreement between the Corporation and the recipient organization, whichever comes sooner, (or upon termination, if earlier), either as a reduction of the final request for reimbursement, or as a transfer of funds from recipient organization to the City.
- 4.2.6 All disbursements to Corporation shall be accounted for annually and any non-reconciled or unexpended funds shall be returned to City on or before the expiration of this Agreement (or upon termination, if earlier).

4.3 **Reconciliation**

- 4.3.1 Corporation shall submit to the City Reconciliation Report(s) accounting for the use of the District assessment funds, as described in Exhibit A, The Reconciliation Report(s) shall be submitted to the City within 45 days of the disbursement of funds and no less than monthly thereafter. Failure to timely submit Reconciliation Report(s) may result in, among other things, cessation of future disbursements, upon notice by email, until such time as the overdue report is received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement.
- 4.3.2 District assessment funds may only be used for activities as authorized and approved by City Council in the Annual Report of Activities. Any expenditure that is not consistent with the Annual Report of Activities, or is not supported with proper documentation described herein and in Exhibit A, shall be considered an ineligible expenditure and may result in, among other things, cessation of future disbursements,

reduction of future disbursements, or termination of this Agreement. Nothing in this section shall waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Corporation.

4.3.3 Corporation shall not use District funds in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Corporation, when Corporation has been noticed, or should have known of such debarment, suspension, or ineligibility.

4.3.4 In the event that Corporation is holding District funds at the end of the preceding fiscal year, then Corporation may use such funds only for activities as authorized and approved by City Council in the Report of Activities. Corporation shall submit to the City a Reconciliation Report detailing the actual amount of carry forward District Funds held by Corporation at June 30, as described in Exhibit A, by September 30. Corporation shall submit to the City a Reconciliation Report accounting for the use of these carry forward Assessment Funds held by Corporation, as described in Exhibit A, by December 31. If the documentation is not submitted within this timeframe then the District funds held as of June 30 must be returned to the City in the form of a check marked payable to the City Treasurer and noting the District's name in the memo line and City staff will deposit the check back into the District Fund. If neither the Reconciliation Report nor the repayment check is received by the City then the monthly disbursements may be suspended pending receipt of the required Reconciliation Report or repayment check.

4.3.5 All Reconciliation Reports shall be accompanied by the following statement: "(Corporation's Name) hereby certifies that all staff time expended and reimbursements requested are for services performed in accordance with the Agreement between The City of San Diego and (Corporation's Name) for the management of the District". All Reconciliation Reports shall be signed by an officer of Corporation (not the Executive Director).

4.3.6 The final disbursement to Corporation may be withheld until all outstanding reports are received. Once the final disbursement to Corporation has been made under this Agreement, Contractor shall have 180 days to submit the Final Expenditure Report to City which accounts for all previously unreconciled disbursements plus the final disbursement and shall include a summary of the activities Corporation has performed pursuant to this Agreement.

4.3.7 Within 60 days of receipt of Reconciliation Reports, City shall approve the report or request additional information.

4.4 **Ineligible Expenses for District Reconciliation /Reimbursement**

4.4.1 Corporation and Corporation's subcontractors shall not use District funds for alcoholic beverages. Corporation's subcontractors shall not use District funds for travel, meals, lodging, or entertainment expenses, unless directly attributable to providing District programs and authorized by Corporation in advance, as provided for elsewhere in this Agreement.

4.4.2 If Corporation receives (or has received) additional funding for its activities from a

source or sources other than through the City's allocation of District funds, and the use of said additional funds requires that Corporation make an accounting to, or be subject to, an audit by such other source, then Corporation shall charge those cost of such audit to the appropriate non-District funding source at the time incurred. Any cost incurred in connection with the Corporation which is properly chargeable to, and actually claimed for compensation under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

- 4.4.3 Corporation shall not request reimbursement for, or submit as part of a Reconciliation Report, any expenditure that has been or may be properly charged to a funding source other than District assessment funds.
 - 4.4.4 Corporation shall not request reimbursement for, or submit as part of a Reconciliation Report, any expenditure that has been or may be properly charged to a funding agency other than the City.
 - 4.4.5 Corporation and Corporation's subcontractors shall not be paid for any expenditure that has been (or should be) properly charged to a funding source other than the District assessment fund, nor paid for expenditures which are ineligible under applicable City policies, the Plan, or this Agreement, unless approved, in writing, by the City. A payment request that is not consistent with the Corporation's budget or the Corporation's prospective Annual Report of Activities or Milestone Report, except as provided in this Section, or that is not supported with proper documentation as required herein, shall be considered an ineligible expenditure.
- 4.5 **Adjustments Between Budgetary Category Items.** Any Corporation requests for adjustments between category items (e.g. from Targeted Marketing and Sales to Destination Marketing) that exceed fifteen percent (15 %) of budgeted category item, as described in the Annual Report of Activities approved by City Council, shall be submitted to City in writing. Corporation's expenditure of additional funds in that budgetary category item may only occur if City provides written approval. City, at its sole discretion, may consider such an adjustment an amendment to the Annual Report of Activities and require City Council authorization for approval.
- 4.6 **Partial Performance.** In the event Corporation performs less than all services required under this Agreement in a proper and timely manner, the City will reimburse Corporation only the reasonable costs of those services actually performed by Corporation during that payment period, as determined by the City.
- 4.7 **Incidental Revenue.** Should Corporation use District funds to generate Incidental Revenue, Corporation may only use such revenue to improve the services performed by Corporation under this Agreement. "Incidental Revenue" means revenues generated by Corporation from receipt or use of District funds, including, but not limited to interest income earned by Corporation on District funds deposited into an interest bearing account. Corporation shall separately account for any and all Incidental Revenue accrued and/or used by Corporation. Corporation shall also submit to the City an Annual Incidental Revenue Report accounting for the receipt and use of all Incidental Revenue during the preceding fiscal year, as described in Exhibit A, with the annual audit.

ARTICLE V

SUSPENSION AND TERMINATION

5.1 Suspension or Disallowance of Payments

5.1.1 Notwithstanding any other provision of this Agreement, if Corporation fails to comply with any material term or condition of this Agreement, City's remedies include, without limitation, each of the following:

- a) Suspending one or more payments to Corporation, pending correction of the activity or action not in compliance; and/or
- b) Disallowing funds for all or part of the cost of the activity or action not in compliance.

5.1.2 If City notifies Corporation that City has suspended payments or disallowed funds, Corporation shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension or disallowance of funding.

5.1.3 Notwithstanding any other provision of this Agreement, if the validity of the District, District activities, District establishment, District renewal, or this agreement becomes the subject of litigation or a claim under the Government Claims Act, California Government Code section 810, *et seq.*, City may, at its sole discretion and upon written notice to Corporation, suspend or reduce one or more payments to Corporation, pending final adjudication of the litigation or claim. The written notice from the City shall include the total anticipated amount of District revenue available to be disbursed to Corporation during the period of litigation or resolution of the claim, including the amount of District revenue available for defense of the litigation or claim, if any, so that Corporation may adjust its budget and Funding Allocations accordingly. During such litigation or claim resolution all District revenue that is collected by the City and not disbursed to Corporation shall remain in the District Fund.

5.2 **Termination for Curable Default.** City may send written notice (delivered in accordance with the provisions of the Notice section herein) to Corporation if Corporation fails to comply with any term or condition of this Agreement. The written notice shall include a description of Corporation's default. If Corporation fails to cure the default within sixty (60) calendar days of the date Corporation receives the written notice, the City may immediately terminate this Agreement. City may suspend one or more payments to Corporation during the sixty (60) calendar day notice period.

5.3 **Termination for Incurable Default.** The City may immediately terminate this Agreement upon written notice (delivered in accordance with the notice provisions herein) to Corporation if:

- a) Corporation makes material misrepresentations in regard to information

furnished to City pursuant to this Agreement, regardless of whether Corporation had knowledge or intent with respect to the misrepresentation;

- b) Corporation, or any of its officers or directors, engages in conduct that results in Corporation, or any of its officers or directors, being convicted of a felony that materially and adversely affects Corporation's performance of its obligations under this Agreement;
- c) Corporation misappropriates funds;
- d) Corporation files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors; and/or
- e) Corporation is unable or unwilling to comply with any additional terms or conditions concerning the operation of the District that may be required by newly enacted (or amended) federal, state, and/or local laws.

5.4 **Continuing Responsibilities**

5.4.1 In the event this Agreement is terminated, Corporation shall complete any and all additional work necessary for the orderly filing of documents and closing of Corporation's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Corporation shall be entitled to fair and reasonable compensation for the services performed by Corporation before the effective date of termination. After filing of documents and completion of performance, Corporation shall deliver to the City all data and records (including, but not limited to, all documents and/or work product) prepared and/or completed directly in connection with, or related to, Corporation's performance under this Agreement. By accepting payment for completion, as well as filing and delivering documents as called for in this Section, Corporation discharges the City of all of the City's payment obligations and liabilities under this Agreement.

5.4.2 Upon the expiration or termination of this Agreement, Corporation shall transfer to City any District assessment funds on hand at the time of the expiration or termination, and any accounts receivable attributable to Corporation's use of District assessment funds.

5.5 **Rights and Remedies.** City's termination of this Agreement shall terminate each and every right of Corporation, and any person claiming any rights by or through Corporation under this Agreement. The rights and remedies of City enumerated in this Article are cumulative and shall not limit, waive, or deny any of City's rights under any other provision of this Agreement. Nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the Effective Date of this Agreement or hereinafter enacted or established, that may be available to City against Corporation.

ARTICLE VI
INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement.

- 6.1.1 To the fullest extent permitted by law, Corporation shall defend, indemnify, protect, and hold harmless the City, and all of the City's officers, agents, and employees, from and against any and all "Indemnified Claims" as defined herein. The "Indemnified Claims" shall refer collectively to: (i) actions, suits, proceedings, or claims, including but not limited to any and all administrative, constitutional, or any other challenges to the validity, establishment, or renewal of the District; (ii) any and all liability, damages, injuries, losses, costs, or expenses, including, without limitation, consultants' and attorneys' fees arising out of or related to, in full or in part, or in any respect whatsoever the District, its formation, this Agreement, or by the acts or omissions of Corporation, its officers, employees, representatives, agents, and/or Subcontractors in performing work or services whether or not such work and/or services are required or authorized herein; and (iii) all expenses of investigating and defending against same, including, without limitation, attorney fees and costs. City may, at its own election, conduct the defense or participate in the defense of any Indemnified Claim. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any Indemnified Claim, Corporation shall pay the City for all costs related thereto, including, without limitation, reasonable fees and costs.
- 6.1.2 The Corporation's obligation to indemnify and hold harmless the City pursuant to paragraph 6.1.1 above shall not include liability, damages (including, without limitation, penalties, fines, and monetary sanctions), injuries, losses, costs, or expenses (including, without limitation, consultants' and attorneys' fees) due to errors or problems with assessment amounts.
- 6.3 **City to Control Defense.** City shall control the defense (including the selection of qualified legal counsel) of any proceeding which gives rise to a right of defense and indemnification under this Article.
- 6.4 **Settlement.** Corporation shall notify City in writing of any settlement or compromise discussion associated with any proceeding covered by this Article and shall provide the City an opportunity to participate in such discussion. Corporation shall not settle or compromise any proceeding covered by this Article without first obtaining written consent to such settlement or compromise from the City.
- 6.5 **District Revenue to Pay Costs of Defense.** The cost of defense of any actions, suits, proceedings, or claims which challenge the validity, establishment, or renewal of the District may be paid for with District revenue, subject to the limitations of section 5.1.3 of this Agreement.
- 6.6 **Enforcement Costs.** Corporation shall pay City any and all costs City incurs enforcing the indemnity and defense provisions set forth herein.

ARTICLE VII

INSURANCE

7.1 **Corporation's Duty to Maintain Insurance.** At all times during this Agreement, Corporation shall maintain and comply with the insurance requirements set forth in this Article VII. Corporation shall provide to City insurance certificates reflecting evidence of all insurance coverage required under this article. Notwithstanding any provision of this Agreement to the contrary, Corporation's failure or refusal to obtain, maintain or renew insurance as required by this Agreement, or failure to provide proof of insurance, shall be a default of this Agreement. If a default under this Article occurs, City shall be permitted to suspend payments during such default period, and Corporation shall be permitted to cure the default, pursuant to Article V herein.

7.2. **Types of insurance.** At all times during the term of this Agreement, the Corporation shall maintain insurance coverage as follows:

Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

Commercial Automobile Liability. For all of the Corporation's automobiles including owned, hired and non-owned automobiles, the Corporation shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

Workers' Compensation. For all of the Corporation's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Corporation shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Corporation shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

7.3. **Deductibles.** All deductibles on any policy shall be the responsibility of the Corporation and shall be disclosed to the City at the time the evidence of insurance is provided.

7.4. **Acceptability of Insurers.** Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

- 7.5. **Required Endorsements.** The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

Commercial General Liability Insurance Endorsements:

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by Corporation or on Corporation's behalf, (b) Corporation's products, (c) Corporation's work, including but not limited to completed operations performed by Corporation or on Corporation's behalf, or (d) premises owned, leased, controlled or used by Corporation.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Corporation's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Corporation's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements:

ADDITIONAL INSURED. To the fullest extent allowed by law, including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Corporation.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Corporation's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements:

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

- 7.6. **Continuity Of Coverage.** All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Corporation shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets

the requirements of this Agreement.

- 7.7. **Modification.** To assure protection from and against the kind and extent of risk existing by the obligations under this Agreement, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Corporation thirty (30) days prior written notice. Corporation shall also obtain any additional insurance required by the City for changed circumstances or City's reasonable re-evaluation of risk levels related to Corporation's obligations under this Agreement.
- 7.8. **Additional Insurance.** The Corporation may obtain additional insurance not required by this Agreement.
- 7.9. **Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 7.10. **Bonding Requirements for Corporation Employees and Officers.** Corporation shall carry a Fidelity Bond that includes, but is not limited to, Employee Dishonesty, Theft, Forgery, and Computer Related Crime. All officers, agents, and employees of the Corporation who handle funds of the Corporation in any manner, and any other officers, agents, and employees of the Corporation specifically designated by the Board of Directors, shall execute fidelity bonds in favor of the Corporation in the penal sums as established by the Board of Directors. Each fidelity bond shall be executed by the officer, agent, or employee as principal and by a corporate surety company approved by the Board of Directors for Corporation, provided, however, that blanket bonds may be employed in lieu of individual bonds in the case of employees.

ARTICLE VIII

COMPLIANCE WITH LAWS AND POLICIES

8.1 **Conflicts of Interest**

- 8.1.1 Under San Diego Municipal Code [Code] section 61.2504, and in keeping with state law codified in California Streets and Highways Code section 36614.5, the Corporation is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Nothing in this Section shall be construed to create any additional duties or obligations, on the part of Corporation or City, beyond those obligations to follow existing law, as updated from time to time during the course of this Agreement. Obligations and duties assumed by Corporation under the Plan, including those related to planning of District activities and allocation of District funds, shall not create in Corporation officials the obligations of a "consultant" as defined in the California Code of Regulations, Title 2, section 18701(a)(2).
- 8.1.2 Corporation shall at all times comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of City related to public contracts and procurement practices to the extent applicable.
- 8.1.3 The Parties are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. If such a financial and/or economic interest is determined to exist, the City shall immediately notify Corporation. Corporation and City shall investigate the nature of the interest and Corporation or City shall take all

necessary actions to clear the conflict, including initiating action against the officer, employee or Corporation.

- 8.1.4 Corporation shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.
- 8.1.5 Corporation Board members and officers are intended and understood to represent and further the economic interest of City's lodging industry and have a fundamental duty to advance the general welfare of the lodging industry in a manner which may incidentally or indirectly benefit themselves or their business interests. Such incidental or indirect benefits shall not be considered to violate the duties assigned to the Corporation, its Board or officers under the terms of this Agreement.
- 8.1.6 Corporation's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Corporation shall not recommend or specify any product, supplier, or Corporation with whom Corporation has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
- 8.1.7 If Corporation violates any conflict of interest law, or any of the provisions of this Section, City shall issue a notice to cure. City and Corporation shall then take actions to cure said violation. Should the Corporation fail to adequately cure the violation, then the City may immediately terminate this Agreement. Further, any such violation shall subject Corporation to liability to the City for attorney's fees and all damages sustained as a result of the violation.

ARTICLE IX

DATA AND RECORDS

- 9.1 **General.** Corporation shall maintain, and require its Subcontractors to maintain, all administrative and financial records required in connection with the operations of the District (including, but not limited to, all books, accounting records, financial statements, invoices, receipts, payroll records, personnel records, and any other data and records pertaining to all matters covered in this Agreement) during the term of this Agreement.
- 9.2 **Accounting Records**
 - 9.2.1 Corporation shall maintain, keep or cause to be kept and require its Subcontractors to maintain, keep or cause to be kept true, complete and accurate accounting records, books, and financial statements in accordance with Generally Accepted Accounting Practices [GAAP] in the industry. The financial statements must be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards. The Corporation shall provide the City with full annual audited financial statements within six months after the end of each Fiscal Year.

- 9.2.2 Within thirty (30) calendar days of any written request by the City for accounting records, Corporation shall at its sole cost and expense make available to the City, for review and audit, all Project-related accounting records, documents, and any other financial data and records. Upon the City's request, Corporation shall submit exact duplicates of the originals for all requested records to the City.
- 9.2.3 All auditing records and statements must include a statement of expenditures of Corporation funds, certified by an independent Certified Public Accountant, identified in the same expenditure classifications as contained in the Corporation's approved budget and shall comport to the extent possible with the budget amounts as set forth in the Plan and annual budgets. All statements must also include a statement of compliance with the terms of this Agreement and must be signed by the executive officer of Corporation.
- 9.2.4 Failure to comply with the requirements of this section could result in suspension of any payments or possible future funding; provided, however, that the City shall not suspend any current or future payments until it has first given the Corporation written notice in accordance with the Termination for Curable Default section.
- 9.3 **Inspection and Photocopying.** At any time during normal business hours and as often as the City deems necessary, Corporation shall permit, and require its Subcontractors to permit, the City, or its authorized agents, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Corporation), all books, accounting records, invoices, receipts, payroll records, personnel records, and any other Project data and records pertaining to all matters covered in this Agreement, for the purposes of auditing, monitoring, and/or evaluating Corporation's performance of its obligations and/or duties in connection with the Agreement and Plan. The City may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion.
- 9.4 **Storage Period.** Corporation shall store, and require its Subcontractors to store, all Project data and records for a period of not less than five years after submission of the final expenditure report for the contract period, or five years after submission of the final expenditure report upon earlier termination of this Agreement, or until all audit findings have been resolved, whichever is longest. All such data and records shall be kept at Corporation's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Corporation shall permit, and require each of its Subcontractors to permit, the City, or their authorized agents to examine all such data and records, for the purposes described herein. After the storage period has expired, or all audit findings have been resolved, whichever is later, Corporation shall provide City with thirty (30) calendar days written notice of its intent to dispose of any Project data and records. Corporation shall not take any action to dispose of such data and records without the prior written consent of the City.
- 9.5 **Original Documents.** Notwithstanding the foregoing, upon the termination of this Agreement for any reason, the City may request that Corporation deliver, and Corporation shall deliver, within fifteen (15) calendar days of any such request by the City, the originals of all such data and records to the City. Corporation may retain copies of all data and records delivered to the City.
- 9.6 **Ownership of Documents.** Once Corporation has received any reimbursement from the City for Corporation's performance of its obligations and/or duties under this Agreement, all data and records (including, but not limited to, all documents prepared and/or work product completed

directly in connection with, or related to, Corporation's performance under this Agreement) shall be the property of the City. The City's ownership of such documents includes the use, reproduction, and/or reuse of such documents, as well as all incidental rights, whether or not the work for which the documents were prepared has been performed. This Section shall apply whether the Agreement is terminated by the completion of the Project, the expiration of this Agreement, or upon termination of this Agreement, if earlier, in accordance with the terms of this Agreement. Nothing in this Section shall limit Corporation's ability to retain copies of any documents over which City claims ownership, nor shall this Section be applied to original copies of Corporation's articles of incorporation, bylaws, or any Corporation documents that are not related to Corporation's performance of obligations and duties under this Agreement and the Plan.

ARTICLE X

CITY POLICY PROVISIONS

- 10.1. **Nondiscrimination.** Corporation shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Corporation's activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 10.2. **Compliance with City's Equal Opportunity Contracting Program.** Corporation shall comply with City Council Ordinance No. 18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Corporation and all of its subcontractors are individually responsible to abide by its contents. Corporation shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Corporation shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Effective Date, Corporation shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions Corporation will take to achieve City's commitment to equal employment opportunities. Corporation shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Agreement so the provisions will be binding upon each Corporation and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by City's Equal Opportunity Contracting Program staff. Corporation's failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default of this Agreement, and City may bar Corporation from participating in City contracts for a period of not less than one (1) year.
- 10.3. **Local Business and Employment.** Corporation acknowledges that City seeks to promote employment and business opportunities for local residents and firms in all City contracts. Corporation shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. Corporation shall hire qualified local residents and firms whenever feasible.

- 10.4. **City Employee Participation Policy.** Corporation shall be in default of this Agreement if Corporation employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the Corporation's selection for this Agreement. This provision does not apply to members of the City Council.
- 10.5. **Drug-free Workplace.** Corporation shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 10.5.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited in the workplace and specifying the actions that will be taken against employees for violations of the prohibition; and
- 10.5.2. Establish a drug-free awareness program to inform employees about all of the following:
- a) The dangers of drug abuse in the workplace;
 - b) Corporation's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee-assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations.
- 10.5.3. Corporation shall include in each of its contracts related to this Agreement language obligating each subcontractor to comply with the provisions of this section to maintain a drug-free workplace. Corporation, and each of its subcontractors, shall be individually responsible for their own drug-free workplace program.
- 10.6. **Disabled Access Compliance.** Corporation shall at all times comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 10.7. **Living Wage Ordinance.** Corporation may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code [Code] sections 22.4201, et seq., in performing its obligations and/or duties under this Agreement. To the extent Corporation believes that it or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1), or any other exemption, Corporation may apply to City's Living Wage Administrator for determination of exemption.

ARTICLE XI

GENERAL PROVISIONS

- 11.1. **Compliance with Law.** Corporation shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. Corporation shall comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations.
- 11.2. **Mandatory Disclosure of Business Interests.** Pursuant to section 225 of The City Charter of the City of San Diego, California (“Charter”), Corporation and each of its subcontractors shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in any transaction pursuant to this Agreement and the precise nature of all interests of all persons therein. Corporation’s failure to fully disclose all of the information required by Charter section 225, or Corporation’s failure to require each of its subcontractors to fully disclose such information, shall be a default of this Agreement. Exhibit B attached hereto and incorporated herein delineates the obligations of Corporation pursuant to Charter section 225.
- 11.3. **No Political Activity.** Corporation shall not use, and shall require its subcontractors not to use, any of the funds received pursuant to this Agreement, or any personnel or material paid for with funds pursuant to this agreement, for political activity. The term “political - activity” shall mean a communication made to any electorate in support of, or in opposition to, a ballot measure or candidate in any federal, state or local government election.
- 11.4. **Open Meetings and Brown Act Compliance.** The Corporation shall comply with the Ralph M. Brown Act, California Government Code section 54950, *et. seq.* All meetings of a majority of the members of the Corporation’s board of directors and of standing committees shall be open and public. An agenda containing the date, time, and location of the meeting, and a general description of each item of business to be discussed or transacted, shall be posted in a place freely accessible to the public at least 72 hours prior to the meeting. The agenda shall also be sent to each member of the Corporation’s board, and every member of the public requesting notification of the meetings, by facsimile, via the United States Postal Service, or electronic mail, at the time of the posting of the agenda.
- 11.5. **California Public Records Act.** Corporation shall comply with the provisions of the California Public Records Act, codified in California Government Code sections 6250- 6270, for all documents and records pertaining to all matters in connection with this Agreement.
- 11.6. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to Corporation:

San Diego Tourism Marketing District Corporation
8880 Rio San Diego Drive, Suite 800
San Diego, CA 92108

With a copy by First Class Mail to: Civitas Advisors Inc.
1102 Corporate Way, Suite 140
Sacramento, CA 95831

If to City:
City of San Diego
Attn: Economic Development Division
1200 Third Avenue, Suite 1400
San Diego, CA 92101

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

Any party entitled or required to receive notice under this Agreement may, by like notice, designate a different address to which notices shall be sent. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service.

- 11.7. **Severability.** If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 11.8. **Unavoidable Delay.** If the performance of any act required of City or Corporation is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. If Corporation or City claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 11.9. **Legal Proceedings.** If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the nonprevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The “prevailing party” shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
- 11.10. **Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 11.11. **Captions.** The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Agreement.
- 11.12. **Entire Understanding.** This Agreement contains the entire understanding of the parties. City and Corporation, by signing this Agreement, agree that there is no other written or oral understanding between them with respect to the subject matter of this Agreement. Each party has relied on its own advice from its own attorneys, and the terms, covenants, and conditions of the Agreement itself. Each party to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever

which is not contained in this Agreement. The failure or refusal of any party to read the Agreement or other documents and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such actions.

- 11.13. **Drafting Ambiguities.** This Agreement is, in all respects, intended by each party hereto to be deemed and construed to have been jointly prepared by the Parties. The Parties hereby expressly agree that any uncertainty or ambiguity existing in this Agreement shall not be interpreted against either of them. Except as expressly limited by this paragraph, all other applicable rules of contract interpretation intended by law shall apply in full to this Agreement.
- 11.14. **Modifications.** This Agreement shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Agreement. Any and all amendments to this Agreement require City Council approval.
- 11.15. **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this Agreement. Except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 11.16. **Waiver.** City's failure to insist upon the strict performance of any of Corporation's obligations under this Agreement, in one or more instance(s), shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. City's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by City to constitute a valid and binding waiver. City's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. City's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City may at any and all times require the cure of the default.
- 11.17. **Survival.** Any obligation which accrues under this Agreement prior to its expiration or termination shall survive the expiration or earlier termination of this Agreement.
- 11.18. **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 11.19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 11.20. **Consents, Approvals.** Neither City nor Corporation may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.
- 11.21. **City's Consent, Discretion.** Whenever required under this Agreement, City's consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager"

herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as “strong mayor”) form of governance pursuant to Article XV of the City of San Diego City Charter.

- 11.22. **Authority.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity’s articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide City with evidence, satisfactory to City, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date:

Date: _____ SAN DIEGO TOURISM MARKETING DISTRICT CORPORATION, a California non-profit corporation

BY: _____
Name: William Evans
Title: Chair of the Board

Date: _____ THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: Kevin Faulconer
Title: Mayor

APPROVED AS TO FORM AND LEGALITY:

Date: _____ JAN GOLDSMITH, City Attorney

BY: _____
Name: Adam Wander
Title: Deputy City Attorney

EXHIBIT A

DISTRICT DISBURSEMENTS AND DISTRICT ASSESSMENT FUNDS RECONCILIATION PROCEDURES

Disbursements in advance of City receipt of required documentation will be provided monthly in accordance with Section 4.2.

The required reports and documents to be submitted with each Reconciliation Report shall be updated annually by City as needed but generally will include the following:

- Cover letter/signed form indicating the amount of eligible District expenses during the period, and any disbursement accrued for a future purpose.
- Banks Statement(s) - include all pages.
- Bank Reconciliation Report.
- A copy of the check and invoice or receipt (or reference to contract for periodic payments of ongoing same amount, e.g. rent) detailing the services/products for each expense must be submitted. All invoices shall itemize the eligible expenditures and include the names and rates of pay for contracted personnel who have performed services on behalf of the District, the hours worked or standard hours if salaried, and details of any reasonable and necessary out-of-pocket expenses. Statements alone are not acceptable, but may be submitted in addition to the invoice or receipt.
- When past due expenses are being submitted then the prior invoice(s) reflecting the amount owed must also be included since only fully documented expenses may be accepted.
- Include payroll statements that detail all withholdings and taxes.
- Proof of payments to State and Federal agencies are required if the taxes/fringe benefits are to be considered as eligible expenses.
- For reimbursement of refreshment expenses for public board/committee/taskforce meetings, submit an agenda and the sign-in sheet for each meeting.
- For mileage, include a log that has the starting and ending mileage and the destination for each trip.
- Please note that late fees, finance charges (for late payments), citations, other penalties, nonsufficient fund bank fees, gifts, donations, gift cards, and alcohol purchases are deemed as ineligible expenses (but does not include approved sponsorships or promotional items).
- Board Meeting Agenda and Minutes
- Monthly Profit and Loss Reports.

EXHIBIT B

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO FOR ADMINISTRATION OF A BUSINESS IMPROVEMENT DISTRICT

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to administer programs, and which receive funding from or through the City.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects.

Board Roster

Corporation shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the Corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City for administration of a Business Improvement District shall comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to the City's procurement of such goods and services except as specified below:

When a *contract* provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Nonprofit Corporation may award the *contract* but shall seek shall solicit written price quotations from at least two potential sources

When a *contract* provides for an expenditure greater than \$10,000 but equal to or less than \$50,000, the Nonprofit Corporation may award the *contract* but shall solicit written price quotations from at least five potential sources.

When a *contract* provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000, the Nonprofit Corporation may award the *contract* only after advertising it for a minimum of one day in the City Official Newspaper at least 10 days before the response is due.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City, after notice and opportunity to cure pursuant to Article V Section 5.2. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the Corporation to any reimbursement or payment for goods or services provided pursuant to the void contract.

EXHIBIT C

SAN DIEGO TOURISM MARKETING DISTRICT MANAGEMENT PLAN

The San Diego Tourism Marketing District Management Plan, recorded as Document RR-310664 on file in the Office of the City Clerk, is incorporated herein by reference.

EXHIBIT D

DISTRICT LITIGATION RESERVE AND WITHHOLDING SCHEDULE

<u>Fiscal Year</u>	<u>Specified \$ Reserve</u>
FY 2017 Opening	\$ 29,000,000
FY2018	\$ 30,000,000