

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: November 24, 2014
TO: Economic Development & Intergovernmental Relations Committee
FROM: City Attorney
SUBJECT: San Diego Tourism Marketing District Corporation and the Living Wage Ordinance

INTRODUCTION

On October 22, 2014, the Economic Development and Intergovernmental Relations Committee heard the annual report from the Living Wage Program. Report No. 14-059 (Oct. 22, 2014). Council Members Lightner and Alvarez questioned whether the San Diego Tourism Marketing District Corporation (Corporation) is exempt from the Living Wage Ordinance (LWO).

QUESTIONS PRESENTED

1. Is an exemption from the LWO part of the City's contract with the Corporation?
2. Is the Corporation exempt from the LWO?

SHORT ANSWERS

1. No, the City's contract with the Corporation does not state that the Corporation is exempt from the LWO. However, the Corporation can apply to the City for a determination of exemption.
2. Yes, the Corporation is exempt from the LWO because the City determined it employs twelve or fewer employees.

ANALYSIS

I. THE AGREEMENT BETWEEN THE CITY AND THE CORPORATION (OPERATING AGREEMENT) STATES THAT THE LWO APPLIES UNLESS THE CORPORATION IS DETERMINED TO BE EXEMPT.

Representatives from the hotel industry, in partnership with the City, created the San Diego Tourism Marketing District (District) in 2007 as a benefit assessment district to address diminishing public resources for tourism marketing. San Diego Resolution R-303077 (Nov. 5, 2007). The Corporation is a non-profit tourism marketing entity created for the administration of the District with an approximate annual budget of \$30,000,000. The initial five year term of the contract between the City and the Corporation began on January 1, 2008 and ended on December 31, 2012. On March 26, 2013, the City Council approved an additional five year Operating Agreement with the Corporation.¹ R-308062 (March 3, 2013). According to the terms of the Operating Agreement, the City oversees the collection of all assessments, penalties, and interest, and ensures that the funds are spent consistent with the District Management Plan and the Tourism Marketing District Procedural Ordinance.² San Diego Municipal Code §§ 61.2501 to 61.2526. Revenue is then disbursed to the Corporation to pay for and hire subcontractors to engage in marketing, promotional, and outreach activities designed to increase hotel occupancy and promote the City as a tourist, meeting, and event destination.

The issue of whether the LWO applies to the Corporation and its subcontractors is addressed in section 10.7 on page 23 of the Operating Agreement which states:

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 the Corporation believes that it or its Subcontractors may be exempt from compliance pursuant to Code section 22.4215(b)(1),³ or any other exemption, Corporation may apply to City's Living Wage Administrator for determination of exemption.

Therefore, under the terms of the Operating Agreement, the Corporation must comply with the LWO unless the City determines it is exempt.

¹ In response to pending litigation, the Operating Agreement was subsequently amended on April 23, 2013 (First Amendment) and again on December 9, 2013 (Second Amendment). R-308065 and R-308588. The First Amendment, among other things, allowed hotels to waive any right to a refund of assessments and indemnified the City against third party claims. The Second Amendment rescinded the First Amendment in its entirety and established a plan for the release and withholding of assessment revenue by requiring City Council approval of the Corporation's budget before revenue is disbursed. A copy of the Operating Agreement and the First and Second Amendments are attached for reference.

² A copy of the District Management Plan is attached for reference.

³ Section 22.4215(b)(1) of the LWO was renumbered to 22.4215(c)(1) on March 28, 2014.

II. THE CORPORATION IS EXEMPT FROM THE LWO IF IT EMPLOYS TWELVE OR FEWER EMPLOYEES.

The City's LWO generally requires covered employers and their subcontractors to pay their employees a wage that will enable a full-time worker to meet basic needs and avoid economic hardship. SDMC § 22.4201. A covered employer includes a business that has entered into a financial assistance agreement with the City. SDMC § 22.4205.

The Operating Agreement is a financial assistance agreement because it is "an agreement between the *City* and a *business* to provide direct financial assistance⁴ with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling ... tourism, arts, and cultural programs ... with combined annual value of \$750,000 or more." SDMC § 22.4205. Thus, the Operating Agreement is a financial assistance agreement for two reasons: (1) the Corporation receives direct financial assistance from the City in the form of assessment revenue in excess of \$750,000 annually; and (2) the funds are specifically designated for the purpose of marketing and promoting tourism in the City of San Diego. Subcontractors who perform services at the site of, or for the program, that is the subject of the financial assistance agreement must pay living wages. *Id.*

However, even if the LWO applies, as is the case here, certain businesses are exempt from the law's requirements either because the business is organized under Internal Revenue Service Code section 501(c)(3), or because the business employs twelve or fewer employees. Living Wage Program staff determined an exemption is appropriate based on SDMC section 22.4215(c)(1) which states:

Businesses, including their parent and subsidiary entities, employing twelve or fewer employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, so long as the City determines that the business, including any of its subcontractors, will not need to retain more than twelve employees to perform work related to a service contract, financial assistance agreement, or City facility agreement.

Businesses that apply for an exemption must prove they meet the requirements of section 22.4215(c) by providing: (1) correspondence on company letter head, signed by a legally authorized officer documenting the number of employees; and (2) the State of California Employment Development Department Quarterly Contribution Return and Report of Wages (Form DE9C) for the prior two quarters.⁵

⁴ "Direct financial assistance" as used in the LWO includes "funds ... or other action of economic value identified in the *financial assistance agreement*." SDMC § 22.4205.

⁵ This language is taken from the "Living Wage Ordinance Application for Exemption." A blank copy of the document is attached for reference.

Living Wage Program staff use the City of San Diego Rules Implementing the Living Wage Ordinance (Rules)⁶ to calculate the total number of employees. According to the Rules, the total number of employees includes: (1) the contractor's employees as of the date the contract is signed; (2) the employees the contractor reasonably believes it will hire during the course of the contract, regardless of whether those employees will work on the City contract; (3) the contractor's parent and subsidiary entities; and (4) the employees of any subcontractors the contractor proposes to use to perform all or a portion of the service covered by the contract. The LWO does not apply to employees in managerial, supervisory, or professional positions.

Living Wage Program staff determined that the Corporation employed one employee at the time the Operating Agreement was signed, and that the subcontractors employed a total of sixty two employees. Of the subcontractors' sixty two employees, only eight performed services covered by the LWO. The subcontractors' remaining fifty four employees held managerial, supervisory, or professional positions and were therefore not subject to the LWO. Based on this information, Living Wage Program staff determined that the Corporation is exempt from the LWO under SDMC section 22.4215(c)(1) because it employed less than twelve employees.⁷ See Living Wage Program Staff documentation reflecting staff's decision, attached.

CONCLUSION

While the Operating Agreement between the City and the Corporation have not expressly exempt the Corporation from the LWO, Living Wage Program staff have determined that the Corporation is exempt under SDMC section 22.4215(c)(1).

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Lara E. Easton
Lara E. Easton
Deputy City Attorney

LEE:cfq
MS-2014-24
Doc. No.: 907539
Enclosures

cc: Nora Nugent, Living Wage Program Administrator
Dennis Gakunga, Purchasing and Contracting Director
Ron Villa, Deputy Chief Operating Officer

⁶ Section 22.4235 of the LWO states, "[t]he *City Manager* shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Division" See Rules Implementing the Living Wage Ordinance at 9-10 (Rev. Nov. 2014). A copy is attached for your reference.

⁷ The Corporation employed one employee and the subcontractor employed eight employees.

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

**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 O-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 O-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 _____, 2012, wherein a weighted majority of the proposed business assesseses 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;

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 _____, 2012 by Resolution Number R-_____.

- 1.2 Tourism Marketing District or District – The San Diego Tourism Marketing District, as renewed by City Council Resolution No. _____.
- 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 and designate benefit categories to which funding allocations shall be made. 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 year 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 annually 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 26, 2012 [Effective Date] and continue for five years until November 25, 2017 [Term], unless terminated earlier in accordance with the terms of this Agreement.
- 2.2 This Agreement may be extended beyond the Term for three (3) ten-year terms followed by one five-year (5) term by mutual agreement of the Parties.

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 to 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 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 City Comptroller. City shall provide Corporation a summary of and accounting for the administrative costs billed to District on no less than 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 Costs.** Corporation shall allow City to recover renewal costs from the District Fund for mutually agreed upon costs justified by a business case analysis by allowing the City to reimburse itself from the District assessments collected in FY2013. Such reimbursement shall be completed no later than August 31, 2013. 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 applications 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, the targeted return-on-investment, and the measurement of results, among other criteria;
 - 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 benefit category, 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 annual meeting at which the election of officers is held and 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 October 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 April 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 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. 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.

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): "Funded in part (or in whole) by the San Diego Tourism Marketing District Corporation 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 an annual budget for the Corporation. Said budget shall be adopted by the Board and annually incorporated into the Annual Report of Activities or Milestone Report, for approval by the San Diego City Council. The budget shall be filed with the City prior to the end of each City fiscal 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 Council, Corporation

and City shall work cooperatively to ensure mutual agreement between the City and Corporation on all aspects of Corporation's proposed budget. Nothing in this section shall prevent the Parties from agreeing to subsequent modifications to the line items 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.

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 last working day of each month, the City will determine the revenue posted during the month from assessments, penalties, and interest in the District Fund and will distribute that amount of funds, minus the City's administrative fees (or reasonable estimate thereof) and a withholding equal to the percent annually budgeted for contingencies to Corporation on or before the twenty-fifth day of the following month pursuant to the procedures described in Exhibit A.

- 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 subject to availability of funds. The written request shall indicate a vote in the affirmative by the Board to request such an additional disbursement and 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 60 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 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 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 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 August 31. 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 October 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 120 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 Line Items.** Any Corporation requests for adjustments between line items that exceed fifteen percent (15 %) of budgeted line 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 line 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, by August 31.

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, 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. 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, including the amount of District revenue available for defense of the litigation, if any, so that Corporation may adjust its budget and Funding Allocations accordingly. During such litigation 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 five 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.** All meetings of a majority of the members of the Corporation’s board of directors shall be open and public. The Corporation shall comply with the Ralph M. Brown Act, California Government Code section 54950, *et. seq.* 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.
7700 College Town Drive, Suite 111
Sacramento, CA 95826

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 non-prevailing 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.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

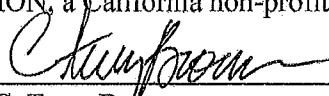
- 11.22. **Authority.** Each individual executing this Agreement on behalf of another person or

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: 11-08-2012

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

BY: 
Name: C. Terry Brown
Title: Chairman of the Board

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

JAN GOLDSMITH City Attorney

BY: _____
Name: _____
Title: _____

EXHIBIT A

DISTRICT DISBURSEMENTS AND DISTRICT ASSESSMENT FUNDS RECONCILIATION PROCEDURES

Disbursements in advance of City receipt of required documentation will be provided monthly based on the revenue posted into the District fund during that month as determined by City staff at month end.

On the last working day of each month, City staff shall determine the revenue posted during the month from assessments, interest, and penalties, which is to be disbursed to Corporation.

OSB staff will then submit a payment request in SAP for that amount within two working days and include a copy of the "invoice" document which details the relevant approved resolution and agreement authorizing the monthly disbursement in advance of City staff receiving documentation as to the actual expenditures. Attached to the invoice document shall be a document indicating how the amount for disbursement was derived.

Information as to the amount to be disbursed shall be provided to Corporation within 4 working days of the month start.

City Comptroller's staff will review the request and, if appropriate, release the payment in accordance with the Vendor Payment Term (NET20 or less).

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.

Only District-related activity expenses as approved by City Council in the annual Report of Activities may be submitted to document the use of the District funds disbursed in advance of said documentation. Failure to submit a report or reports within 10 days of the due date will result in advance payments being halted until overdue reports are received and reviewed by City staff, and deemed to be in compliance with the requirements of this Agreement.

The required reports and documents to be submitted with each Reconciliation Report are:

- Cover letter/signed form indicating the amount of eligible District expenses during the period, and any disbursement accrued for a future purpose.
- Summary Profit and Loss Report* for the period.
- Cash Disbursement Report* for all transactions during the period.
- Custom Journal Report* for all transactions during the period indicating the split of each expenditure between the various funding sources (classes).
- Transaction Detail by Account Report* for each City Funding source.
- Banks Statement(s) – include all pages.
- Bank Reconciliation Report.
- Cash Deposit Report of all checks deposited (including all funds received from the City).
- Monthly Activity Report based on the Council-approved Report of Activities.

- One copy of the invoice and checks. Only those invoices and checks that pertain to City funding sources are to be submitted. These documents shall be provided in the same order as the list on the Custom Journal 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, 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.
- Checks and invoices are not to be stapled together.
- Include payroll statements that detail all withholdings and taxes if salaries are included in the Council-approved Report of Activities.
- Proof of payments to State and Federal agencies are required if the taxes/fringe benefits are to be considered as eligible expenses.
- For refreshments 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.
- One copy of the Board Meeting Minutes and Attendance sheets.

Once the payment request is authorized by the City Comptroller's Office and the number of days pursuant to the NET payment term have passed from the date of the "invoice" document, payment will be made in one of the following ways depending on whether the Corporation has registered for the ACH payment program:

- Checks are cut daily by the City Comptroller's Office and mailed out via U.S. Postal Service the next working day and may take up to four days to be delivered; or
- ACH payments are generally deposited into the receiving bank account the next working day (in the morning).

* References to Quickbooks 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.

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 competitive prices either orally or in writing.

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.

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

**First Amendment to
the Operating Agreement Between
the City of San Diego and the
San Diego Tourism Marketing District Corporation
Approved by the City Council on March 26, 2013**

The City of San Diego ("City") and the San Diego Tourism Marketing District Corporation ("TMD Corporation") enter into this First Amendment to Operating Agreement ("Amendment") with reference to the following circumstances:

A. By Resolution No. R-303621, the City Council authorized the Mayor to execute a five-year agreement between the City and the San Diego Tourism Promotion Corporation (now the TMD Corporation) for the administration of the San Diego Tourism Marketing District ("TMD"), which agreement expired on March 31, 2013 and is on file in the Office of the City Clerk as Document No. RR-303621 ("2008 Operating Agreement").

B. On March 26, 2013, the City Council approved that certain Operating Agreement between the City and the TMD Corporation for the administration of the TMD and expenditure of assessments on lodging businesses in the TMD ("Hotels"), which has yet to be signed by the City ("2013 Operating Agreement").

C. Three legal challenges to the TMD assessment during the 39.5-year period commencing on January 1, 2013 ("TMD Assessment") are now pending: *Shapiro v. City of San Diego*, San Diego County Superior Court Case No. 37-2012-000887765-CU-MC-CTL; *San Diegans for Open Government v. City of San Diego*, San Diego Superior Court Case No. 37-2012-00088065-CU-MC-CTL; and *Browning, et al. v. City Council of the City of San Diego*, San Diego Case No. 37-2013-00036413-CU-WM-CTL (collectively, the "Pending Lawsuits").

D. The City and TMD Corporation expressly condition the effectiveness of this Amendment upon both parties signing the 2013 Operating Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in the 2013 Operating Agreement and this Amendment, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and TMD Corporation hereby agree to amend the 2013 Operating Agreement as follows:

1. TERM. This Amendment, like the 2013 Operating Agreement, is effective upon its execution by the later of the two parties to do so ("Amendment Effective Date") and shall have a term of five years commencing November 26, 2012 and ending November 25, 2017.
2. HOTEL INDEMNIFICATION AND WAIVER. Within 30 days after Council approval of this Amendment, the City shall receive an executed indemnification agreement in a form approved by the City Attorney's Office and containing the terms described below from any combination of Hotels in the TMD. Each indemnification agreement shall require the indemnifying Hotel to hold harmless, indemnify, and defend the City, its

elected officials and other officers, employees, agents, and representatives from third-party claims, including attorneys' fees and costs, if any, as well as the City's defense costs, including reasonable attorneys' fees, if any, arising from or related to any third-party effort (*i.e.*, other than by one or more Hotels) to obtain refunds, reimbursements, or relief from the collection of TMD assessments. Each indemnification agreement shall also include a waiver by the indemnifying Hotel of any right of that Hotel to reimbursement or payment from the City. Such indemnification shall be limited as follows:

- (A) Each Hotel's monetary obligation shall be limited to (i) the dollar amount of the TMD Assessment paid by that indemnifying Hotel in the 12 months prior to the date the City gives written demand for performance of this section 2 and (ii) to claims arising from guests of that indemnifying Hotel;
- (B) Each Hotel's indemnity shall be triggered only after the City's District Fund, as defined in section 1.6 of the 2013 Operating Agreement, in which the City retains assessments as provided in section 4 below, is exhausted by a final judgment or good faith settlement, including attorneys' fees and costs, if any; by unreimbursed City administrative expenses, if any, as allowed under the 2012 Management Plan (on file in the Office of the City Clerk as document number RR-307843) ("2012 Management Plan"); by any third-party contractual claims resulting from the TMD, if any; or by City's actual defense costs not previously paid by the TMD Corporation pursuant to paragraph (D) of this section below;
- (C) Each indemnifying Hotel shall pay its proportionate share of any remainder of such judgment, settlement, administrative or defense costs.
- (D) TMD Corporation shall defend any lawsuit within the scope of this indemnity with counsel reasonably acceptable to the City using funds released to TMD Corporation by the City pursuant to section 7 below. Should the City determine that separate counsel is required due to a conflict of interest, it may be represented by separate counsel and recover the cost of that separate representation from assessment proceeds consistently with the 2012 Management Plan and applicable law.

The financial obligation of the indemnifying Hotels to indemnify the City after exhaustion of the City's District Fund shall be apportioned among them in proportion to the TMD assessments paid by each indemnifying Hotel in the year before the indemnity is paid.

3. Any Hotel may withdraw its indemnification agreement by delivering a written notice of withdrawal addressed to the City Clerk (with a copy to the City Attorney's Office) during the first 15 days of April of any year but, should it do so, the City may refrain from releasing further assessment proceeds from that Hotel to TMD Corporation as provided in section 2 above and section 4 below until final resolution of the Pending Lawsuits

(including any available appeals) in a manner that upholds the validity of the TMD Assessment.

4. **LIABILITY RESERVE.** Pursuant to Section 5.1.3 of the 2013 Operating Agreement, the City may retain in the City's District Fund the proceeds of the TMD Assessment as follows:
 - (A) Commencing with assessments paid to the City on or after July 1, 2013, the City will hold in reserve all TMD assessments from Hotels which do not execute indemnification agreements pursuant to section 2 above to reserve against the risk that a court may order refunds of those assessments for one year from receipt; and
 - (B) Commencing with assessments paid to the City on or after July 1, 2013, the City may hold in reserve until final resolution of the Pending Lawsuits (including any available appeals) assessments paid by Hotels which do not execute indemnification agreements pursuant to section 2 above up to a total amount of \$2.3 million to fund the City's defense of any suit seeking such an order, third-party attorneys' fees and costs, unreimbursed City administrative costs, and third-party contractual claims resulting from the TMD, if any, to the extent not already paid in some other manner.
 - (C) Except as provided in paragraph (B) of this section and in section 7 below, the City agrees to release to the TMD Corporation the TMD assessments from Hotels which do not execute indemnification agreements withheld under paragraph (A) of this section one year after receipt into the District Fund, to the extent they are not subject to existing claims.
5. **TMD INDEMNIFICATION:** (A) As provided in Section 6 of the Operating Agreement and without detracting from it, TMD Corporation agrees to hold harmless, indemnify, and defend the City, its elected officials and other officers, employees and agents from any damages arising from claims against the City resulting from any operation of the TMD Corporation, including the distribution of TMD funds other than those collected from the indemnifying Hotels. Should TMD Corporation fail to fulfill this promise to the reasonable satisfaction of City, City may withhold the proceeds of TMD assessments from TMD Corporation pursuant to Section 5.1.3 of the Operating Agreement as necessary to liquidate this promise.
 - (B) Notwithstanding this paragraph and Section 6 of the Operating Agreement, the TMD Corporation's obligation to indemnify the City and its elected officials and other officers, employees and agents shall not extend to TMD Assessment proceeds held by TMD Corporation that it has committed to executed contracts with its subcontractors. Such TMD Corporation subcontractors are intended third-party beneficiaries of this Amendment.

- (C) To protect the City from potential liability for claims by unpaid TMD contractors, TMD Corporation agrees that it will commit grants only from available funding and will not commit assessment funds before they are received.
6. TRANSPARENCY. Within five business days following TMD Corporation's approval or filing of any of the following items, TMD Corporation shall post and maintain on its website:
- (A) its agendas and all related reports, schedules, or exhibits for each agenda item, minutes, budgets, audited financial statements, and annual reports that include a summary of recipient performance reviews;
- (B) public information about grants awarded, including recipients' entire application for TMD Corporation funding and any attachments thereto, including its two most recent years' Internal Revenue Service Form 990 "Return of Organization Exempt From Income Tax IRS", and, for each for-profit recipient, a disclosure of the compensation of the recipient's employees and independent contractors from TMD funds in substantially the form attached to this Amendment as Exhibit A, which is incorporated herein by reference; and
- (C) performance reviews of grant recipients.
7. RELEASE OF FUNDING TO TMD CORPORATION. Immediately upon execution of this Amendment, City shall release to TMD Corporation the proceeds of assessments collected by the City under the 2007 Management Plan (on file in the Office of the City Clerk as Document No. RR-303226) consistent with the 2012 Management Plan and, upon satisfaction of section 2 above, assessments collected by the City under the 2012 Management Plan in accordance with and subject to the limitations set forth in the 2013 Operating Agreement, as modified by this Amendment. The City shall release and the TMD Corporation shall expend those funds consistent with the 2012 Management Plan and applicable law.
8. BALBOA PARK CENTENNIAL CELEBRATION. TMD Corporation will encourage and expect an appropriate application from Balboa Park Centennial, Inc. (BPCI), for five percent (5%) of the total TMD disbursed funds in the first year (January 1, 2013 to June 30, 2013) not to exceed \$750,000; and for ten percent (10%) of total TMD disbursed funds per year for years two and three. BPCI's applications shall not exceed \$6 million cumulatively in the three years following the Amendment Effective Date. In accordance with the 2012 Management Plan and Grant Application Guidelines, any funds allocated to BPCI shall be used for sales, marketing, special events and advertising efforts consistent with the 2012 Management Plan and approved by TMD Corporation to support the 2015 Centennial Celebration, which approval shall not be unreasonably denied. BPCI's efforts must deliver the specific benefit to the Hotels of incremental new room nights. Nothing in this Amendment shall obligate TMD Corporation to make a grant which is not permitted by applicable law, including Article XIII C, section 1, subd. (e) of the California Constitution (Proposition 26).

9. At all times consistent with the San Diego City Charter, the San Diego Municipal Code, the 2007 and 2012 Management Plans, the 2013 Operating Agreement, and all other applicable laws and regulations, the Parties agree to act in good faith and to assert their best efforts to effect the letter and intent of the TMD.
10. BINDING EFFECT. Except as expressly modified by this Amendment, the 2013 Operating Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the Amendment Effective Date.

Date: _____

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

BY: _____
C. Terry Brown
Chairman of the Board

Date: 4/15/13

THE CITY OF SAN DIEGO,
a California municipal corporation

BY: Bob Filner
Bob Filner
Mayor

APPROVED AS TO FORM AND LEGALITY:

Date: _____

JAN I. GOLDSMITH City Attorney

BY: _____

Name: _____

Title: _____

DUPLICATE

SECOND AMENDMENT TO
THE OPERATING AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
THE SAN DIEGO TOURISM MARKETING DISTRICT CORPORATION

This Second Amendment (Second Amendment) is made and entered into by and between the City of San Diego (City) and the San Diego Tourism Marketing District Corporation (Corporation), mutually referred to as the "Parties."

RECITALS

A. The purpose of this Second Amendment is to set forth a new process for the distribution of assessment funds collected by the City for the San Diego Tourism Marketing District (District).

B. On November 26, 2012, the City Council adopted a resolution renewing the District for a 39.5-year term that commenced January 1, 2013. The express intent of the District and assessment is to fund sales and marketing programs and services that deliver incremental room nights to assessed lodging businesses (Hotels).

C. The City and Corporation entered into a five-year Agreement for operation of the San Diego Tourism Marketing District and administration of District assessment funds, on file with the Office of the City Clerk as Document No. RR-308062 (Operating Agreement).

D. On or about December 19, 2012, petitioners Melvin Shapiro and San Diegans for Open Government initiated separate lawsuits in San Diego Superior Court challenging the validity of the District and associated assessment, styled *Shapiro v. City of San Diego et al.*, Case No. 37-2012-00087765-CU-MC-CTL, and *San Diegans for Open Government v. City of San Diego et al.*, Case No. 37-2012-00088065-CU-MC-CTL, and on February 25, 2013, Brigitte Browning, Sergio Gonzales, and UNITE HERE Local 30 filed a similar lawsuit styled *Browning et al. v. San Diego City Council*, Case No. 37-2013-00036413-CU-WM-CTL and other similar lawsuits could be filed. The *Shapiro* and *Browning* cases have since been dismissed.

E. The City and Corporation executed the First Amendment to the Operating Agreement in April 2013, on file with the Office of the City Clerk as Document No. RR-308065 (First Amendment). The First Amendment, among other things, allowed for individual Hotels to waive any right to a refund and to indemnify the City against any third-party claims in order to induce the City to release to Corporation assessment funds collected from those Hotels. Pursuant to the First Amendment, the Corporation collected and the City received waivers and indemnity agreements from Hotels that represent approximately 18 percent of the District assessments. Accordingly, the City released to Corporation all assessment funds collected from January 1, 2013 through June 30, 2013, and has released 18 percent of the net assessment funds and interest collected thereafter.

| | |
|---|-------------|
| DOCUMENT NO. | 308588 |
| FILE # | NOV 21 2013 |
| OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA | |

F. The Corporation now desires to establish a process that would allow more District assessment funds to be disbursed to the Corporation than under the First Amendment because the cessation of District marketing due to the City's withholding of assessment funds to date potentially damages the tourism industry in San Diego.

G. The City desires to establish a process that reasonably manages the risk associated with the disbursement of assessment funds prior to the resolution of any legal challenge to the District or assessment.

H. It is the intent of the Parties, through this Second Amendment, to preserve the original Operating Agreement as adopted November 26, 2012, particularly the City's ability under Section 5.1.3 of the Operating Agreement to suspend or reduce one or more payments to Corporation.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth in the Operating Agreement and this Second Amendment, the Parties agree as follows:

**ARTICLE I
TERM**

Upon the execution of the Parties, the term of this Second Amendment is effective as of November 21, 2013 (Effective Date), and expires with the Operating Agreement on November 25, 2017.

**ARTICLE II
RE-AFFIRMING THE OPERATING AGREEMENT**

The Parties re-affirm all provisions of the Operating Agreement between the City and Corporation approved by the City Council November 26, 2012.

**ARTICLE III
RESCINDING THE FIRST AMENDMENT**

The Parties hereby rescind the First Amendment in its entirety. Accordingly, as of the effective date of this Second Amendment, all waiver and indemnity agreements received from individual Hotels pursuant to the First Amendment are null and void.

**ARTICLE IV
DISBURSEMENT OF ASSESSMENT FUNDS**

4.1 Pursuant to the District Reserve and Withholding Schedule attached to this Second Amendment as Attachment 1 (Attachment 1), on November 30, 2013, or as soon thereafter as practical, the City will release to Corporation \$6,000,000 of the approximate \$10,000,000 of District assessment funds available.

- 4.2 Beginning on the Effective Date of this Second Amendment, the City will begin releasing District assessment funds to Corporation on a monthly basis pursuant to the process established in Article IV of the Operating Agreement. However, the City will withhold from those monthly disbursements the amounts set forth in Attachment 1 to this Second Amendment.
- 4.3 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 the Operating Agreement.
- 4.4 In the event of a final, non-appealable judgment upholding the validity of the District in the current pending litigation, funds held by the City shall be distributed to the Corporation, subject to Sections 4.3 and 4.5 of this Second Amendment. Nothing in this section shall be construed to limit the City's authority stated in Section 5.1.3 of the agreement adopted by Council November 26, 2012 and Section 4.5 of this Second Amendment.
- 4.5 **Nothing in this Second Amendment shall be interpreted to limit or in any way detract from the City's ability, at the City's sole discretion, to withhold a larger percentage of assessment funds pursuant to Section 5.1.3 of the Operating Agreement. That section provides as follows:**

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, 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. 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, including the amount of District revenue available for defense of the litigation, if any, so that Corporation may adjust its budget and Funding Allocations accordingly. During such litigation all District revenue that is collected by the City and not disbursed to Corporation shall remain in the District Fund.

ARTICLE V CITY'S CONSENT, DISCRETION

Consistent with Section 11.21 of the Operating Agreement, whenever required under the Operating Agreement or this Second Amendment, the City's consent or approval shall mean

the written consent or approval of the Mayor or his or her designee, unless otherwise expressly provided, without the need for further resolution by the City Council. The City's discretionary acts under the Operating Agreement, including but not limited to Section 5.1.3 of the Operating Agreement, or this Second Amendment shall be made in the Mayor's discretion, unless otherwise expressly provided. The Mayor's consent or approval may be given, and Mayor's discretion may be exercised, either acting in Mayor's sole authority or upon the direction of the City Council. In the event of a disagreement between the Mayor and City Council, the City Council's direction shall control.

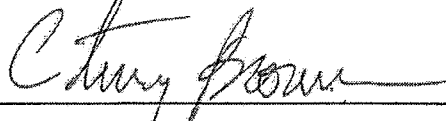
**ARTICLE VI
BINDING EFFECT**

Except as amended hereby, the provisions of the Operating Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment is executed to be effective as of the Effective Date.

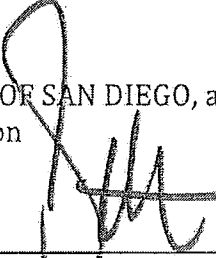
Date: 12.4.13

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

BY: 
C. Terry Brown
Chairman of the Board

Date: 9/11/13

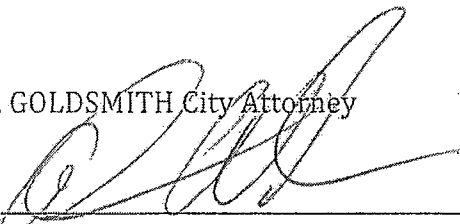
THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Scott Chadwick
Chief Operating Officer

APPROVED AS TO FORM AND LEGALITY:

Date: 1/16/14

JAN I. GOLDSMITH City Attorney

BY: 
Adam Wander
Deputy City Attorney

RECEIVED
CITY CLERK'S OFFICE
14 JAN 13 AM 10:49
SAN DIEGO, CALIF.

R-308588

ATTACHMENT 1

DISTRICT RESERVE AND WITHHOLDING SCHEDULE

| | |
|--|---------------------|
| Projected District Annual Revenue | \$28,500,000 |
| Projected Monthly Revenue | \$2,375,000 |
| Less 10% for Admin/Opportunity and Catastrophe | -\$237,500 |
| Projected Net per Month | \$2,137,500 |
| | |
| Desired Reserve | \$30,000,000 |
| Amt. available as of Nov. 30, 2013 | \$10,000,000 |
| Amt. to be released to Corporation on Nov. 30, 2013 | \$6,000,000 |
| Additional Funding Needed | \$26,000,000 |
| FY 2014 Monthly Amount to Withhold (8 months) | \$187,500 |
| FY 2015 Monthly Amount to Withhold | \$541,667 |
| FY 2016 Monthly Amount to Withhold | \$625,000 |
| FY 2017 Monthly Amount to Withhold | \$875,000 |
| | |
| FY 2014 Additional Withholding | \$1,500,000 |
| FY 2014 Ending Reserve | \$5,500,000 |
| FY 2015 Withholding | \$6,500,000 |
| FY 2015 Ending Reserve | \$12,000,000 |
| FY 2016 Withholding | \$7,500,000 |
| FY 2016 Ending Reserve | \$19,500,000 |
| FY 2017 Withholding | \$10,500,000 |
| FY 2017 Ending Reserve | \$30,000,000 |

**SAN DIEGO
TOURISM MARKETING
DISTRICT
DISTRICT MANAGEMENT
PLAN**

**SAN DIEGO
TOURISM MARKETING DISTRICT
DISTRICT MANAGEMENT PLAN**

*Formed pursuant to the San Diego City Tourism Marketing District Procedural Ordinance
(City of San Diego Municipal Code §61.2501 et seq.)*

Submitted to the

San Diego Tourism Marketing District Corporation and
the City of San Diego

September 11, 2012

by



**SAN DIEGO TOURISM MARKETING DISTRICT
DISTRICT MANAGEMENT PLAN**

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | HISTORY AND OVERVIEW..... | 2 |
| II. | INTRODUCTION..... | 5 |
| A. | What is a Tourism Marketing District? | 5 |
| B. | Transparent Governance Provides Mission Specific Results and Accountability..... | 6 |
| C. | Programs and Services NOT Funded by the District..... | 7 |
| III. | ASSESSED LODGING BUSINESSES, BOUNDARY & BENEFIT CATEGORIES..... | 9 |
| IV. | ASSESSMENTS AND ACTIVITIES..... | 11 |
| A. | Assessment Rates and Basis and Exempt Revenue..... | 11 |
| B. | Funding Process..... | 12 |
| C. | Time and Manner for Collecting Assessments..... | 13 |
| D. | Penalties and Appeals..... | 13 |
| E. | Operators' Duties and Accounting Procedures..... | 14 |
| F. | Budget Summary..... | 14 |
| G. | Activity and Budget Guidelines..... | 15 |
| H. | Benefit Category A Programs..... | 21 |
| I. | Benefit Category B Programs..... | 25 |
| J. | City Administration..... | 26 |
| K. | Opportunity/Catastrophe/Contingency..... | 26 |
| V. | GOVERNANCE AND OVERSIGHT..... | 28 |
| A. | City Administration and Oversight..... | 28 |
| B. | San Diego Tourism Marketing District Corporation Administration..... | 28 |
| C. | Report of Activities..... | 30 |
| D. | Modifications of Plan..... | 32 |
| E. | Modifications of District Operating Agreement..... | 32 |
| | APPENDIX 1 – DEFINITION OF LODGING ESTABLISHMENTS..... | 33 |
| | APPENDIX 2 –PROCEDURAL ORDINANCE..... | 34 |
| | APPENDIX 3 – DISTRICT LODGING BUSINESSES..... | 49 |
| | APPENDIX 4 – BENEFIT CATEGORY PROGRAMS..... | 60 |
| | APPENDIX 5 – DETAILED BUDGET..... | 65 |

I. History and Overview

On May 8, 2007, at the request of a working group comprised of lodging industry representatives, the San Diego City Council (*City Council*) adopted the San Diego Tourism Marketing District Procedural Ordinance (SDMC Section 61.2501 et seq.) (*Procedural Ordinance*), which created a process for creating a tourism marketing district. Subsequently, on August 1, 2011, the *City Council* adopted amendments to the *Procedural Ordinance* specifying, among other things, a process by which such a district may be renewed. These amendments permit a renewal term up to forty (40) years.

The **San Diego Tourism Marketing District** (*District*) was established pursuant to the *Procedural Ordinance* effective January 1, 2008 for a five-year term that ends December 31, 2012. Developed by San Diego lodging businesses, the *District* is a benefit assessment district created to fully or partially fund marketing and sales efforts that directly benefit San Diego lodging businesses. This District Management Plan (*Plan*) proposes to renew the *District* for a period of thirty-nine and one-half (39.5) additional years and sets forth a plan for *District* activities and assessments during that renewal period.

District: The boundaries of the *District* are the same as the boundaries of the City of San Diego.

Benefit Categories: There will be 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 (current and future). These assessed businesses are defined in Appendix 1.

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.

Assessed businesses operating as of June 2012 are listed in Appendix 3.

Activities: Activities shall include unique and exclusive marketing and sales promotions to increase hotel room night consumption and market *District* lodging businesses as tourist, meeting, and event destinations. These activities and the estimated annual cost thereof are described by category in Section IV.

Administration: The District will be operated by a non-profit corporation representing the assessed businesses pursuant to an operating Agreement with the City of San Diego. The associated administration/operating costs of the non-profit and the City are outlined in Section IV.

Assessments: 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 are 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.

In summary, lodging businesses with 30 or more rooms will be assessed at a total rate of 2% (Category A + Category B). All other lodging businesses will be assessed at a total rate of 0.55% (Category B only).

Pursuant to this Plan, assessable Rent does not include revenue from stays where:

- the transient has exercised occupancy or was entitled to occupancy for one month or more; or
- the total space rental charge is twenty-five dollars (\$25.00) a day or less, or the accommodations rented are in a dormitory and the total space rental charge for each transient is twenty-five dollars (\$25.00) a day or less; or
- the transient is by treaty, or federal law, or state law exempt from payment of transient occupancy taxes; or
- rent is directly paid by the United States Government or the State of California or their respective instrumentalities.

Assessments will be authorized by the *City Council* to be levied for the term of the *District*.

Budget: The total *District* annual budget for the initial year of its thirty-nine and one-half (39 ½) year term, representing the combined assessments of the two (2) benefit categories, is anticipated to be approximately \$30,000,000.

Bonds: No bonds shall be issued.

Remittance: Assessments are paid to the *City* monthly.

Duration: The renewed *District* will have a thirty-nine and one-half (39 ½) year term. The renewed *District* assessments will be levied January 1, 2013 through June 30, 2053. Pursuant to SDMC §61.2524(a)(2), after the first year of operation of the renewed *District*, there will be an annual 30-day period during which

assessed business owners may petition for disestablishment of the *District*. The 30-day period begins each year upon presentation to the *City Council* of the annual Report of Activities (or Milestone Report in years where there is one). Upon written petition of business owners paying more than 50% of the assessments levied, the *City Council* must adopt a resolution of intention to disestablish the *District*.

Renewal:

Pursuant to SDMC §61.2514, *District* renewal requires submittal of petitions from lodging business owners who will be responsible for more than 50% of the total annual assessment followed by a ballot procedure and multiple *City Council* hearings. The assessed lodging business owners will receive ballots by mail. If a majority of the ballots returned, when weighted by the amount of the anticipated assessment represented by returned ballots, do not favor renewal the *District* will not be renewed. In the absence of such a majority protest then the *District* may be renewed in the *City Council's* discretion.

II. Introduction

A. *What is a Tourism Marketing District?*

The *District* follows the Tourism Business Improvement District (TBID) model, which utilizes the efficiencies of private sector operation in the market-based promotion of local and regional tourism for the targeted benefit of assessed businesses. TBIDs, such as this *District*, allow lodging businesses to organize their efforts to increase tourism, specifically the consumption of hotel rooms as measured by room night stays, achieving economies of scale they could not otherwise achieve.

In San Diego, lodging businesses within the *District* will be assessed and those funds will be used to provide privileges, programs and services directly to the assessed lodging businesses that specifically benefit those businesses.

District-funded programs and services designed to deliver incremental new room night sales to assessed businesses may include, but are not limited to:

- Marketing of the Assessed Businesses
- Tourism Promotion Activities
- Special Events and Programs

In California, TBIDs such as the *District* are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law), the Parking and Business Improvement Area Law of 1989 (BID Law), or pursuant to an ordinance of a Charter City. In San Diego, the *City Council* adopted a local TBID enabling (procedural) ordinance similar to the 1994 PBID Law. This State statute and the *City procedural ordinance* allow creation of a special benefit assessment district to raise funds within a specific geographic area, in this case the city of San Diego, for the purpose of improving room occupancy and room night sales for assessed businesses.

There are many benefits to TBIDs:

- Funds must be spent to provide privileges or a specific benefit only to those who pay;
- Funds cannot be diverted for other government programs;
- Activities are customized to fit the needs of businesses in each TBID;
- Petition support is required from lodging businesses paying over 50% of the annual proposed assessment (this is true both under San Diego's *procedural ordinance* and the 1994 PBID Law);
- They are designed by those who will pay the assessment; and
- They provide a stable funding source for tourism promotion that will result in the generation of incremental new room night sales for assessed businesses.

The Board of Directors of the San Diego Tourism Marketing District Corporation (*Corporation*) analyzes prospective tourism development programs that are of direct benefit to the assessed businesses, and allocates assessment revenue to support such programs. In this way, through its mission and operations, the *Corporation's* Board of Directors provides a specific government service directly to the assessed business that is not provided to those not charged, and which does not exceed the reasonable costs to the *City* of providing the service. Indeed, because assessment revenues are not the sole source of funding for the Corporation's program of activities, the cost of the services and the value benefit accrued from them is substantially greater than the assessment amount.

B. Transparent Governance Provides Mission Specific Results and Accountability

This District Management Plan designates the *Corporation* to act as the Tourism Marketing District Association for the district pursuant to SDMC §61.2522. The *Corporation's* Board of Directors is comprised exclusively of owners or owner's representatives from assessed lodging businesses within the *District*. The *Corporation's* Board of Directors acts on behalf of all assessed businesses to ensure that the mission of the *District* is accomplished and provides a specific service and benefit directly to those who pay. This includes awarding *District* funding to contractors. Each year the *Corporation* receives and reviews numerous contractor applications for *District* funding for which review criteria include evaluation of room night sales generation at assessed businesses from *District* funding.

District funding is used to drive incremental room night stays exclusively to assessed businesses within the *District*, providing a specific service and benefit directly to the payors. All contractors are required to have additional funding from non-*District* sources to support a portion of their programming. Through a rigorous application process and subsequent follow-up audits, it has been determined that, over the term of the initial *District*, programs receiving partial *District* funding, including Holiday Bowl, Crew Classic, Wine & Food Festival, and Rock & Roll Marathon, have delivered 100% of their funded room night sales production to lodging businesses within the *District*. Subsequently, the minimal room nights that may have occasionally accrued to lodging establishments outside the *District* as a result of *District*-associated marketing and programs result from expenditures made with non-*District* revenues. A portion of the funding for the *Corporation's* program of activities derives from sources other than the assessment. Accordingly, assessment funding can be shown to produce benefits directly to the assessed businesses and not to others.

In order to ensure a specific benefit to payors and provision of a government service which does not exceed the reasonable cost of the service, not all applicants for *District* funding are funded. While many worthy organizations request funding for important social or other purposes, the partial list below includes organizations that could not demonstrate the minimum required production of hotel room nights for assessed businesses.

| <u>Funding Year</u> | <u>Organization</u> | <u>Requested Amount</u> |
|---------------------|-----------------------------------|-------------------------|
| FY12 | SD Film Commission | \$530,000 |
| FY11 | SD County Bike the Bay | \$5,000 |
| FY11 | Century Club of SD | \$250,000 |
| FY11 | Citizen Diplomacy Council | \$24,000 |
| FY11 | Pazzo Entertainment | \$500,000 |
| FY10 | Armed Services YMCA Fireworks | \$106,336 |
| FY10 | La Jolla Marketing Alliance, Inc. | \$1,048,050 |
| FY10 | Travelers Aid Society of SD | \$60,000 |
| FY10 | SD Asian Film Foundation | \$40,000 |
| FY10 | SD International Auto Show | \$206,000 |
| FY10 | SD Film Foundation / Festival | \$25,000 |

District funds may also be provided to San Diego area convention and visitors bureaus (CVBs) for provision of services benefitting assessed businesses as described in this Plan. Historically, efforts have been undertaken by CVBs receiving *District* funds to ensure benefit accrues only to assessed businesses. For example, by mutual agreement of the Boards of Directors of the *Corporation* and the San Diego North CVB, the San Diego North CVB reorganized its board membership in order to guarantee that no benefit from *District* funding was accruing to lodging businesses outside the *District* which are not payors.

C. Programs and Services NOT Funded by the District

In order to ensure provision of a specific government service and benefit to payors, which does not exceed the reasonable cost of providing the service, there are certain activities or improvements which may not be funded by the *District*. These include:

- The acquisition, construction, installation or maintenance of any tangible public property, including parking facilities, parks, planting areas, fountains, benches, booths, kiosks, display cases, pedestrian shelters, signs, trash receptacles, public restrooms, ramps, sidewalks, plazas, pedestrian malls, lighting and heating of public facilities.
- The closing, opening, widening or narrowing of existing or new streets.
- Facilities or equipment, or both, to enhance security and safety of persons and property within the *District*, unless included in a specific proposal to benefit the assessed businesses.
- Regular public safety and security personnel and programs, maintenance and repair, sanitation, nor other municipal services normally and historically provided by the *City*.
- Expenditures not consistent with the terms of this *Plan*.

- Political candidate or ballot initiative activity.

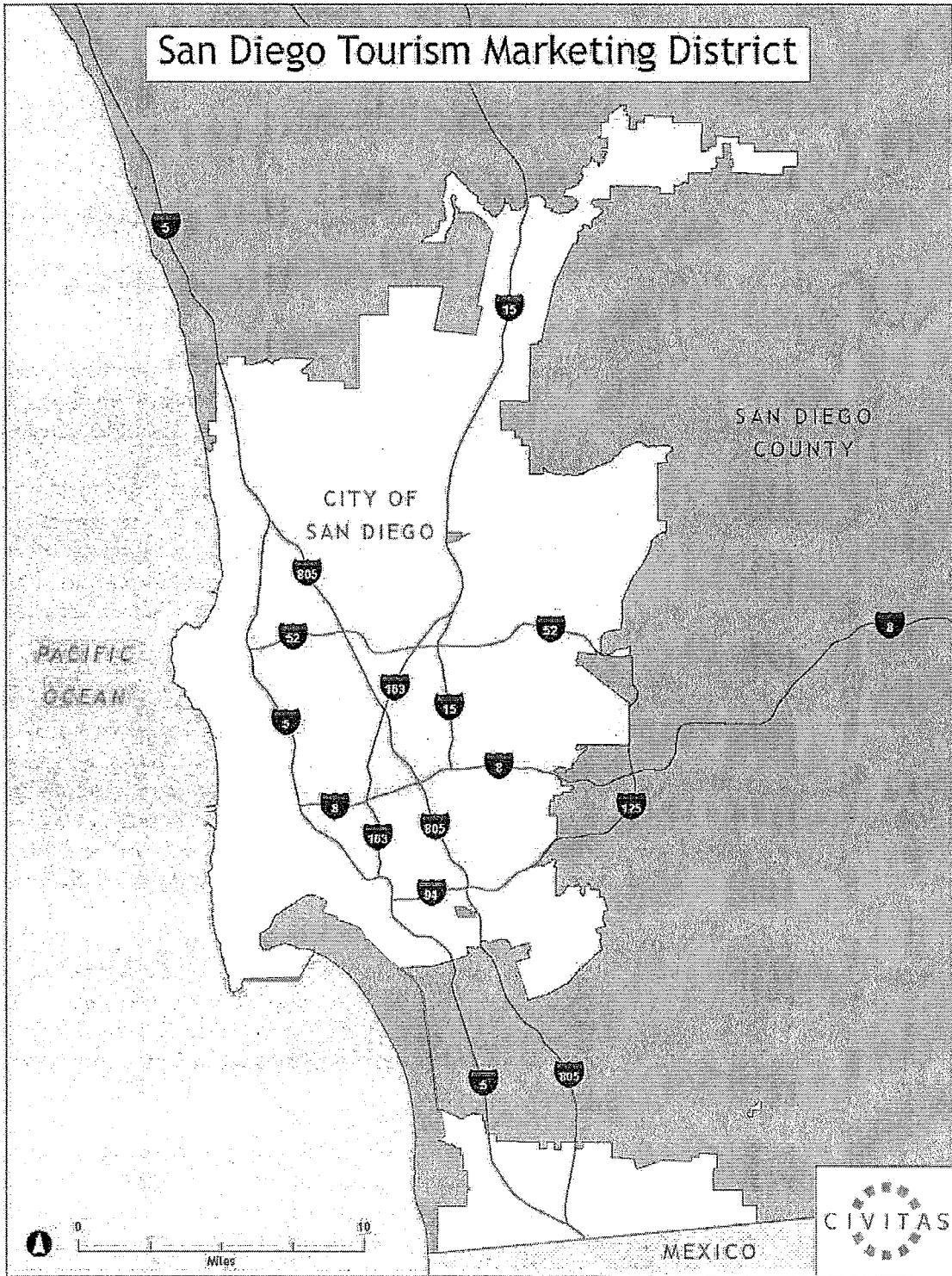
None of these activities generate direct specific benefit and service to assessed businesses that is not provided to others not charged and, accordingly, excluding these services from funding eligibility further demonstrates that the assessment is expended only on activities of direct specific benefit to assesses.

III. ASSESSED LODGING BUSINESSES, BOUNDARY & BENEFIT CATEGORIES

The *District* shall include two (2) benefit categories, each providing a set of privileges and specific benefits to a specific universe of lodging businesses (as defined in Appendix 1), existing and in the future, available for transient public occupancy within the boundaries of the city of San Diego. The universe for each benefit category is:

- Category A: Lodging businesses benefitting under this category are all of those businesses (current and future) within the *District* with thirty (30) or more rooms.
- Category B: Lodging businesses benefitting under this category are all lodging businesses (current and future) within the *District*, regardless of size.

The *District* boundaries are illustrated by the map on the next page. A complete listing, including benefit categories, of lodging businesses within the *District* (as of June 2012) that will be assessed may be found in Appendix 3.



IV. ASSESSMENTS AND ACTIVITIES

A. Assessment Rates and Basis and Exempt Revenue

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 receive services and benefit from activities provided under categories A and B, and will be assessed a total of 2% of Assessable Rent. Lodging businesses with fewer than 30 rooms will receive services and benefit from activities provided under category B only and will be assessed 0.55% of Assessable Rent.

The term "Assessable Rent" as used herein means the total consideration charged to a transient as shown on the guest receipt for the occupancy of a room, or portion thereof, in a lodging business. Assessable Rent shall not include any federal, state, or local taxes collected, including but not limited to Transient Occupancy Taxes. Pursuant to this Plan, any other charges shall be considered Assessable Rent only in accordance with the *City's* Transient Occupancy Tax.

Based on the benefit received and pursuant to this Plan, assessments will not be levied on revenue from stays: of more than one (1) month; by federal or state government employees or officials on government business whose room rent is being paid directly or indirectly by the federal government or the State of California; or those international government employees or officials which by treaty are exempt from locally-levied transient occupancy taxes. Further, assessments will not be levied when the total space rental charge is twenty-five dollars (\$25.00) a day or less or the accommodations rented are in a dormitory and the total rent for each transient is twenty-five dollars (\$25.00) a day or less.

For lodging businesses with seventy (70) or more rooms, assessments levied for the *District* shall not include Assessable Rent resulting from stays pursuant to contracts executed prior to January 1, 2008. For lodging businesses with sixty-nine (69) rooms or fewer, assessments levied for the *District* shall not include Assessable Rent resulting from stays pursuant to contracts executed prior to January 1, 2013.

As used in this section "contract" means a written document which was executed by a representative of the lodging business and the transient or the transient's representative prior to the date specified above. The contract must include a provision stating that it is irrevocable, non-cancellable, or non-refundable; signed agreements which can be cancelled are not "contracts" within the meaning of this section. Reservations made at lodging businesses are not considered contracts. Contract does not include agreements between the lodging business and any third-party booking agent for the purpose of booking transient stays at the lodging business, such as a property management company.

The assessment is to be remitted by the owner(s), operator(s), or an authorized representative who is noted on *City* records as the responsible party for the remitting and reporting of Transient Occupancy Tax as specified in SDMC §35.0114, or as amended, for each lodging business in the city of San Diego. "Business" and "lodging business" mean any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by transients for dwelling, lodging or sleeping purposes, and includes those businesses defined in Appendix 1. "Transient" means any person who exercises occupancy, or is entitled to occupancy, by reason of concession, permit, right of access, license or other agreement for a period of less than one (1) month, pursuant to SDMC §61.2504 and 35.0102. A month is defined as the period of consecutive days from the first calendar day of occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists. In accordance with SDMC §35.0111(b), stays by any person who occupies a room, or any portion thereof, in a lodging business, or is entitled to occupancy thereof, for a period of one (1) month or more, shall be deemed not to have been a transient with respect to the first month of occupancy or entitlement to occupancy.

The assessment imposed is levied solely upon the lodging business with the business owner being solely responsible for payment of the assessment when due. If the business owner chooses to charge any portion of the assessment to a transient, that said portion shall be separately stated from the amount of rent charged and any applicable taxes, and identified for the transient in any and all communications from the business owner as "San Diego Tourism Marketing District Assessment."

B. Funding Process

Assessment funds will be spent to provide a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged; and which does not exceed the reasonable costs to the *City* of conferring the benefit or granting the privilege. The activities also constitute specific government services provided directly to the payor that is not provided to those not charged, and which do not exceed the reasonable cost to the *City* of providing the services.

The privileges and services provided with *District* funds are sales, marketing, advertising and promotional programs available only to assessed businesses. District activities will be designed for the sole purpose of generating incremental room night sales at assessed businesses. Such room night sales are of great value to assessed business and constitute a specific benefit for which the assessment is charged. Non-assessed businesses will not have access to the privileges and services provided by the assessment. For example, only assessed businesses will be entitled to receive sales leads generated by District-funded activities or be featured in District-funded marketing materials.

Because marketing services are provided by *Corporation*-approved contractors, requirements for contractors and the application process have been developed. Specifically, all funding requests must delineate:

- All sales, marketing, advertising and promotional programs;
- Number of *District* lodging business room nights generated – existing and incremental;

- Average daily rate;
- Return on Investment (ROI) as measured in *District* room night revenue;
- Time of year (peak, shoulder, low); and
- Number of marketing impressions (included as supportive information only where applicable).

Successful applicants that become contractors for the *Corporation* will be required to submit quarterly performance updates and comprehensive annual performance reports which include the above required information along with samples of marketing materials and information as to the methodology used to substantiate the ROI. Funded contractors and programs must also have a cost allocation methodology which demonstrates that costs are apportioned between applicable funding sources so that the amount of assessment revenue used is proportionate to the benefit derived by *District* lodging businesses.

The *Corporation* will contract with an independent third-party to audit the results and to verify *District* room nights and ROI.

C. Time and Manner for Collecting Assessments

The *District* assessment will be levied beginning January 1, 2013 and will continue for thirty-nine and one-half (39 ½) years until June 30, 2053. The business owner of each individual assessed lodging business located within the boundaries of the *District*, participating in exclusive privileges and receiving specific services and benefits as provided by benefit category A and/or B, will be responsible for remitting the appropriate assessment on a monthly basis (including any delinquencies, penalties and interest). The *City* will take all reasonable efforts to collect the assessment from each lodging business. The *City* will forward assessments collected (including any delinquencies, penalties and interest) to the *Corporation* according to terms set forth in the *District* operating *Agreement*, an Agreement to be entered into between the *City* and *Corporation* related to district management. The *Corporation* will have the responsibility of managing *District* programs as provided in this *Plan*.

D. Penalties and Appeals

Pursuant to this *Plan*, penalties may be assessed against those benefited businesses failing to make timely payments. In addition, benefited businesses shall have a right to appeal penalties, as spelled out in the resolution of formation.

Any benefited business failing to remit the *District* assessment within the time required under the resolution of formation shall pay penalties as specified in the resolution of formation. In the event there is a determination by the City Treasurer that non-payment of an assessment is due to fraud, penalties may be assessed as specified in the resolution of formation.

E. Operators' Duties and Accounting Procedures

Pursuant to this Plan:

- (a) The amount of assessment, if passed on to a transient, shall be separately stated from the amount of rent charged and any applicable taxes, and each transient shall receive a receipt for payment from the business. A duplicate of the receipt given to each transient shall be kept by the business in accordance with subsection (c) below. The purpose of this requirement is to ensure the assessment is not misrepresented to transient occupants and the businesses do not "pad" their room rents with assessments that are not due to the *District*. It does not change the legal incidence of the assessment, which remains on the assessed business.
- (b) Each business shall account separately for, and maintain separate monthly summary totals for, assessable and non-assessable rent and the assessment.
- (c) Each business shall maintain its financial and accounting records in accordance with generally accepted accounting principles acceptable to the City Treasurer. It shall be the duty of every business liable for the payment to the *City* of any assessment imposed to keep and preserve within the boundaries of the city of San Diego, for a period of three (3) years, all business records as may be necessary to determine the amount of such assessment for which the business is liable for payment to the *City*. The City Treasurer and authorized deputies or agents in the exercise of duties imposed shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of assessment due.
- (d) The costs of additional goods and services, which are not rent, but which may be sold as a package, or are complimentary with a room, or portion thereof, in a lodging business shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

F. Budget Summary

The assessment revenue derived from the *District* is estimated at approximately \$30,000,000 annually. Over the thirty-nine and one-half (39 ½) years of the *District*, this would equate to an estimated \$1,200,000,000 through 2053. This amount may fluctuate as occupancy rates and room rental rates change, and as businesses open and close during the term of the *District*. There shall be no increase in the assessment rates within the two (2) benefit categories for the term of the *District*, except pursuant to the rules set forth in the Municipal Code for modification of this Plan.

In addition to assessment revenue, interest and penalties collected on behalf of the *District* by the *City* are considered to be revenue to the *District* and shall be deposited into the *District* Fund and shall be available to be expended in accordance with this *Plan*. Over the term of the *District*, the *Corporation*

may have access to incidental revenue to supplement assessments, interest and penalties for any operating year. "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. Such incidental revenue shall be accounted for and expended within the regular annual *District* budget process in accordance with the operating *Agreement* and this *Plan*.

G. Activity and Budget Guidelines

Assessments are proposed to be used for the Activities as generally outlined in the Budget Guidelines table on the next page and as further described in this section of the *Plan*. It is anticipated that ninety percent (90%) of assessment revenue will be designated annually for Marketing and Sales activities which will be tailored within the specific benefit categories to benefit the assessed businesses. Within the ninety percent (90%) allocated to marketing and sales activities, the *Corporation's* Board of Directors may adjust program allocations as needed to address changes in outside funding provided to those programs and ensure that assessment funds are spent on a specific benefit provided directly to assessees which is not provided to those not charged.

Ten percent (10%) of assessment revenue will be designated in total annually for Administration (including actual *City* costs to administer the *District*) and for a Reserve for opportunities, catastrophes, contingencies, and renewal of the *District*. Other revenues such as penalties and interest and incidental revenue shall be designated for Administration but may be added to the Reserve or designated for other activities at the discretion of the *Corporation's* Board of Directors.

Annually, a detailed prospective Report of Activities (including a budget) based on these Budget Guidelines will be developed and approved by the *Corporation's* Board of Directors for submission to the *City Council*.

| Budget Guidelines (based on historical activity) | | Category A | | Category B | |
|--|---|---|--------------|---|-------------|
| Benefit Category | Description | Estimated Percent of Assessment Revenue | Amount | Estimated Percent of Assessment Revenue | Amount |
| A 1 | Meeting and Group Sales & Marketing and Consumer-Direct Sales & Marketing | | | | |
| A 1.1 | Hotel Meeting Sales | 25.1% | \$5,440,000 | | |
| A 1.2 | Event Management and Group Sales Development | 12.0% | \$2,595,000 | | |
| A 1.3 | Tourism Development Including Travel & Trade | 4.9% | \$1,060,000 | | |
| A 1.4 | Group Meeting Direct Marketing | 5.1% | \$1,110,000 | | |
| A 1.5 | Consumer Direct Sales & Marketing Programs | 14.5% | \$3,135,000 | | |
| A 1.6 | Multi-Year Tourism Development | 5.4% | \$1,160,000 | | |
| A 1 - Subtotal | Meeting & Group Sales and Consumer Direct Marketing | 67.0% | \$14,500,000 | 0.0% | \$0 |
| A 2 - Subtotal | Sub-Regional Targeting | 6.9% | \$1,500,000 | 0.0% | \$0 |
| A 3 - Subtotal | Competitive Targeting | 16.1% | \$3,485,000 | 0.0% | \$0 |
| B - Subtotal | Destination Marketing with Specific Call to Action | 0.0% | \$0 | 90.0% | \$7,515,000 |
| Contingency | Opportunity / Catastrophe Reserve | 5.0% | \$1,082,500 | 5.0% | \$417,500 |
| Admin & Ops | City of San Diego and Corporation | 5.0% | \$1,082,500 | 5.0% | \$417,500 |
| TOTAL ESTIMATED ANNUAL BUDGET | PROJECTED FY2014 ANNUAL BUDGET | 100.0% | \$21,650,000 | 100.0% | \$8,350,000 |

For more specific information about the services provided in each budget category, see Appendixes 4 and 5.

Budget Adjustments

Although actual revenues of the Corporation will fluctuate, the proportional allocations as listed in the table above shall generally remain the same; however, during the budgeting process each year, the Corporation's Board of Directors may adjust program allocations as needed to address: economic conditions; tourism trends; and changes in non-assessment funding provided to those programs. The resulting proposed annual budget submitted to City Council for consideration as part of the Annual Report of Activities will then ensure that assessment funds are to be spent on a specific benefit provided directly to assessed businesses which is not provided to those not charged. In no event will the budget for City administration costs fall below the amount necessary to recover City administration costs.

The projections of assessment revenue shall be reviewed periodically during the fiscal year and compared with actual assessment revenue. Should the projections of assessment revenue be revised

downward by two percent (2%) or more, then *Corporation's* Board of Directors may reduce the designated amounts provided to contractors. The *Corporation's* Board of Directors may also choose to partially or completely back-fill the projected shortfall in assessment revenue by designating Opportunity/Catastrophe/Contingency Reserves to contractors. At fiscal year-end, a reconciliation of actual to projected assessment revenue shall be completed by *City* and *Corporation* within a mutually agreed upon time frame. Any positive variation between projected and actual assessment revenue posted to the *District* Fund may only be allocated in the following fiscal year budget.

Every five (5) years, beginning in FY2018 to be effective for FY2019 budget and coincide with the *District* Milestone Report, for the duration of the *District*, the Board of Directors of the *Corporation* shall establish a percentage to be applied to the projected assessment revenue to determine the amount to be designated annually for contractors and DMOs. Budgeted amounts shall be contingent upon approval by the *Corporation* of a scope of services from the contractors and DMOs, but shall be subject to approval by *City Council* per SDMC section 61.2521(c).

Administration

The *Corporation*, under the direction of its Board of Directors, is responsible for administration of the business operations of the *District*. This requires the allocation of personnel and other resources so as to direct *District* activities toward common goals and specific benefits for the assessed lodging businesses. The administrative activities of the *Corporation* include planning, organizing, staffing, directing, controlling, and budgeting, which includes forecasting, oversight, and revenue management. The administration budget will be utilized for the administrative costs of providing the services and benefits described in this Plan. This includes the *City's* costs of collecting and remitting the assessments, and the *Districts* costs of administering programs (rent, insurance, legal, accounting, administrative staff, etc.). A detailed budget for the administrative funding allocation will be submitted and approved annually and will include detail on the following items which are included in the administration and operations category:

- Estimated operating expenses including but not limited to wages, benefits, and overhead costs such as rent, supplies, utilities, and travel;
- Estimated costs of contract services and support including but not limited to legal, accounting, bookkeeping and technology;
- Estimated cost of directors and officers liability insurance in the minimum amount of \$5,000,000 per director, plus additional insurance as required by the *City*;
- Estimated cost of performance audits of contracted entities receiving funding from the *District* unless otherwise stipulated by the *Corporation's* Board of Directors;
- Estimated cost of an annual financial audit of the *Corporation*, and
- Estimated cost of *City* collection, administrative, and legal services.

The *Corporation* may annually budget a minimum of three percent (3%) and a maximum of seven percent (7%) of *District* assessment revenue to the operation and management of the *Corporation*, including *City* collection and administrative costs. In addition, the *Corporation* may annually budget a

minimum of three percent (3%) and a maximum of seven percent (7%) of *District* assessment revenue to the Opportunity/Catastrophe/Contingency Reserve. Allocation of more than five percent (5%) of the annual *District* assessment revenue for administration, as described above, shall require approval by a two-thirds (2/3) supermajority vote of the *Corporation's* Board of Directors.

The combined annual budget amounts for the *Corporation's* Administration, including *City* Administration Costs, and the *District* Opportunity/Catastrophe/Contingency Reserve may not exceed 10% of *District* assessment revenue. This limit does not include any litigation costs pertaining to the defense of the *District*, which will be paid from *District* funds in addition to administration costs.

In 2018 and every fifth fiscal year thereafter, the allocation for *District* Administration and Operations shall be 3% to 7% plus an additional increment of one-half of one percent (0.5%) to support the development and presentation of a *District* Milestone Report. The Milestone Reports will be budgeted, prepared and presented to the *City* in the years listed below, to be implemented in the following year (e.g. the FY2018 report will be prepared and submitted in FY2018 and effective in FY2019). Those years will be:

FY2018
FY2023
FY2028
FY2033
FY2038
FY2043
FY2048
FY2053

Revenue for the Milestone Report expenditures shall be available from the Opportunity/Catastrophe/Contingency Reserve.

Marketing and Sales

It is widely recognized that successful direct marketing and sales of a visitor destination is the result of a considerable investment in time and resources. Visitor destinations, of all sizes in myriad locations, compete for a finite number of consumers. Many of these visitors require lodging. This daily consumption of lodging, as measured by the industry standard of hotel room nights, is vital because the unused portion of a hotel's available inventory spoils every day, and is never again available for sale.

Historically, businesses in visitor destinations have banded together to pool resources in order to develop coordinated messaging and to deliver a call-to-action that would result in an increase in the consumption of visitor-serving offerings. These groups have been given many names that usually contain the term "visitors bureau." More recently, they have been recognized as Destination Marketing Organizations (DMOs). Over time these organizations have become clearinghouses for

visitor-serving information, products and services, while generating incremental new business for their members. Typically, a major participant in these coordinated community, regional and/or statewide efforts are representatives of the hotel industry who, understanding the “commodity” nature of their products, constantly seek opportunities to increase daily consumer demand for them.

Depending on the location and its available visitor offerings, each DMO develops and implements a business plan to sustain current visitor levels while generating additional business from new visitors. The activities implemented to serve these goals are numerous, creative, and diverse.

The meetings industry is distinct within the visitor industry, different from tourism, with its own unique markets, requirements and agendas. Yet, like leisure visitors, meeting attendees and convention delegates require accommodations.

The success of marketing and sales efforts is predicated on the long-term establishment and operations of a local DMO. The decisions that drive these direct sales initiatives are based on years, if not decades, of research, performance analysis, brand development and messaging, plus nurtured client/vendor relationships, performed by a professional staff with administrative support requiring extensive business manpower (sales force), infrastructure (offices, equipment, transportation) and technology (internet tools).

The *Corporation* is not a marketing and sales entity, but rather a funding conduit to contractors for development and implementation of effective marketing and sales programs and services that provide unique privileges and specifically benefit assessed businesses within the *District* by providing a specific government service. The *Corporation* will be responsible for allocation and distribution of available revenue and will contract with qualified third-party contractors to supply marketing and sales programs and services as required and approved by the *Corporation's* Board of Directors.

Marketing

Marketing is the activity of identifying, communicating to, reaching, informing, educating, motivating and persuading prospective consumers of hotel room nights to consummate a purchase. It is the message that prepares the prospective consumer for the sale, may take many traditional and/or innovative forms, and may be modified over time as a result of changes in consumer demands, new tourism products, and advances in marketing and communication technologies. It currently consists of many strategies, tactics and components including but not limited to these examples:

- Market Research;
- Advertising;
- Marketing Promotion;
- Press and/or Public Relations;
- New Product Development;
- Web Strategies, Viral and E-marketing;
- Partnership marketing; and

- Direct Marketing (to a defined universe with a specific call to action).

Sales

The sales process is defined as the activities designed to close or consummate the sale. This closure can take several forms when delivering hotel room night sales. For the transient or tourist responding to the marketing activities this sale may take the form of a walk-in purchase, an on-line reservation, or a telephone reservation.

Another significant element of the hotel sales function involves group and meeting sales. The group and meeting sales process consists primarily of interpersonal interaction, activities that engage the prospect or customer on a personal level rather than at a distance, through technology or a second-party. It is often done by one-on-one meetings, cold calls, and networking. It requires significant front-line sales manpower, plus administrative, operational, and technological support, and considerable time. Often, success is the result of several years of communication and relationship building between the sales representative and the customer; who is usually a professional meeting or convention planner. The "sale" results in a signed agreement or contract for a meeting or convention that can deliver hundreds, if not thousands of hotel room nights.

Funding Marketing and Sales

Because both marketing and sales programs are necessities for successfully increasing room night sales, the *Corporation* will contract for marketing and sales programs and services to promote assessed lodging businesses in the *District* and to fund projects, programs, and activities that specifically benefit and provide unique privileges to assessed lodging businesses within the *District*.

The marketing and sales programs and services funded by the *District* are meant to deliver incremental room night sales directly to *District*-assessed lodging businesses. It is understood that each individual lodging business implements and privately funds a unique, proprietary marketing and sales program that is responsible for the generation of the vast majority of room nights at each business. *District* programs and services are supplemental to, and provide incremental room nights in addition to, those proprietary programs.

To allocate funding to marketing and sales programs, the *Corporation's* Board of Directors must find that each will be likely to generate incremental room night sales at assessed businesses. The purpose of any funded activity must be to generate such sales. The *Corporation's* Board of Directors will establish and regularly update a clearly defined application process for proposed marketing and sales programs. This application will articulate the required qualifications of applicants, the target ROI, and the measurement of results, among other criteria as means to ensure direct benefit to assessees.

Marketing and Sales Programs: Stipulated Best Practices

To guide *District* contractors and ensure direct benefit to assessees, below is a partial list of required Best Practices for implementation of *District*-funded programs and services. Following *District* renewal and adoption by the *Corporation's* Board of Directors, this list may be modified from time to time provided that the goal of direct and exclusive benefit to assessees is attained.

- It is required that all recipients of *District* funds certify that those funds will be spent to provide exclusive privileges and/or specific benefits only to *District* assessed businesses and not to any other, non-assessed businesses. To the extent that other, non-*District*, lodging businesses may receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-*District* funds.
- It is required that all recipients of *District* funds demonstrate availability of other additional non-*District* sources of revenue, such as but not limited to, membership dues, marketing fees, earned income, and/or participation fees, which they will contribute to the promotion or program to pay for any incidental benefit to non-*District* lodging businesses.
- It is required that all advertising materials and media include a call-to-action that directs consumers exclusively to *District* lodging businesses.
- It is required that all recipients of *District* funds conduct an analysis of room night generation for *District* lodging businesses and non-*District* lodging businesses in addition to a ROI analysis. The cost of efforts which generate room nights for non-*District* lodging businesses must be paid with non-*District* funds.

H. Benefit Category A Programs

Benefit Category A Overview

It is understood by the Board of Directors of the *Corporation* that the aggressive, daily consumption of lodging, as measured by the industry standard of hotel room nights, is vital to all lodging businesses because the unused portion of a hotel's available inventory spoils every day, and is never again available for sale. Therefore, the *Corporation* will contract with destination marketing organizations (DMOs) and other contractors selected through competitive application or procurement processes for the specific marketing and sales programs and services as outlined below.

The marketing and sales programs and activities of Benefit Category A will focus primarily on (i) the group and meeting planner or contractor and (ii) consumer direct sales and marketing programs. Consumer direct sales and marketing programs are specifically designed to place booking opportunities for assessed businesses in the grasp of consumers who have or may have expressed an interest in traveling to San Diego. To ensure proportional provision of direct benefits to assessees, the services to be provided to benefit category A assessees have been divided into three sub-categories: A1, A2, and A3.

Meeting & Group Direct Sales and Marketing

Benefit category A requires that a specific set of marketing and sales tools be deployed to achieve individual property direct sales for those lodging businesses. Hotel Meeting Sales is focused on Group, Meeting, Convention and Tour Operator contract programs. These are typically business-to-business relationships. These programs require unique skills, marketing tools and expertise to deal with different markets, develop different messaging, and to address multiple challenging and different decision factors. Specifically, the marketing and sales programs and services provided to generate hotel room nights include (as defined in Appendix 4), but are not limited to:

- Hotel Meeting Sales;

- Event Management and Groups Sales Development;
- Tourism Development including Travel & Trade;
- Group Meeting Direct Marketing; and
- Consumer Direct Sales & Marketing Programs including National Online and Pay-Per-Click Banner Advertising and Online Travel Agency Campaigns (OTAs such as Expedia, Orbitz, and Travelocity).

Consumer Direct Sales & Marketing Programs

In addition, benefit category A requires that a specific set of tools be deployed to deliver consumer direct marketing and sales programs and services designed to result in additional hotel room night sales for assessed lodging businesses in the *District*. These programs and services include, but are not limited to, Consumer Direct Marketing Programs including National Pay-per-Click Banner Advertising and Online Travel Agent Campaigns (as defined in Appendix 4).

Multi-Year Tourism Development

Benefit category A also includes activities related to the Strategic development of multi-year or long-range event planning dedicated to the production of District lodging business leads and room night sales demand. Typical expenses include, but are not limited to, strategic planning, event RFPs, third-party whitepapers, promotional items, information technology, market intelligence, research, and performance audits. (as defined in Appendix 4)

Benefit Category A1: Meeting and Group Sales & Marketing Programs and Consumer Direct Sales & Marketing Programs to Drive Sales Demand for District Lodging Businesses
Benefit category A1 lodging businesses will have the exclusive privilege to participate or be represented in, and receive a specific benefit from, but not limited to, the direct marketing and sales initiatives and programs listed above and further defined in Appendix 4.

Other activities designed to support the above efforts to drive sales demand to these lodging businesses include: Direct Sales and Marketing to Meeting Planners and Meeting Buyers, and Consumer Research, Market Intelligence, Market Cultivation and Penetration.

Benefit category A1 direct sales and marketing programs and services, which are a diverse mix of time-tested and proven initiatives, projects, and activities, will provide exclusive privileges and specifically benefit all current and future lodging businesses of thirty (30) rooms or more within the boundaries of the *District*. These initiatives, projects and activities are deployed to achieve individual property direct sales for those lodging businesses with meeting space, and/or large enough (30 rooms or more) to accommodate a small meeting, reunion or tour group. The hotel meeting and group sales effort is focused on group, meeting, convention and tour operator contract programs.

Benefits resulting from these programs will be realized directly by individual lodging businesses in the target market area or market segment served through the exclusive privilege of participating in a unique contract program, marketing initiative or service funded under benefit category A.

Benefit Category A2: Sub-Regional Targeting

Although benefit category A1 programs are designed to provide benefit citywide, many of these programs have a focus on larger convention and activities that occur in the Downtown area. In order to ensure that the programs exist to directly serve the needs of larger hotels spread throughout the City, category A2 includes services that are directed specifically towards parts of the City other than Downtown. Targeted sub-regional marketing will deliver specific benefit to coordinated groups of lodging businesses throughout the *District* which are subject to the benefit category A assessment. These lodging businesses will have the exclusive privilege to participate or be represented in, and/or receive the specific benefit from, but not limited to the marketing and sales initiatives and programs listed above and further defined in Appendixes 4 and 5. Activities shall be intended to provide supplemental programs of the type detailed in benefit category A.1 but specific to the District sub-regions outside of the downtown core such as Rancho Bernardo, La Jolla, Mission Bay, Mission Valley, and others.

Subject to further provisions in this paragraph, the *Corporation* shall annually budget a portion of funds derived from benefit category A assessment revenue to DMOs for the purpose of sub-regional sales and marketing for those lodging businesses subject to the benefit category A assessment. When allocating resources and implementing programs in sub-regional areas, consideration shall be given to the number and distribution of lodging businesses subject to the benefit category A assessment and room count in those sub-regional areas to ensure that all assessees benefit proportionally from the activities funded by the assessment.

To further ensure provision of a specific benefit to assessed lodging businesses, sub-regional Hotel Advisory Committees shall be established as follows:

- DMOs receiving *District* funds shall establish criteria for the recognition of sub-regional Hotel Advisory Committees.
- The *Corporation's* Board of Directors shall annually apply those criteria to identify the bona fide sub-regional Hotel Advisory Committees.
- Membership on the Hotel Advisory Committees shall be limited to representatives from lodging businesses subject to the benefit category A assessment located in the sub-region for which each committee is established. While the sub-regions may realign or increase in the future, it is anticipated that the initial sub-regions will include, but not be limited to:
 - Mission Bay
 - Mission Valley
 - La Jolla
 - Shelter Island / Point Loma
 - I-5 corridor (adjacent to Del Mar)
 - I-15 corridor
- The committees shall act in an advisory capacity with the primary purpose of consulting with DMOs, and making recommendations on the programs and expenditures relative to sub-regional programs annually proposed by DMOs.
- Sub-regional programs as proposed and implemented shall be consistent with the stated goals and objectives of the DMO to the extent they comply with the requirements of this Plan, and shall utilize proven marketing and media channels.

Benefit Category A3: Competitive Targeting

Category A3 includes programs similar in nature to those funded through category A1, but selected through a competitive application process amongst smaller service providers and special programs.

The *Corporation's* Board of Directors will annually budget a portion of the revenue derived from the benefit category A assessment for competitive supplemental marketing efforts. Such programs, activities, events, and services may be solicited either through a competitive application or open procurement process. These programs and services must provide unique, exclusive privileges and/or deliver a measurable specific benefit to assessees based on room night sales, which are in addition to the privilege or benefits provided by other programs funded with the benefit category A assessment.

The *Corporation* will solicit and/or receive applications for funding from numerous diverse entities. Specific application guidelines were implemented during the *District's* initial five-year term and will continue to be utilized throughout the renewal term. Changes to the guidelines, criteria and application can only be made by an action of the *Corporation's* Board of Directors.

Fundamental to the funding of any application will be the clearly articulated exclusive privileges and specific benefit to assessed lodging businesses in the *District*. While exclusive privileges can be delivered in numerous ways, the specific benefit must be measured in the delivery of hotel room night sales to assessed lodging businesses. Successful applications will clearly describe the strategy and tactics for delivering room night sales, as well as the estimated resulting number of room night sales and resulting gross room revenue. The method for calculating and verifying the ROI results must be described in the application.

When considering these fundamental application requirements, priority will be given to:

- (a) Special-need periods of the year;
- (b) Special-need geographic locations within the *District*, that may include but are not limited to a sub-region, multiple sub-regions, a neighborhood or community, or an area uniquely defined to host or support a program or event; and
- (c) The opportunity to generate incremental room nights from existing programs or sponsoring programs.

Competitive Supplemental Marketing Programs will deliver a specific benefit to coordinated groups of lodging businesses throughout the *District* which are subject to the benefit category A assessment. These lodging businesses will have the exclusive privilege to participate or be represented in, and/or receive the specific benefit from competitive supplemental marketing initiatives and programs designed to drive sales demand for room nights at these businesses as articulated in Appendix 4.

Determining ROI

All successful applicants for funding from assessment revenues must clearly demonstrate a measurable ROI based on room night sales for the programs or services they propose. Applicants and recipients must develop and demonstrate their suggested methods of measuring ROI for their

programs as part of applications and quarterly performance reports. All stated ROI results are subject to third-party audit.

I. Benefit Category B Programs

Benefit Category B: Overview

Critical to the consumption of lodging business room nights is the location, or destination, of the businesses. While a meeting or convention can mandate a destination for a conventioner or delegate, the transient hotel guest, the tourist, makes a personal travel decision in light of market forces. Consumer direct/destination marketing and messaging are designed to influence, entice and support such decisions and therefore generate incremental transient room night sales. All of the lodging businesses subject to the benefit category B assessment will directly benefit from consumer direct/destination marketing.

Benefit Category B: Destination Marketing with Specific Call to Action

Benefit category B funds consumer direct destination marketing. Such marketing can include, but is not limited to, consumer direct advertising and earned media (public relations releases) and media contacts. All marketing funded through benefit category B will include specific calls to action directly related to district lodging businesses. Such calls to action might include, but are not limited to, inclusion of special consumer directed website landing pages featuring only district lodging businesses, links, or phone numbers exclusively dedicated to providing district lodging business information and booking opportunities. All approved campaigns must have budget proportional other source funding reflective of benefit that will be used to augment the District funding to proportionally reflect the any percentage of benefit received to non-assesseees. Typical direct expenses include advertising costs, agency fees, production, printing, distribution costs District-related personnel salary, commissions, benefits, training, travel, printed material, promotional items, information technology, market intelligence, research, and performance audits. - Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

While none of the exclusive privileges (calls to action and special website and phone number) of participating in programs funded by benefit category B will be available to businesses that do not pay the benefit category B assessment, secondary benefit may accrue to lodging establishments outside the boundaries of the *District*, but the resulting room night capture would be offset by the utilization of other source income to support these programs. DMOs will be required to demonstrate sufficient alternate revenue sources in support of Consumer Direct/Destination Marketing programs under benefit category B.

Benefit category B Consumer Direct/Destination Marketing programs and services will provide exclusive privileges and specifically benefit all assessed lodging businesses in the *District*, regardless of size. Therefore, all of these qualifying lodging businesses as listed in Appendix 3 will be assessed for the activities provided by funding from benefit category B. Benefits resulting from these

programs will be realized directly by individual assessed lodging businesses in the target market area or market segment served through the exclusive privilege of participating in a unique contract program, marketing initiative or service funded by the benefit category B assessments.

J. City Administration

The *City* shall recover its actual annual costs and any renewal costs associated with *District* program oversight, collection, and administration. The amount budgeted each year for *City* Administration is to be determined on an annual basis, though it is not anticipated to exceed \$600,000 in the first year. In no case shall the annual assessment revenue designated for *District* Administration, *City* Administration, and the Opportunity/ Catastrophe/Contingency Reserve exceed ten percent (10%) of all projected annual assessment revenue. Notwithstanding the foregoing, any subsequent *District* renewal or modification processes may incur additional one-time costs. Costs for services to be recovered by the *City* include but are not limited to:

- Economic Development - Contract management and disbursement/reimbursements, coordination and preparation of annual and periodic reports and presentations to Council;
- Office of the City Treasurer - Collection administration, management and auditing;
- Office of the City Auditor - Program auditing;
- Office of the Comptroller - Check disbursements; and
- Office of the City Attorney - Legal review, document preparation, collection services/litigation.

Notwithstanding the foregoing, in addition to the administrative costs described above, litigation costs pertaining to the defense of the *District* incurred by the *City* shall be paid from *District* funds in addition to the recovery of administration costs. Specific provisions for *City* Administration costs, including recovery of any renewal costs, are contained in the operating *Agreement*.

K Opportunity/Catastrophe/Contingency

A prudent portion of the *District* budget for both of the benefit categories will be designated for an opportunity/catastrophe/contingency reserve. This reserve will be used to: (i) replace actual revenue shortfalls when carrying out the activities in each of the benefit categories, (ii) maximize unique and unforeseen opportunities and (iii) react to unforeseen situations.

The utilization of these funds will be at the discretion of the *Corporation's* Board of Directors but within the approved scope of services to be provided according to this Plan and the Annual and Milestone Reports.

The annual allocation to the opportunity / catastrophe / contingency reserve will not exceed seven percent (7%) of the total budget; nor will the allocation be less than three percent (3%) of the total annual budget, unless and until the cumulative revenue from assessments designated for the combined opportunity/catastrophe/ contingency reserves reaches \$10 million. Once the cap is

reached, any assessment revenue that would otherwise be designated for the opportunity/catastrophe/contingency reserves will instead be designated for current marketing and sales programs.

If at the expiration of the *District*, there is an opportunity/catastrophe/contingency reserve remaining for either or both of the benefit categories, and business owners within that category wish to renew the *District*, the remaining opportunity/catastrophe/contingency reserve may be used for renewal costs.

If the *District* is renewed following the thirty-nine and one-half (39 ½) year term, and the benefit category structure, assessment rate, and boundaries remain identical going forward, the opportunity/catastrophe/contingency reserve for each benefit category shall be made available to the corporation managing the renewed *District* in accordance with SDMC section 61.2523(a) or other ordinance provisions which may then exist. These previously accumulated funds may be spent consistently with the allocations in this *Plan* or may remain in savings for future expenditures consistent with this *Plan*. Should the *District* not be renewed, or at any time be dissolved, the previously accumulated assessment revenue (less any funding needed to settle outstanding obligations) shall be proportionally refunded and distributed to the assessed businesses in each benefit category of the *District*. Should the *District* be renewed but with different boundaries or benefit categories, remaining funds shall be transferred to the new *District* but spent on programs and services to benefit only the assessed businesses in accordance with this *Plan*.

V. Governance and Oversight

A. City Administration and Oversight

Petitions signed by business owners are required to be submitted to the *City* in support of renewing the *District* in accordance with SDMC §61.2506(a). If sufficient petitions, when weighted by the amount of proposed assessment(s) to be levied under benefit categories A and/or B, are submitted in support of the renewal, then the *City Council* may adopt a Resolution of Intention to renew the *District*, cause a ballot to be mailed to all identified businesses, and give notice of the required public hearing. If 50% or more of the ballots that are returned, when weighted by the amount of the anticipated assessment represented by returned ballots, favor district renewal, then the *City Council* may adopt a resolution renewing the *District* and authorize the levying of assessments for a period of thirty-nine and one-half (39 ½) years.

The *City* will oversee collection of the assessments and ensure the expenditure of funds is consistent with this *Plan*. On an annual basis, within 30 days of the *City's* finalization of the fiscal year's accounting, the *City* will provide a full accounting of *District* assessment revenue including interest earned on any pooled investments, plus interest and penalties collected from delinquent accounts.

Prior to the beginning of each Fiscal year, the *City Council*, in an open meeting, shall consider the submitted Report of Activities, and may approve as submitted or modified (including the associated expenditure of *District* revenue).

B. San Diego Tourism Marketing District Corporation Administration

The *procedural ordinance* provides that the *City* may contract with a designated non-profit corporation to implement this *Plan* and to carry out specified activities, subject to the terms and conditions enumerated in the contract with that corporation. The *City* shall contract with the *Corporation*, a private non-profit corporation, to serve as the Tourism Marketing District Association, manage the *District* assessments, and contract for implementation of the proposed marketing and sales programs and services as outlined in this *Plan*.

Purpose

The specific purpose of the *Corporation*, a private non-profit corporation, is to directly benefit lodging businesses in the *City* through the effective and judicious allocation of its revenue and resources to measurably successful tourism promotion, marketing, sales, and advertising programs, and special events, that will generate additional room nights for assessed businesses and not others (except to the extent non-assessment revenue is used to benefit to non-assesseees).

General Powers

Subject to the provisions and limitations of the California Non-profit Mutual Benefit Corporation Law and any other applicable laws, and subject to any limitations of its Articles of Incorporation and

Bylaws, the *Corporation's* activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors.

Board of Directors

Only business owners or business owner's representatives paying the *District* assessment may vote in annual elections of the *Corporation*. And only business owners or business owner's representatives paying the *District* assessment may seek serve on the Board of Directors of the *Corporation*. The Board of Directors shall consist of nine (9) directors unless changed by amendment to the Bylaws of the *Corporation*.

Board members, officers, and members of the *Corporation* shall represent the assessed lodging businesses and further their economic interests.

Board Nominations & Elections

Elections to the Board of Directors will be held annually. A call for self-nominations will occur annually and all self-nominees will be listed on the ballot for Board elections. In addition to, or in the absence of, self-nominations, the Nominations Committee of the Board may put forth a slate of nominees at each election.

The procedure for nominations and elections, including the timing for nominations, and the protocol for distribution and collection of ballots, is defined in the Bylaws of the *Corporation*. The *Corporation* will annually arrange for the *City*, or the *City's* designee, to administer, count and report the results of the balloting for Board elections.

Board Officers

Officers of the Board of Directors shall be elected by a majority vote of the Board at the first regularly scheduled meeting of the Board following annual Board member elections.

Board Standards and Conduct

The *Corporation* is organized as a 501(c)6 mutual benefit corporation, and its purpose is the management of the resources of the *District*. The primary measures of the *Corporation's* success will be the exclusive privileges and specific benefits it delivers to the assessed businesses. Because the delivery of a specific measurable benefit to the assessed businesses is required by law, and is the primary legal purpose of the *Corporation*, it is recognized that members of the Board of Directors, through their assessed businesses, will receive benefit from the activities of the *Corporation*.

In addition, the *City's* enabling *procedural ordinance* recognizes, analogously to the 1994 PBID Law, that 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." Notwithstanding the foregoing and regardless of state allocations for mandate reimbursements, the *Corporation* shall comply with the Ralph M. Brown Act, California Government Code §54950 *et seq.*, at all times when matters within the subject matter of the *District* are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code §6250 *et seq.*, for all documents relating to activities of the *District*.

Furthermore, the *Corporation's* Board of Directors shall comply with the California Corporations Code and shall develop internal policies defining standards, responsibilities and conduct for the Board of Directors.

A Volunteer Board of Directors

The members and officers of the Board of Directors of the *Corporation* will serve as volunteers. They will receive no compensation for their service individually or collectively. They are not entitled to, nor may they make a claim for, reimbursement of any personal or professional expenses attributed to their service. Other than Directors and Officers Liability Insurance no benefits such as, but not limited to, health insurance, worker's compensation insurance, disability insurance, reimbursement of out-of-pocket expenses, or paid vacation, will be provided.

Limiting Contact Between Applicants and the Board of Directors

It will be vital that the application and allocation process for funding from the *Corporation* be open, fair, and efficient. To this end, the written submission of an application and supporting materials, as well as any public presentation that may be required from applicants, will be the foundation for Board discussion and deliberations. Board members are encouraged to limit their contact and communication with applicants regarding their applications or proposed application to open and public meetings of the Board and its committees, and to disclose any extra-meeting contact or communication prior to participating in the consideration of that applicant's submission.

C. Report of Activities

Annual Report

The *Corporation* shall cause to be prepared annually a report for the coming fiscal year. The first report of the renewed district will include the activities for the first eighteen months of operation, from January 1, 2013 through June 30, 2014. The final report of the renewed district will include activities from July 1, 2052 through June 30, 2053. Every fifth year, a Milestone Report shall be submitted instead of the Annual Report, which shall include all of the information required in the Annual Report.

The report may propose changes, including, but not limited to, the boundaries of the *District* or to any benefit zones within the *District*, the basis and method of levying assessments, and any changes in the classification of categories of business if a classification is used.

The report shall be filed with the *City* by mutually agreed upon dates pursuant to the operating *Agreement*, and shall refer to the *District* by name, specify the fiscal year to which the report applies, and with respect to that fiscal year, will contain all of the following information:

- Any proposed changes to the boundaries of the *District*;
- The activities to be provided for that fiscal year;
- An estimate of the cost of providing the activities for that fiscal year;

- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year;
- The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year; and
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this *Plan* as necessary to ensure that assessment-funded programs directly benefit assessees alone.

District Milestone Report

The *Corporation* shall cause to be prepared a retrospective and prospective *District* Milestone Report every five (5) fiscal years for which assessments are levied. This *District* Milestone Report will include the required annual Report of Activities for the prospective fiscal year. The first *District* Milestone Report of the renewed *District* will include the reporting of results for the initial period of operation, from January 1, 2013 through the date of preparation of the report. The final Milestone Report of the renewed district will include reporting of results from July 1, 2048 through June 30, 2053. Reports for the intervening period will include reporting of results for the prior five (5) years. Reports will be submitted to the *City* on agreed upon dates pursuant to the operating *Agreement*.

The report may propose changes, including, but not limited to, the boundaries of the *District* or any benefit categories within the *District*, the basis and method of levying the assessments, and any changes in the classification of benefit categories or categories of business, within categories, if used.

The report shall be filed with the *City* on agreed upon dates pursuant to the operating *Agreement*, and shall refer to the *District* by name, specify the five (5) prospective fiscal years to which the report applies, and with respect to those five (5) fiscal years, shall contain all of the following information:

- Any proposed changes to the boundaries of the *District* or to any benefit categories or classification of businesses within the *District*;
- The general activities to be provided for the next five (5) fiscal year cycle;
- An estimate of the cost of providing the activities for the next five (5) fiscal year cycle;
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for each fiscal year for the next five (5) year cycle;
- The estimated amount of any surplus or deficit revenues to be carried over one year to the next for the next five (5) fiscal year cycle; and
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this *Plan* as necessary to ensure that assessment-funded programs directly benefit assessees alone.

The *City Council* may approve the reports as filed by the *Corporation*, or may modify any portion of the report and approve it as modified. Such modification shall only be made subject to the noticing provisions of San Diego Municipal Code sections 61.2519 and 61.2520. The Council shall not

approve a change in the basis and method of levying assessments that would impair a contractual obligation of the *City Council* or approved by the *City Council*.

D. Modifications of Plan

The *Corporation* may, at any time, make a written request that the *City Council* modify this *Plan*. Any modification of this *Plan* shall be made pursuant to SDMC §61.2520, as that ordinance now reads or may hereafter be amended, but shall include prior written notice of the proposed modification to assessed businesses and a noticed public hearing on the proposed modification.

E. Modifications of District Operating Agreement

The *City* and *Corporation* shall enter into an operating *Agreement* for operation of the *District*. Mutually agreed modifications shall be made pursuant to the provisions of the approved operating *Agreement*.

Appendix 1 – Definition of Lodging Establishments

For the purposes of the assessment levied in connection with the renewed District:

1. The assessment shall be calculated as a percentage of the Assessable Rent of each lodging business.
2. “Lodging Business” means a business, other than a recreational vehicle park or campground, that is a “hotel” pursuant to SDMC Section 35.0102. Lodging Business does not include a business whose principal purpose is to rent rooms for occupancy to tenants for use as a primary residence, such as a Single Room Occupancy (SRO) Hotel.
3. “Assessable Rent” means “rent,” as that term is defined in SDMC Section 35.0102, subject to the exclusions set forth in SDMC Sections 35.0111 and 61.2516.

For reference:

SDMC Section 35.0102 defines “hotel” as “any structure or any portion of any structure which is occupied, or intended or designed for Occupancy, by Transients for dwelling, lodging, or sleeping purposes, and is held out as such to the public. ‘Hotel’ does not mean any hospital, convalescent home, or sanitarium.”

Appendix 2 –Procedural Ordinance

(As of July 1, 2012, but may be amended from time to time.)

Chapter 6: Public Works and Property, Public Improvement and Assessment Proceedings

Article 1: Public Improvement and Assessment Proceedings

Division 25: San Diego Tourism Marketing District Procedural Ordinance

(Added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

§61.2501 Purpose and Intent

The purpose and intent of this Division is:

- (a) To allow for the establishment of a *tourism marketing district* to provide for tourism development, including coordinated joint marketing and promotion of San Diego *businesses*, in order to retain and expand the lodging industry which is one of the top revenue generators for the San Diego economy and a key employment sector.
- (b) To create a mechanism to fund promotional *activities* for tourism development through the levy of *assessments* upon the *businesses* to which the special and specific benefit from those *activities* is conferred.
- (c) To provide a method for the involvement of a nonprofit entity to participate in the preparation and review of proposed *tourism marketing district* plans for *district activities*.
- (d) To provide a method for the City Council to authorize a nonprofit entity with specific interest in the promotion of City tourism to implement and administer *district activities*.
- (e) To provide a mechanism with which a charge may be imposed for a special and specific benefit conferred directly to the payors that is not provided to those not charged and which does not exceed the reasonable costs to the City of San Diego of conferring the benefit.

(“Purpose and Intent” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2502 Citation of Division

This division may be cited as the San Diego Tourism Marketing District Procedural Ordinance.

(“Citation of Division” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

§61.2503 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the San Diego City Council to order the work shall void or invalidate such procedure for any *assessment* or the cost of the work done thereunder.

("Rules of Construction" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2504 Definitions

For purposes of this division, defined terms appear in italics. The following definitions apply in this Division:

"Activities" means, but is not limited to, the promotion and marketing of *assessed businesses* to provide a special and specific benefit to assessed *businesses* within the *district* that is not provided to those not paying the *assessment*.

"Assessment" means a levy for the purpose of conducting *activities* which will provide a special and specific benefit to the assessed *businesses* located within a *tourism marketing district* is not provided to those not paying the *assessment*. *Assessments* levied under this Division are not special taxes.

"Business" means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by *transients* for dwelling, lodging or sleeping purposes.

"Business owner" means the owner, operator, or authorized representative of the *business* who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax pursuant to San Diego Municipal Code section 35.0114.

"District management plan" or *"plan"* means a proposal as defined in sections 61.2507.

"Tourism marketing district," or *"district,"* means an area established pursuant to this Division, within which *businesses* pay *assessments* to fund *activities*.

"Tourism marketing district association" or *"association"* means a private nonprofit entity which represents, and whose membership includes only the assessed *business owners* or *business owners'* representatives in a *district* and which participates in the preparation and review of proposed *district management plans* for *district activities* that provide a special and specific benefit to *assessed businesses* that is not provided to those that are not assessed. A *tourism marketing district association* may be an existing nonprofit entity or a newly formed nonprofit entity. In accordance with California Streets and Highways Code section 36614.5, the *association* 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.

Transient has the same meaning as in San Diego Municipal Code section 35.0102.

("Definitions" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2505 Alternative Financing Method; No Limit on Other Provisions of Law

This Division provides an alternative method of financing certain *activities*. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for *activities* or the raising of revenue for the benefit of *businesses*.

(“Alternative Financing Method; No Limit on Other Provisions of Law” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

§61.2506 Establishment of Tourism Marketing District

A *tourism marketing district* may be established as provided in this Division, in the following manner:

- (a) Upon the submission of a written petition, signed by the *business owners* in the proposed *district* who will pay more than 50 percent of the *assessments* proposed to be levied, the City Council will initiate proceedings to establish a *district* by the adoption of a resolution expressing its intention to establish a *district*. Where the same *business owner* would be assessed an amount in excess of 40 percent of the total amount of all *assessments* proposed to be levied, that *business owner's* share of the *assessment* over such 40 percent shall not be included in determining whether the petition is signed by *business owners* who will pay more than 50 percent of the total amount of *assessments* proposed to be levied.
- (b) The petition of *business owners* required under subdivision (a) shall include a summary of the *district management plan*. That summary shall include all of the following:
 - (1) A map showing the boundaries of the *district*.
 - (2) Information specifying where the complete *district management plan* can be obtained.
 - (3) Information specifying that the complete *district management plan* shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
 - (1) A brief description of the proposed *activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the *activities* and the location and extent of the proposed *district*.

- (2) A time and place for a public hearing on the establishment of the *tourism marketing district* and the levying of *assessments*, which shall be consistent with the requirements of section 61.2508.

(“Establishment of Tourism Marketing District” added 5–30–2007 by O–19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2507 Tourism Marketing District Management Plan

The *district management plan* shall contain all of the following:

- (a) A map of the *district*.
- (b) The name of the proposed *district*.
- (c) A description of the boundaries of the *district*, including the boundaries of any benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and *businesses* included. Nothing in this Division prohibits the boundaries of a *district* created pursuant to this Division to overlap with other *districts* created pursuant to this Division or assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code sections 36500 - 36551, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code sections 36600 - 36671.
- (d) The general description of *activities* proposed for each year of operation of the *district* and the estimated maximum cost thereof.
- (e) The estimated total annual amount proposed to be expended each year for administration and operation of the *district*.
- (f) The proposed source or sources of financing including the proposed method and basis of levying the *assessment* in sufficient detail to allow each *business owner* to calculate the amount of the *assessment* to be levied against their *business*.
- (g) The planned frequency for the levying of the *assessments*.
- (h) The specific number of years in which *assessments* will be levied. The maximum term for any *district* is 40 years. The *district management plan* may set forth specific changes in *assessments* for each year of operation of the *district*.
- (i) The proposed timing and duration of *activities* under the *plan*.
- (j) Any proposed rules and regulations to be applicable to the *district*.
- (k) A list of the *businesses* to be assessed then in existence.
- (l) A description of the procedures utilized by the *association* for the nomination and election of the *association's* board of directors.

- (m) Any other item or matter required to be incorporated therein by the San Diego City Council, the San Diego Municipal Code, or any other applicable law. The *district management plan* shall be approved by City Council at the time City Council considers the petition of *businesses* seeking to establish a *tourism marketing district*. Should the *businesses* or the *tourism marketing district association* seek to modify the *plan* at any time, such modifications shall be subject to the requirements of sections 61.2519 and 61.2520.

(“Tourism Marketing District Management Plan” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2508 Notice of Proposed Assessments; Public Hearing

- (a) If the City Council proposes to levy a new or increased *assessment* pursuant to this Division, the City shall comply with the following notice, protest, and hearing procedures:
- (1) The City Council shall identify all *businesses* which will have a special and specific benefit conferred on them by the *activities* and upon which an *assessment* will be imposed.
 - (2) All *assessments* shall be supported by the *management plan*.
 - (3) The City shall give notice by mail to the *business owner* of each identified *business*. Each notice shall state the estimated total initial annual *assessments* for the entire *district*, the duration of the payments, the reason for the *assessment* and the basis upon which the amount of the proposed *assessment* was calculated, and a specific formula in sufficient detail to allow the *business owner* to calculate the proposed *assessment* on the *business*, together with the date, time, and location of a public hearing on the proposed *assessment*.
 - (4) If the proposed *assessment* formula is based on gross room revenue, the amount of the proposed *assessment* for each identified *business* shall be estimated based on gross room rental revenue for the City’s most recent complete fiscal year.
 - (5) Each notice shall also include, in a conspicuous place, a summary of the procedures for the completion, return, and tabulation of the ballots required pursuant to section 61.2508(a)(6), including a statement that the *assessment* shall not be imposed if the ballots submitted in opposition to the *assessment* exceed the ballots submitted in favor of the *assessment*, with ballots weighted according to the proportional financial obligation of the affected *business*. The City shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed *assessment*. On

the face of the envelope mailed to the *business owner*, in which the notice and ballot are enclosed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED." The City may additionally place the phrase "OFFICIAL BALLOT ENCLOSED" on the face of the envelope mailed to the *business owner*, in which the notice and ballot are enclosed, in a language or languages other than English.

- (6) Each notice given pursuant to this section shall contain a ballot that includes the City's address for receipt of the ballot and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the *business*, and his or her support or opposition to the proposed *assessment*. Each ballot shall be in a form that conceals its contents once it is sealed by the person submitting the ballot. Each ballot shall be signed and either mailed or otherwise delivered to the address indicated on the ballot. Regardless of the method of delivery, all ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to section 61.2508(a)(8).
Ballots shall remain sealed until the tabulation of ballots pursuant to section 61.2508(a)(8) commences, provided that a ballot may be submitted, changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed *assessment* at the hearing required pursuant to this section. The City may provide an envelope for the return of the ballot, provided that if the return envelope is opened by the City prior to the tabulation of ballots pursuant to section 61.2508(a)(8), the enclosed ballot shall remain sealed as provided in this section.
- (7) At the time, date, and place stated in the notice mailed pursuant to section 61.2508(a)(3), the City shall conduct a public hearing upon the proposed *assessment*. At the public hearing, the City shall consider all objections or protests, if any, to the proposed *assessment*. At the public hearing, any person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.
- (8) At the conclusion of the public hearing, a person or persons designated by the City shall tabulate the ballots submitted, and not withdrawn, in support of or opposition to the proposed *assessment*.
- (9) The City Council may, if necessary, continue the tabulation at a different time or location accessible to the public, provided the City Council announces the time and location at the hearing. Technological methods may be used in the tabulation of the ballots, including, but not limited to, punchcard, or optically readable (bar-coded) ballots.

- (10) A majority protest exists if the ballots submitted, and not withdrawn, in opposition to the proposed *assessment* exceed the ballots submitted, and not withdrawn, in its favor, weighting those ballots by the amount of the proposed *assessment* to be imposed upon the identified *business* for which each ballot was submitted.
 - (11) If there is a majority protest against the imposition of a new *assessment* or an increase in an existing *assessment*, the City shall not impose or increase the assessment.
- (b) In addition to the requirements of section 61.2508(a), the City shall also comply with California Government Code section 54954.6, as it relates to adopting any new or increased assessment.

("Notice of Proposed Assessments; Public Hearing" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2509 City Council Adoption, Revision or Modification of Assessments; Modification of Approved Activities; Changes to District Boundaries

At the conclusion of the public hearing to establish the *district*, the City Council may adopt, revise, change, reduce or modify the proposed *assessment* or the type or types of *activities* to be funded with the revenues from the *assessments*. At the hearing, the City Council may only make changes to the boundaries of the proposed *tourism marketing district* that will exclude territory containing *businesses* that the City Council finds will not benefit from the proposed *activities*; and may only change proposed *assessments* by reducing them.

("City Council Adoption, Revision or Modification of Assessments; Modification of Approved Activities; Changes to District Boundaries" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2510 Resolution of Formation of Tourism Marketing District

- (a) If the City Council, following a public hearing, decides to establish a proposed *tourism marketing district*, the City Council shall adopt a resolution of formation that shall contain all of the following:
 - (1) A brief description of the proposed *activities*, the amount of the proposed *assessment*, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the *activities* and the location and extent of the proposed *district*.
 - (2) The number, date of adoption, and title of the resolution of intention.

- (3) The time and place where the public hearing was held concerning the establishment of the *district*.
 - (4) A determination regarding any protests received. The City Council shall not establish the *district* or levy *assessments* if a majority protest was received.
 - (5) A statement that the operations of the *district* established by the resolution shall be subject to any amendments to this Division.
 - (6) A statement that the *activities* to be provided to benefit *businesses* in the *district* will be funded by the levy of the *assessments*. The revenue from the levy of *assessments* within a *district* shall not be used to provide *activities* that directly benefit *businesses* outside the *district* or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning establishment of the *district*.
 - (7) A statement specifying the time and manner for levying the assessments by the City Treasurer.
 - (8) A statement that any *assessment* imposed pursuant to this Division is levied solely upon the *business owner* within the *district*, that the *business owner* is solely responsible for payment of the *assessment* when due, and that, if the *business owner* chooses to collect any portion of the *assessment* from a *transient*, that portion shall be specifically called out and identified for the *transient* in any and all communications from the *business owner* as a “*San Diego Tourism Marketing District Assessment*.”
 - (9) A finding that the *activities* funded by the *assessments* will provide a special and specific benefit to *businesses* within the *tourism marketing district* that is not provided to those not paying the *assessment*.
- (b) The adoption of the resolution of formation and recordation of the notice and map pursuant to section 61.2512 shall constitute the levy of an *assessment* in each of the fiscal years referred to in the *district management plan*.

(“*Resolution of Formation of Tourism Marketing District*” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2511 City Clerk to Record Notice and Map of District

Following adoption of a resolution establishing a *district* pursuant to section 61.2510 the City Clerk shall record a notice and map of the *district*.

(Renumbered from former Section 61.2512, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2512 City Council Establishment of Benefit Zones

The City Council may establish one or more separate benefit zones within the *district* based upon the degree of benefit derived from the *activities* to be provided within the benefit zone, and may impose a different *assessment* within each benefit zone. The City Council may also define categories of *businesses* based upon the degree of benefit that each will derive from the *activities* to be provided within the *district*, and may impose a different *assessment* or rate of *assessment* on each category of *business*, or on each category of *business* within each zone.

(“City Clerk to Record Notice and Map of District” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2513, retitled to “City Council Establishment of Benefit Zones” and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2513 Establishment, Modification or Disestablishment; Districts and Benefit Zones

All provisions of this Division applicable to the establishment, modification, or disestablishment of a *tourism marketing district* apply to the establishment, modification, or disestablishment of benefit zones or categories of *business*. In order to establish, modify, or disestablish a benefit zone or category of *business*, the City Council shall follow the procedure to establish, modify, or disestablish a *tourism marketing district*.

(“Council Establishment of Benefit Zones” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Renumbered from former Section 61.2514, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2514 Expiration of Tourism Marketing District

If a *tourism marketing district* expires due to the time limit set pursuant to section 61.2507(h), a new *district management plan* may be created and a new *district* established pursuant to this Division.

(“Establishment, Modification or Disestablishment; Districts and Benefit Zones” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Renumbered from former Section 61.2515, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2515 Collection of Assessments

The collection of the *assessments* levied pursuant to this Division shall be made at the time and in the manner set forth by the City Council in the resolution establishing the *district* described in section 61.2510. A method for charging interest and penalties for delinquent payments of *assessments* may also be prescribed in the resolution establishing the *district*.

("Expiration of Tourism Marketing District" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2516, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2516 Exemptions from Assessments

The following *business* revenues are considered exempt from assessment under this Division:

- (1) Revenues from a *transient* who has exercised occupancy for more than one month;
- (2) Revenues from a *transient* whose room rent is being paid directly or indirectly by the federal government or the State of California, or
- (3) Revenues from a *transient* who is by treaty exempt from locally-levied transient occupancy taxes.

("Collection of Assessments" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2518, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2517 Validity of Assessments; Contests

The validity of an *assessment* levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the *district* and levying the *assessment* is adopted pursuant to section 61.2510. Any appeal from a final judgment in an action or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

("Assessments Based on Estimated Benefits" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Renumbered from former Section 61.2519, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011. Former Section 61.2517 removed.)

§61.2518 City's Promotional Responsibilities

- (a) Nothing in this Division shall relieve the City of its responsibility to promote the City of San Diego as enumerated in San Diego Municipal Code section 35.0128 regarding the use of revenues from the City's Transient Occupancy Tax.
- (b) The City Manager, or the Manager's designee, will provide the *tourism marketing district association*, on an annual basis, a statement detailing actual Transient Occupancy Tax revenues collected under San Diego Municipal Code section 35.0103 that are available for promoting the City. This statement shall also

describe the prescribed use of revenues from the City's Transient Occupancy Tax to include, but not be limited to:

- (1) The annual debt payment for all existing bond obligations related to the San Diego Convention Center Corporation;
- (2) The annual marketing subsidy as required by the San Diego Convention Center Corporation; and
- (3) The annual debt payment for all existing bond obligations relative to Balboa Park and Mission Bay Park.

("Exemptions from Assessments" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2520, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2519 Modifications of District Management Plan

A *tourism marketing district association* may, at any time, request that the City Council modify its *district management plan*. Any modification of the *district management plan* shall be made pursuant to this Division.

("Validity from Assessments; Contests" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2521, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2520 District Plan Modification; Public Hearing Required

- (a) Upon the written request of a *tourism marketing district association*, the City Council may modify the *district management plan*, including modification of the *activities* to be funded with the revenue derived from the levy of the *assessments*, after conducting one public hearing on the proposed modifications. If the modification includes the levy of a new or increased *assessment*, the City shall comply with the notice and protest requirements of section 61.2508.
- (b) The City Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.
- (c) The City shall give all *business owners* within the *district* written notice by mail, of the proposed modifications of the *district management plan*, an explanation of the modification, and the reason for the modification, together with the date, time and location of a public hearing on the proposed modification.

(“City’s Promotional Responsibilities” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2522, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2521 Tourism Marketing District Association; Report of Activities

- (a) Each *tourism marketing district association* shall cause to be prepared a prospective report for each fiscal year, except the first year, for which *assessments* are to be levied and collected to pay the costs of the *activities* described in the report. The *tourism marketing district association's* first report shall be due after the first year of operation of the *district*. The report may propose changes, including, but not limited to, the boundaries of the *tourism marketing district* or any benefit zones within the *district*, the basis and method of levying the *assessments*, and any changes in the classification of categories of *business*, if a classification is used.
- (b) The report shall be filed with the City Clerk prior to the end of each fiscal year, and shall refer to the *tourism marketing district* by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:
 - (1) Any proposed changes to the boundaries of *the tourism marketing district* or to any benefit zones or classification of *businesses* within the *district*.
 - (2) The *activities* to be provided for that fiscal year.
 - (3) An estimate of the cost of providing the *activities* for that fiscal year.
 - (4) The method and basis of levying the *assessment* in sufficient detail to allow each *business owner* to estimate the amount of the *assessment* to be levied against his or her *business* for that fiscal year.
 - (5) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year.
 - (6) The estimated amount of any contributions to be made from sources other than *assessments* levied pursuant to this Division.
- (c) The City Council may approve the report as filed by the *tourism marketing district association*, or may modify any portion of the report and approve it as modified. Such modification shall only be made subject to the noticing provisions of sections 61.2520. Any portion of the report which proposes to modify the *district management plan* shall only be approved after complying with the notice and public hearing requirements of Section 61.2520. The City Council shall not approve a change in the basis and method of levying *assessments* that would impair an authorized or executed contract to be paid from the revenues derived from the levy of *assessments*.

- (d) A *tourism marketing district association* shall comply with the Ralph M. Brown Act, California Government Code sections 54950 - 54963, at all times when matters within the subject matter of the *district* are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code sections 6250 - 6276.48, for all documents relating to *activities* of the *district*.
- (e) Each *business owner* paying the *tourism district assessment* has the right to vote in annual elections of the *association* and the right to seek nomination or election to the board of directors of the *association*.

(“*Modifications of District Management Plan*” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Renumbered from former Section 61.2523, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2522 Tourism Marketing District Association; Contract With Nonprofit

The *district management plan* may state that a *tourism marketing district association* will provide for and administer the *activities* described in the *district management plan*. If the *district management plan* designates a *tourism marketing district association*, the City may contract with the designated nonprofit corporation to implement the *plan* and carry out specified *activities*, subject to the terms and conditions enumerated in the contract.

(“*District Plan Modification; Public Hearing Required*” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2524, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2523 Renewal of Expired District

- (a) Upon renewal of an expired *district*, any remaining revenues derived from the levy of *assessments*, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed *district*. If the renewed *district* includes additional *businesses* not included in the prior *district*, the remaining revenues shall be spent to benefit only the *businesses* in the prior *district*. If the renewed *district* does not include *businesses* included in the prior *district*, the remaining revenues attributable to these *businesses* shall be refunded to the owners of these *businesses*.
- (b) Upon renewal, a *district* shall have a term not to exceed forty (40) years. There is no requirement that the boundaries, *assessments*, or *activities* of a renewed *district* be the same as the original or prior *district*.

("Tourism Marketing District Association; Report of Activities" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Amended 12-18-2007 by O-19691; effective 1-17-2008.)

(Renumbered from former Section 61.2525, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2524 Disestablishment of District; Procedures

- (a) Any *tourism marketing district* established or extended pursuant to the provisions of this Division, where there is no outstanding and unpaid indebtedness incurred to accomplish any of the purposes of the *district*, may be disestablished by resolution of the City Council in either of the following circumstances:
 - (1) If the City Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the *district*; or
 - (2) After the first year of operation of the *district*, there shall be a 30-day period each year in which assessed *business owners* may request disestablishment of the *district*. The first such period shall begin upon presentation to City Council of the *district's* initial annual report of activities. During each successive year of operation of the *district*, *business owners* shall have such a 30-day period to request disestablishment upon presentation of the *district's* report of activities. Upon the written petition of the *business owners* in the *district* who pay 50 percent or more of the *assessments* levied, the City Council shall pass a resolution of intention to disestablish the *district*. The City Council shall notice a hearing on disestablishment., pursuant to section 61.2508.
- (b) The City Council shall adopt a resolution of intention to disestablish the *district* prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the *assessments* levied within the *district*. The notice of the hearing on disestablishment required by this section shall be given by mail to the owner of each *business* subject to *assessment* in the *district*. The City Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the *business owners*. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

("Tourism Marketing District Association; Contract With Nonprofit" added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Renumbered from former Section 61.2526, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2525 Disestablishment; Refund of Assessments

- (a) If the disestablishment occurs before an *assessment* is levied for the fiscal year, the method and basis that was used to calculate the *assessments* levied in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding *assessment* revenue collected after disestablishment shall be spent on *activities* specified in the *district management plan*.
- (b) Upon the disestablishment of a *district*, any remaining revenues, after all outstanding debts are paid, derived from the levy of *assessments*, or derived from the sale of assets acquired with the revenues, shall be refunded to the *business owners* then located and operating within the *district* in which *assessments* were levied by applying the same method and basis that was used to calculate the *assessments* levied in the fiscal year in which the *district* is disestablished.

(“Renewal of Expired District” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(Renumbered from former Section 61.2527, and amended 10-6-2011 by O-20096 N.S.; effective 11-5-2011.)

§61.2526 Action to Determine Validity; Action Contesting Validity

- (a) An action to determine the validity of *assessments*, contracts, improvements, or *activities* may be brought by the City or *tourism marketing district association* pursuant to Chapter 9 (commencing with section 860) of Title 10 of Part 2 of the California Code of Civil Procedure. For such purpose an *assessment*, *activity*, improvement, or acquisition shall be deemed to be in existence upon its authorization by City Council.
- (b) In accordance with California Streets and Highways Code section 36633, the validity of an *assessment* levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the *assessment* is adopted pursuant to section 61.251. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

(“Disestablishment of District; Procedures” added 5-30-2007 by O-19622 N.S.; effective 6-29-2007.)

(“Action to Determine Validity; Action Contesting Validity” added 10-6-2011 by O-20096 N.S.; effective 11-5-2011 Former Section renumbered to 61.2524.)

Appendix 3 – District Lodging Businesses

List of Lodging Businesses as of June 2012

The following is a list of the lodging businesses in the City that, based on the City's Transient Occupancy Tax records, appear to have been active for some or all of the period between July 1, 2011 and June 30, 2012 and which will receive specific benefits and privileges resulting from the services provided to the benefit category or categories in which they are included as indicated in the table starting on the next page.

This list does not include businesses that, at some point, registered with the City for Transient Occupancy Tax purposes but did not, based on the City's records, have taxable activities during July 1, 2011 through June 30, 2012.

| Business Name | Category(ies) | Business Name | Category(ies) | Business Name | Category(ies) |
|--------------------------|---------------|-----------------------------|---------------|--------------------------------|---------------|
| 1050 ISLAND AVE #706 | B | 530 K ST #305 | B | AL AND LINDA VALENTINE | B |
| 1131 Bangor ST | B | 530 K ST #409 | B | AL AND LINDA VALENTINE | B |
| 1225 Island #516 | B | 5352 VIA CAVANCHO | B | AL AND LINDA VALENTINE | B |
| 1421 GRAND AVE | B | 5436 CALUMET AVE | B | AL AND LINDA VALENTINE | B |
| 1626 REED AVE | B | 5436 CHELSEA AVE | B | ALAN AND SHARON KIPNIS | B |
| 2112 BALBOA AVE #7 | B | 6003 AVENIDA CRESTA | B | ALAN RITCHIE | B |
| 225 BONAIR | B | 6003 VISTA DE LA MESA | B | ALBERT & ANNIE CARAVELLI | B |
| 2318 CHALCEDONY ST | B | 660 Loring Street | B | ALEJANDRINA CASTRO | B |
| 2595 Ocean Front WALK #7 | B | 6655 NEPTUNE | B | ALEX VILLIGER | B |
| 2645 OCEAN FRONT WALK | B | 702 VERONA CT | B | ALICANTE UNIT 1202 | B |
| 2820 BAYSIDE WALK #5 | B | 708 BALBOA CT | B | ALICAT INVESTMENTS | B |
| 2869 MISSION BLVD | B | 708 LIVERPOOL CT | B | ALICE L. SAVAGE LIVING TRUST | B |
| 2916 SPRUCE STREET | B | 708 SEAGIRT CT | B | ALLEN, JOHN & BOBBIE | B |
| 2985 OCEAN FRONT WALK | B | 714 .5 OSTEND CT | B | ALTA VISTA PROPERTIES | B |
| 3211 OCEAN FRONT WALK | B | 716 SALEM CT | B | AMERICAS BEST VALUE INN | A & B |
| 3265B | B | 716 WHITING CT | B | ANA'S RETREAT W/ POOL & HOTTUB | B |
| 33 REDONDO | B | 720 1/2 Dover Court | B | ANCHOR MOTEL | B |
| 33630 | B | 720 Dover Court | B | ANDAZ SAN DIEGO | A & B |
| 33630 | B | 721 ENSENADA CT | B | ANDERSON, PAUL | B |
| 3503 OCEAN FRONT WALK | B | 721 YORK CT #1 | B | ANDERSON, WES | B |
| 3531 BAYSIDE | B | 721 YORK CT #3 | B | ANM TRAVEL | B |
| 3534 BAYSIDE WALK | B | 721 YORK CT #2 | B | ANN CALLAHAN'S HILLCREST B&B | B |
| 3544 BAYSIDE WALK | B | 724 RUSHVILLE ST | B | ANNE GRIFFEN | B |
| 3631 #4 OCEAN FRONT WALK | B | 726YO | B | ANTHONY & PAMELA DEDOMENICO | B |
| 3689 OCEAN FRONT WALK | B | 732 PORTSMOUTH CT | B | ANTHONY TAYLOR | B |
| 3696D | B | 738 JE #B | B | AQUA SURF | B |
| 3703 OCEAN FRONT WALK | B | 745 SC LLC | B | ARGENTINE BLVD, LLC | B |
| 3750 BAYSIDE WALK #1 | B | 7964 CALLE DE LA PLATA #1/2 | B | ARNOTT, CHERYL | B |
| 3753 Ocean Front WALK #2 | B | 807 WIND LLC | B | ARTHUR ATHANS | B |
| 3834 1/2 BAYSIDE WALK #A | B | 809 MANHATTAN CT | B | ARTHUR&LINDA PELBERG FAMILY TR | B |
| 3834 1/2 BAYSIDE WALK #B | B | 812 ENSENADA CT | B | ARTIST BEACH RETREAT | B |
| 3914 BAYSIDE WALK | B | 813 PORTSMOUTH CT | B | ASBURY HOUSE | B |
| 3969 OCEAN FRONT WALK #1 | B | 8132 CAMINO DEL SOL | B | ASKIN, ANDREW & AMY | B |
| 3969 OCEAN FRONT WALK #2 | B | 815 SAN JOSE PL | B | ATKINSON, TERRY | B |
| 3969 OCEAN FRONT WALK #3 | B | 8188 LA JOLLA SHORES DR | B | AVEDIAN, AREK | B |
| 420 COAST BLVD S | B | 821 TOULON CT | B | AVION AT SPECTRUM | B |
| 436 WEST LLC | B | 822 CAPISTRANO PL | B | AVIS N. LYNCH TRUST | B |
| 4465 Ocean BLVD #56 | B | 829 SAN FERNANDO PL #1 | B | BAHIA RESORT HOTEL | A & B |
| 4556 NIAGARA LLC | B | 829 SAN FERNANDO PL #3 | B | BAILEY, SUZANNE | B |
| 457 Coast BLVD #501 | B | 840 TURQUOISE | B | BAILEY, SUZANNE | B |
| 4667 OCEAN BLVD #112 | B | 8418 PASEO DEL OCASO | B | BAKER, MARK | B |
| 4667 OCEAN BLVD #313 | B | 847 Opal ST | B | BALBOA PARK INN | B |
| 4767 Ocean BLVD #610 | B | 860 ISTHMUS 3N & 3S | B | BANKS, CAROLYN | B |
| 4767 Ocean BLVD #701 | B | A VACATION BY THE BAY | B | BARBARA BAREFIELD | B |
| 4853 OCEAN BLVD | B | ACCOMAZZO, DAPHINNE & GENE | B | BARBOUR, RICHARD | B |
| 4896 DIXIE DR | B | ADAMO, ANGIE & VINCE | B | BARRY LORENZ | B |
| 500 WEST BROADWAY | A & B | AJAY MATHUR | B | BARRY, KRISTEN | B |
| 5046 LONG BEACH AVE | B | AJKK LLC | B | BART AND PAULA CHRISTENSEN | B |
| 5062 MILLWODD RD | B | AJKK, LLC | B | BART SAYER | B |

| Business Name | Category(ies) | Business Name | Category(ies) | Business Name | Category(ies) |
|-------------------------------------|---------------|---------------------------------------|---------------|----------------------------------|---------------|
| BARTHOLOMEW, HOWARD..... | B | BEST WSTRN HACIENDA HTL OLD TWA & B | B | BROWAR, MATTHEW | B |
| BASIL TECHNOLOGY | B | BEST WSTRN ISL PALMS HTL & MAR..A & B | B | BROWAR, MATTHEW | B |
| BASS, KITTY | B | BETH WINTERMEYER..... | B | BROWN, CHARLENE | B |
| BAY CLUB HOTEL & MARINA..... | A & B | BETSY CHADWICK..... | B | BROWN, J.J. | B |
| BAY FRONT ESCAPE..... | B | BETSY CHADWICK..... | B | BROWN, MARC | B |
| BAY INN & SUITES SEAWORLD | A & B | BFH ASSET MANAGEMENT LLC..... | B | BUCKLEY, STEPHEN..... | B |
| BAY SIDE LUXURY..... | B | BIG SPLASH..... | B | BUNGER, ANGELA..... | B |
| BAY SIDE LUXURY 2..... | B | BIGGS, MIKE..... | B | BUNGER, ANGELA..... | B |
| Bayfront Townhouse #1..... | B | BILL AND LORI HASTING..... | B | BURKE, ELSIE..... | B |
| BayFront Townhouse #2..... | B | BIPIN N PATEL..... | B | BURKE, ELSIE | B |
| BAYSIDE BUNGALOW | B | BIRD ROCK OCEAN VIEW HOME | B | BURTON, TAYLOR..... | B |
| BAYSIDE LANE CONDOS #6..... | B | BLAIN, DAVE | B | Cable Street Cottage | B |
| BAYSIDE WALK # C | B | BLAINE SMITH | B | CABRILLO GARDEN INN | A & B |
| BAYSIDE WALK #C | B | BLANCO, CYNTHIA..... | B | CABRILLO MOTOR LODGE..... | B |
| BEACH & BAYSIDE VACATIONS..... | B | BLATZ, MIKE & RHONDA | B | CALIFORNIA SUITES HOTEL | A & B |
| BEACH BAY GETAWAY | B | BLEICH, IDA | B | CALLAGHAN, MARIA C..... | B |
| BEACH COTTAGES, THE | A & B | BLOOM, DONALD | B | CAMDEN TUSCANY | B |
| BEACH FRONT OASIS..... | B | BLOOM, DONALD | B | CAMERON BROTHERS CONSTRUCTION .. | B |
| BEACH HAVEN INN..... | B | BLUE HERRON COTTAGES | B | CAMERON BROTHERS CONSTRUCTION .. | B |
| BEACH HOUSE RENTAL | B | BLUE HERRON COTTAGES | B | CAMPAGNA, MIKE | B |
| BEACH SIDE BUNGALOW..... | B | BLUE HERRON COTTAGES | B | CAMPION, JUDY..... | B |
| BEACH VACATION RENTALS | B | BLUE HERRON COTTAGES | B | CANDICE WERNER..... | B |
| BEACH VACATION RENTALS | B | BLUEWATER VACATION HOMES | B | CAPISTRANO PLACE VACATIONS..... | B |
| BEACHCOMBER #1..... | B | BLUEWATER VACATION HOMES | B | CAPRI BY THE SEA..... | B |
| BEACHCOMBER SHORES | A & B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BELANCHI, DAVID..... | B | BLUEWATER VACATION HOMES | B | CAPRI BY THE SEA..... | B |
| BELANICH, DAVID..... | B | BLUEWATER VACATION HOMES | B | CAPRI BY THE SEA..... | B |
| BENNETT, RICHARD & BARBARA | B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BENNETT, RICHARD & BARBARA | B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BENSON, CAROLYN | B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BENSON, CAROLYN | B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BENSON, CAROLYN | B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BENSON, CAROLYN | B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BENSON, CAROLYN | B | BLUEWATER VACATION HOMES | B | Capri by the Sea..... | B |
| BENSON, CAROLYN | B | BMW INVESTMENTS..... | B | Capri by the Sea..... | B |
| BENSON, DEBBIE | B | BONA PROPERTIES LLC | B | Capri by the Sea..... | B |
| BERKSHIRE MOTEL..... | B | BONAIR WAY | B | Capri by the Sea..... | B |
| BERNARD, JO..... | B | BOOKHEIMER, MELISSA | B | CAPRI BY THE SEA..... | B |
| BERTIL BYLGER..... | B | BREHM COASTAL PROPERTIES | B | Capri by the Sea..... | B |
| BERTIL BYLGER..... | B | BRENDA SHEARS | B | Capri by the Sea..... | B |
| BEST WESTERN AMERICANA INN..... | A & B | BRENNAN & WHEELER | B | Capri by the Sea..... | B |
| BEST WESTERN BAYSIDE INN..... | A & B | BRET DUDL..... | B | Capri by the Sea..... | B |
| BEST WESTERN BLUE SEA LODGE ... | A & B | BRIAN C. MALK..... | B | Capri By the Sea | B |
| BEST WESTERN GOLDEN TRIANGLE . | A & B | BRIGHTON BEACH GARDENS..... | B | Capri By the Sea | B |
| BEST WESTERN INN BY THE SEA..... | A & B | BRIGHTON CT BUNGALOW | B | Capri By the Sea | B |
| BEST WESTERN INN-MIRAMAR..... | A & B | BRILL AND RHODES CONDO RENTAL..... | B | Capri by The Sea..... | B |
| BEST WESTERN MISSION BAY | A & B | BRINTON, MAC..... | B | Capri by the Sea..... | B |
| BEST WESTERN POSADA@THE YACHT A & B | B | BRISTOL COURT HOTEL | A & B | Capri by the Sea..... | B |
| BEST WESTERN SEVEN SEAS LODGEA & B | B | BRITT SCRIPPS INN | B | Capri by The Sea..... | B |
| | | BROTHERS, JACK INC..... | B | Capri by the Sea..... | B |
| | | BROWAR, MATTHEW..... | B | Capri by the Sea..... | B |

| Business Name | Category(ies) | Business Name | Category(ies) | Business Name | Category(ies) |
|---------------------------|---------------|--------------------------------|---------------|--------------------------------|---------------|
| Capri by the Sea | B | CLARK, LARRY & KAY | B | DAVID JABLONSKI | B |
| Capri by the Sea | B | CLARK, REED & JOANNA | B | DAVID ROBINSON | B |
| Capri by the sea | B | CLASSIC INN | A & B | DAVID WOUDEMBERG | B |
| Capri by the Sea | B | CLEMANS W.J. & BETH | B | DAVID WOUDEMBERG | B |
| Capri by the Sea | B | CLIFFORD DOUGLAS | B | DAVID/JUNE COLLINS FMLY TRUST | B |
| Capri by the Sea | B | CLIFT, ALAN | B | DAVIS CORLEY | B |
| Capri by the Sea | B | COASTAL CASA COZY CASITA | B | DAVIS, WILLIAM & YASMIN | B |
| Capri by the Sea | B | COASTAL CASITA | B | DAWES STREET DUPLEX | B |
| Capri by the Sea | B | COLACE, SALLY | B | DAYS HOTEL - HOTEL CIRCLE | A & B |
| Capri by the Sea | B | COMFORT INN & SUITES HOTEL CIR | A & B | DAYS INN | A & B |
| Capri by the Sea | B | COMFORT INN & SUITES ZOO/SW | A & B | DAYS INN & SUITES | A & B |
| Capri by the Sea | B | COMFORT INN AT THE HARBOR | A & B | DAYS INN HARBORVIEW | A & B |
| Capri by the Sea | B | COMFORT INN GASLAMP | A & B | DAYS INN SAN DIEGO | A & B |
| Capri by the Sea | B | COMFORT SUITES MISSION VALLEY | A & B | DAYS INN SUITES-POINT LOMA | A & B |
| Capri by the Sea | B | COMFORT SUITES OTAY MESA | A & B | DCPD BALBOA LLC | B |
| Capri by the Sea | B | CONFERENCE SERVICES AT SDSU | B | DCPD BALBOA LLC | B |
| Capri by the Sea | B | COOLIDGE, OLIVER & JIL | B | DE CONCINI, DENNIS | B |
| Capri by the Sea | B | COOPER, MYLES | B | DEBBIE BEACHAM | B |
| Capri by the Sea | B | COORS, ANDREW | B | DEBOER, BARBARA | B |
| Capri by the Sea | B | COSMOPOLITAN RESTAURANT HOTEL | B | DEBORAH & GERALD GIRAUD | B |
| Capri by the Sea | B | COTTAGE, THE | B | DEBRA ANGELOFF | B |
| CARIBBEAN COTTAGE | B | COUCHOT, PAUL & STEPHANIE | B | DEDOMENICO, ANTHONY & PAMELA | B |
| CARL LUDLOW | B | COULSON, TOM & PATRICIA | B | DEDOMENICO, ANTHONY & PAMELA | B |
| Carmel Terrace | B | COUNTRY INN & SUITES | A & B | DEL MAR RIDGE | B |
| CAROL HENKE | B | COURTYARD BY MARRIOTT | A & B | DENISE'S S MISSION BEACH CONDO | B |
| CAROL RAYBURN | B | COURTYARD BY MARRIOTT | A & B | DHARMESH JIVAN | B |
| CAROLE'S B&B GRIMWEST | B | COURTYARD BY MARRIOTT SD OT | A & B | DIAMOND HEAD INN | B |
| CARROLL HOUSE | B | COURTYARD BY MARRIOTT-L.S | A & B | DICAPUA, LARRY & MARIANNE | B |
| CASA ABALONE | B | COURTYARD RANCHO BERNARDO | A & B | DICK MORAN | B |
| CASA DE LA JOYA | B | COURTYARD SD MV/HOTEL CIRCLE | A & B | DILLARD, DAN | B |
| Casa de la Playa | B | COX, FRANK | B | DINEEN, MARY ANN & GENE | B |
| CASA GERALDINA | B | CRAIG CROWLEY&BETH CHAPPELL | B | DING, WEI RICHARD | B |
| CASA ROSA | B | CRONE'S COBBLESTONE COTTAGE | B | DINNISON, NORM & SANDY | B |
| CASA WINDANSEA | B | CROWN JEWEL & SAIL BAY | B | DOLPHIN MOTEL | B |
| CASITAS DEL MAR | B | CROWN POINT VACATIONS | B | DOMINQUEZ, DANIEL | B |
| CATAMARAN RESORT HOTEL | A & B | CROWNE PLAZA SAN DIEGO | A & B | DORAIS, RICH | B |
| CECILIA FAIRFAX | B | CRYSTAL PIER MOTEL | B | DOUBLETREE CLUB HOTEL | A & B |
| CHAMPAGNE, LAURA | B | CUNNINGHAM, JOEL & AMY | B | DOUBLETREE GOLF RESORT SD | A & B |
| CHANDLER, JANICE | B | CURRIER, ANDREW & MARLENE | B | DOUBLETREE HOTEL DEL MAR | A & B |
| CHARLES MAGADINI | B | CURTIS CASELLA | B | DOUBLETREE HOTEL SAN DIEGO MV | A & B |
| CHELSEAS VIEW | B | CURTIS, KIM | B | DOUG GANS | B |
| CHERI GITTINS | B | DANA HORNE | B | DOUG ROBERTSON | B |
| CHMURA, FRANK (JOYCE) | B | DANA HORNE | B | DOUGLAS AND DAWN KNIGHT | B |
| CHOU, MINNIE | B | DANIEL AND DONNA PETERSON | B | DRAHEIM, DEBBIE | B |
| CHRISTENSEN, BART & PAULA | B | DANIEL PICK | B | DUKE, WENDELL | B |
| CHRISTENSEN, BART & PAULA | B | DANIEL PICK | B | DUNHAM, ROBERT | B |
| CHRISTENSEN, BART & PAULA | B | DARRELL MILLS | B | DUNHAM, ROBERT | B |
| CHRISTINE BAIRD | B | DARRELL'S S MISSION BEACH COND | B | DUNNING, CHARLES | B |
| CINDY METNIKIN | B | DAVE & ANNA LOVE | B | DURAZAO FAMILY BEACH HOUSE | B |

| Business Name | Category(ies) | Business Name | Category(ies) | Business Name | Category(ies) |
|-------------------------------|---------------|--------------------------------|---------------|---------------------------------|---------------|
| DURO, LEONARD | B | FOX, JAMES & MARCEL TEN EYCU | B | HAMPTON INN | A & B |
| EADS | B | FRANCINE LESTER | B | HAMPTON INN DEL MAR | A & B |
| EBB TIDE MOTEL | B | FRANCISCO CINDY | B | HAMPTON INN SEA WORLD/AIRPORT | A & B |
| EBONY INN MOTEL, DBA GOPI INC | B | FRANK CHARBONEAU | B | HANDLERY HOTEL & RESORT | A & B |
| ECCO SANDS | B | FRANK, RICHARD & BETH | B | HANSENS HIDEAWAY | B |
| ED CHAN | B | FRED FELLWOCK | B | HAO, BEILENE | B |
| EDWARD V. KUNIGONIS | B | FRED FELLWOCK | B | HARBORVIEW HOTEL & SUITES | A & B |
| EL RIO MOTEL | A & B | FREDRICKS PROPERTIES | B | HARD ROCK HOTEL | A & B |
| ELLIOTT CORKY AND TOM | B | FREEDOM OF BEACH | B | HARDEN | B |
| ELLIOTT, MAC | B | FRONT STREET VACATION RENTAL | B | HARDWICK, WAYNE & SALLY | B |
| ELLSQORTH, DARLENE | B | FRONTIER MOTOR L.P. | B | HARRISON LAZARUS | B |
| ELSBREE | B | FUN AT BEACH LLC | B | HARTMAN, STAN | B |
| EMANUEL SYNODINO | B | GABRIELLE O'CONNELL TRUSTEE | B | HARTWELL, JODI | B |
| EMBASSY HOTEL | A & B | Gaby's La Jolla Ocean Getaway | B | HARVEY'S TOUR INN MOTEL | B |
| EMBASSY SUITES | A & B | Gaby's La Jolla Ocean Getaway | B | HASKELL, MARCY | B |
| EMBASSY SUITES SD LA JOLLA | A & B | GARVIN, JEFF | B | HASSIN INVESTMENTS L.P. | B |
| EMERSON, SHIRLEY | B | GARY & LISA FLANAGAN | B | HATTON, ROBERT | B |
| EMPRESS HOTEL THE | A & B | GASLAMP PLAZA SUITES | A & B | HATTON, ROBERT | B |
| ENGLE, ROGER | B | GEHRKE, SUSAN | B | HAUPT, RUTH | B |
| ENSENADA COURT LLC | B | GEHRKE, SUSAN | B | HAWN, LAURIE | B |
| ERNST, ERIK | B | GENE & NANCY JO MILLER | B | HAYES, SUSAN | B |
| ERNST, ERIK | B | GENRKE, SUSAN | B | HEART OF THE VILLAGE | B |
| ESTANCIA LA JOLLA HOTEL & SPA | A & B | GEOFFREY MONCRIEF | B | HEIM, RICHARD | B |
| EVENING CREEK | B | GERHARDT, REBECCA | B | HEINZMANN REALTY | B |
| EXTENDED STAY AMERICA # 8787 | A & B | GIBBS FAMILY TRUST | B | HENDLER, JOYCE | B |
| EXTENDED STAY AMERICA #8573 | A & B | GIFFIN, GLORY | B | HENRICKS, CHERRY & DON | B |
| EXTRA HOLIDAYS, LLC | A & B | GLENN HART | B | HENRY, LIZ & BURNS | B |
| E-Z 8 MOTEL OF OLD TOWN | A & B | GLENN HOEGH | B | HERITAGE INN | A & B |
| E-Z 8 MOTEL-SOUTH BAY | A & B | GLORIA WELLCOME TRUST | B | HIDEAWAY | B |
| FAIRFAX, CECELIA | B | GOLDBERG, WARREN | B | HILTON GARDEN INN | A & B |
| FEELING BEACHY LLC | B | GOLDING, JOEL | B | HILTON GARDEN INN SAN DIEGO-RB. | A & B |
| FELICIA GRONDIA TRUST | B | GOOD NITE INN SEAWORLD PARTNER | A & B | HILTON LA JOLLA TORREY PINES | A & B |
| FELLMAN, ALLISON | B | B | | HILTON SAN DIEGO / DEL MAR | A & B |
| FELSPAR BEACH HOME | B | GORDON, STU | B | HILTON SAN DIEGO AIRPORT | A & B |
| FEM INVESTMENTS | B | GOTTLIEB, JEFFREY | B | HILTON SAN DIEGO BAYFRONT | A & B |
| FERRALL, PATRICK & ELENA | B | GRACE'S BEACH HOME | B | HILTON SAN DIEGO GASLAMP QTR. | A & B |
| FERREIRA, BARBARA | B | GRANT & KARIN MC KINSTRY | B | HILTON SAN DIEGO RESORT & SPA | A & B |
| FERRELL, PAUL | B | GRONDIN, FELICIA | B | HILTON SD MISSION VALLEY | A & B |
| FERRIS, MARTY | B | GRONDIN, FELICIA | B | HILTON, ROBERT & CINDY | B |
| FER-SCHER FAMILY LLC | B | GROSS, MIKE | B | HILTON, TED | B |
| FFRENCH, NIAL | B | GROTH, KENNETH L & BEVERLY | B | HIRSCHENBEIN, DR NEIL&MARY ANN | B |
| FILIPPONI, CAROL | B | GROVE, LARRY & LINDA | B | HISTORIC COVE COTTAGE | B |
| FILLIPPONI, CAROL | B | GSC MISSION BEACH LLC | B | HOCHULI, ED | B |
| FILLIPPONI, CAROLYN | B | GUERRAZZI, DORENE | B | HODGE, LAWRENCE | B |
| FLAMINGO MOTEL | B | GUGLIOTTA, ADRIANA & TONY | B | HOEGH, GLEN | B |
| FOROUZANDEH, SASHA S. | B | HALFERTY, GLORIA | B | HOLBROOK, DAVID & ANGIE | B |
| FOSTER, ALAN | B | HALLAHAN, MICHAEL | B | HOLIDAY INN EXPRESS | A & B |
| FOSTER, ALAN | B | HAMILTON, ANN & EDWARD | B | HOLIDAY INN EXPRESS | A & B |
| FOUR POINTS SHERATON | A & B | HAMPTON INN | A & B | HOLIDAY INN EXPRESS | A & B |

| Business Name | Category(ies) | Business Name | Category(ies) | Business Name | Category(ies) |
|--------------------------------------|---------------|-------------------------------------|---------------|------------------------------------|---------------|
| HOLIDAY INN EXPRESS..... | A & B | HUNTAMER, JACK..... | B | JTA PROPERTY MGT..... | B |
| HOLIDAY INN EXPRESS & SUITES | A & B | HUTCHENS HOUSE | B | JUDY HAMILTON..... | B |
| HOLIDAY INN EXPRESS AIRPORT..... | A & B | HYATT REGENCY LA JOLLA | A & B | KAHN, MOHAMED..... | B |
| HOLIDAY INN EXPRESS OLD TOWN ... | A & B | HYATT REGENCY SAN DIEGO..... | A & B | KAISER, SCOTT | B |
| HOLIDAY INN EXPRESS-LA JOLLA | A & B | HYATT RGNCY M B SPA & MARINA | A & B | KANO-MAILE LTD..... | B |
| HOLIDAY INN MIRAMAR..... | A & B | HYATT SUMMERFIELD SUITES | A & B | KANTER FAMILY LTD PARTNERSHIP..... | B |
| HOLIDAY INN MSN VLY-STADIUM..... | A & B | IL TESORO | B | KAREN GODDARD..... | B |
| HOLIDAY INN RANCHO BERNARDO.... | A & B | IMPERIAL MOTEL | A & B | KAREN STEWART..... | B |
| HOLIDAY INN SAN DIEGO..... | A & B | INABA, ANTHONY | B | KARLA & GARY ROBINSON | B |
| HOLIDAY INN SAN DIEGO BAYSIDE | A & B | INN AT OCEAN MANOR | B | KATHLEEN VAUGHN | B |
| HOLIDAY INN-S.D. ON THE BAY..... | A & B | INN AT THE PARK | A & B | KATZ, GARY & KYLE..... | B |
| HOLIDAY LODGE MOTEL | A & B | ISADORE AND JOHANNA UNGER | B | KAVTON LLC | B |
| HOLLAND, TERRY..... | B | J & L HOLDINGS, LLC..... | B | KEATING HOTEL..... | A & B |
| HOLLAND, WILL | B | JACK BROTHERS INC..... | B | KEATING HOUSE INN..... | B |
| HOLLAND, WILLIAM..... | B | Jack's Villa Del Sol..... | B | KELLEY REAL ESTATE..... | B |
| HOLMES, BILL & DIANNE | B | JAI SIARAM,LLC-ACE BDGT. MOTEL..... | B | KELLEY,JIM | B |
| HOLMES, SUSAN | B | JAMAICA SANDS GETAWAY #3 | B | KELLY C COOK | B |
| HOMAN, RAY | B | JAMES KELLER | B | KELLY KINCAID..... | B |
| HOME AT THE BEACH..... | B | JAMES MILLS..... | B | KEN SMITH | B |
| HOME AT THE WAVES | B | JAMES MULDOON..... | B | KEN WEBSTER..... | B |
| HOMESTEAD SUITES #9621 | A & B | JANET SMITH & SUE CURLEY | B | KENNEBECK CONDOS..... | B |
| HOMESTEAD SUITES #9622..... | A & B | JEAN FRONING | B | KENNEBECK CONDOS LLC..... | B |
| HOMEWOOD SUITES | A & B | JEANNE ZEHNER | B | KENSINGTON VACATION RENTAL | B |
| HOMEWOOD SUITES BY HILTON-L.S. A & B | | JEFFRIES, DAVID AND JUSTINA..... | B | KERI MEYER..... | B |
| HORAK, MARY ANN AND FRANK | B | JEFFRIES, DAVID AND JUSTINA..... | B | KIA VISTA | B |
| HORAK, MARY ANN AND FRANK | B | JENKINS, BEVERLY | B | KIM, SUE..... | B |
| HORCHLER, HELMUT..... | B | JERROL L. MCLEOD..... | B | KING OF THE BEACH LLC..... | B |
| HORNE, DANA..... | B | JERROL MC LEOD..... | B | KINGS INN | A & B |
| HORTON GRAND HOTEL | A & B | JEVIN/ BRITTANY SACKETT..... | B | KLINE, DOUG | B |
| HOSTELLING INTL POINT LOMA..... | A & B | JEVIN/ BRITTANY SACKETT..... | B | KNAPP-ALLIGOOD, MARTA | B |
| HOSTELLING INTL SD DOWNTOWN.... | A & B | JIM & CAROLINE EVANS | B | Knights Inn..... | A & B |
| HOTEL INDIGO - SAN DIEGO..... | A & B | JIM KELLEY..... | B | KOHLER RENTAL..... | B |
| HOTEL LA JOLLA | A & B | JIM KELLEY..... | B | KOKA-THOTA, ANURADHA | B |
| HOTEL PALOMAR SAN DIEGO | A & B | JIM MURREY..... | B | KONA KAI RESORT..... | A & B |
| HOTEL PARISI | B | JIM YOUNG | B | KORAAM HOSPITALITY..... | A & B |
| HOTEL SOLAMAR | A & B | JOHN & COLLEEN GARBACZEWSKI | B | KRISTINA MULLER EBERHARD..... | B |
| HOUSE BY THE SEA..... | B | JOHN MC EVOY | B | LA CRESTA MOTEL | B |
| HOUSE RENTAL/ELIZABETH MORRELL.... | B | JOHN MUNOS | B | LA JOLLA BEACH & TENNIS CLUB..... | A & B |
| HOUSTON, RICHARD | B | JOHN PLUTH..... | B | LA JOLLA BEACH TRAVELODGE | A & B |
| HOWARD JOHNSON..... | A & B | JOHN RAMIREZ | B | LA JOLLA BED & BREAKFAST | B |
| HOWARD JOHNSON INN..... | A & B | JOHN SHIGLEY, TRUSTEE | B | LA JOLLA BILTMORE MOTEL..... | B |
| HOWARD JOHNSON UNI. INN | A & B | JOHN SKADBERG VACATION RENTAL | B | La Jolla Blvd | B |
| HOWELL, MARCIA..... | B | JOHNATHAN SCHMOCK..... | B | La Jolla Blvd | B |
| HUEY, BRYAN | B | JOHNSON, JEAN | B | La Jolla Chateau..... | B |
| HUMPHREY'S HALF MOON INN/STES. A & B | | JON FOSTER | B | LA JOLLA COTTAGES..... | B |
| HUNT JAMES & ARBAUGH..... | B | JONES, PAMELA..... | B | LA JOLLA COVE SUITES | A & B |
| HUNT, LA ROSE | B | JORDAN, CAROLE..... | B | LA JOLLA HAUS | B |
| HUNT, JAMES & ARBAUGH,PATRICIA..... | B | JOSEPH, C. MR..... | B | LA JOLLA HERMOSA BEACH..... | B |
| HUNTAMER, JACK | B | JTA PROPERTY MGT..... | B | LA JOLLA INN | B |

| <u>Business Name</u> | <u>Category(ies)</u> | <u>Business Name</u> | <u>Category(ies)</u> | <u>Business Name</u> | <u>Category(ies)</u> |
|-------------------------------------|----------------------|------------------------------------|----------------------|--------------------------------------|----------------------|
| LA JOLLA LANDMARK ESTATE | B | LIA JOHNSON | B | MARTHA'S VINEYARD CLASSIC..... | B |
| LA JOLLA LOFT | B | LIDO BAY FRONT APTS..... | B | MARTIN, TIM & ELIZABETH..... | B |
| LA JOLLA RESIDENCE INN | A & B | LINDLEY, SHAVON | B | MARTINDALE, MICHAEL..... | B |
| LA JOLLA RIVIERA APARTMENTS | A & B | LINTON, ROBERT | B | MASTERSON, JANE & TIM..... | B |
| LA JOLLA SHORES | B | LINTON, ROBERT | B | MAXALTA LLC | B |
| LA JOLLA SHORES BEACH HOUSE..... | B | LINTON, ROBERT | B | MAYS, MARK | B |
| LA JOLLA SHORES HOTEL | A & B | LINTON, ROBERT | B | MAZZO, KELLY | B |
| LA JOLLA VACATION RENTALS | B | LISA AND JIM THOMAS..... | B | MC CABE MARY BETH | B |
| LA JOLLA VACATION RENTALS | B | LISA DOANE VACATION RENTAL..... | B | MC DONALD, BARBARA..... | B |
| LA JOLLA VACATION RENTALS | B | LISA KNAPP LEE | B | MC EVOY, JOHN | B |
| LA JOLLA VACATION RENTALS | B | LITTLE ITALY INN | B | MC EVOY, JOHN | B |
| LA JOLLA VACATION RENTALS | B | LIVINGSTON, BRAD | B | MC KEE, JOAN | B |
| LA JOLLA VACATION RENTALS | B | LIVINGSTON, BRAD | B | MCALOON, TOM..... | B |
| LA JOLLA VACATION RENTALS | B | LIVINGSTON, LEON..... | B | MCAULIFFE, TONY | B |
| LA JOLLA VACATION RENTALS | B | LODGE AT TORREY PINES | A & B | MCCARTY, ROSWITHA..... | B |
| LA JOLLA VACATION RENTALS | B | LOMA LODGE MOTEL | A & B | MCINDOE, LORRAINE | B |
| LA JOLLA VACATION RENTALS CA | B | LORD, DOROTHY & ALAN | B | MECHANIC, JONAH | B |
| LA JOLLA VILLA..... | B | LORI CLARK VIVIANO | B | MECHANIC, JONAH | B |
| LA JOLLA VILLAGE LODGE..... | A & B | LORN DUTHIE | B | MECHANIC, JONAH | B |
| LA JOLLA'S MOST CHARMING | B | LORRAINE MC INDOE..... | B | MECHANIC, JONAH | B |
| LA PENSIONE HOTEL..... | A & B | LOTUSCOTTAGES.COM | B | MECHANIC, JONAH | B |
| LA PETITE ROUGE..... | B | LOUGHERY, DONALD | B | MECHANIC, JONAH | B |
| LA QUINTA INN..... | A & B | LOVELESS, LINDA..... | B | MECHANIC, JONAH | B |
| LA QUINTA INN & SUITES S. D. | A & B | LOW, LINDA/ KALKSTEIN, ALLEN | B | MECHANIC, JONAH | B |
| LA QUINTA INN, MISSION VALLEY | A & B | LOWELL, DOUGLAS | B | MECHANIC, JONAH | B |
| LA QUINTA INNS & SUITES..... | A & B | LUCKUROTH, DONNA..... | B | MEEK, DEAN..... | B |
| LA VALENCIA | A & B | LUCKY D'S HOTEL..... | A & B | MELVIN BERNARD KIRSNER TRUST..... | B |
| LABBE, KENNETH & JULIE | B | LUPO, DOMENIC | B | MERRITT, TOM & PAM..... | B |
| LABBE, KENNETH & JULIE | B | LUSCOMB, ROB..... | B | MESSERSCHMIDT, EUGENE & PAT..... | B |
| LABBE, KENNETH & JULIE | B | LUSKIN, MARIA..... | B | MI CASA ES SU CASA VAC/RENTALS | B |
| LAFAYETTE HOTEL & SUITES..... | A & B | LYDICK, CHRIS..... | B | MI CASA ES SU CASA VAC/RENTALS | B |
| LAMONT STREET..... | B | LYNN ROBBINS | B | MI CASA ES SU CASA VAC/RENTALS | B |
| LAMPLIGHTER INN | A & B | MADDEN, KURT..... | B | MICHAEL & BOBBI BLOHM..... | B |
| LANE, BILL & CAROL | B | MADDEN, KURT..... | B | MICHAEL & TRACI GILL..... | B |
| LANGDON, LYNDELL..... | B | MADDEN, KURT..... | B | MICHAEL BARK..... | B |
| LARRY HANCOCK..... | B | MAHONEY, LORRAINE..... | B | MICHAEL COPLEY | B |
| LARRY RATNER | B | MAIN STREET MOTEL..... | B | MID CENTURY MODERN..... | B |
| LARRY RATNER | B | MANN, LARRY I DR | B | MIDGE VACCARO | B |
| LARRY RATNER | B | MAR SEA PACIFIC PROPS INC..... | B | MIKE & CAROL RIEKER..... | B |
| LARRY RATNER | B | MARABELLA PROPERTIES | B | MIKE AND TERRI MCCABE | B |
| LARRY RATNER | B | MARCHETTI, SUSAN..... | B | MIKE PANISSIDI | B |
| LARSEN, ROBERT OR SUSAN..... | B | MARINA INN | B | MILLER, JOHN & ALICE | B |
| LAUGHON OCEAN ENTERPRISES..... | B | MARINER'S LOOKOUT | B | MILLER, VAN & LAURIE | B |
| LAUREL BAY APARTMENTS | B | MARJORIE TAYLOR & STEVE BURKE..... | B | MINDY I & DANIEL I GERSENFISH | B |
| LAURIE DUNLOP | B | MARK & LAURIE FICARRA..... | B | MIRIAM SIMPSON | B |
| LEO, ROBIN | B | MARK PURDY | B | MIRIAM SIMPSON | B |
| LESTER, JEROME..... | B | MARKELL, ELAINE & DOUG | B | MISSION BAY MOTEL | A & B |
| LEVERTY, EUGENE | B | MARSHA SEWELL AND ASSOCIATES..... | B | MISSION BEACH TROPICAL RETREAT | B |
| LEVI, EDDIE..... | B | MARSHALL FOREMAN..... | B | MISSION BEACH TROPICAL RETREAT | B |

| Business Name | Category(ies) | Business Name | Category(ies) | Business Name | Category(ies) |
|--------------------------------|---------------|-----------------------------|---------------|-------------------------------|---------------|
| MISSION BLVD #205 | B | NORDMARKEN, MICHAEL O | B | PARINELLO, NANCY | B |
| MISSION PLAZA HOTEL SUITES/SEA | A & B | OB Bungalow | B | PARINELLO, NANCY | B |
| MISSION POINT VIEW | B | OB DUPLEX 5173 | B | PARINELLO, NANCY | B |
| MISSION VALLEY RESORT | A & B | O'BOYLE, PAUL | B | PARINELLO, NANCY | B |
| MISSION VALLEY TRAVELODGE | A & B | O'BRIEN, ATITAYA | B | PARINELLO, NANCY | B |
| MISSLER, CRAIG | B | OCEAN BEACH BUNGALOW | B | Parkside Inn | B |
| MISSOURI HOUSE | B | OCEAN BEACH INTL HOSTEL | A & B | PARROTTINO, ANTONIO | B |
| MITCHELL, MARK & CHERYL | B | OCEAN BEACH MOTEL | A & B | PASTOR, JAVIER | B |
| MIYAMA, KARINA | B | OCEAN FRON WALK | B | PAT & MIA PARKER | B |
| MOATES, KAREN | B | Ocean Front Luxury Cottage | B | PATRICIA HANSEN | B |
| MODELL, BOB | B | OCEAN FRONT OASIS | B | PATTERSON/MANWARING | B |
| MOEBIUS HOUSE | B | OCEAN FRONT WALK, LLC | B | PATZMAN, JOHN | B |
| MOLLOY, PETE | B | OCEAN PACIFIC JAMAICA, LLC | B | PATZMAN, JOHN | B |
| MOLNER, DAVID | B | OCEAN PACIFIC SAN JUAN, LLC | B | PATZMAN, RUTH & JOHN | B |
| Monte Vista | B | OCEAN PACIFIC SAN JUAN, LLC | B | PAUL AND GAIL CASLAVKA | B |
| MORAN, THOMAS A | B | OCEAN PACIFIC SAN JUAN, LLC | B | PAUL ANDERSON | B |
| MORGAN MOTEL | B | OCEAN PACIFIC XII, LLC | B | PAULS PB HOME | B |
| MORRIS, GABRIELLE | B | OCEAN PARK INN, INC | A & B | PECKMAN, UTA | B |
| MOTEL 6 - AIRPORT | A & B | OCEAN POINT | B | Pelfam Investment | B |
| MOTEL 6 #1020 | A & B | OCEAN VIEW VILLAGE HOME | B | PELFAM INVESTMENTS, LLC | B |
| MOTEL 6 #1419 | A & B | OCEAN VIEW VILLAS | B | PELL PLACE CONDO'S | B |
| MOTEL 6 (LOC #98) | A & B | OCEAN VILLA MOTEL | A & B | PERINE, LINDA | B |
| MOTEL 6 (LOC#14) | A & B | O'HARA, TIM & KATHY | B | PERRY, SUSAN | B |
| MOTEL SAN DIEGO | B | OLD TOWN INN | A & B | PETER SCHMIDT | B |
| MOTHS, TERRY & SANDRA | B | OLEINIK, JOHN | B | PETERSEN, CARL | B |
| MOUNTAIN PARK MGMT LLC | B | OLIEVATAS RENTAL | B | PETERSEN, HANS & BONNIE | B |
| MUDVILLE FLATS | B | OLSON, DAVID | B | Pete's Mission Beach Getaway | B |
| MY SPACIOUS MB CONDO | B | OLTMAN, JOHN | B | PETRUZZO, ROBERT & TONI | B |
| NANCY KRAMER | B | OMNI SAN DIEGO HOTEL | A & B | PETTY, CLAUDE | B |
| NANCY SARO | B | On Top of Sunset Cliffs | B | PFC FINANCIAL DBPP | B |
| NARRAGANSETT VACATION RENTAL | B | O'NEILL, BILL & JEAN | B | PHILIP & MINDY HOFFMAN | B |
| NASH, RUSS | B | ORI AND KATHY BEN-YEHUDA | B | PHILLIPS, BOB & KIM | B |
| NAVAJO LODGE MOTEL | B | ORR'S SAND CASTLE | B | PHILLIPS, BOB AND KIM | B |
| NEGUS, NORMAN | B | OSMENT, MICHAEL | B | PHIL'S PACIFIC BEACH HIDEAWAY | B |
| NEIMAN, DAN | B | PACIFIC BEACH RETREAT | B | PICCINI, ISABELLE | B |
| NENOW-ESPENSON, ROBIN | B | PACIFIC INN HOTEL & SUITES | A & B | PICK FAMILY PARTNERSHIP | B |
| NEVINS, BRIDGETTE | B | PACIFIC SHORES HOTEL | A & B | PIECH, STEPHEN | B |
| NEW HORIZONS LIVING TRUST | B | PACIFIC SUNSET GROUP | B | PIECH, STEPHEN | B |
| NICK DELLA MAGGIORE | B | PACIFIC SUNSET GROUP | B | PIEFFER, MIKE | B |
| NIEMAN, DANIEL | B | PACIFIC TERRACE HOTEL | A & B | PIEFFER, MIKE & KEVIN | B |
| NINA DETROW | B | PACIFIC VACATION | B | PIERIK, JAMES & LAURI | B |
| NISHIKAWA, DAN | B | PACIFIC VIEW INN | B | PLANDER REALTY CORP | B |
| NODLAND, ED AND CHERYL | B | PACIFIC VIEW PLACE | B | PLAXICO, NANCY | B |
| NOIRO WEST LLC DBA SHERATON | A & B | PACIFICA HOTEL | A & B | PLAYA DEL NORTE | B |
| NORDMARKEN, MICHAEL O | B | PADRE TRAIL INN | A & B | PLAYA LA JOLLA | B |
| NORDMARKEN, MICHAEL O | B | PALM HOUSE | B | POINT LOMA INN | B |
| NORDMARKEN, MICHAEL O | B | PANTAI INN | B | POLIN, MICHAEL | B |
| NORDMARKEN, MICHAEL O | B | PARADISE IN LA PLAYA OF PL | B | POLIN, MICHAEL | B |
| NORDMARKEN, MICHAEL O | B | PARC SUITES | B | PORTER, KAY | B |

| Business Name | Category(ies) | Business Name | Category(ies) | Business Name | Category(ies) |
|------------------------------------|---------------|--|---------------|---|---------------|
| PORTO VISTA HOTEL..... | A & B | RICHARD & PATRICIA SIAS..... | B | SAN DIEGO YACHT & BREAKFAST..... | B |
| POSEY, TOM & CATHY..... | B | RICK CARTER..... | B | SAND PATCH, LLC..... | B |
| PRAZEN, JOHN & SANDY..... | B | RICK NOLAN..... | B | SANDPATCH, LLC..... | B |
| PREMIER INN..... | A & B | RIEKER, MIKE..... | B | SANDRA D. BRENNER..... | B |
| PRESIDIO PROPERTY MGMT..... | B | RIMOLDI, KRISTEN..... | B | SANDS OF LA JOLLA..... | A & B |
| PRIME INN..... | A & B | RIMOLDI, KRISTEN..... | B | SANDSTONE..... | B |
| PROSPECT CONDO..... | B | RING, STEVE..... | B | SANDY BEACH RENTALS..... | B |
| PUGH, FRED..... | B | ROBERT CHOATE..... | B | SANTA CLARA..... | B |
| QUALITY // COMFORT SUITES..... | A & B | ROBERT DELAURENTIS..... | B | SANTA CLARA..... | B |
| QUALITY INN..... | A & B | ROBERT HENDERSON..... | B | SAUER, JANICE..... | B |
| QUALITY INN..... | A & B | ROBERT MANAUGH..... | B | SAVAGE PROPERTIES LLC..... | B |
| QUALITY INN - I-5 NAVAL BASE..... | A & B | ROBERT MC CAY..... | B | SAVAGE PROPERTIES, LLC..... | B |
| QUALITY INN MIRAMAR..... | A & B | ROBERT MCKAY..... | B | SCHAK, TODD..... | B |
| QUEEN, GOERGE..... | B | ROBERT SANTOS..... | B | SCHIFF BAYSIDE RENTAL..... | B |
| RACHEL ZIJLSTRA..... | B | ROBERT WEICHETT..... | B | SCHMITTER..... | B |
| RADISSON HOTEL HARBOR VIEW..... | A & B | ROBERTS, EDDA..... | B | SCHWARTZ, HARRY..... | B |
| RADISSON SUITE HOTEL..... | A & B | ROBIN NENOW..... | B | SCHWIMMER & FOWLER..... | B |
| RAMADA INN & SUITES..... | A & B | ROBINSON, HEATHER & DANA #L..... | B | Scotland Georgia LLC..... | B |
| RAMADA INN SAN DIEGO NORTH..... | A & B | ROBINSON, RALPH & SANDRA..... | B | SCOTT PACK..... | B |
| RAMADA LIMITED..... | A & B | RODEWAY INN..... | A & B | SCRIPPS INN..... | B |
| RAMADA LIMITED..... | A & B | RODEWAY INN..... | A & B | SD ROW HOME..... | B |
| RAMADA LTD -SEA WORLD..... | A & B | RODEWAY INN & SUITES..... | A & B | SD3545 LLC..... | B |
| RAMADA PLAZA HOTEL..... | A & B | RODNEY SEPULVADO..... | B | SEA STAR BEACH COTTAGE..... | B |
| RAMBLING RANCH..... | B | ROJAS, GAIL..... | B | SEACLIFF MOTEL/APT..... | B |
| RAMSEY, RICHARD..... | B | RORBACH, CLARK..... | B | SEACOAST PALMS INN..... | A & B |
| RANCHO BERNARDO INN..... | A & B | RORBACH, CLARK..... | B | SEAN LEVI..... | B |
| RAST, SHIRLEY..... | B | ROSENSTEEL, KEN AND JO ANNE..... | B | SEAN PARKS..... | B |
| RAWDIN, GREGG..... | B | ROSS, NICK..... | B | SEASIDE INN..... | B |
| RAYA, RALPH..... | B | ROUSEK, CHRISTIAN..... | B | SEASIDE OCAN VIEW CONDO..... | B |
| RAYMOND DITTAMORE..... | B | ROVSEK, CHRISTIAN..... | B | SEASIDE OCEAN VIEW..... | B |
| RB 2005 REV TRUST..... | B | RUTH SOROKIN..... | B | SEA-VIEW BUNGALOW..... | B |
| READY, JOHN T..... | B | RYGG, LANCE..... | B | See the Sea #52..... | B |
| RED ROOF INN PB..... | A & B | RYOKO DAUNORAS..... | B | SELLERS, TOM..... | B |
| REDONDO CT #36..... | B | S D MARRIOTT MISSION VALLEY..... | A & B | SENERA LLC..... | B |
| Redondo Ocean Front..... | B | SAGE, LAURA #604..... | B | SHADWELL, DAN..... | B |
| REDWOOD HOLLOW COTTAGES..... | B | SAIL BAY VACATION RENTAL #301..... | B | SHAFER, LOIS..... | B |
| REFF, MITCHELL..... | B | SALEM COURT BEACH HOUSE..... | B | SHALES, GENE..... | B |
| RENS, LEE..... | B | San Castle..... | B | SHARON RINALDI..... | B |
| RESIDENCE CLUB ON MISSION BCH..... | B | SAN DIEGO DOWNTOWN TRAVELODGE A & B..... | B | SHAW, JACOB..... | B |
| RESIDENCE INN BY MARRIOTT..... | A & B | SAN DIEGO INN MOTEL..... | B | SHEGA, JOHN..... | B |
| RESIDENCE INN BY MARRIOTT..... | A & B | SAN DIEGO MARRIOTT COURTYARD..... | A & B | SHEILA HARDEN..... | B |
| RESIDENCE INN BY MARRIOTT..... | A & B | SAN DIEGO MARRIOTT DEL MAR..... | A & B | SHERATON LA JOLLA HOTEL..... | A & B |
| RESIDENCE INN BY MARRIOTT..... | A & B | SAN DIEGO MARRIOTT GASLAMP QTR..... | A & B | SHERATON SAN DIEGO MISSION VLY A & B..... | A & B |
| RESIDENCE INN KEARNY MESA..... | A & B | SAN DIEGO MARRIOTT GASLAMP QTR..... | A & B | SHERATON SD HOTEL & MARINA..... | A & B |
| RESIDENCE INN- SD GASLAMP..... | A & B | SAN DIEGO MARRIOTT LA JOLLA..... | A & B | SHERRY AZIM..... | B |
| RESORT RENTAL LLC..... | A & B | SAN DIEGO MARRIOTT MARINA..... | A & B | SHERRY AZIM..... | B |
| REYNOLDS, JAMES AND JANIS..... | B | SAN DIEGO PARADISE POINT RESOR..... | A & B | SHINNICK, DUANE..... | B |
| RHOADES..... | B | SAN DIEGO WAVE WATCHER LLC..... | B | SHIRLEY PARSONS LLC P. ROEBUCK..... | B |
| RICH BERNAL..... | B | | | SHORE, MITZI..... | B |

| <u>Business Name</u> | <u>Category(ies)</u> | <u>Business Name</u> | <u>Category(ies)</u> | <u>Business Name</u> | <u>Category(ies)</u> |
|--------------------------------------|----------------------|-------------------------------------|----------------------|-------------------------------------|----------------------|
| Signature Point | B | SUNDANCE, LLC | B | TOM LOHMAN & PINKIE BAILEY | B |
| SIMMONS, MARIANNE..... | B | SUNSET LODGE | B | TOP 'O THE BEACH #23 | B |
| SLOAN, CHARLES..... | B | SUNSET VIEW RENTAL | B | TOP OF THE VILLAGE | B |
| SMITH, ALEX | B | SUNSET VIEW VACATION RENTALS | B | Torrey Ridge..... | B |
| SMITH, BRENT | B | SUNSET WATCH CAHILL COTTAGE | B | Torrey Villas..... | B |
| SMITH, DAN | B | SUNSETS & SEASCAPES | B | TOURMALINE BEACH HOUSE | B |
| SMITH, DAN..... | B | SUPER 8 MOTEL | A & B | TOWER 23, LP | A & B |
| SMITH, DR DAN..... | B | SUPER 8 MOTEL | A & B | Towers At Costa Verde..... | B |
| SMITH, KARL..... | B | SUPER 8 MOTEL SEA WORLD..... | A & B | TOWN & COUNTRY HOTEL..... | A & B |
| SMITH, MICHAEL..... | B | SURF & TURF MISSION BEACH..... | B | TRADE WINDS MOTEL | B |
| SOBECK, MICHAEL..... | B | SURF RIDER CONDOMINIUMS | B | TRAVEL TIME MOTEL..... | A & B |
| SOFIA HOTEL..... | A & B | SURF RIDER CONDOMINIUMS | B | TRAVELODGE MOTEL..... | B |
| Sol Mar Y Playa #1 | B | SURFER MOTOR LODGE | A & B | TRAVELODGE SAN YSIDRO..... | A & B |
| SOMMERSET HOTEL..... | A & B | Surfside..... | B | TREADWAY, MADONNA..... | B |
| SORRENTO MESA RESIDENCE INN | A & B | SURI GUNNALA | B | TREE HOUSE | B |
| SOUTH BAY LODGE, INC. | A & B | SUSAN & ROBERT BENSON | B | TRISKELE ACQUISITIONS LLC..... | B |
| SPARKS, RICHARD..... | B | SUSAN MURPHY | B | TROPICAL SHORES RETREAT | B |
| SPARKS, RICHARD..... | B | SUTHERLAND, MIKE..... | B | TURBES, DENNIS..... | B |
| SPITZ BEACH HOUSE | B | SWARTZBAUGH, THEODORE..... | B | TURBES, DENNIS..... | B |
| SPOON,ROBERTA & WALLACE,ROBERT...B | | SWEETWATER CASTLE | B | U.S. GRANT | A & B |
| SPRINGHILL SUITES BY MARRIOTT.... | A & B | SYLVAIN GERALD | B | U.S. SUITES OF SAN DIEGO..... | A & B |
| STANLEY, CRAIG..... | B | TANG, JOHN N..... | B | UEHLING, KEN | B |
| STAR MOTEL..... | B | TANGIERS..... | B | USA HOSTELS, INC. | B |
| STATE STREET RETREAT | B | TANGIERS COTTAGE | B | VACATION RENTAL | B |
| STAUFFER, HOPE, MR.&MRS..... | B | TERRY KEEFER..... | B | VACATION RENTAL | B |
| STAYBRIDGE SUITES CARMEL MTN...A & B | | THE BAYVIEW..... | B | VAGABOND INN | A & B |
| STAYBRIDGE SUITES SORRENTO | A & B | THE CARRIAGE HOUSE | B | VAGABOND INN POINT LOMA..... | A & B |
| STEIN, MICHAEL | B | THE DANA ON MISSION BAY | A & B | Valentia..... | B |
| STEINER, HARRIS & ARDETTA | B | THE FIJIAN..... | B | VALLI HI MOTEL..... | A & B |
| STEPHANIE WHITLOCK | B | THE FRIENDSHIP HOTEL | A & B | VANTAGE POINTE | B |
| STEPHEN AND SUSAN MCARTHUR | B | THE GRAND DEL MAR..... | A & B | VARGAS, ALEXANDER..... | B |
| Steve Chang..... | B | THE GRANDE COLONIAL HOTEL | A & B | VILLA ADAIR..... | B |
| Steve Chang..... | B | THE HOHE HOUSE..... | B | Villa Caribe - The Bonaire..... | B |
| STEVE HARMSSEN..... | B | THE KINGSTON | B | Villa Caribe - The Martinique | B |
| STEVEN DAILY | B | THE MARINER | B | Villa Caribe - The St. Lucia..... | B |
| STEVENS, TROY..... | B | THE MOANA HOUSE | B | Villa Caribe - The Tobago..... | B |
| STEWART, ROSS..... | B | THE PATRICIAN, A CORDIA SENIOR..... | B | Villa Caribe - The Trinidad..... | B |
| STOEBLING, DAVID | B | THE PEARL HOTEL | B | VILLA DEL MAR..... | B |
| STRANDWAY..... | B | THOMAS, LAURA..... | B | VILLA DEL SOL..... | B |
| STRANGE RONALD & JULIE | B | THREE ARCH CAPITAL INC..... | B | VILLA ITALIA | B |
| STRONG, DAVID M | B | TIKI TOWNHOUSE..... | B | VILLA MAGNIFICA..... | B |
| STRONG, JOHN & BETTY..... | B | TILLILIE, RAY | B | VILLAGE@MORENA VISTA..... | B |
| STUART, MARK..... | B | TILLILIE, RAY | B | VILLAGEO LLC | B |
| STUDIO 819 | A & B | TILLILIE, RAY & KAREN | B | Villas of Renaissance | B |
| SUITS, GINNY..... | B | TIM & SUSAN PICKERING | B | VINCEN'T PLACE | B |
| SULLIVAN, MIKKI..... | B | TIPPETTS, THOMAS N. | B | VISTA BAHIA,LLC..... | B |
| SUN BURST COURT INN..... | B | TODD NUGENT..... | B | VOLKEL, WILLIAM JR. MR.&MRS. | B |
| SUN HARBOR MOTEL | B | TOM & MARY GEGAX..... | B | VVV RENTAL LLC..... | B |
| SUN RAY'S RETREAT | B | TOM AND LEE ANN BAROCH..... | B | W SAN DIEGO | A & B |

| <u>Business Name</u> | <u>Category(ies)</u> | <u>Business Name</u> | <u>Category(ies)</u> | <u>Business Name</u> | <u>Category(ies)</u> |
|---------------------------------|----------------------|------------------------------------|----------------------|-----------------------------------|----------------------|
| WADSWORTH, SUZY | B | WHITE DOVE PROPERTIES | B | WISH YOU WERE HERE, LLC | B |
| WALDEN, JOSH & JUDY | B | WHITE DOVE PROPERTIES | B | WOLFE, SKIP & BETTY | B |
| WALTERS, CLAUDIA | B | WHITE DOVE PROPERTIES | B | WONDERLAND BEACH RENTALS | B |
| WANG, PEI PEI | B | WHITE, RYAN | B | WONDERLAND VACATION RENTALS | B |
| WARREN SOBERG | B | WHITE, RYAN | B | WOOD PROPERTY MGMT | B |
| WATHKE, RONALD | B | WIEBE, SANDRA | B | WOODS, VAUGHN | B |
| WAY, ALAN | B | Will Holland | B | WU, WILLIAM | B |
| WEAVER, DWAYNE & ANN | B | WILL HOLLAND | B | YABLONICKY, ANDREA | B |
| WEIS, MARK | B | WILLIAM & YASMIN DAVIS | B | YAROSLAVSKIY, NATALIE | B |
| WELCOME INN MOTEL | B | WILLIAM CONNER | B | YELLOW COTTAGE, LLC | B |
| WELTY, JAMES | B | WILLIAMS, JACK | B | YELLOW COTTAGE, LLC | B |
| WESLEY J. HILL | B | WILLIAMS, KATIE | B | YELLOW COTTAGE, LLC | B |
| WEST PARK INN | A & B | WILLIAMS, KENNETH | B | YORK, BILLEE J (B&B) | B |
| WESTERN INN | A & B | WILLIAMS, ROD-WILLIAMS PROPS | B | ZACKOWSKI, GREG | B |
| WESTGATE HOTEL | A & B | WILLOUGHBY, MARK | B | ZEHRER, JEANNE | B |
| WESTIN GASLAMP QUARTER | A & B | WILSON, STEPHEN L | B | ZIEGLER, JAMES | B |
| WESTIN SAN DIEGO | A & B | WINDANSEA ESTATE | B | ZIEMKOWSKI, JAMES | B |
| WHALEN FAMILY BEACH HOUSE | B | WINDANSEA RETREAT | B | ZIMMERMAN, MARTY | B |
| WHALEN FAMILY DOLLHOUSE | B | WINKLER FAMILY ENT, INC | B | ZOCKOLL, CHRIS | B |
| WHEELDEN, MICHAEL | B | WINN, JAMES & MARY | B | ZYPHER INC | B |

Appendix 4 – Benefit Category Programs

BENEFIT CATEGORY A1

A1: Meeting and Group Sales & Marketing Programs and Consumer Direct Sales & Marketing Programs to Drive Sales Demand for District Lodging Businesses

Activities to be Implemented through Destination Marketing Organizations

A1.1 Hotel Meeting Sales

Deployment of a direct sales force tasked to attend sales conferences and make sales calls on meeting planners, association & business group clients, and individuals.

- Typical direct expenses include District-related sales personnel salary, commissions, benefits, training; travel and entertainment of targeted industry professionals such as meals (excluding alcohol) ; staff travel and related expenses for attendance at industry tradeshow and events, travel, meal and mileage expenses related to sales calls activities; outside services such as lead generation services; remote sales offices; marketing materials and promotional items targeted towards hotel sales efforts;; event registration for staff attendance at industry tradeshow and events; funding of events that agree to promote district activities; dues and subscriptions such as membership to trade organizations to create additional client relationships and sales opportunities; information technology, market intelligence, research, and performance audits.
- Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

A1.2 Event Management and Group Sales Development

Execution of special events dedicated to the production of District lodging business meeting leads and room night sales demand through, but not limited to, participation in and marketing activities at professional and/or affinity group conferences, organizations or associations of meeting planners, business group clients, and individuals.

- Typical expenses include District-related personnel salary, commissions, benefits, training, travel and entertainment; tradeshow and event expenses such as exhibit fees, facility and booth space rentals; outside contractors, bid & sponsorship fees, remote sales office; printed material and promotional items; food and beverage (excluding alcohol) appurtenant to trade show participation; information technology, market intelligence, research, and performance audits.
- Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

A1.3 Tourism Development including Travel & Trade

Execution of special events dedicated to the production of District group meeting leads and room night sales demand through, but not limited to, domestic and international travel & trade shows.

- Typical expenses include District-related sales personnel salary, commissions, benefits, and training; international representation in countries such as Germany, UK, and Japan including brochure distribution; travel and entertainment; event food & beverage (excluding alcohol) and printed material and promotional items distributed at tradeshow and events attended by travel trade representatives and decision makers; trade show booths and display production, space rental, display transportation, set up & break down costs; information technology, market intelligence, research, and performance audits.
- Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

A1.4 Group Meeting Direct Marketing

Placement of advertisements to targeted affinity group organizations through various mediums such as business, association, or trade networks and publication to directly influence the production of District lodging leads and room night sales through conferences, meeting planners, associations, and group clients.

- Typical expenses include advertising costs, agency fees, production, printing, distribution costs, District-related personnel salary, commissions, benefits, training, travel, printed material and promotional items, information technology, market intelligence, research, and performance audits.
- Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

A1.5 Consumer Direct Sales & Marketing Programs

Placement of consumer direct sales and marketing campaigns including, but not limited to, Pay-Per-Click Online Banner Advertising and dedicated Online Travel Agency (OTAs such as Expedia, Orbitz, Travelocity) campaigns that are specifically designed to place booking opportunities for assessed businesses in the grasp of consumers who have or may have expressed an interest in traveling to San Diego.

- Typical expenses include outside services such as advertising agency fees ; related events and promotions; production and advertising costs, District-related personnel salary, commissions, benefits, training, travel, printed material , promotional items, information technology, market intelligence, research, and performance audits.
- Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

A1.6 Multi-Year Tourism Development

Strategic development of multi-year or long-range event planning dedicated to the production of District lodging business leads and room night sales demand.

- Typical expenses include, but are not limited to, strategic planning, event RFPs, third-party whitepapers, promotional items, information technology, market intelligence, research, and performance audits. Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

Within benefit category A1 the activities provided will result in Direct, Indirect, and General & Administrative expenses. 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 expenses may be treated as exceptions to OMB Circular A-122 with supporting analysis.

BENEFIT CATEGORY A2

A2: Sub-Regional Targeting

Activities to be Implemented through Destination Marketing Organizations

Supplemental programs of the type detailed in benefit category A1 but specific to District sub-regions outside of the downtown core such as Rancho Bernardo, La Jolla, Mission Bay, Mission Valley, and others.

- Assessment revenues derived from benefit category A may only be expended for such programs as in A1 and may not be designated for General Advertising.

BENEFIT CATEGORY A3

A3: Competitive Targeting

Activities to be Implemented through Destination Marketing Organizations

Programs of the type detailed in benefit category A.1 awarded through competitive process.

- Assessment revenues derived from benefit category A may only be expended for such programs as in A1 and may not be designated for General Advertising.

Within benefit categories A2 and A3, the activities provided will result in Direct, Indirect, and General & Administrative expenses. 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.

BENEFIT CATEGORY B

B: Destination Marketing with Specific Call to Action

Destination advertising campaigns and earned media will have specific call to actions such as special consumer directed website landing pages, links, and/or phone numbers to drive sales demand for District lodging businesses. All approved campaigns must have budgeted proportional other source funding reflective of benefit that will be used to augment the District funding to proportionally reflect any benefit to non-assesseees.

- Typical direct expenses include advertising costs, agency fees, production, printing, distribution costs District-related personnel salary, commissions, benefits, training, travel, printed material and promotional items, information technology, market intelligence, research, and performance audits.
- Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead.

Within benefit category B the activities provided will result in Direct, Indirect, and General & Administrative expenses. 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.

Appendix 5 – Detailed Budget

| | | Recipients | % | Category A | % | Category B |
|---|--|--|-------|-------------|----|------------|
| BENEFIT CATEGORY A1 | | | | | | |
| Meeting and Group Sales & Marketing Programs and Consumer Direct Sales & Marketing Programs to Drive Sales Demand for District Lodging Businesses | | Payor Universe: All lodging businesses with 30 rooms or more in City of San Diego | | | | |
| A1.1 | Hotel Meeting Sales | | 25.1% | \$5,440,000 | 0% | \$0 |
| | Deployment of a direct sales force tasked to attend sales conferences and make sales calls on meeting planners, association & business group clients, and individuals. • Typical direct expenses include District-related sales personnel salary, commissions, benefits, training; travel and entertainment of targeted industry professionals such as meals (excluding alcohol) ; staff travel and related expenses for attendance at industry tradeshows and events, travel, meal and mileage expenses related to sales calls activities; outside services such as lead generation services; remote sales offices; marketing materials and promotional items targeted towards hotel sales efforts;; event registration for staff attendance at industry tradeshows and events; funding of events that agree to promote district activities; dues and subscriptions such as membership to trade organizations to create additional client relationships and sales opportunities; information technology, market intelligence, research, and performance audits. • Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead. | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |
| A2 | Event Management and Group Sales Development | | 12.0% | \$2,595,000 | 0% | \$0 |
| | Execution of special events dedicated to the production of District lodging business meeting leads and room night sales demand through, but not limited to, participation in and marketing activities at, professional and/or affinity group conferences, organizations or associations of meeting planners, business group clients, and individuals. • Typical expenses include District-related personnel salary, commissions, benefits, training, travel and entertainment; tradeshow and event expenses such as exhibit fees, facility and booth space rentals; outside contractors, bid & sponsorship fees, remote sales office; printed material and promotional items; food and beverage (excluding alcohol) appurtenant to trade show participation; information technology, market intelligence, research, and performance audits. • Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead. | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |

| | | Recipients | % | Category A | % | Category B |
|-------------|---|--|-------|-------------|----|------------|
| A1.3 | Tourism Development Including Travel & Trade | | 4.9% | \$1,060,000 | 0% | \$0 |
| | Execution of special events dedicated to the production of District group meeting leads and room night sales demand through, but not limited to, domestic and international travel & trade shows. • Typical expenses include District-related sales personnel salary, commissions, benefits, and training; international representation in countries such as Germany, UK, and Japan including brochure distribution; travel and entertainment; event food & beverage (excluding alcohol) and printed material and promotional items distributed at tradeshow and events attended by travel trade representatives and decision makers; trade show booths and display production, space rental, display transportation, set up & break down costs; information technology, market intelligence, research, and performance audits. • Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead. | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |
| A1.4 | Group Meeting Direct Marketing | | 5.1% | \$1,110,000 | 0% | \$0 |
| | Placement of advertisements to targeted affinity group organizations through various mediums such as business, association, or trade networks and publication to directly influence the production of District lodging leads and room night sales through conferences, meeting planners, associations, and group clients. • Typical expenses include advertising costs, agency fees, production, printing, distribution costs, District-related personnel salary, commissions, benefits, training, travel, printed material and promotional items, information technology, market intelligence, research, and performance audits. • Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead. | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |
| A1.5 | Consumer Direct Sales & Marketing Programs | | 14.5% | \$3,135,000 | 0% | \$0 |
| | Placement of consumer direct sales and marketing campaigns including, but not limited to, Pay-Per-Click Online Banner Advertising and dedicated Online Travel Agency (OTAs such as Expedia, Orbitz, Travelocity) campaigns that are specifically designed to place booking opportunities for assessed businesses in the grasp of consumers who have or may have expressed an interest in traveling to San Diego. • Typical expenses include outside services such as advertising agency fees ; related events and promotions; production and advertising costs, District-related personnel salary, commissions, benefits, training, travel, printed material , promotional items, information technology, market intelligence, research, and performance audits. • Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead. | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |

| | | Recipients | % | Category A | % | Category B |
|---|--|------------|--------------|---------------------|-----------|------------|
| A1.6 | Multi-Year Tourism Development | | 5.4% | \$1,160,000 | 0% | \$0 |
| | Strategic development of multi-year or long-range event planning dedicated to the production of District lodging business leads and room night sales demand. • Typical expenses include, but are not limited to, strategic planning, event RFPs, third-party whitepapers, promotional items, information technology, market intelligence, research, and performance audits. • Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead | TMD | | | | |
| <p><i>NOTE: Within benefit category A1 the activities provided will result in Direct, Indirect, and General & Administrative expenses. 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 expenses may be treated as exceptions to OMB Circular A-122 with supporting analysis.</i></p> | | | | | | |
| Benefit Category A1: Sub-total | | | 67.0% | \$14,500,000 | 0% | \$0 |

| BENEFIT CATEGORY A2: Sub-Regional Targeting | | | | | | |
|--|---|--|-------------|--------------------|-----------|------------|
| | Supplemental programs of the type detailed in benefit category A1 but specific to District sub-regions outside of the downtown core such as Rancho Bernardo, La Jolla, Mission Bay, Mission Valley, and others. - Assessment revenues derived from benefit category A may only be expended for such programs as in A1 and may not be designated for General Advertising. | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |
| Benefit Category A2: Sub-total | | | 6.9% | \$1,500,000 | 0% | \$0 |

| BENEFIT CATEGORY A3: Competitive Targeting | | | | | | |
|---|--|--|------------|--------------------|-----------|------------|
| | Programs of the type detailed in benefit category A.1 awarded through competitive process. - Assessment revenues derived from benefit category A may only be expended for such programs as in A1 and may not be designated for General Advertising. | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |
| Benefit Category A3 : Sub Total | | | 16% | \$3,485,000 | 0% | \$0 |

| | | | | | | |
|---|--|--|------------|---------------------|-----------|------------|
| TOTAL BENEFIT CATEGORY A - SALES AND MARKETING | | | 90% | \$19,485,000 | 0% | \$0 |
|---|--|--|------------|---------------------|-----------|------------|

| | Recipients | % | Category A | % | Category B |
|---|--|----|---|-----|-------------|
| BENEFIT CATEGORY B: | | | | | |
| Destination Marketing with Specific Call to Action | | | Payor Universe: All lodging businesses | | |
| <p>Destination advertising campaigns and earned media will have specific call to actions such as special consumer-directed website landing pages, links, and/or phone numbers to drive sales demand for District lodging businesses. All approved campaigns must have budgeted proportional other source funding reflective of benefit that will be used to augment the District funding to proportionally reflect the any percentage of benefit received to non-assesseees. - Typical direct expenses include advertising costs, agency fees, production, printing, distribution costs District-related personnel salary, commissions, benefits, training, travel, printed material , promotional items, information technology, market intelligence, research, and performance audits. - Typical indirect expenses include related contractor executive management, information technology support, and general & administrative overhead</p> | Approved TMD Contractors such as DMO and/or Competitive Applications | | | | |
| TOTAL BENEFIT CATEGORY B - SALES AND MARKETING | | 0% | \$0 | 90% | \$7,515,000 |
| <p><i>NOTE: Within benefit category B the activities provided will result in Direct, Indirect, and General & Administrative expenses. 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.</i></p> | | | | | |

| | | | | |
|--|----|-------------|----|-----------|
| CONTINGENCY - Opportunity / Catastrophe / Renewal | 5% | \$1,082,500 | 5% | \$417,500 |
|--|----|-------------|----|-----------|

| | | | | |
|---|----|-------------|----|-----------|
| ADMIN & OPS - City and Corporation | 5% | \$1,082,500 | 5% | \$417,500 |
|---|----|-------------|----|-----------|

| | | | | |
|------------------------------|------|--------------|------|-------------|
| TOTAL TMD COLLECTIONS | 100% | \$21,650,000 | 100% | \$8,350,000 |
|------------------------------|------|--------------|------|-------------|

*It is expected that the budget categories will be re-allocated from year-to-year to address economic conditions, tourism trends, and changes in non-assessment funding provided to those programs.



**LIVING WAGE
ORDINANCE
APPLICATION FOR
EXEMPTION**

**LIVING WAGE ORDINANCE
APPLICATION FOR EXEMPTION**



Send form to:

**CITY OF SAN DIEGO
LIVING WAGE PROGRAM**
202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 236-6682 Fax (619) 533-3240

COMPANY INFORMATION

Company Name: _____
 Company Address: _____
 Company Contact Name: _____ Contact Phone: _____

CONTRACT INFORMATION

Contract Number (if no number, state location): _____ Start Date: _____
 Contract Amount: _____ End Date: _____
 Purpose/Service Provided: _____

EXEMPTION BASIS

Check one option and submit required supporting documentation.

- Business employs 12 or fewer employees**, including parent and subsidiary entities, for each working day in each of 20 or more calendar weeks in current or preceding calendar year and, in the City's determination, will not need to retain more than a total of 12 employees (including subcontractors) to perform work related to the City contract. §SDMC 22.4215 (c)(1).

Required documentation: Correspondence on company letterhead and signed by a legally authorized officer documenting number of employees AND copy of firm's State of California Employment Development Department *Quarterly Contribution Return and Report of Wages (Continuation)* [form DE9C] for prior two quarters.

- Business organized under IRS section 501(c)(3)** and highest officer's salary, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee. §SDMC 22.4215 (c)(2).

Required documentation: Copy of IRS letter recognizing status as non-profit organized under section 501(c)(3) AND statement of salary listing corporation's highest paid officer and lowest paid worker, both computed on an hourly basis.

- Collective Bargaining Agreement** is in place which specifically supersedes the Living Wage Ordinance. §SDMC 22.4240.

Required documentation: Copy of collective bargaining agreement OR written confirmation from union representing employees working on the contract.

- Other – Cite LWO Municipal Code section:** _____

Required documentation: Correspondence explaining basis of request for exemption.

CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California that information submitted in support of this application is true and correct to the best of the contractor's knowledge.

 Name of Signatory Title of Signatory

 Signature Date

Approval of this application exempts only the listed contractor from the LWO during performance of this contract. A subcontractor performing work on this contract is not exempt unless separate exemption has been applied for and approved.

FOR OFFICIAL CITY USE ONLY

Not Approved – Reason: _____
 Approved LWO Analyst: _____ Date: _____

**RULES IMPLEMENTING
THE LIVING WAGE
ORDINANCE**

CITY OF SAN DIEGO

RULES IMPLEMENTING THE LIVING WAGE ORDINANCE

Effective date July 1, 2006; revision date November 1, 2014

LIVING WAGE PROGRAM

202 C Street, M.S. 9A, San Diego, CA 92101
Phone: (619) 236-6682 Fax: (619) 533-3240

Table of Contents

| | |
|--|----|
| A. Definitions | 3 |
| B. Applicability of LWO | |
| Types of Covered Agreements | 7 |
| Presumption of Coverage | 9 |
| Final Authority | 9 |
| C. Exemptions | |
| Categorical Exemptions | 9 |
| Exemptions Requiring City's Approval | 9 |
| Determination of Exemption | 11 |
| Liberal Interpretation of Definitions | 12 |
| D. Employer Requirements | |
| LWO Requirement of Minimum Compensation | 12 |
| LWO Health Benefits | 13 |
| Compensated and Uncompensated Leave | 13 |
| LWO Notice to Employees | 15 |
| Affordable Care Act (ACA) | 15 |
| Federal Earned Income Tax Credit (EITC) | 15 |
| Reporting Requirements | 16 |
| Contractor Annual Reports | 16 |
| City Access to Employer Records to Monitor Compliance with the LWO | 17 |
| Disclosure of Documents and Information | 17 |
| Subcontractors Subject to the LWO | 17 |

[continued]

Table of Contents, continued

| | |
|--|----|
| E. Administrative Recordkeeping and Reports | |
| LWO Administrative Records and Reports | 18 |
| Report to Council | 18 |
| Annual LWO Wage Rate Adjustment | 18 |
| F. Monitoring and Investigation | |
| LWO Contract Language | 18 |
| Employer Monitoring | 18 |
| Investigation in Response to Specific Concerns or Complaints | 19 |
| Employer's Failure to Reasonably Cooperate | 19 |
| G. Enforcement | |
| Notice to Employer of LWO Violations | 19 |
| Remedies | 19 |
| Consequence for Two or More Violations | 20 |
| Prime Contractor Responsible for Subcontractor | 20 |
| Employee's Right to File Action | 20 |
| Prohibition against Retaliation | 21 |
| H. Employee Complaint Process | |
| Employee Complaints | 21 |
| Complaints Alleging Retaliation | 21 |
| Confidentiality of Information during Investigation | 21 |
| Investigation of Employee Complaints | 21 |
| Resolution of Investigation into Employee Complaints | 22 |
| Submission of Additional Information After Completion of Investigation | 22 |
| Payment of Amounts Due to Employees | 22 |

Appendix A: **Living Wage Rates**

Appendix B: **Living Wage Ordinance Notice and Forms**

| | |
|--|--|
| LWO Notice to Employees (English, Spanish) | |
| Affordable Care Act [ACA] Information (English, Spanish) | |
| Earned Income Tax Credit [EITC] Information (English, Spanish) | |
| LWO Certification of Compliance | |
| LWO Application for Exemption | |
| LWO Employee Complaint Form (English, Spanish) | |

RULES IMPLEMENTING THE LIVING WAGE ORDINANCE

The purpose of these Rules Implementing the Living Wage Ordinance [Rules] is to provide guidance for *covered employers* to comply fully with the requirements of the City of San Diego's Living Wage Ordinance, Chapter 2, Article 2, Division 42 of the San Diego Municipal Code (SDMC) [the Living Wage Ordinance or simply "LWO"]. These Rules are intended as an administrative aide to carry out the intent of the LWO and should not be construed to extend, modify, or otherwise alter the substantive provisions of the LWO.

A. DEFINITIONS

In addition to the definitions in SDMC §22.4205, the following definitions shall apply in these Rules (several terms found in Section 22.4205 are duplicated here for convenience):

Bidder means a person or firm who submits a bid, proposal, or other document to the City seeking award of a contract.

Business means any corporation, partnership, limited liability corporation, joint venture, sole proprietorship, association, or trust, other than a public entity.

City means the City of San Diego, its organizational subdivisions, agencies, offices, or boards, but does not include independent agencies, such as the Housing Authority and the Retirement Board, each of which is encouraged to adopt its own living wage policy.

City facility means any of the following facilities that are owned, operated, managed, or leased by the *City*:

- (a) Petco Park;
- (b) Qualcomm Stadium;
- (c) San Diego Sports Arena;
- (d) San Diego Convention Center;
- (e) San Diego City Concourse; or
- (f) Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there. This subsection is not intended to extend the Living Wage Ordinance to other structures located in the Civic Center Plaza.

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility*. *City facility agreement* includes:

- (a) subleases or other agreements for use of the *City facility* for 30 days or more in any

calendar year; and

- (b) subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days.

City facility employer means any *business* that has entered into a *City facility agreement*. For the purposes of this Division, *City facility employer* includes any sublessee, subcontractor, or concessionaire that retains employees to provide *services* at a *City facility*.

City Manager means the City Manager and his/her delegates and representatives.

Compensated leave means any paid sick leave, vacation leave, or personal leave provided by a *covered employer* to a *covered employee*. *Compensated leave* does not include paid holidays that are provided by a *covered employer* under the *covered employer's* established policy.

Complaint means a report of an alleged violation of the LWO whether from a *covered employee* or otherwise alleged.

Covered employee means:

- (a) any individual employed on a full-time, part-time, temporary, or seasonal basis by:
 - (1) a *service contractor* with regard to any hours worked in performance of a *service contract*;
 - (2) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*; or
 - (3) a *City facility employer* with regard to any hours worked at a *City facility*.
- (b) *Covered employee* does not include:
 - (1) a supervisor or manager;
 - (2) an individual who, in addition to wages, receives academic credit for their work from an accredited educational institution;
 - (3) an individual who participates in job training and education programs that have as their express purpose the provision of basic job skills or education;
 - (4) an owner of a *business*; and
 - (5) an “executive, administrative, or professional employee” who, as described in California Labor Code Section 515(a):

- (a) customarily and regularly exercises discretion and independent judgment in performing duties;
- (b) meets the criteria of “executive, administrative, or professional employee” for at least one-half of work time; and
- (c) earns a monthly salary equivalent to no less than two times the California minimum wage for full-time employment.

If the description of an “executive, administrative, or professional employee” is amended in the California Labor Code, such description shall also apply to these Rules.

Covered employer means any *service contractor, financial assistance recipient, or City facility employer*, or any authorized agent thereof.

Financial assistance agreement means an agreement between the *City* and a *business* to provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a) economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. Direct financial assistance includes funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

Financial assistance recipient means any *business* that has entered into a *financial assistance agreement*. For the purposes of this division, *financial assistance recipient* includes all subcontractors retained by a *business* to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

Health benefits means benefits related to medical, dental, vision, and other health services, and excludes benefits related to retirement, disability, accidental death and dismemberment insurance, and life insurance.

Health benefits rate means a minimum dollar amount per hour toward the cost of *health benefits* for *covered employees* and their dependents.

Incidental services means services that are:

- (a) part of an agreement for whose primary purpose is to purchase or rent goods or equipment; and
- (b) performed on a non-recurring and irregular basis. Services are not incidental, even if

the primary purpose of the agreement is to purchase goods or equipment, if the agreement provides that services are to be performed on a regular schedule.

Managerial employee and *supervisory employee* both mean a person compensated above the living wage rate and who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other subordinate employees, or the responsibility to direct them, adjust their grievances, or recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Prime service contractor means any *business* that enters into a contract for *services* directly with the *City*. For any contract subject to the LWO, a *prime contractor* must use its own employees to perform at least fifty percent (50%) of the work described in the contract.

Service contract means a contract between the *City* and a *business*, and any applicable subcontracts or franchises, to furnish *services*. For purposes of this Division, *service contract* includes all contracts for *services* provided through the managed competition program under Charter section 117(c).

Service contractor means any *business* that has been awarded a *service contract* subject to this Division. For the purposes of this Division, *service contractor* includes all subcontractors or franchisees retained by a *business* to perform any or all of the functions covered by a *service contract*. Subcontractors include sublessees and concessionaires.

Services means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this Division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

- (a) Automotive repair and maintenance;
- (b) Cashiers;
- (c) Child care;
- (d) Concessions/retail sales;
- (e) Facility and building maintenance;
- (f) On-site food service/preparation;
- (g) Janitorial, custodial, street cleaning, and housekeeping;
- (h) Landscaping;
- (i) Laundry services;
- (j) Office/clerical;

- (k) Parking services;
- (l) Pest control;
- (m) Security services;
- (n) Ushers and wheelchair attendants;
- (o) Ticket takers;
- (p) Warehouse workers;
- (q) Waste collection and waste disposal, including recycling;
- (r) Right-of-way maintenance; and
- (s) Water and wastewater maintenance.

Unfair immigration-related practice has the same meaning as in California Labor Code section 1019(b)(1).

Wages means the amount paid to a *covered employee* as compensation for labor performed. The term does not include any amount paid to a *covered employee* not directly related to the labor performed, such as for parking, uniforms, meals, and contributions to retirement plans.

Willful violation means a *covered employer's* intentional failure or refusal to perform an act which is required under this Division. Such failure or refusal need not be based on a deliberate malicious purpose or intent to defraud. A *covered employer's* failure or refusal to comply with this Division is prima facie evidence of a *willful violation* if the contract for *services* states that this Division applies.

B. APPLICABILITY OF LWO

1. **Types of Covered Agreements.** The LWO's provisions apply only to the following types of agreements with the *City: service contracts, City facility agreements, and financial assistance agreements.*

a. Service Contracts.

(1) Compliance with the LWO is required during the term of any *service contract* or any applicable subcontract.

(a) A *service contract* with a combined annual value of payment of \$25,000 or less is not covered if it was entered into, awarded, amended, renewed or extended before April 1, 2014.

(b) A *service contract*, or applicable subcontract, that was previously exempt

because it did not meet the monetary threshold before April 1, 2014, becomes subject to the LWO if contract payments later exceed \$25,000 in a year.

(c) A *service contract*, or applicable subcontract, that was previously exempt because it did not meet the monetary threshold before April 1, 2014, may become subject to the LWO if it later is amended, modified, renewed or extended.

(d) For any contract subject to the LWO, a *prime contractor* must use its own employees to perform at least fifty percent (50%) of the work described in the contract.

(e) The provision of *incidental services* do not subject agreements for the purchase or rental of property, goods or equipment to the LWO.

(2) *City* agreements that may otherwise be deemed a *service contract* are not subject to the requirements of the LWO unless they involve expenditures of funds entirely within the *City's* control.

(3) Contracts for *services* that are to be performed on an as-needed basis are subject to the LWO.

b. **City Facility Agreements.** *City facility agreement* means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility*. *City facility agreements* apply to Petco Park; Qualcomm Stadium; San Diego Sports Arena; San Diego Convention Center; San Diego City Concourse; and the Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there (but not other structures located in the Civic Center Plaza). A *City facility agreement* also includes:

(1) Subleases or other agreements between a *City facility* entity and another *business* for use of the *City facility* for 30 days or more in any calendar year.

(2) Subcontracts and concession agreements between a *City facility* entity and another *business* for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days. In determining whether a contract for *services* at a *City facility* exceeds \$25,000 annually, the total amount of the contract shall be calculated by adding together the amount provided for in the original contract and all amendments, modifications, renewals, or extensions. As-needed contracts become subject to the LWO when the expended amount exceeds \$25,000.

c. **Financial Assistance Agreements.** *Financial assistance agreements* are subject to the LWO under either of the following conditions:

(1) The *financial assistance agreement* is for economic development, job creation,

or job retention and has a combined value over a period of five years of \$500,000 or more. Compliance with the LWO must continue for a period of 5 years after the threshold amount has been received by the *business*.

- (2) The *financial assistance agreement* is for tourism, arts, and cultural programs and has a combined annual value of \$750,000 or more. Compliance with the LWO must continue for one year after the threshold amount has been received by the *business*.

2. **Presumption of Coverage.** An agreement, request for proposal, request for bid, or request for quote for any of the agreements in the foregoing paragraph [Rules, B.1] is presumed to be covered by the LWO unless specifically exempted by the LWO.
3. **Final Authority.** The Purchasing & Contracting Director has the final authority in determining whether an agreement is subject to the LWO.

C. EXEMPTIONS

1. **Categorical Exemptions.** Except for *City facility agreements*, which are not exempt from LWO requirements, the following categories of agreements shall be exempt from the LWO:
 - a. Contracts subject to federal or state law or regulations that preclude applicability of the LWO's requirements.
 - b. Contracts where the *City* shares management authority with other jurisdictions unless all those jurisdictions agree to the applicability of the LWO to the contract.
 - c. Contracts for *services* by other governmental entities.
 - d. Contracts for public works construction.
 - e. Cooperative procurement contracts.
 - f. Contracts for purchase of goods, property, or a lease of property, unless the contract includes a component for services that are more than *incidental services*.
 - g. Contracts for professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other services.
 - h. Contracts where compliance with the LWO is not in the best interests of the *City* as certified by the *City Manager* and approved by the City Council.
2. **Exemptions Requiring City's Approval.** In order to qualify for the following exemptions, contractors must submit an Application for Exemption on the form included in Appendix B. The exemption is not valid until the Living Wage Manager approves the contractor's application. The following may be exempt from the LWO upon the City's

approval:

- a. The *business* employs 12 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the *City* determines that the *business*, including its subcontractors, will not need to retain more than 12 employees to perform work related to the subject agreement.

- (1) The number of employees includes:

- (a) The contractor's employees as of the date the contract is signed;
- (b) The employees the contractor reasonably believes it will hire during the course of the contract, whether those employees will work on the *City* contract or not;
- (c) The employees of the contractor's parent and subsidiary entities; and
- (d) The employees of any *subcontractors* the contractor proposes to use to perform all or a portion of the service covered by the contract.

- (2) Along with the Application for Exemption, the contractor must provide written documentation of the number of employees. Acceptable documentation shall include a letter on the contractor's letterhead and signed by an officer who is authorized to legally bind the entity and a copy of the firm's State of California Employment Development Department Quarterly Contribution Return and Report of Wages (Continuation) [form DE9C].

- (3) A previously exempt contract may later become subject to the LWO if the number of employees exceeds 12 as calculated according to these Rules.

- b. A *business* organized under section 501(c)(3) of the United States Internal Revenue Code, 26 U.S.C. section 501(c)(3) to provide community-based social services, other than child care services. Such *businesses* must provide the following additional documents in support of an Application for Exemption:

- (1) A copy of the most recent IRS letter indicating that the *business* is recognized as a non-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

- (2) A statement showing that the *business*' highest paid officer's salary, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee.

- (a) The "lowest paid full-time employee" refers to the lowest paid full-time employee of the *business*, regardless of whether that employee works on the *City* agreement.

- (b) In calculating the salary of the highest paid officer and the wage rate of the

lowest paid full-time employee, items such as cash allowances for car expenses, meals, parking, or the value of pension plan contributions shall not be included.

c. **Collective Bargaining Agreement:** A collective bargaining agreement may exempt a contract from the LWO provided such waiver or exemption is explicitly stated in the collective bargaining agreement.

(1) If the collective bargaining agreement does not specifically indicate that it is exempt from, or waives, the provisions of the LWO, the employer shall submit written confirmation from the union representing the employees that the union and the employer have agreed that the collective bargaining agreement supersedes the LWO.

(2) The provisions of the LWO shall not be interpreted to require an employer to reduce the wages and benefits required by a collective bargaining agreement.

d. **Negotiation of Collective Bargaining Agreement:** An employer subject to the LWO may apply for provisional exemption from the LWO if the employer and the union are engaged in negotiations and the issue of supersession of the LWO has been proposed. If provisional exemption status is granted, it is valid until the end of the negotiation process.

(1) The employer must provide sufficient documentation with the application and shall provide status reports upon request from the *City*.

(2) At the end of the negotiation process, the employer shall provide the Living Wage Manager with a copy of the final collective bargaining agreement to verify whether it supersedes the LWO and the effective dates.

(a) If the final collective bargaining agreement supersedes the LWO, the employer shall be exempt for the time period covered by the effective dates. However, the employer remains subject to all applicable provisions of the LWO for the time period not covered by that collective bargaining agreement and if the employer has not complied with the LWO during the time period not covered by that collective bargaining agreement, the employer shall make retroactive corrections.

(b) If the final collective bargaining agreement does not supersede the LWO, the employer shall be required to comply with all applicable LWO requirements, including the wage and benefits provisions. Compliance shall also be required retroactively to the date the employer first became subject to the LWO. If necessary, the employer shall provide retroactive payments to *covered employees*.

3. Determination of Exemption. The Living Wage Manager shall review Applications for Exemption and, upon approval from the Purchasing & Contracting Director, provide a final determination within 10 working days after receipt of all forms, documentation, and,

if necessary, legal opinions.

- a. A determination by the Living Wage Manager that a bidder or employer is exempt from the LWO exempts the bidder or employer only for the agreement for which the application was submitted. Approval does not exempt the bidder or employer for any other bid or agreement.
- b. An exemption approval does not extend to any *subcontractor* unless the *subcontractor* separately applies for and is granted an exemption from the LWO or unless the Living Wage Manager has categorically exempted the agreement.
- c. If the Living Wage Manager categorically exempts an agreement from the LWO, then neither the prime contractor nor any *subcontractor* working on the agreement will be subject to the LWO.

4. **Liberal Interpretation of Definitions.** In accordance with SDMC §22.4215(d), the definitions of *service contract*, *financial assistance agreement*, or *City facility agreement* shall be liberally interpreted so as to further the policy objectives of the LWO.

D. EMPLOYER REQUIREMENTS

All *covered employers*, including subcontractors, who perform work or provide *services* pursuant to an agreement that is subject to the LWO are subject to requirements of the LWO and these Rules.

1. LWO Requirement of Minimum Compensation.

- a. *Covered employers* must pay *covered employees* a “living wage” which shall be the amount as defined in the LWO and as specified in Appendix A. If the *covered employer* offers no health benefits, the *covered employer* shall pay the *covered employee* the full cash living wage rate. If the *covered employer* offers health benefits in order to satisfy the requirements of the LWO, the terms must be in accordance with the LWO and these Rules.
- b. The Living Wage Manager shall upwardly adjust the wage rate and *health benefits rate* each fiscal year, effective July 1, to reflect the change in the regional Consumer Price Index for All Urban Consumers. The Living Wage Manager shall provide notice of the new wage rate and *health benefits rate* by publishing an announcement of such rate adjustments on the *City’s* website prior to April 1 of each year.
- c. *Covered employers* are required to pay the living wage rate and benefits to *covered employees* working on the *City* agreement for each hour the *covered employee* works on the subject agreement. Benefits include health benefits or cash equivalent, *compensated leave* time, and uncompensated days off.
- d. A *covered employer* shall not use tips or gratuities earned by a *covered employee* to offset the wage rate required by the LWO.

- e. When a contract is subject to the requirements of both Living Wage and Prevailing Wage laws, the *covered employer* must pay a *covered employee* the higher wage rate as determined by the sum of required hourly wages, *health benefits* and *compensated leave*.
2. **LWO Health Benefits.** *Covered employers* may pay *covered employees* the living wage either fully in cash or as a cash payment for the wage rate combined with a health benefits payment of a minimum dollar amount per hour toward the cost of health benefits as defined in the LWO and these Rules.
- a. If the *covered employer* elects not to provide health benefits, the *covered employer* must pay the full cash wage, as specified in Appendix A, to a *covered employee*.
 - b. If the *covered employer* elects to provide a *covered employee* with health benefits, proof of the provision of health benefits must be submitted to the Living Wage Manager no later than 10 calendar days after a request for such documentation.
 - (1) If the submitted documentation does not demonstrate that health benefits are provided in accordance with the LWO, the *covered employer* will be considered to be out of compliance with the LWO until sufficient documentation is received.
 - (2) In addition to remedies provided for by the LWO, failure to provide the requested information may result in payment being withheld until documents are submitted.
 - c. If the *covered employer* elects to provide health benefits through a plan costing less than the minimum dollar amount per hour as specified in the LWO, the difference shall be added to the *covered employee's* hourly wage rate as a cash payment.
 - d. A co-premium may be required of a *covered employee* only if the cost of health benefits is greater than the minimum dollar amount per hour as specified in the LWO.
3. **Compensated and Uncompensated Leave.** A *covered employer* must provide a *covered employee* working on the *City* agreement at least 10 compensated leave days per year for sick leave, vacation leave, or personal leave, and 10 additional uncompensated days off per year for sick leave for illness of the *covered employee* or an immediate family member, when the *covered employee* has exhausted all accrued compensated leave days off.
- a. A full-time *covered employee* shall accrue a minimum of 10 compensated leave days per year based on the *covered employee's* regularly scheduled work hours. A part-time *covered employee* shall accrue compensated leave days in increments proportional to that accrued by a full-time *covered employee*.
 - (1) A *covered employer* may not unreasonably deny a *covered employee's* request to use an accrued compensated leave.
 - (2) A *covered employee's* request for time off is presumed to be a request for paid

time off unless the *covered employee* specifically asked for unpaid time off.

- (3) A *covered employee* shall be eligible to use accrued compensated leave after the first 6 months of employment or consistent with company policy, whichever is sooner.
 - (4) A *covered employee* shall accrue compensated leave unless the *covered employee* has been on a leave of absence without pay for over 30 calendar days.
 - (5) Upon return to work following an unpaid leave of absence of more than 30 calendar days, a *covered employee* shall begin to accrue compensated leave at the appropriate applicable full-time or part-time rate.
- b. Paid holidays that are provided under established employer policy shall not be counted toward the provision of the 10 compensated leave days.
- (1) Payment of premium pay for work performed on a holiday does not constitute compensated leave for purposes of the LWO.
 - (2) For a holiday to qualify as one of the minimum 10 compensated leave days required under the LWO, a *covered employee* who works on a holiday must be allowed to take another paid day off in lieu, even if the *covered employee* is provided with premium pay for the hours worked on the holiday.
- c. Unused compensated leave accrued by a *covered employee* working on a subject agreement shall be carried over for at least one year, with the carryover date based on the date of accrual.
- d. The LWO does not require the *covered employer* to cash out compensated leave upon a *covered employee's* termination unless otherwise required by law.
- e. A *covered employer* may choose to provide *covered employees* with more compensated leave than is required under the LWO.
- f. The Living Wage Manager, upon approval from the Purchasing & Contracting Director, may allow a *covered employer's* established compensated leave policy to remain in place, even though it does not meet the accrual rate and eligibility deadlines required in these Rules, if the Living Wage Manager determines all of the following conditions are met:
- (1) The *covered employer's* established policy provides *covered employees* with more than 10 paid days off per year;
 - (2) At least a portion of the paid days off are available for use by *covered employees* within the first year of employment; and
 - (3) The Living Wage Manager determines requiring the covered employer to change its policy to comply with these Rules will result in *covered employees* receiving

fewer benefits.

- g. At least 10 uncompensated days off shall be made available, as needed, for personal or immediate family illness after a *covered employee* has exhausted his or her compensated leave days.
- h. A *covered employer* working on or under the authority of a *City* agreement who fails to provide *covered employees* with compensated leave in accordance with the LWO shall provide the affected *covered employees* with the time off retroactive to the effective date of the agreement or amendment. A *covered employer* required to provide *covered employees* with compensated leave retroactively shall:
 - (1) Calculate the amount of compensated leave the *covered employee* should have accrued under the LWO and pay the *covered employee* the cash value at the correct wage rate due to the *covered employee* when the compensated leave should have accrued. Such calculation shall be subject to approval by the Living Wage Manager.
 - (2) Calculate the amount of uncompensated time off that the *covered employee* should have accrued under the LWO and add the additional amount of uncompensated leave to the uncompensated leave already accrued by the *covered employee*.

- 4. **LWO Notice to Employees.** A *covered employer* shall annually distribute to *its covered employees* with the first paycheck to occur after July 1 a copy of the LWO Notice to Employees included in Appendix B to ensure *covered employees* are advised of the adjusted wage and health benefits rates.
 - a. A *covered employer* shall notify each current *covered employee* and each new *covered employee* at time of hire, of his or her rights under provisions of the LWO by providing *covered employees* with a copy of the LWO Notice to Employees in Appendix B.
 - b. *Covered employers* shall post a notice to *covered employees* in a prominent place in an area frequented by *covered employees* informing them of any applicable exemptions from the LWO.
- 5. **Affordable Care Act (ACA).** Within 30 days of commencement of work on a *City* agreement or subcontract subject to the LWO the *covered employer* shall inform all *covered employees* of the possible availability of health insurance coverage under the Affordable Care Act (ACA). Annually with the first paycheck to occur after July 1, a *covered employer* shall distribute information regarding ACA with employee paychecks.
- 6. **Federal Earned Income Tax Credit (EITC).** Within 30 days of commencement of work on a *City* agreement or subcontract subject to the LWO the *covered employer* shall inform all *covered employees* of their possible right to EITC. Annually with the first paycheck to occur after July 1, a *covered employer* shall distribute information regarding EITC with employee paychecks.

7. Reporting Requirements.

- a. Each *covered employer* shall file an LWO Certification of Compliance with the Living Wage Manager within 30 days of becoming a *covered employer*.
 - (1) *Covered employers* are required to ensure that all applicable *subcontractors* file an LWO Certification of Compliance within 30 days of becoming covered by the LWO.
 - (2) The LWO Certification of Compliance shall be completed on the form included in Appendix B.
 - (3) Failure to file an LWO Certification of Compliance may result in payment being withheld until the document is submitted.

- b. *Covered employers* shall maintain, and shall require subcontractors covered by the LWO to maintain, payroll records on *covered employees* containing the following information:
 - (1) Name.
 - (2) Address.
 - (3) Date of hire.
 - (4) Job classification.
 - (5) Rate of pay.
 - (6) Hours worked in each pay period with time on LWO-covered contracts clearly indicated.
 - (7) Cost and amount paid for health benefits.
 - (8) Compensated leave days (accrued and used) and uncompensated leave days (accrued and used).

- c. *Covered employers* and subcontractors must maintain the records referred to in these Rules to document compliance with the LWO for at least 3 years after the *City's* final payment on the contract.

- d. *Covered employers* and subcontractors shall make these records available for inspection to the *City* upon request. *Covered employers* shall make a *covered employee's* individual records available for inspection to the *covered employee* upon such a request.

8. Contractor Annual Reports. Each *covered employer* shall file an annual report with the

Living Wage Manager regarding compliance with the LWO. The Living Wage Manager shall send correspondence to each covered employer with a format for completion of requested information and a due date. The *City* may require a *covered employer* to submit additional reports.

9. **City Access to Employer Records to Monitor Compliance with the LWO.** A *covered employer*, subject to the LWO, shall allow authorized *City* representatives access to work sites, upon request, to monitor compliance and investigate employee *complaints*. A *covered employer* shall submit, upon request, copies of payrolls, health benefit statements, and related documents to comply with the LWO. The *City* may require the *covered employer* to submit other documentation. Failure to submit documents or allow access to the work sites as requested may be deemed as non-compliance with the LWO. In addition to remedies provided for by the LWO, such non-compliance may result in a recommendation that the *covered employer's* subject agreement be terminated and/or payments to the *covered employer* be withheld until access is provided and documentation is submitted.
10. **Disclosure of Documents and Information.** Documents and information obtained in the course of administration of the LWO become *City* records. Disclosure is subject to provisions and limitations of the California Public Records Act. Consistent with the Public Records Act, documents and information obtained during the course of an investigation or inquiry shall remain confidential while the investigation or inquiry is ongoing.
11. **Subcontractors Subject to the LWO.** A subcontractor performing work or providing *services* on an agreement subject to the LWO shall also comply with the LWO unless the subcontractor qualifies for an exemption. A subcontractor may be subject to the LWO even if the prime contractor has been granted an exemption.
 - a. A prime contractor must inform its subcontractor of the subcontractor's obligation to comply with the LWO. Language obligating the subcontractor to comply with the LWO shall be included in each subcontract between the prime contractor and the subcontractor. Regardless of whether such language is included in the subcontract, the subcontractor is obligated to comply with the LWO.
 - b. If the *City* finds that an employer classified an employee as an independent contractor in order to avoid complying with the LWO, the Living Wage Manager may require the employer to comply with the LWO and/or recommend terminating the employer's agreement. The Living Wage Manager may consider the following factors in determining whether an employee is a bona fide independent contractor:
 - (1) Whether the employee has the right to control or discretion to determine how to perform the work required under the *City* agreement.
 - (2) Whether similar employees in the industry or field are customarily engaged as independent contractors for the type of work.
 - (3) Whether the employee has any substantial investment other than personal

services in the business.

- (4) Whether the employee has control over the time and place of work.
- (5) Whether the employee supplies his or her own tools or equipment, if they are normally used by persons engaged in such work.
- (6) Whether the subject employee hires employees.

E. ADMINISTRATIVE RECORDKEEPING AND REPORTS

1. **LWO Administrative Records and Reports.** The Purchasing & Contracting Director shall maintain a list of all subject and exempt agreements and a file of all *complaints*, findings, and results. The Purchasing & Contracting Director may provide special reports and recommendations on significant issues of interest to the City Council.
2. **Report to Council.** In accordance with SDMC §22.4235(c), on July 1 of each year, or as soon thereafter as is practicable, the Purchasing & Contracting Director shall provide an annual report to the City Council generally describing the effects of the LWO upon the City.
3. **Annual LWO Wage Rate Adjustment.** The hourly wage rates and health benefits rate shall be upwardly adjusted each July 1 to reflect the change in the regional Consumer Price Index for All Urban Consumers for the twelve-month period preceding December 31 of the previous year. Prior to April 1 of each year, the Living Wage Manager shall calculate the new rates and provide notice by posting on the *City's* website the rates in effect for the next fiscal year.

F. MONITORING AND INVESTIGATION

These Rules will augment the *City's* normal and customary procedure for administering its contracts.

1. **LWO Contract Language.** The Living Wage Manager will make available standard LWO contract language for agreements subject to the LWO.
2. **Employer Monitoring.** The Living Wage Manager will monitor the operations of *covered employers* for compliance by conducting site visits and payroll reviews. The Living Wage Manager may review the provision of wages and health benefits by a *covered employer* as part of site visits. A *covered employer* shall cooperate with the Living Wage Manager when a meeting, a site visit, or documentation is requested. Cooperation includes providing:
 - a. Full access to the work site for employer and employee interviews.
 - b. Copies of certified payrolls, timesheets, health and benefit statements, employee policy manuals, and any other document that would assist in determining if a *covered employer* is providing or has provided the wages and health benefits required by the

LWO.

3. **Investigation in Response to Specific Concerns or Complaints.** Whether based upon a complaint or otherwise, the *City* shall initiate an investigation when there is a specific concern or complaint about a *covered employer* related to the LWO. If a *covered employee* alleges noncompliance with the LWO or retaliation by the *covered employer* as a result of an allegation, the *City* shall initiate an investigation pursuant to these Rules.
4. **Employer's Failure to Reasonably Cooperate.** If a *covered employer* fails to produce requested documentation, fails to allow access to the work site or the *covered employees* for employee interviews, or otherwise unreasonably fails to cooperate, the Living Wage Manager may consider the *covered employer* to be out of compliance with the LWO. In addition to remedies provided in the LWO, the Living Wage Manager may request payments to the *covered employer* be withheld until the *covered employer* cooperates.

G. ENFORCEMENT

1. **Notice to Employer of LWO Violations.** Whether based upon a complaint or otherwise, if the Living Wage Manager determines that a *covered employer* is not in compliance with the LWO, the Living Wage Manager will issue a written notice to the *covered employer* that the violation is to be corrected within 30 days. Requests for reasonable extensions of time may be approved by the Living Wage Manager.
2. **Remedies.** If a *covered employer* has not demonstrated within 30 days that it has substantially cured any material violation of the LWO, the Living Wage Manager upon approval from the Purchasing & Contracting Director shall initiate one or more of the following:
 - a. Request the City to declare a material breach of the *service contract, financial assistance agreement, or City facility agreement* and exercise its contractual remedies including but are not limited to termination of the *service contract, financial assistance agreement, or City facility agreement* and the return of monies paid by the *City* for services not rendered.
 - b. Recommend debarment under Chapter 2, Article 2, Division 8 of the San Diego Municipal Code to debar the *covered employer* from future *City* contracts for a period of three years or until all penalties and/or restitution have been fully paid, whichever occurs last.
 - c. Request a determination of non-responsibility under Chapter 2, Article 2, Division 30 of the San Diego Municipal Code.
 - d. Request that the City Attorney bring a civil action against the employer seeking any legal remedies, including but not limited to:
 - (1) Where applicable, payment to the *covered employee* of all unpaid wages or *health benefits* prescribed by the LWO; and/or

- (2) A fine payable to the City in the amount of up to one hundred dollars (\$100) per *covered employee* for each day the violation remains uncured.
- (3) The City's administrative costs.
- e. Refer violations of the LWO to appropriate local state, and/or federal agencies and authorities.
- 3. **Consequence for Two or More Violations.** If a *covered employer* is determined by the *City* to have violated the LWO two or more times in a two-year period, the *City* shall take enforcement actions described in San Diego Municipal Code section 22.4230(f) even if the *covered employer* has substantially cured any material violations.
- 4. **Prime Contractor Responsible for Subcontractor.** A *covered employer* who is a prime contractor is responsible to:
 - a. Inform covered subcontractors of their obligation to comply with the LWO;
 - b. Include language requiring the subcontractor to comply with the LWO in each subcontract between the prime contractor and a covered subcontractor;
 - c. Inform covered *subcontractors* that they are required to file a Certification of Compliance within 30 days of becoming a *covered employer*; and
 - d. Cooperate with the *City's* investigation of covered *subcontractors*.
- 5. **Employee's Right to File Action.** A *covered employee* claiming a violation of the LWO shall have the right to file an action against his or her *covered employer* in the appropriate court within three years after discovery of the alleged violation. The court shall award the following:
 - a. For failure to pay the required living wage: the difference between the required living wage rate and the amount actually paid to the *covered employee*, plus interest, and penalties for *willful violations*.
 - b. For failure to pay the health benefits rate: the difference between the required health benefits rate and the amount actually paid towards the health benefits rate for the *covered employee*, plus interest, and penalties for *willful violations*.
 - c. For retaliation for exercise of any rights provided for under the LWO: reinstatement, back pay, and/or any other relief that a court may deem appropriate.
 - d. For a *willful violation* of this division, a court shall award as a penalty up to three times the amount of damages.
 - e. The court shall award reasonable attorney's fees and costs to a *covered employee* who prevails in any such private action and to a *covered employer* who prevails if the *covered employee's* suit is found to be frivolous.

6. **Prohibition against Retaliation.** Neither a *covered employer* nor a *covered employer's* representative shall take any action against a *covered employee* in retaliation for alleging noncompliance with the LWO or for providing information towards or cooperating in an investigation regarding compliance with the LWO. When undertaken for retaliatory purposes, *unfair immigration-related practice* has the same meaning as in California Labor Code section 1019(b)(1).
- a. California Labor Code section 1019(b)(1) prohibits any of the following practices:
- (1) Requesting more or different documents than required or refusal to honor documents that reasonably appear to be genuine.
 - (2) Using the federal E-Verify system to check employment authorization status of a person in a manner not required or not authorized.
 - (3) Threatening to file or the filing of a false police report.
 - (4) Threatening to contact or contacting immigration authorities.
- b. *Unfair immigration-related practice* does not include conduct undertaken at the express and specific direction or request of the federal government.

H. EMPLOYEE COMPLAINT PROCESS

1. **Employee Complaints.** A *covered employee* who alleges violation of any provision of the LWO by a *covered employer* may report such acts to the Living Wage Manager and, at the *covered employee's* discretion, exhaust available employer internal remedies. An employee making a complaint regarding a *covered employer's* compliance with the LWO may submit the complaint in writing to the Living Wage Manager, on the LWO Employee Complaint Form, which is included in Appendix B.
2. **Complaints Alleging Retaliation.** A *covered employee* claiming retaliation (such as termination, reduction in wages or benefits, adverse changes in working conditions, or an *unfair immigration-related practice*) under terms of the LWO may report the alleged retaliation to the Living Wage Manager in writing, on the LWO Employee Complaint Form, which is included in Appendix B.
3. **Confidentiality of Information during Investigation.** Consistent with the California Public Records Act, information and records obtained by the *City* in the course of its complaint investigations, including identity of the complainants and witnesses, shall be considered confidential and exempt from public disclosure during the course of the investigation.
4. **Investigation of Employee Complaints.** Upon receipt of a *covered employee's* written *complaint*, the *City* shall investigate and address any alleged violation of LWO requirements. Upon conclusion of the investigation, the Living Wage Manager shall notify the employee of the results.

5. **Resolution of Investigation into Employee Complaints.** The *City* will attempt to complete an investigation into an employee's *complaint* within 30 to 60 days. If the investigation is not complete within 60 days, the Living Wage Manager will notify the *covered employee* of the status of the investigation and provide regular status reports to the *covered employee* every 30 days until the investigation is completed.
6. **Submission of Additional Information after Completion of Investigation.** Upon completion of an investigation and upon approval from the Purchasing & Contracting Director, the Living Wage Manager will notify the *covered employee*, and the *covered employer* if appropriate, of the investigation results.
 - a. Either the *covered employee* or the *covered employer* may request reconsideration of the Living Wage Manager's investigation findings. Such request for reconsideration shall be based solely on discovery of new information, which, along with the written reconsideration request, shall be submitted to the Living Wage Manager, within 30 days of receiving notice of the findings.
 - b. If the request for reconsideration and new information is received before the 30 day deadline, the Living Wage Manager upon approval from the Purchasing & Contracting Director will re-evaluate the original *complaint* and notify the employee and the employer the result of the reconsideration.
 - c. If the request for reconsideration and the new information is submitted after the 30 day deadline, the discretion of whether to reopen the investigation shall lie solely with the Purchasing & Contracting Director.
7. **Payment of Amounts Due to Employees.** If corrective payments are required to be paid to *covered employees* in order to comply with the LWO, the *covered employer* shall pay the entire amount due to each *covered employee* in one payment within the time period required by the *City* in its notice to the *covered employer*.

City of San Diego

LIVING WAGE RATES

| EFFECTIVE DATES | INCREASE | CASH WAGE + HEALTH BENEFITS | FULL CASH WAGE |
|------------------------------|----------|--|------------------|
| July 1, 2014 – June 30, 2015 | 1.3% | \$11.80 + \$2.37 per hour in Health Benefits | \$14.17 per hour |
| July 1, 2013 – June 30, 2014 | 1.6% | \$11.65 + \$2.34 per hour in Health Benefits | \$13.99 per hour |
| July 1, 2012 – June 30, 2013 | 3.0% | \$11.47 + \$2.30 per hour in Health Benefits | \$13.77 per hour |
| July 1, 2011 – June 30, 2012 | 1.3% | \$11.14 + \$2.23 per hour in Health Benefits | \$13.37 per hour |
| July 1, 2010 – June 30, 2011 | 0.0% | \$11.00 + \$2.20 per hour in Health Benefits | \$13.20 per hour |
| July 1, 2009 – June 30, 2010 | 3.9% | \$11.00 + \$2.20 per hour in Health Benefits | \$13.20 per hour |
| July 1, 2008 – June 30, 2009 | 2.3% | \$10.58 + \$2.12 per hour in Health Benefits | \$12.70 per hour |
| July 1, 2007 – June 30, 2008 | 3.4% | \$10.34 + \$2.07 per hour in Health Benefits | \$12.41 per hour |
| July 1, 2006 – June 30, 2007 | N/A | \$10.00 + \$2.00 per hour in Health Benefits | \$12.00 per hour |

For additional information, please contact:

City of San Diego Living Wage Program
 202 C Street, MS 9A
 San Diego, CA 92101-4195
 Phone: 619/236-6682
 Fax: 619/533-3240

City of San Diego

**LIVING WAGE ORDINANCE
NOTICE AND FORMS**

The notice and forms listed below are approved by the City for use in conjunction with these Rules. When these Rules refer to the use of a notice or form, only the current version included in this Appendix B may be used.

NOTICES:

Living Wage Ordinance Notice to Employees (English, Spanish)

Affordable Care Act Information (English, Spanish)

Earned Income Tax Credit Information (English, Spanish)

FORMS:

Living Wage Ordinance Certification of Compliance

Living Wage Ordinance Application for Exemption

Living Wage Ordinance Employee Complaint Form (English, Spanish)

LIVING WAGE ORDINANCE



ORDENANZA DEL SUELDO DIGNO

NOTICE TO EMPLOYEES

This employer is a contractor with the City of San Diego. This contract is subject to the Living Wage Ordinance. You must be paid "a living wage" for any hours you work on this contract.

THESE ARE YOUR RIGHTS...

MINIMUM HOURLY PAY:

◆ \$14.17/hour without health benefits.

OR

◆ \$11.80/hour plus at least \$2.37/hour in health benefits.

- ◆ It's the employer's choice whether to provide health benefits.
- ◆ If health benefits cost less than \$2.37/hour, the difference is added to the hourly wage.
- ◆ Rates are adjusted annually; listed rates are effective from July 1, 2014, through June 30, 2015.

MINIMUM DAYS OFF PER YEAR:

- ◆ 10 paid days for vacation, sick leave, or other personal need
 - ◆ Days off are in addition to paid holidays.
 - ◆ Days off are pro-rated based on hours worked at living wage rate.

AND

◆ 10 unpaid days for personal or family illness.

RETALIATION IS PROHIBITED:

◆ Employers may not fire, reduce pay or discriminate against a worker for filing a complaint.

FOR MORE INFORMATION

For more information or to obtain a complaint form if you believe your rights are being violated, please contact:

AVISO PARA EMPLEADOS

Este empleador es contratista de la Ciudad de San Diego. Este contrato está sujeto a la Ordenanza del Sueldo Digno. Usted debe ser pagado "un sueldo digno" por cada hora trabajada bajo este contrato.

ESTOS SON SUS DERECHOS...

COMPENSACIÓN MÍNIMA POR HORA:

◆ \$14.17/hora sin prestaciones médicas.

O

◆ \$11.80/hora más un mínimo de \$2.37/hora de beneficios médicos.

- ◆ Es la elección del empleador de ofrecer beneficios médicos.
- ◆ Si los beneficios médicos cuestan menos de \$2.37/hora, la diferencia es añadida al salario.
- ◆ El sueldo se ajusta anualmente; el sueldo actual tiene vigencia de Julio 1, 2014, hasta Junio 30, 2015.

MÍNIMO DÍAS LIBRES CADA AÑO:

- ◆ 10 días pagados para vacaciones, enfermedad, o razones personales
 - ◆ Días libres son agregados a los días festivos.
 - ◆ Días libres son ajustados por horas trabajadas al sueldo digno.

Y

◆ 10 días sin paga personales o por enfermedad familiar.

SE PROHIBE CUALQUIER TIPO DE REPRESALIA:

◆ Los empleadores no pueden despedir, reducir la paga, ni discriminar contra un trabajador que solicita una queja..

PARA MAYOR INFORMACION

Para más información o para obtener un formulario de quejas si usted considera que sus derechos han sido violados, por favor llame:

LIVING WAGE PROGRAM

PURCHASING & CONTRACTING DEPARTMENT, CITY OF SAN DIEGO

202 C Street, MS 9A, San Diego, CA 92101

Phone (619) 236-6682 Fax (619) 533-3240

www.sandiego.gov/purchasing/programs/

A.C.A.

AFFORDABLE CARE ACT

The federal law called the *Patient Protection and Affordable Care Act* provides a number of ways to help make quality health care coverage more affordable.

For individuals, financial assistance is available on a sliding scale, with more support for those who earn less.

Millions of Californians will qualify for government assistance to make insurance more affordable.

LEY DE CUIDADO DE SALUD ASEQUIBLE

La ley federal de *Protección al Paciente y Cuidado de Salud Asequible* brinda varias maneras para hacer que su cobertura de cuidado de salud sea más accesible.

Las personas pueden recibir ayuda financiera de acuerdo a una escala proporcional que dará más ayuda a quienes tengan menos ingresos.

Millones de californianos calificarán para obtener ayuda del gobierno haciendo el seguro médico más accesible.

COVERED CALIFORNIA

Covered California is a state agency created to help Californians who don't get health insurance from their job or a public program.

If you have health insurance through work or a public program, keep it. But if not, Covered California can help.

Assistance is based on your income. If your income is limited, you may be eligible for free coverage through Medi-Cal. And no one can be denied for having a pre-existing medical condition.

COVERED CALIFORNIA

Covered California es una agencia estatal creada para ayudar a los californianos que no reciben seguro médico de su trabajo o de un programa público.

Si tiene seguro médico a través de su trabajo o un programa público, consérvelo. Si no, Covered California le puede ayudar.

La ayuda se basa en sus ingresos. Si su ingreso es limitado, usted puede ser elegible para la cobertura gratuita a través de Medi-Cal. Y no pueden negársela a nadie por tener una condición médica preexistente.

FOR MORE INFORMATION

CALL 800-300-1506

VISIT www.CoveredCA.com

PARA MÁS INFORMACIÓN

LLAME AL 800-300-0213

VISITE www.CoveredCA.com/espanol/

العربية (Arabic)
800-826-6317

فارسی (Farsi)
800-921-8879

ខ្មែរ (Khmer)
800-906-8528

Español (Spanish)
800-300-0213

Հայերեն (Armenian)
800-996-1009

Filipino
800-983-8816

한국어 (Korean)
800-738-9116

Русский (Russian)
800-778-7695

中文 (Chinese)
800-300-1533

Hmoob (Hmong)
800-771-2156

ລາວ (Lao)
800-357-7976

Tiếng Việt (Vietnamese)
800-652-9528

E.I.T.C.

Earned Income Tax Credit

The Earned Income Tax Credit, or EITC, is a tax break for people who work but do not earn high incomes. Taxpayers who qualify and claim the credit could pay less federal tax, pay no tax, or receive a refund.

All people eligible for EITC have 7 things in common:

1. Must have earned income.
2. Must have a valid Social Security number.
3. Cannot file as married filing separately.
4. Generally cannot be a nonresident alien.
5. Cannot be a qualifying child of another person.
6. Cannot be filing Form 2555 or Form 2555-EZ.
7. Investment income amount is limited.

The 4 most common EITC filing errors:

1. Claiming a child who's not a qualifying child.
2. Married taxpayers who incorrectly file as single or head of household.
3. Misreporting income.
4. Incorrect Social Security Numbers.

For more information:

CALL 1.800.829.1040
VISIT www.irs.gov/eitc
ASK YOUR TAX PREPARER

El Crédito Tributario por Ingreso del Trabajo

El Crédito Tributario por Ingreso de Trabajo, o EITC, es un beneficio tributario para las personas que trabajan pero que no ganan mucho dinero. Los contribuyentes que reúnen los requisitos y reclaman el crédito podrían pagar menos impuesto federal, no pagar ningún impuesto federal o hasta recibir un reembolso.

Todas las personas que reúnen los requisitos para el EITC tienen 7 cosas en común:

1. Tienen que tener ingreso de trabajo
2. Tienen que tener un número de seguro social válido
3. No pueden presentar la declaración como casados que presentan por separado
4. Por lo general, no pueden ser extranjeros no residentes
5. No pueden ser hijo calificado de otra persona
6. No pueden presentar el Formulario 2555 o el Formulario 2555-EZ
7. El ingreso de inversiones es limitado

Los 4 errores más frecuentes que se cometen cuando se reclama el EITC:

1. Reclamar un hijo que no es un hijo calificado
2. Contribuyentes casados que presentan la declaración incorrectamente como soltero o cabeza de familia
3. Declarar el ingreso incorrectamente
4. Números de seguro social incorrectos

Para más información:

LLAME AL 1.800.829.1040
VISITE www.irs.gov/espanol
PREGÚNTELE A SU PREPARADOR DE IMPUESTOS

**LIVING WAGE ORDINANCE
CERTIFICATION OF COMPLIANCE**



Send form to:

**CITY OF SAN DIEGO
LIVING WAGE PROGRAM**
202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 236-6682 Fax (619) 533-3240

COMPANY INFORMATION

| | |
|-----------------------|----------------|
| Company Name: | |
| Company Address: | |
| Company Contact Name: | Contact Phone: |

CONTRACT INFORMATION

| | |
|---|-------------|
| Contract Number (if no number, state location): | Start Date: |
| Contract Amount: | End Date: |
| Purpose/Service Provided: | |

TERMS OF COMPLIANCE

A contractor or subcontractor working on or under the authority of an agreement subject to the Living Wage Ordinance (LWO) must comply with all applicable provisions of the LWO unless specifically approved for an exemption. The basic requirements of the LWO obligate contractors and subcontractors to:

- (a) Pay covered employees the current fiscal year's hourly wage rate of \$11.80 and health benefits rate of \$2.37 (adjusted annually on July 1).
- (b) If any lesser amount is applied toward the health benefits rate, to add this difference to the hourly wage rate as cash payment.
- (c) Provide a minimum of 10 compensated leave days per year for vacation, sick leave, or other personal need at the employee's request and permit 10 additional uncompensated leave days for personal or family illness when accrued compensated leave days have been used.
- (d) Annually distribute a notice with the first paycheck after July 1 to inform all covered employees of requirements of the LWO, their possible right to Federal Earned Income Tax Credit, and the possible availability of health insurance coverage under the Affordable Care Act.
- (e) Prohibit retaliation against any covered employee who alleges noncompliance with the requirements of the LWO.
- (f) Permit access for authorized City representatives to work sites and relevant records to review compliance with the LWO.
- (g) Maintain wage and benefit records for covered employees for 3 years after final payment.
- (h) Perform at least fifty percent (50%) of the work with its own employees.
- (i) File a Living Wage Ordinance Certification of Compliance with the City within 30 days of becoming a covered employer.

If a subcontractor fails to submit this completed form, the prime contractor may be found in violation of the LWO for failure to ensure its subcontractor's compliance. This may result in a withhold of payments or termination of the agreement.

CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California to comply with the requirements of the Living Wage Ordinance.

| | |
|-------------------|--------------------|
| _____ | _____ |
| Name of Signatory | Title of Signatory |
| _____ | _____ |
| Signature | Date |

FOR OFFICIAL CITY USE ONLY

| | | |
|------------------|--------------|------------------|
| Date of Receipt: | LWO Analyst: | Contract Number: |
|------------------|--------------|------------------|

**LIVING WAGE ORDINANCE
APPLICATION FOR EXEMPTION**



Send form to:

**CITY OF SAN DIEGO
LIVING WAGE PROGRAM**

202 C Street, MS 8A, San Diego, CA 92101
Phone (619) 236-6682 Fax (619) 533-3240

COMPANY INFORMATION

| | |
|-----------------------|----------------|
| Company Name: | Vendor ID: |
| Company Address: | Contact Phone: |
| Company Contact Name: | Contact Email: |

CONTRACT INFORMATION

| | |
|---------------------------|-------------|
| Contract Number: | Start Date: |
| Contract Amount: | End Date: |
| Purpose/Service Provided: | |

EXEMPTION BASIS

Check one option and submit required supporting documentation.

Business employs 12 or fewer employees, including parent and subsidiary entities, for each working day in each of 20 or more calendar weeks in current or preceding calendar year and, in the City's determination, will not need to retain more than a total of 12 employees (including subcontractors) to perform work related to the City contract. §SDMC 22.4215 (c)(1).

Required documentation: Correspondence on company letterhead and signed by a legally authorized officer documenting number of employees and listing subcontractors AND copy of firm's State of California Employment Development Department *Quarterly Contribution Return and Report of Wages (Continuation)* [form DE9C] for prior two quarters AND list of subcontractors AND copy of Purchase Agreement or Purchase Order.

Business organized under IRS section 501(c)(3) and highest officer's salary, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee. §SDMC 22.4215 (c)(2).

Required documentation: Copy of IRS letter recognizing status as non-profit organized under section 501(c)(3) AND statement of salary listing corporation's highest paid officer and lowest paid worker, both computed on an hourly basis AND copy of Purchase Agreement or Purchase Order.

Collective Bargaining Agreement is in place which specifically supersedes the Living Wage Ordinance. §SDMC 22.4240.

Required documentation: Copy of collective bargaining agreement OR written confirmation from union representing employees working on the contract AND copy of Purchase Agreement or Purchase Order.

Other – Cite LWO Municipal Code section: _____

Required documentation: Correspondence explaining basis of exemption request AND copy of Purchase Agreement or Purchase Order.

CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California that information submitted in support of this application is true and correct to the best of the contractor's knowledge.

| | |
|-------------------|--------------------|
| _____ | _____ |
| Name of Signatory | Title of Signatory |
| _____ | _____ |
| Signature | Date |

Approval of this application exempts only the listed contractor from the LWO during performance of this contract. A subcontractor performing work on this contract is not exempt unless separate exemption has been applied for and approved.

FOR OFFICIAL CITY USE ONLY

Not Approved – Reason: _____

Approved LWO Analyst: _____ Date: _____

**EMPLOYEE COMPLAINT FORM
FORMULARIO DE QUEJAS**



Send form to:

**CITY OF SAN DIEGO
LIVING WAGE PROGRAM**
202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 236-6682 Fax (619) 533-3240

**COMPANY INFORMATION
INFORMACIÓN SOBRE LA COMPAÑÍA**

| | |
|--|--|
| Company Name: <i>Nombre de la Compañía:</i> | |
| Company Address: <i>Dirección de la Compañía:</i> | |
| Company Phone: <i>Teléfono de la Compañía:</i> | |
| Work Site Address: <i>Sitio de Trabajo:</i> | |
| Supervisor Name: <i>SupervisorGerente:</i> | |

**EMPLOYEE INFORMATION
INFORMACIÓN SOBRE EL EMPLEADO**

| | |
|---|--|
| Your Name: <i>Su Nombre:</i> | Social Security Number: <i>Número de Seguro Social:</i> |
| Address: <i>Dirección:</i> | |
| Telephone number <i>Número de teléfono</i> | Home: <i>Residencia:</i> |
| Work: <i>Trabajo:</i> | |
| Hourly Rate Paid: <i>Sueldo por hora:</i> | Overtime Rate Paid: <i>Sueldo por horas extras:</i> |
| Current job title: <i>Puesto:</i> | How long have you worked for this company? <i>¿Cuánto tiempo ha trabajado para esta compañía?</i> |
| Do you receive health benefits? <i>¿Recibe usted beneficios médicos?</i> | If Yes, how much do you pay for your benefits? <i>¿Si Sí, cuánto le hacen pagar por sus beneficios médicos?</i> |

**EMPLOYEE COMPLAINT
QUEJA DEL EMPLEADO**

| |
|--|
| |
| |
| |
| |
| |
| |
| |

Use reverse side if needed
Use el reverso si requiere de mas espacio

Signature · *Firma del Empleado*

Date · *Fecha*

**FOR OFFICIAL CITY USE ONLY
PARA USO OFICIAL DE LA CIUDAD SOLAMENTE**

| | | |
|------------------|--------------|------------------|
| Date of Receipt: | LWO Analyst: | Contract Number: |
|------------------|--------------|------------------|

**LIVING WAGE
ORDINANCE
CERTIFICATION OF
COMPLIANCE**

**LIVING WAGE ORDINANCE
CERTIFICATION OF COMPLIANCE**



Send form to:

**CITY OF SAN DIEGO
LIVING WAGE PROGRAM**
202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 236-6682 Fax (619) 533-3240

COMPANY INFORMATION

Company Name: San Diego Tourism Authority
 Company Address: 750 B St. Ste 1500 San Diego, CA 9201
 Company Contact Name: Athnea Salas Contact Phone: 619-537-2880

CONTRACT INFORMATION

Contract Number (if no number, state location): _____ Start Date: 7/1/15
 Contract Amount: _____ End Date: 6/30/14
 Purpose/Service Provided: DESTINATION MARKETING

TERMS OF COMPLIANCE

A contractor or subcontractor working on or under the authority of an agreement subject to the Living Wage Ordinance (LWO) must comply with all applicable provisions of the LWO unless specifically approved for an exemption. The basic requirements of the LWO obligate contractors and subcontractors to:


- (a) Pay covered employees a wage no less than the minimum initial compensation of \$11.65 per hour (adjusted annually on July 1).
- (b) Provide covered employees a health benefit of \$2.34 per hour (adjusted annually on July 1) or, if any lesser amount is applied toward a health plan, to add this difference to the hourly wage rate as cash payment.
- (c) Provide a minimum of 10 compensated days off per year for vacation, sick leave, or other personal need at the employee's request and provide 10 additional uncompensated days off for personal or family illness when accrued compensated days off have been used.
- (d) Inform all covered employees of their possible right to Federal Earned Income Tax Credit within 30 days of contract start.
- (e) Permit access for authorized City representatives to work sites and relevant records to review compliance with the LWO.
- (f) Maintain wage and benefit records for covered employees for 3 years after final payment.
- (g) Prohibit retaliation against any employee who alleges non-compliance with the requirements of the LWO.

If a subcontractor fails to submit this completed form, the prime contractor may be found in violation of the LWO for failure to ensure its subcontractor's compliance. This may result in a withhold of payments or termination of the agreement.

CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California to comply with the requirements of the Living Wage Ordinance.

Athnea Salas

 Name of Signatory


 Signature

VP of Human Resources

 Title of Signatory
8/1/13

 Date

FOR OFFICIAL CITY USE ONLY

Date of Receipt: 8/2/13 LWO Analyst: GA Contract Number: _____



THE CITY OF SAN DIEGO

September 9, 2013

Ms. Jere Batten
Batten Accountancy, Inc.
2020 Camino del Rio North, #810
San Diego, CA 92108

Dear Ms. Batten:

Subject: Approval of Living Wage Ordinance Exemption Request

This office has approved your request, received August 2, 2013, for exemption from the City of San Diego's Living Wage Ordinance working for the San Diego Tourism Marketing District Operating Agreement. This exemption is granted in accordance with San Diego Municipal Code §22.4215(b)(1) and is based upon your submission of documentation to show your firm does not retain more than twelve employees.

This exemption will no longer be valid if your firm's workforce, including any subcontractors, increases to more than twelve employees. Should such an increase in your workforce occur, you are required to notify this office immediately.

San Diego Municipal Code §22.4235(a) authorizes periodic reviews of appropriate records to verify compliance. In the future, your firm may receive requests for documentation (such as copies of EDD Quarterly Wage and Withholding Reports or payroll records) to validate your continued exempt status.

Detailed information regarding the Living Wage Ordinance is posted on the City's website at: www.sandiego.gov/administration/programs/. If you have questions regarding the Ordinance, please contact me at (619) 236-6682 or LMHernandez@sandiego.gov.

Sincerely,

A handwritten signature in cursive script that reads "Lucy M. Hernandez".

Lucy M. Hernandez
Living Wage Senior Compliance Officer
Purchasing & Contracting Department

cc: Lorin Stewart, Executive Director, San Diego Tourism Marketing District



THE CITY OF SAN DIEGO

October 22, 2013

Mr. John Lambeth
Civitas
1102 Corporation Way, Suite 140
Sacramento, CA 95831

Dear Mr. Lambeth:

Subject: Approval of Living Wage Ordinance Exemption Request

This office has approved your request, received August 2, 2013, for exemption from the City of San Diego's Living Wage Ordinance working for the San Diego Tourism Marketing District Operating Agreement. This exemption is granted in accordance with San Diego Municipal Code §22.4215(b)(1) and is based upon your submission of documentation to show your firm does not retain more than twelve employees.

This exemption will no longer be valid if your firm's workforce, including any subcontractors, increases to more than twelve employees. Should such an increase in your workforce occur, you are required to notify this office immediately.

San Diego Municipal Code §22.4235(a) authorizes periodic reviews of appropriate records to verify compliance. In the future, your firm may receive requests for documentation (such as copies of EDD Quarterly Wage and Withholding Reports or payroll records) to validate your continued exempt status.

Detailed information regarding the Living Wage Ordinance is posted on the City's website at: www.sandiego.gov/administration/programs/. If you have questions regarding the Ordinance, please contact me at (619) 236-6682 or LMHernandez@sandiego.gov.

Sincerely,

A handwritten signature in cursive script that reads "Lucy M. Hernandez".

Lucy M. Hernandez
Living Wage Senior Compliance Officer
Purchasing & Contracting Department

cc: Lorin Stewart, Executive Director, San Diego Tourism Marketing District



THE CITY OF SAN DIEGO

May 13, 2013

Mr. C. Terry Brown, Chair
San Diego Tourism Marketing District Corporation
8880 Rio San Diego Dr., Ste. 800
San Diego, CA 92108

Dear Mr. Brown:

Subject: Approval of Living Wage Ordinance Exemption Request

This office has approved your request, received May 6, 2013, for exemption from the City of San Diego's Living Wage Ordinance on the San Diego Tourism Marketing District Operating Agreement. This exemption is granted in accordance with San Diego Municipal Code §22.4215(b)(1) and is based upon your submission of documentation to show your firm does not retain more than twelve employees.

This exemption will no longer be valid if your firm's workforce, including any subcontractors, increases to more than twelve employees. Should such an increase in your workforce occur, you are required to notify this office immediately.

San Diego Municipal Code §22.4235(a) authorizes periodic reviews of appropriate records to verify compliance. In the future, your firm may receive requests for documentation (such as copies of EDD Quarterly Wage and Withholding Reports or payroll records) to validate your continued exempt status.

Detailed information regarding the Living Wage Ordinance is posted on the City's website at: www.sandiego.gov/administration/programs/. If you have questions regarding the Ordinance, please contact me at 619/533-3948 or NNugent@sandiego.gov.

Sincerely,

Nora Nugent
Living Wage Manager
Administration Department

cc: Loren Stewart, Executive Director, San Diego Tourism Marketing District
Meredith Dibden-Brown, Office of Small Business Manager, City of San Diego



THE CITY OF SAN DIEGO

September 9, 2013

Mr. John Lambeth
Civitas
1025 Ninth Street, Suite 212
Sacramento, CA 95814

Dear Mr. Lambeth:

Subject: Approval of Living Wage Ordinance Exemption Request

This office has approved your request, received August 2, 2013, for exemption from the City of San Diego's Living Wage Ordinance working for the San Diego Tourism Marketing District Operating Agreement. This exemption is granted in accordance with San Diego Municipal Code §22.4215(b)(1) and is based upon your submission of documentation to show your firm does not retain more than twelve employees.

This exemption will no longer be valid if your firm's workforce, including any subcontractors, increases to more than twelve employees. Should such an increase in your workforce occur, you are required to notify this office immediately.

San Diego Municipal Code §22.4235(a) authorizes periodic reviews of appropriate records to verify compliance. In the future, your firm may receive requests for documentation (such as copies of EDD Quarterly Wage and Withholding Reports or payroll records) to validate your continued exempt status.

Detailed information regarding the Living Wage Ordinance is posted on the City's website at: www.sandiego.gov/administration/programs/. If you have questions regarding the Ordinance, please contact me at (619) 236-6682 or LMHernandez@sandiego.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lucy M. Hernandez".

Lucy M. Hernandez
Living Wage Senior Compliance Officer
Purchasing & Contracting Department

cc: Lorin Stewart, Executive Director, San Diego Tourism Marketing District



THE CITY OF SAN DIEGO

September 9, 2013

Ms. Julie P. Dubick, CEO
Balboa Park Celebration, Inc.
2131 Pan American Plaza
San Diego, CA 92101

Dear Ms. Dubick:

Subject: Approval of Living Wage Ordinance Exemption Request

This office has approved your request, received August 14, 2013, for exemption from the City of San Diego's Living Wage Ordinance working for the San Diego Tourism Marketing District Operating Agreement. This exemption is granted in accordance with San Diego Municipal Code §22.4215(b)(1) and is based upon your submission of documentation to show your firm does not retain more than twelve employees.

This exemption will no longer be valid if your firm's workforce, including any subcontractors, increases to more than twelve employees. Should such an increase in your workforce occur, you are required to notify this office immediately.

San Diego Municipal Code §22.4235(a) authorizes periodic reviews of appropriate records to verify compliance. In the future, your firm may receive requests for documentation (such as copies of EDD Quarterly Wage and Withholding Reports or payroll records) to validate your continued exempt status.

Detailed information regarding the Living Wage Ordinance is posted on the City's website at: www.sandiego.gov/administration/programs/. If you have questions regarding the Ordinance, please contact me at (619) 236-6682 or LMHernandez@sandiego.gov.

Sincerely,

A handwritten signature in cursive script that reads 'Lucy M. Hernandez'.

Lucy M. Hernandez
Living Wage Senior Compliance Officer
Purchasing & Contracting Department

cc: Lorin Stewart, Executive Director, San Diego Tourism Marketing District