

**First Amendment to Operating Agreement Between the City of  
San Diego and the San Diego Tourism Marketing District Corporation  
Approved by the City Council on  
November 26, 2012 and restated on March 26, 2013**

On November 26, 2012 the City Council approved, and on March 26, 2013 the City Council reapproved, that certain Operating Agreement between the City of San Diego (City) and the San Diego Tourism Marketing District Corporation (TMD Corporation) for the expenditure of assessments on hotels in the Tourism Marketing District (TMD), which has yet to be signed for the City. That agreement is referenced in this Amendment as the 2013 Operating Agreement.

The City and TMD Corporation hereby agree to amend the 2013 Operating Agreement as follows. This Amendment is intended to be consistent with the other provisions of the 2013 Operating Agreement except as provided in paragraph e. below.

- a. **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 ending November 25, 2017.
- b. **HOTEL INDEMNIFICATION:** Within 30 days of Council approval of this Amendment, at least 20 of the top 25 largest hotels in the TMD by TOT volume, or a larger number of hotels that represent equivalent TOT volume, will execute agreements to hold harmless, indemnify, and defend the City, its elected officials and other officers, employees, and agents from any and all claims by that hotel or its successors and assigns to refund, reimbursement or relief from the collection of TMD assessments; such indemnity shall be limited to the amount of assessment due from each indemnifying hotel, shall apply only to claims from hotel guests and maybe withdrawn annually upon written notice to the City within the first 15 days of April.
- c. **SELF-INSURANCE:** Pursuant to Section 5.1.3 of the Operating Agreement, the City Council may direct the retention in the City's TMD Fund of some or all of the proceeds of the assessment on hotels which do not execute waivers pursuant to paragraph b. above in order to self-insure against the risk that refunds of assessments will be ordered by a court and to fund the City's defense of any suit seeking such an order.
- d. **TMD INDEMNIFICATION:** 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 third party 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 distribution of TMD assessments to TMD Corporation pursuant to Section 5.1.3 of the Operating Agreement as necessary to liquidate this promise.
- e. **LIMIT ON INDEMNIFICATION:** Neither TMD hotels nor the TMD Corporation need hold harmless, indemnify or defend any claim arising from the acts or

f. INDEMNIFICATION OF CITY OFFICERS: Paragraph 6.1.1 of the 2013 Operating Agreement is hereby amended to read as set forth in Paragraph 6.1 of the 2008 Operating Agreement such that City elected officials are expressly identified as beneficiaries of the indemnification promise.

g. ACCOUNTABILITY: The TMD Corporation will post to its website within five business days following TMD's approval or filing of:

1. 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;
2. public information about grants awarded including recipients' entire application for TMD Corporation funding and any attachment 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 Agreement as Exhibit A, and;
3. performance reviews of grant recipients.

h. RELEASE OF FUNDING TO TMD CORPORATION. This Amendment shall be effective upon its execution by the later of the two parties to do so. Immediately upon satisfaction of paragraph b. of this Amendment above, the City shall release to TMD Corporation assessments collected by the City under the 2007 Management Plan and the 2012 Management Plan in accordance with the 2013 Operating Agreement.

i. BALBOA PARK CENTENNIAL CELEBRATION. TMD Corporation will encourage and expect an appropriate application from Balboa Park Centennial Celebration, Inc. (BPCI), for 10% of total TMD disburseable assessment revenue per year for two consecutive years (FY 14 and FY 2015). In accordance with TMD District Management Plan and Grant Application Guidelines, any funds allocated to BPCI shall be used for sales, marketing and advertising efforts approved by TMD Corporation to support the 2015 Centennial Celebration, and will deliver the specific benefit to the TMD assessed lodging establishments 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).

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

Effective Date:  
Date: