COPY

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 Promotion 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, following the procedures included in the Ordinance, the Council initiated the establishment of a Tourism Marketing District [TMD] and held a public hearing on December 3, 2007, wherein a weighted majority of the proposed business assessees were verified as not casting ballots in opposition to the establishment of the TMD; and

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

WHEREAS, the tourism industry has formed the San Diego Tourism Promotion Corporation, a non-profit mutual benefit corporation, for the purposes, among other things, of contracting with the City to operate the TMD;

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, developed by the industry proponents of the District, outlining the anticipated operations of the District and establishing a set of budgetary guidelines, including proposed budget line items, for the five-year duration of the District. The Plan was approved by the San Diego City Council on October 15, 2007 as Resolution Number R-303077.

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1.2 Tourism Marketing District or District – An area established pursuant to San Diego Municipal Code section 61.2501 et seq., within which businesses pay assessments to fund activities pursuant to section 61.2501 et seq.

1.3 Annual Report of Activities – A prospective report, as defined in the Plan, due for submission to the City by March 1st of each year during duration of the District, detailing proposed activities and budget for the following fiscal year, submitted by Corporation and approved by the City Council.

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.

1.5 Subcontractor – Any entity, 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.

1.6 TMD Fund – A City of San Diego fund, established and administered by the City's Auditor and Comptroller, for the receipt of TMD assessment funds from the City Treasurer and the disbursement of funds to the Corporation for activities to the City for eligible City oversight and administrative functions.

1.7 Operating Manual – The Operating Manual for Economic Development Programs, produced by the City of San Diego's City Planning & Community Investment Department, Economic Division, as amended from time to time.

1.8 Fixed Funding Allocations – Fixed Funding Allocations are delineated in the Plan and designate specific entities to which fixed funding allocations shall be made. Fixed Funding allocations may not be altered without a modification to the Plan.

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 April 1, 2008 [Effective Date] and continue for five (5) years until March 31, 2013 [Term], unless terminated earlier in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Agreement will terminate on disestablishment of the District pursuant to San Diego Municipal Code [Code] section 61.2526.

2.2 This Agreement may not be extended beyond the Term. After five years of operation, the TMD may continue to operate on the basis of assessments levied upon renewal to be accomplished by balloting the assessed businesses and through an affirmative vote by the

City Council pursuant to San Diego Municipal Code section 65.2501 et seq. as amended from time to time.

ARTICLE III

OBLIGATIONS OF CORPORATION

3.1 GENERAL OBLIGATIONS

3.1.1 Corporation shall perform all services necessary for the proper management of the TMD. 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 A and incorporated herein) and the Annual Report of Activities, under the direction of the Board of Directors of Corporation.

3.1.2 The total payment to be paid to Corporation under this Agreement shall not exceed the amount of TMD Assessments collected and shall conform with the Plan's budget guidelines and budget spreadsheet.

3.1.3 Any modifications to the Plan shall be submitted to the San Diego City Council for approval 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 FIXED FUNDING ALLOCATIONS

3.2.1 Corporation shall make Fixed Funding Allocations in accordance with the Plan. Administrative costs billed by City shall be billed directly to the TMD Fund administered by City Auditor and Comptroller. City shall provide Corporation a summary of and accounting for the administrative costs billed to TMD on no less than a quarterly basis. Any modification of these fixed funding allocations shall be accomplished through an amendment to the Plan pursuant to San Diego Municipal Code sections 61.2521 and 61.2522, as amended from time to time.

3.2.2 Beginning with the Effective Date of this Agreement, and as and when TMD assessment revenues are available for these purposes, Corporation shall relieve the City of the remainder of certain funding obligations to organizations as allocated in the FY2008 appropriations ordinance, in the amounts specified below, by allowing City to reimburse itself from the TMD Fund for payments made to said organizations:

San Diego ConVis	$4,415,206
San Diego North ConVis	$ 190,452
San Diego Film Commission	$ 330,909
San Diego Bowl Game Association	$ 195,569

SD International Sports Council	$ 72,900
San Diego Hall of Champions	$ 37,500
Accessible San Diego	$ 32,520
Elite Racing/Rock & Roll Marathon	$ 9,760
California State Games	$ 7,714
San Diego Crew Classic	$ 2,324
Total for FY 2008	$5,294,853

3.2.3 Within the first six months of FY2009, as and when TMD assessment revenues are available for these purposes, Corporation shall provide an allocation of funds to each organization in an amount as specified below:

San Diego Film Commission	$330,909
San Diego Bowl Game Association	$195,569
SD International Sports Council	$ 72,900
San Diego Hall of Champions	$ 37,500
Accessible San Diego	$ 32,520
Elite Racing/Rock & Roll Marathon	$ 9,760
California State Games	$ 7,714
San Diego Crew Classic	$ 2,324
Total for FY 2009	$689,196

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 listed specifically 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 TMD assessment revenues are fully available for expenditure for those purposes.

3.4 **START-UP COSTS**

3.4.1 Corporation shall reimburse City, through TMD funds, for actual start-up costs as described in the Plan in an amount not to exceed $60,000 by allowing the City to reimburse itself from the TMD assessments collected in FY2008. Such reimbursement shall be completed no later than July 31, 2008.

3.4.2 Corporation shall submit to City for reimbursement, agreed-upon proof of actual start-up costs, in an amount not to exceed $112,000. City shall reimburse Corporation from FY2008 TMD assessments on or before July 31, 2008.

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, for fixed allocations and funds awarded through an application process;

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 tourism promotion 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) provide on at least a quarterly basis reports to City on the target and actual outcomes (by types of activities, specific marketing initiative, by entity funded, and detailing the way in which all assessed businesses are benefited) along with details of funds expended;

e) allocate revenue and resources on an annualized basis in accordance with the Plan and as outlined herein under Fixed Funding Allocations;

f) distribute a newsletter or other form of communication, at least quarterly to every business assessed in the TMD, and include, among other things, a directory of Corporation's current Board Members;

g) Hold no fewer than six regularly scheduled open meetings each year, which are noticed and conducted in compliance with the Ralph M. Brown Act, and which 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;

h) 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 TMD, on or before September 30 each year following the TMD's first full fiscal year of operations;

i) Prepare a prospective Report of Activities, as required under the San Diego Municipal Code section 61.2523 as amended from time to time, to be delivered to the City by March 1st of each year during the duration of the Agreement, along with a report on the Corporation's return-on-investments in keeping with the Corporation's obligations to TMD assessees and the City;

j) Ensure that TMD assessment 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. TMD assessment funds may not be applied toward any upgrades;

k) Ensure that TMD assessment funds are applied toward a maximum of $50 per day, per person, for meals (excluding sales tax and a maximum 15% gratuity, which are also eligible expenditures), and only when the provision of meals is required in order to perform the Corporation's obligations under the Plan and this Agreement. TMD assessment funds may not be used to pay for any alcoholic beverages consumed with meals;

l) Ensure that, in the event that meals are provided to individuals who are not employees or Board members of Corporation, or provided within the scope of a business development meeting, proper documentation concerning the purpose of the meeting, the benefit or anticipated benefit to the TMD and a list of attendees shall be provided to City. Documentation must be provided in order for City to authorize reimbursement to the Corporation for TMD assessment funds used for these purposes. The same limitation on the use of TMD assessment funds herein shall apply to those individuals being hosted by the Corporation;

m) Ensure that TMD assessment funds are applied only toward the equivalent of the cost of a standard room in a business class hotel, or toward the conference rates of the host hotel when attending a conference, when out-of-town lodging is required in order to perform the Corporation's obligations under the Plan and this Agreement. The same limitation shall apply when the provision of lodging in San Diego is required for out-of-town visitors on TMD business;

n) 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 TMD funds at the time it is authorized, approved or ratified, and that the primary objective for Corporation's or Corporation's subcontractors' participation is to gain exposure for San Diego and to secure access to important decision makers

representing prominent convention and tourism groups. City acknowledges that from time to time there may arise a business requirement of event sponsorships by Corporation and Corporation's subcontractors in order to market San Diego as a tourist destination in a highly competitive market. If alcoholic beverages are consumed during event sponsorships, they may not be paid for with TMD assessment funds; and

o) Ensure that, should Corporation's subcontractors request reimbursement from TMD 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. Should subcontractor express a need to expend TMD funds for travel, meals, hosting meals, out-of-town or in-town lodging or sponsorships that is outside the scope of work, statement of activities or budget, the subcontractor must apply in writing, in advance of the expenditure, to Corporation for permission to incur such expenses.

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 Promotion Corporation with City of San Diego Tourism Marketing District Assessment Funds." Such acknowledgment shall be prominently displayed on all such promotional materials. When any such promotional material expresses an opinion regarding a matter of public policy, the acknowledgment shall note that the opinion(s) stated in the promotional materials does not necessarily reflect the policy of the City of San Diego.

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 comply with San Diego Municipal Code section 35.0128, as amended from time to time, and the Plan regarding the Transient Occupancy Tax [TOT]. City shall provide an annual statement of TOT revenues consistent and in

compliance with the Plan and Code.

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, for approval by the San Diego City Council. The budget shall be filed with the City prior to the end of each City fiscal year beginning during the duration 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 TMD 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, ADVANCES, REIMBURSEMENTS

4.1 **REVENUES.** All funds collected pursuant to the TMD assessments shall be timely deposited and appropriately credited by City to the TMD Fund. City shall provide, on a mutually agreed upon thirty (30) day cycle, a report of TMD assessment revenues credited to the TMD Fund and expenditures, advances or transfers from the TMD Fund.

4.1.1 The total revenues from the TMD will vary depending upon the gross room revenues, minus exempt revenues, collected by hotel businesses subject to the TMD assessment. Revenues are projected under the Plan throughout the term of the Agreement.

4.1.2 From the TMD assessment revenues funding this Agreement, City shall reimburse Corporation for expenditures throughout the term of the Agreement upon receipt of proper evidence of expenditures as described herein or contractual obligations in amounts not to exceed TMD assessment revenues present in City accounts.

4.1.3 Any expenditures by Corporation which are not within the prescribed limitations of this Agreement, the Plan, the Operating Manual, 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 TMD and shall be borne solely by Corporation.

4.2 ADVANCES

4.2.1 Upon a written request from Corporation, City may make an initial cash advance to Corporation for working capital purposes, not to exceed $50,000.

4.2.2 Upon a written request from Corporation, City may make subsequent cash advances to the Corporation for program expenses. The cumulative outstanding amount of these advances may not exceed $2,000,000 or fifteen percent (15%) of the annual program budget, whichever is less. These advances may only be made by the City from the TMD Fund if sufficient funds are available in the TMD Fund at the time of the request, and subject to certification of funds availability by the City Auditor and Comptroller. The written request shall indicate a vote in the affirmative by the Board to request such an advance and details of the amount, timing, and proposed use of such funds.

4.2.3 Upon a written request from Corporation, City may make cash advances on behalf of the Corporation to a designated recipient organization, for on-going programs under the conditions specified in this Section. The amount of each advance may not exceed $2,000,000 or fifteen percent (15%) of the annual TMD budget for each designated recipient organization, whichever is less. The cumulative amount of all outstanding advances, including without limitation, advances to Corporation, may not exceed $5,000,000. These advances may only be made by City from the TMD Fund based on available cash within the TMD Fund at the time of the request, and subject to certification of funds availability by the City Auditor and Comptroller.

City may advance TMD funds to recipient organizations subject to each of the following:

a) receipt by City of a signed agreement between Corporation and the recipient organization, detailing the amount, timing, permitted use of such funds, 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 City of a full accounting by recipient organization and verified by Corporation of any TMD funds previously advanced to recipient organization; and

d) all advances to recipient organizations shall be returned 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.

4.2.4 All advances to Corporation shall be returned on or before the expiration of this Agreement (or upon termination, if earlier), either as a reduction of the final request for reimbursement, or as a transfer of funds from Corporation to City.

4.3 REIMBURSEMENT REQUESTS

4.3.1 Corporation shall submit to City, on a monthly basis, its requests for reimbursement (in duplicate), along with all supporting receipts, invoices, checks, payroll statements, bank statements, and any other records for services performed, in accordance with the procedures described in the Operating Manual. Each expenditure submitted for reimbursement must show as cleared on the submitted bank statements. Bank statements, alone, will not be accepted by City, except under extraordinary circumstances.

4.3.2 All requests for reimbursement 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 TMD". All reimbursement requests shall be signed by an officer of Corporation (not the Executive Director).

4.3.3 Partial reimbursement requests may be submitted in accordance with the Operating Manual.

4.4 REIMBURSEMENTS

4.4.1 City shall reimburse Corporation for TMD activities, upon receipt of proper evidence of Corporation's expenditures and contractual obligations pursuant to this Agreement.

4.4.2 City shall pay all properly submitted requests for reimbursement to Corporation no later than thirty (30) calendar days from receipt of Corporation's completed reimbursement request packet, subject to availability of District assessment funds collected by the City (i.e., Cash in Treasury in TMD Fund), for the District.

4.4.3 Corporation shall not use District assessment 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 of such debarment, suspension, or ineligibility.

4.4.4 The final reimbursement to Corporation under this Agreement shall be withheld until all expenditures have been accounted for, and Corporation has submitted a Final Expenditure Report summarizing the activities Corporation has performed pursuant to this Agreement.

4.5 REQUESTS INELIGIBLE FOR TMD REIMBURSEMENT

4.5.1 Corporation and Corporation's subcontractors shall not use TMD assessment funds for alcoholic beverages. Corporation's subcontractors shall not use TMD assessment funds for travel, meals, lodging, or entertainment expenses, unless authorized by Corporation in advance, as provided for elsewhere in this Agreement.

4.5.2 If Corporation receives (or has received) additional funding for its marketing and promotion efforts from a source or sources other than through the City's allocation of TMD 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 expenditures to the appropriate 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.

4.5.3 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 TMD 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, except as provided in this Section, or that is not supported with proper documentation as required in the City's Operating Manual, shall be considered an ineligible expenditure.

4.6 DIRECT PAYMENTS

4.6.1 City may, at the written request of Corporation, execute an interfund transfer (or other action) to effect payment from the TMD Fund to another City fund for eligible expenses.

4.6.2 City may, at the written request of Corporation, make a direct payment from TMD Fund to a Subcontractor for eligible expenses, provided:

a) the amount of the direct payment exceeds fifty percent (50%) of Corporation's outstanding advance; and

b) the subcontract, furnished to City, complies with the requirements set forth herein.

4.7 **ADJUSTMENTS BETWEEN BUDGETARY LINE ITEMS.** Any Corporation requests for adjustments between line items that exceed ten percent (10%) of line item, as described in the Plan or Annual Report of Activities, shall be submitted to City in writing, and shall be approved by City in writing, prior to Corporation's expenditure of additional funds in that budgetary line item. City, at its sole discretion,may consider such an adjustment an amendment to the Plan and require City Council authorization for approval.

4.8 **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.

4.9 **PROJECT INCOME.** Should Corporation use TMD assessment revenue to generate Project Income, Corporation may use such income to improve the services performed by Corporation under this Agreement. "Project Income" means revenues generated by Corporation from receipt of assessment funds, including interest income accrued by Corporation on assessment district funds. Corporation shall separately account for any and all Project Income accrued and/or used by Corporation in the account established. In addition, Corporation shall include an accounting of any and all Project Income accrued and/or used by Corporation in its monthly report, and in the annual audit, submitted to the City.

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 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.

5.2 **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 TMD 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 TMD assessment funds on hand at the time of the expiration or termination, and any accounts receivable attributable to Corporation's use of TMD 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

Corporation shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, and any and all matters following a settlement, dismissal, or judgment related thereto, including but not limited to any and all administrative, constitutional or any other challenges to the validity or establishment of the TMD, excepting any claim asserted prior to the Effective Date, and liability established, for damages or injuries to any person or property, including without limitation, injury to Corporation's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are in any manner directly or indirectly connected with, or are caused, or claimed to be caused, by 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 all expenses of investigating and defending against same, including, without limitation, attorney fees and costs. Corporation's obligations under this section shall not include any claims or liability arising from the established sole negligence or sole willful misconduct of City, its elected officials, departments, officers, employees, representatives, and/or agents. Where comparative negligence is determined to have been contributory, principles of comparative negligence will be followed and each party will bear the proportionate cost of any damage attributable to the negligence of that party, its officers, employees and agents. City may, at its own election, conduct the defense, or participate

in the defense, of any claim related in any way to this indemnification. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, City shall consult with Corporation, and Corporation shall pay the City for all costs related thereto, including, without limitation, reasonable fees and costs. For purposes of this Section, City's consultation with Corporation does not create an obligation on part of City, but rather an advisory role on part of Corporation.

6.2 **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 **INSURANCE REQUIREMENTS**. Corporation shall deliver to City a current certificate of insurance for:

7.2.1 Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars ($2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars ($4,000,000);

7.2.2 Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and

7.2.3 Workers' Compensation Insurance, as required by the laws of the State of California for all of Corporation's employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least than One Million Dollars ($1,000,000).

7.3 **Additional Insureds**. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

7.4 **Primary & Non-Contributory**. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with City's Economic Development Department.

7.5 **Qualified Insurer(s).** All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to City. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

7.6 **Deductibles/Retentions**. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Corporation and must be disclosed and acceptable to City at the time evidence of insurance is provided.

7.7 **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.

7.8 **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 City for changed circumstances or City's reasonable re-evaluation of risk levels related to Corporation's obligations under this Agreement.

7.9 **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. All premiums for fidelity bonds required of officers, agents, and employees shall be paid by Corporation and such premiums shall be a corporate expense.

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 TMD activities and allocation of TMD 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 tourism industry and have a fundamental duty to advance the general welfare of the tourism 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 TMD (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 ninety (90) days after the end of each Fiscal Year. All expenses incurred in connection with the audits shall be the financial responsibility of the Corporation.

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 sections 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 their 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 contractor 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 fro 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 contractor and subcontractor to comply with the provisions of this section to maintain a drug-free workplace. Corporation, and each of its contractors and 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 engage, and shall ensure that each of its subcontractors is prohibited from engaging in any political activity during the term of this Agreement. "Political activity," shall mean any communication to any electorate in support of, or in opposition to, any ballot measure or any candidate in any federal, state, municipal, 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

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11.3 **No Political Activity.** Contractor shall not use and 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.

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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 **Operating Manual.** Notwithstanding any other provision in this Agreement, Corporation acknowledges receipt of, and shall comply with the Operating Manual, including without limitation those provisions related to fiscal accountability, eligible and ineligible project expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. Corporation shall seek and obtain City's prior written approval of any deviation from the Operating Manual's prescribed practices and procedures.

11.7 **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 Promotion Corporation
_____
_____
_____

With a copy by First Class Mail to: _____
_____
_____
_____

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.

11.8 **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.

11.9 **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.

11.10 **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.

11.11 **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.

11.12 **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.

11.13 **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.

11.14 **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.

11.15 **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.

11.16 **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.

11.17 **Waiver.** City's failure to insist upon the strict performance of any of Corporation's obligations under this Agreement, in one or more instance, 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.

11.18 **Survival.** Any obligation which accrues under this Agreement prior to its expiration or termination shall survive the expiration or earlier termination of this Agreement.

11.19 **Governing Law**. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.

11.20 **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.

11.21 **Consents, Approvals.** Neither City nor Corporation may unreasonably withhold or unreasonably delay any consent or approval required by this Agreement.

11.22 **City's Consent, Discretion**. Whenever required under this Agreement, City's consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego

or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

11.23 **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: 4/17/08

SAN DIEGO TOURISM PROMOTION CORPORATION, a California non-profit corporation

BY: _____

Name: C. Terry Brown

Title: Chairman

Date: 5/12/08

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: Jay M. Goldstone

Title: Chief Operating Officer

APPROVED AS TO FORM AND LEGALITY:

Date: 5-13-08

MICHAEL J. AGUIRRE, City Attorney

BY: _____

Name: KIMBERLY HARRELL

Title: DEPUTY CITY ATTORNEY

R 303621

EXHIBIT A

SAN DIEGO TOURISM MARKETING DISTRICT MANAGEMENT PLAN

SAN DIEGO TOURISM MARKETING DISTRICT MANAGEMENT PLAN

September 2007

Developed by a coalition of lodging business owners and managers
representing the San Diego County Hotel Motel Association
and the San Diego Lodging Industry Association.

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OVERVIEW AND EXECUTIVE SUMMARY

Conceived and developed by a coalition of lodging business owners and managers representing the San Diego County Hotel Motel Association and the San Diego Lodging Industry Association, the San Diego Tourism Marketing District (District) is a benefit assessment district proposed to improve tourism activity and hotel room night consumption in the City of San Diego.

History
As a result of diminishing public resources available for effective and competitive destination marketing, local lodging industry leadership began discussing alternative funding sources and available options over 5 years ago. Since that time, a working group comprised of lodging industry representatives has held dozens of meetings with proposed assessed businesses, stakeholder groups and interested parties. On May 8, 2007 the San Diego City Council adopted an enabling Procedural Ordinance that allows for the creation of a Tourism Marketing District. Herein, representatives of the San Diego Lodging Industry have taken steps to formalize a District Management Plan in hopes of gaining industry support to form the proposed District.

Location
The Proposed Tourism Marketing District will be citywide, inclusive of all areas within the city limits of the City of San Diego. There are no benefit zones proposed within the District. A map of the District is included in this Plan as Appendix A.

Assessed Businesses
The assessment is proposed to be levied upon 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 for each lodging *business* of 70 or more sleeping rooms in the City of San Diego. *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. *Transient* has the same meaning as in Municipal Code section 35.0102.

The assessment imposed is levied solely upon the lodging businesses within the district. The business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that said 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."

Method & Basis of Levying Assessment
The annual assessment is based upon 2% of gross room revenue from transient stays for lodging businesses with 70 or more sleeping rooms operating within the City of San Diego. The rate of 2% will remain fixed for the duration of this District. Certain room revenue will be exempt from assessment.

Budget
The District budget for the first six months of collections and disbursements is estimated to be approximately $14.2 million and $29.2 million for the first 12 months.

Activities
Revenue generated from the assessment will fund marketing programs to increase tourism and promote the City of San Diego as a tourist, meeting, convention and special event destination.

Formation
District formation requires submittal of petitions in support from lodging businesses representing more than 50% of the total annual assessment. After City staff verifies the petitions the matter goes to the City Council. The City Council will then require that a ballot be mailed to all affected hotels with the returns to be counted by the City Clerk. The City Council will then hold a hearing and be advised of results of the ballot count. The Council shall not establish the District nor shall it impose an assessment if there is a majority protest. A majority protest exists if ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected businesses. In the absence of a majority protest the Council may proceed with establishing the District by resolution.

Management & Oversight
The implementation of this District Management Plan will be the responsibility of the Board of Directors of the San Diego Tourism Promotion Corporation (SDTPC), a private non-profit entity composed exclusively of the assessed lodging businesses. Only business owners or owner's representative paying the tourism district assessment have the right to vote in annual elections of the association. And only business owners or owner's representative paying the tourism district assessment have the right to seek nomination or election to the board of directors of the association. Oversight is provided by the City to ensure that the expenditure of funds is consistent with the District Management Plan.

Proposed Timing and Duration of Activities
The District will begin operations January 1, 2008 or at a later date set by the City Council. Assessed businesses will be responsible for calculating the assessments beginning on the start-up date set by the City Council. Assessed businesses will be required to remit the assessment on a monthly basis beginning 45 days after the effective start date of the District. The District Management Plan is a five (5) year plan and will terminate with the expiration of the District. Each activity of the District will have its own schedule, but none will last longer than the duration of the District. After five years, hotel business owners may petition the City to extend the district for an additional 10 years subject to the requirements of the Tourism Marketing District Procedural Ordinance SDMC Section 61.2501 et seq.

WHAT IS A TOURISM MARKETING DISTRICT (TMD)?

The San Diego Tourism Marketing District follows the model of successful Tourism Business Improvement Districts (BID's) that utilize the efficiencies of private sector operation in the market-based promotion of local and regional tourism. Tourism BID's, such as the proposed SDTMD allow lodging and other tourism-related business owners to organize their efforts to increase tourism. In San Diego, lodging business owners within the district will assess

themselves in order to fund the District and those funds will be used to provide programs and services that specifically benefit the assessed lodging businesses.

San Diego Tourism Marketing District funded programs and services may include, but are not limited to:

- Marketing of the Area
- Tourism Promotion Activities
- Special Events and Programs

In California, Tourism BID's, such as the TMD, are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law), the Parking and Business Improvement District Law of 1989 (BID Law), or by ordinance of a Charter City. The local lodging businesses have chosen to ask the City of San Diego to create an enabling (procedural) ordinance modeled on the 1994 PBID Law. This State statute and the City ordinance allow for the establishment of an assessment district to raise funds within a specific geographic area; in this case the City of San Diego, for the purpose of promoting tourism and hotel room occupancy.

There are many benefits to Tourism BID's:

- Funds must be spent to benefit those who pay;
- Funds cannot be diverted for other government programs or expenditures;
- Tourism BID's are customized to fit the needs of each tourism district;
- Tourism BID's allow for a wide range of services;
- Requires petition support from lodging businesses paying over 50% of the annual proposed assessments (1994 PBID Law);
- Provides a stable funding source for tourism promotion.

The San Diego Tourism Marketing District will NOT fund:

- The acquisition, construction, installation or maintenance of any tangible 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 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 area, 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 to the area.
- Expenditures not consistent with the terms of this District Management Plan.

City's Promotional Responsibilities
As provided in the San Diego Municipal Code section 35.0128 the original 4% Transient Occupancy Tax, which was approved by San Diego voters, will continue to be used to promote the City.

To this end, the City will provide the SDTPC, on an annual basis, a statement detailing actual TOT revenues collected under Code section 35.0103 that are available for promoting the City. This statement will also describe the prescribed use of revenues from the City's TOT to include, but not be limited to:

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

TOURISM MARKETING DISTRICT ADMINISTRATION

CITY ADMINISTRATION AND OVERSIGHT

City requires petitions to be submitted to the City in support of establishing the TMD in accordance with SDMC 61.2501 et seq. If sufficient petitions are submitted in support of the proposed district then City Council shall adopt a Resolution of Intention to establish the district and shall cause a ballot to be mailed to all affected businesses and give notice of the required public hearing. If there is no majority protest then the City Council shall adopt a Resolution establishing the district and shall authorize the levying of assessments for a period of five (5) years.

The City of San Diego will oversee the collection of the assessments and will ensure that the expenditure of funds is consistent with the District Management Plan.

Initially, the City proposes to retain no more than $300,000 of TMD assessments on an annual basis, pro-rated at the establishment of the District and adjusted thereafter at the beginning of each fiscal year, to reflect an automatic annual escalator of 4.5%. These funds will be used to cover the costs of the City's administration of the District, as follows:

- City Planning & Community Investment Department - Economic Development Division
  Agreement monitoring and reimbursement of expenditures and coordination of annual City Council process.
- Office of the City Treasurer
  Processing and reporting of assessments remitted and auditing of reported/remitted assessments.

- Office of the City Auditor and Comptroller
  Approval of direct payments and issuance of checks and auditing of agreement between City and the "tourism marketing district association".
- Office of the City Attorney
  Preparation of resolutions and other documents required for annual City Council process and review and preparation of documents for administration of the District.

Prior to the beginning of each Fiscal year, the City Council shall consider, in an open meeting, the proposed services and activities for the fiscal year as presented in the annual District Management Plan.

SAN DIEGO TOURISM PROMOTION CORPORATION ADMINISTRATION

The enabling Procedural Ordinance provides that the City will contract with a designated nonprofit corporation to implement a plan and carry out specified activities, subject to the terms and conditions enumerated in the contract with that nonprofit. The City proposes to contract with the San Diego Tourism Promotion Corporation (SDTPC), a private, non-profit corporation, to serve as the San Diego Tourism Marketing District Association to manage the District assessments and to contract for implementation of the proposed marketing programs and services as outlined in the District Management Plan.

Purpose

The specific purpose of this private, non-profit corporation is to create a positive economic, fiscal and employment impact on lodging businesses in the City of San Diego through the effective and judicious allocation of its revenue and resources to measurably successful tourism promotion, marketing and advertising programs.

General Powers

Subject to the provisions and limitations of the California Nonprofit Mutual Benefit Corporation Law and any other applicable laws, and subject to any limitations of the articles of incorporation or 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 tourism marketing district assessment have the right to vote in annual elections of the association. And only business owners or business owner's representatives paying the tourism marketing district assessment have the right to seek nomination or election to the board of directors of the association. 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 association are intended and understood to represent and further the economic interest of the City's tourism industry. Board members or officers have a fundamental duty to advance the general welfare of the tourism industry in San Diego.

Initial Directors: The initial Board of Directors shall be appointed by the Incorporator of the Corporation, and shall serve for staggered terms of one, two or three years. At the first duly constituted meeting of the Board of Directors, the initial Board members shall draw lots to determine their individual term. It is anticipated that the initial Board of Directors will consist of (In alphabetical order):

Luis Barrios, Hacienda Hotel Old Town
Richard Bartell, Bartell Hotels
C. Terry Brown, Atlas Hotels
Patrick Duffy, Hilton La Jolla Torrey Pines
Bill Evans, Evans Hotels
Mohsen Khaleghi, Hyatt Regency Mission Bay Spa & Marina
Bob Rauch, Homewood Suites
Joe Terzi, Starwood Hotels
Ray Warren, Marriott Hotels

Board Nominations & Elections
Elections to the Board of Directors will be held annually beginning at the end of the first full fiscal year of operation for the Corporation. 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 the distribution and collection of ballots, will be defined in the Bylaws of the Corporation. SDTPC anticipates retaining a third-party contractor 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 the seating of new Board members.

Board Standards and Conduct
The San Diego Tourism Promotion Corporation will be organized as a 501(c)6, mutual benefit corporation, and will have as its purpose the management of the resources of the San Diego Tourism Marketing District. The primary measure of the success of the Corporation will be the benefit it delivers to the assessed businesses. Because the delivery of a 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 SDTPC.

In addition, State law provides, and the City's enabling Procedural Ordinance recognizes, that SDTPC 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."

However, SDTPC shall comply with Ralph M. Brown Act, California Government Code section 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 section 6250 *et. seq.*, for all documents relating to activities of the district.

Furthermore, the SDTPC 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 San Diego Tourism Promotion Corporation will serve as volunteers. They will receive no monetary compensation or remuneration 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, workman's compensation insurance, disability insurance, or paid vacation, will be provided.

Report of Activities
The SDTPC 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 full fiscal 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.

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:

- Any proposed changes to the boundaries of the tourism marketing district or to any benefit zones or classification of businesses within 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.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this Division.

The San Diego City Council [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 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 an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

Modifications of District Management Plan
The SDTPC may, at any time, request that the San Diego City Council modify the district management plan. Any modification of the district management plan shall be made pursuant to the following requirements:

- Upon the written request of the tourism marketing district association, the San Diego City Council [Council] may modify the district management plan after conducting one public hearing on the proposed modifications. The Council may modify the activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution to make the modifications after holding a required public hearing. Notice of the public hearing and the proposed modifications shall be published as provided in San Diego Municipal Code section 61.2507. If the modification includes the levy of a new or increased assessment, the Council shall comply with Code section 61.2507.
- The 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.

Marketing Support Programs Application Guidelines & Criteria

The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services that can deliver a measurable return on investment, and that are in addition to the programs fund by fixed allocations within its budget.

It is anticipated that the San Diego Tourism Promotion Corporation will solicit and/or receive applications for funding from numerous, diverse organizations, and entities. Specific application guidelines will be created and available soon after the SDTPC is appointed by the City to manage the Tourism Marketing District. Those guidelines, criteria and application will be created at the sole discretion of the Board of Directors of the San Diego Tourism Promotion Corporation. Changes to the guidelines, criteria and application can only be made by an action of the Board of Directors of the Corporation. (See Attachment 1, Framework for Application Criteria & Process.)

Limiting Contact Between Applicants and the Board of Directors: It will be vital that the application and allocation process for funding from the SDTPC be open, fair and efficient. To this end, the written submission of the 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, and to disclose any such contact or communication prior to participating in the consideration of that applicant's submission.

ACTIVITIES & BUDGETS

A general budget has been developed by lodging industry representatives to serve as a guideline in order that the San Diego Tourism Promotion Corporation (SDTPC) deliver measurable benefit and service levels throughout the District. An annual budget will be developed and approved by the SDTPC Board and included in the Report of Activities submitted to the City Council annually.

SDTPC: A NON-MARKETING ENTITY

The San Diego Tourism Promotion Corporation is not envisioned as a marketing entity, but rather as a funding conduit for the development and implementation of effective marketing programs and services that benefit the assessed businesses within the District. SDTPC will be responsible for the allocation and distribution of the available revenue and will contract with qualified third-party vendors to supply marketing programs and services as required and approved by the Board of Directors.

SDTPC BUDGET GUIDELINES

The San Diego Tourism Promotion Corporation (SDTPC) will contract for marketing programs and services to promote the City of San Diego as a tourism destination and to fund projects, programs, and activities that specifically benefit hotels within the boundaries of the District.

General Guidelines:

(a) Marketing programs and services will be broadly defined by the Board of the SDTPC in order to remain current with changing consumer demands, tourism products, and marketing and communication technologies.

(b) Marketing programs and services will take many traditional and/or innovative forms based on the target market and proposed strategy and tactics for implementation. Therefore, marketing programs and services could include, but not be limited to: i) advertising; ii) marketing promotion; iii) direct sales; iv) press and/or public relations; v) new product development; vi) prospective marketing; vii) visitor services; viii) market research; ix) e marketing & web strategies, x) partnership marketing; xi) special events, and more as identified.

(c) Marketing programs and services will seek to benefit all assessed hotels within the boundaries of the District through a diverse mix of projects, programs and activities. It is recognized that all marketing programs and services will have multi-level benefits to the hotels in the District. Primary benefits will be realized directly by hotels in the target market area or market segment served by a particular contract program or service. Secondary benefits will be realized by all hotels in the District through the successful implementation of marketing programs and services that

increase hotel occupancies, reduce available hotel inventory and create compression within the marketplace.

(d) Marketing programs will have measurable result. The Board of Directors of the SDTPC will establish and regularly update a clearly defined application process for proposed marketing programs. This application will articulate the required qualifications of applicants, the target return-on-investment, and the measurement of results, among other criteria.

Fixed Allocations:

(e) At a minimum, the SDTPC shall annually allocate fifty percent (50%) of its District revenue and resources to a single comprehensive entity for the purpose of destination marketing for the City of San Diego, which, for the initial five (5) year term of this District, shall be the San Diego Convention & Visitors Bureau or its successor organization. A draft Memorandum of Understanding between the San Diego Convention & Visitors Bureau and the San Diego Tourism Promotion Corporation is attached (Attachment 2) that outlines the general condition of the measurements for this fixed funding. This draft is provided within for information only and will be the basis for a legally binding contract between these same parties once the District is established.

(f) The SDTPC shall annually allocate ten percent (10%) of its District revenue and resources to a single comprehensive entity for the purpose of destination marketing for the northern region of the City of San Diego, which, for the initial five (5) year term of this District, shall be the San Diego North Convention & Visitors Bureau or its successor organization. This ten percent (10%) shall represent the annual minimum and maximum allocation available to the San Diego North Convention & Visitors Bureau. A draft Memorandum of Understanding between the San Diego North Convention & Visitors Bureau and the San Diego Tourism Promotion Corporation is attached (Attachment 3) that outlines the general conditions of and measurements for this fixed funding. This draft is provided within for information only and will be the basis for a legally binding contract between these same parties once the District is established.

(g) The SDTPC shall annually allocate five percent (5%) of its revenue to a marketing opportunity/catastrophe reserve fund for the specific purpose of maximizing unique and unforeseen opportunities or reacting to unforeseen situations to positively impact the tourism economy in the San Diego region. For the initial five (5) year term of the district, the SDTPC marketing opportunity/catastrophe reserve fund shall be capped at a maximum of $10,000,000 in principal contributions until such time as it is required for use. Interest returned on the holding and investment of the principal shall be re-invested into the SDTPC marketing opportunity/catastrophe reserve fund.

If the District is renewed following the initial five (5) year term, the available balance, including interest, of the SDTPC marketing opportunity/catastrophe reserve

fund shall be made available to the Corporation managing the renewed District. These previously accumulated funds shall be spent consistent with the allocations in this plan. Should the District not be renewed, the previously accumulated funds shall be proportionally refunded and distributed to the assessed businesses.

(h) Operating Expenses: the SDTPC may annually allocate a maximum of three percent (3%) of its revenue to the operation and management of the SDTPC.

Marketing Support Programs:

(i) The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services, either directly or indirectly through a competitive application process, that can deliver a measurable return on investment, and that are in addition to the programs funded by fixed allocations within the budget.

SDTMD ANTICIPATED 5 YEAR REVENUE INCOME AND DISTRIBUTION

Estimated revenues and expenditures are shown for each fiscal year. Certain assumptions and calculations were utilized in developing the projections and budgets below. Those assumptions are listed separately in this document in Attachment 4.

Due to the anticipated mid-fiscal-year start of the District, the first and last fiscal years reflect approximately 6 months worth of activities.

Adjustments to Budget
Any Annual budget surplus or deficit will be rolled over into the following year's TMD budget. Assessments will be set accordingly, within the constraints of the annual adjustment, to adjust for surpluses or deficits that are carried forward.

Bonds
No Bonds shall be issued in connection with this District.

Budget Spreadsheet

TMD FIVE YEAR BUDGET	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013
	Approx. 6 months	12 months	12 months	12 months	12 months	Approx 6 months
Estimated TOT Revenue	**$ 79,600,000**	**$168,752,000**	**$ 178,877,120**	**$ 189,609,747**	**$ 200,986,332**	**$106,477,000**
Estimated TMD Revenue	**$14,176,381**	**$30,053,928**	**$31,857,163**	**$33,768,593**	**$35,794,709**	**$18,971,196**
Fixed Allocations	**$9,186,396**	**$18,721,548**	**$19,114,298**	**$20,261,156**	**$21,476,825**	**$11,382,718**
San Diego CVB	$7,081,000	$15,026,964	$15,928,582	$16,884,297	$17,897,355	$9,485,598
San Diego North CVB	$1,416,200	$3,005,393	$3,185,716	$3,376,859	$3,579,471	$1,897,120
San Diego Film Commission *	$330,909	$330,908				
San Diego Bowl Game Association *	$195,569	$195,568				
SD International Sports Council *	$72,900	$72,900				
San Diego Hall of Champions *	$37,500	$37,500				
Accessible San Diego *	$32,520	$32,519				
Elite Racing/Rock & Roll Marathon *	$9,760	$9,759				
California State Games *	$7,714	$7,713				
San Diego Crew Classic *	$2,324	$2,324				
Opportunity/Catastrophe Reserve @ 5%	**$708,819**	**$1,502,696**	**$1,592,858**	**$1,688,430**	**$1,789,735**	**$948,560**
SDTPC Operating Budget @ 3%	**$425,291**	**$901,618**	**$955,715**	**$1,013,058**	**$1,073,841**	**$569,136**
Admin. Fee Paid to City	$150,000	$313,500	$327,608	$342,350	$357,756	$186,930
Available for Operating Expenses	$275,291	$588,118	$628,107	$670,708	$716,085	$382,206
Personnel						
Executive Director (Salary & Benefits)	$100,000	$209,000	$218,405	$228,233	$238,504	$124,618
Admin. Support (Salary & Benefits)	$30,000	$62,700	$65,522	$68,470	$71,551	$37,385
Contract Services						
Legal & Compliance/Corporate Secretary	$36,000	$72,000	$72,000	$72,000	$72,000	$36,000
Accounting/CPA/Corporate Treasurer	$36,000	$72,000	$72,000	$72,000	$72,000	$36,000
Audits (as required)	$30,000	$85,000	$85,000	$85,000	$85,000	$45,000
Overhead						
See Page 14	$35,000	$73,150	$76,442	$79,882	$83,476	$43,617
Contingency/Carry-over	$8,291	$14,268	$38,739	$65,123	$93,554	$59,585
Total Fixed Distribution	**$10,320,506**	**$21,125,862**	**$21,662,871**	**$22,962,644**	**$24,340,401**	**$12,900,414**
One-time Start-up Costs						
Reimburse Actual District Start-up Costs	$112,000	$0	$0	$0	$0	$0
Estimated City Start-up Costs	$60,000	$0	$0	$0	$0	$0
Total Start-up Costs	$172,000	$0	$0	$0	$0	$0
Total Variable Distribution	**$3,683,875**	**$8,928,066**	**$10,194,292**	**$10,805,949**	**$11,454,308**	**$6,070,782**
Marketing Support Programs	TBD	TBD	TBD	TBD	TBD	TBD
Competitive Application Process	TBD	TBD	TBD	TBD	TBD	TBD
*Groups with fixed funding from TMD for 12 months, shown here over 18 months budget cycle.						

Operating Expenses
The SDTPC may annually allocate a maximum of three percent (3%) of its revenue to the operation and management of the SDTPC. A detailed budget will be submitted and approved annually and shall include:

- Cost of service fees to be paid to the City of San Diego, including:
  One time actual start-up costs not to exceed $60,000 for:
  - System development including labor and hardware/software requirements
  - City Management time to establish policies and procedures, bring on additional staff, and implement program

  An annual amount of no more than $300,000 of TMD assessments, pro-rated at the establishment of the District and adjusted thereafter at the beginning of each fiscal year, to reflect an automatic annual escalator of 4.5%, for fixed cost increases for the following services:
  - CP&CI Economic Development division - Contract Management and Reimbursements
  - Office of the City Treasurer - Collection Administration, Management and Auditing
  - Office of the City Auditor and Comptroller-Check Disbursements and Program Auditing
  - Office of the City Attorney - Legal Review and Document Preparation
- Estimated operating expenses including wages, benefits, and administrative and overhead costs such as rent, supplies, utilities and travel;
- Estimated cost of directors and officers liability insurance in the amount of $5,000,000 per director, plus additional insurance as required by the City;
- As required, estimated cost of performance audits of contracted entities receiving funding from SDTPC unless otherwise stipulated;
- As required, estimated cost of an annual financial audit of the SDTPC.

FUNDING PROCESS

Method & Basis of Levying Assessment
The proposed annual assessment amount is 2% of gross room revenue, which is defined as "total consideration charged to a *transient* as shown on the guest receipt for the occupancy of a room, or portion thereof, in a Hotel."

Gross room revenue will exclude revenue derived from a person who has exercised occupancy or was entitled to occupancy for more than one month where a month is defined as a 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. Gross room revenues will also exclude certain revenues where exempt by treaty or by Federal or State laws or where transients are Federal or State Government officials exercising occupancy on government business as prescribed in the resolution establishing the district.

Transient occupancy taxes should not be included when calculating the assessment.

Total annualized assessments for the first year are estimated to be $29.2 million. There shall be no increase in the assessment rate for the term of the district. Total collections may change in subsequent years according to the inventory of hotel rooms, the room rates, and the occupancy levels. No other sources of funds are anticipated from the District.

Operators Duties and Accounting Procedures

(a) The amount of assessment, if passed on to each Transient, shall be separately stated from the amount of Rent charged and any other 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.

(b) Each business shall account separately for, and maintain separate monthly summary totals for, taxable and non-taxable Rent and for the assessment.

(c) Each business shall maintain its financial and accounting records in accordance with established 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, for a period of three years within the boundaries of this City, 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 Hotel shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

Time and Manner for Collecting Assessments

The collection of the assessments levied shall be made at the time and in the manner set forth by the San Diego City Council in the resolution establishing the district. It is proposed that assessments will be remitted on a monthly basis to the City Treasurer by each business using a self-reporting form that identifies the accounting periods for the previous month and the applicable gross room revenue and District assessment for each of those accounting periods.

Assessments levied for the purpose of providing improvements and promoting activities that benefit businesses are not taxes for the general benefit of a city, but are assessments for the activities which confer benefits upon the assessed businesses for which the activities are provided.

Penalties and Appeals
Pursuant to the resolution of establishment for the TMD, 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 establishment.

Any benefited business failing to remit the TMD assessment within the time required under the resolution of establishment shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency, and one-third of one percent (1/3 of 1%) for each day thereafter, including weekends and holidays. Any penalty assessed shall not exceed twenty-five percent (25%) of the amount of the assessment due payable for the entire reporting period. The penalty assessed shall be in addition to the amount of the assessment due during the period for which assessments were not timely paid.

In the event there is a determination by the City Treasurer that non-payment of an assessment is due to fraud, the City Treasurer may assess a penalty of twenty-five percent (25%) of the amount of the assessment for the period in which the fraud occurred. Such a penalty for fraud related to payments shall be assessed over the above any penalties assessed daily, as discussed above. A benefited business may, within fourteen (14) days after the service or mailing of a notice of penalty, make application in writing to the City Treasurer for a hearing of appeal. In exercising its appeal rights, a benefited business shall follow the same procedures articulated in San Diego Municipal Code Sections 35.0117 and 35.0118.

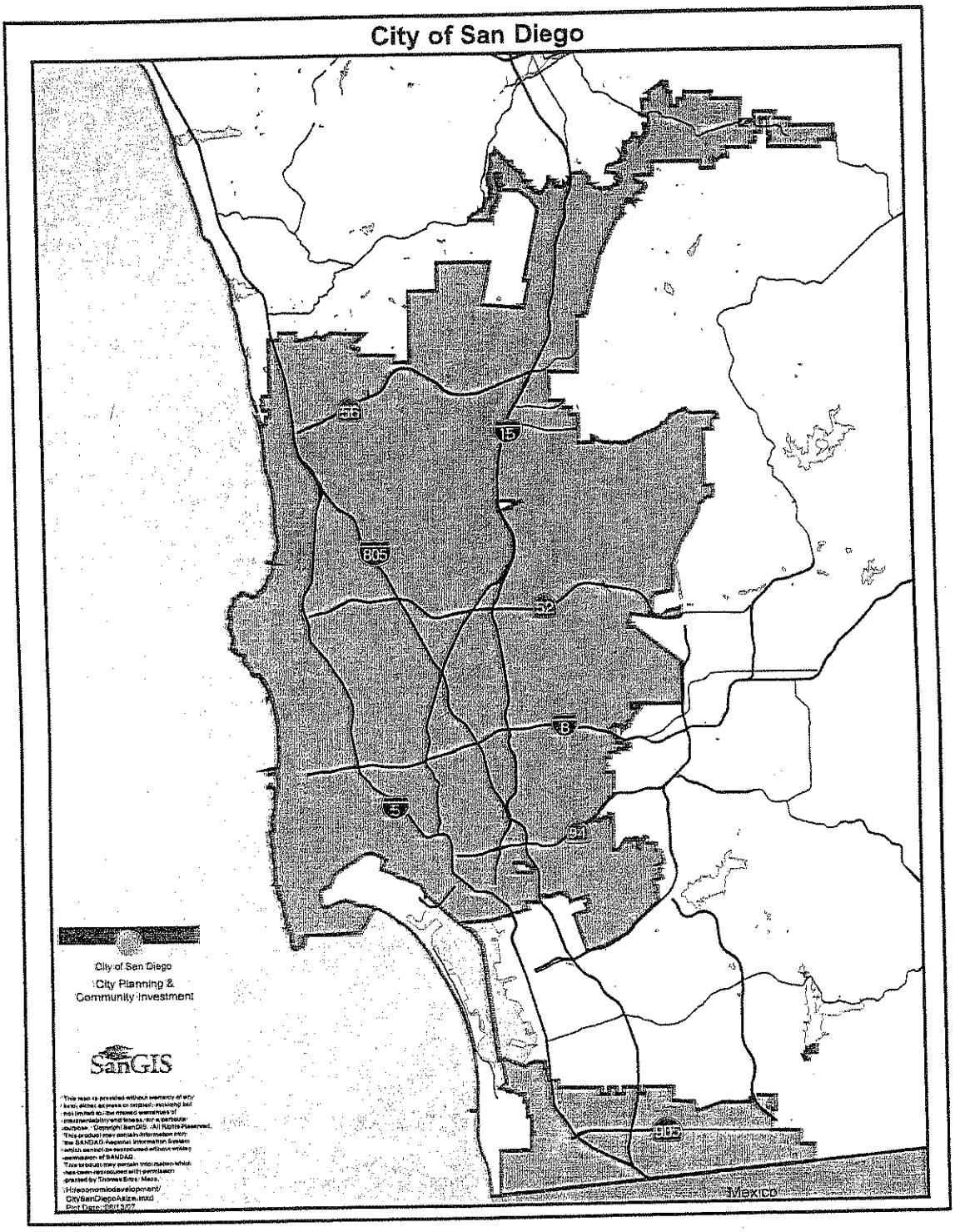
Assessments Based on Estimated Benefits
"Assessment" means a levy for the purpose of promoting activities which will benefit the businesses located within a tourism marketing district. Assessments levied under a tourism marketing district are not special taxes.

Assessments levied on businesses shall be levied on the basis of the degree of estimated benefit to the businesses within the tourism marketing district. The proposed assessment is a percentage of gross room revenue, and so when a hotel's revenue increases from the enhanced tourism marketing services provided through the TMD, the real dollar amount of the assessment will increase proportionately.

The district's activities are designed to provide benefits specifically for the assessed businesses by increasing tourism within the boundaries of the District and hence increasing hotel room occupancy and revenues. An indirect benefit may accrue to the surrounding community or to the public as a result of the activities to be provided with the assessment levied. These indirect benefits (if any) are incidental and inconsequential.

APPENDIX A

Map of District



APPENDIX B
List of Assessed Businesses

Hotel Name	Hotel Location
500 West Broadway	500 W Broadway
Bahia Resort Hotel	998 West Mission Bay Dr
Bay Club Hotel & Marina	2131 Shelter Island Dr
Beach Cottages, The	4255 Ocean Bl
Best Western Americana Inn	815 W San Ysidro Bl
Best Western Bayside Inn	555 W Ash St
Best Western Blue Sea Lodge	707 Pacific Beach Dr
Best Western Hacienda Hotel	4104 Harney St
Best Western Inn By The Sea	7830 Fay Av
Best Western Inn-Miramar	9310 Kearny Mesa Rd
Best Western Mission Bay	2575 Clairemont Dr
Best Western Seven Seas Lodge	411 Hotel Circle S Cr
Best Western Posada @ Yacht	5005 North Harbor Dr
Bristol Court Hotel	1055 01st Av
California Suites Hotel	5415 Clairemont Mesa Bl
Carmel Highland G & T Resort	14455 Penasquitos Dr
Catamaran Resort Hotel	3999 Mission Bl
Chateau La Jolla	233 Prospect St
Clarion Hotel Bayview	660 K St
Comfort Inn & Suites Hotel Cir	2201 Hotel Circle S Cr
Comfort Inn & Suites Zoo/Sw	2485 Hotel Circle Pl
Comfort Inn Airport-Old Town	1955 San Diego Av
Comfort Inn Gaslamp	660 G St
Comfort Suites	631 Cam Del Rio S
Courtyard By Marriott	8651 Spectrum Center Bl
Courtyard San Diego Downtown	530 Broadway
Dana Inn	1710 West Mission Bay Dr
Days Inn	4540 Mission Bay Dr
Days Inn	543 Hotel S Cr
Days Inn & Suites	5550 Clairemont Mesa Bl
Days Inn Suites-Point Loma	3350 Rosecrans St
Del Mar Hilton	15575 Jimmy Durante Bl
Doubletree Club Hotel	1515 Hotel Circle South
Doubletree Hotel Del Mar	11915 El Cam Real
Doubletree Hotel San Diego-M.V	7450 Hazard Center Dr

APPENDIX B
List of Assessed Businesses – continued

Hotel Name	Hotel Location
Econolodge	445 Hotel Circle S Cr
Economy Inn	230 Via De San Ysidro
Embassy Hotel	3645 Park Bl
Embassy Suites	601 Pacific Hy
Embassy Suites Hotel	4550 La Jolla Village Dr
Empress Hotel The	7766 Fay Av
Estancia La Jolla Hotel & Spa	9700 Torrey Pines Rd
Extended Stay America # 8787	3860 Murphy Canyon Rd
Extended Stay America #8573	2087 Hotel Circle South
E-Z 8 Motel Of Old Town	4747 Pacific Hy
E-Z 8 Motel-South Bay	1010 Outer Rd
E-Z 8 Motels-Sports Arena	3333 Channel Wy
Fairfield Inn & Suites	641 Cam Del Rio S
Four Points Hotel Sheraton	8110 Aero Dr
Golden West Hotel	720 04th Av
Good Nite Inn	4545 Waring Rd
Good Nite Inn	3880 Greenwood St
Half Moon Inn	2303 Shelter Island Dr
Hampstead Lafayette Hotel, Llc	2223 El Cajon Bl
Hampton Inn	5434 Kearny Mesa Rd
Hampton Inn Del Mar	11920 El Cam Real
Hampton Inn San Diego Downtown	1531 Pacific Hy
Hampton Inn Sea World/Airport	3888 Greenwood St
Handlery Hotel & Resort	950 North Hotel Cr
Hilton Garden Inn San Diego-Rb	17240 Bernardo Garden Dr
Hilton Harbor Island	1960 Harbor Island Dr
Hilton Hotel-San Diego	1775 East Mission Bay Dr
Hilton La Jolla Torrey Pines	10950 North Torrey Pines Rd
Hilton San Diego Gaslamp Qtr	401 K St
Hilton Sd Mission Valley	901 Cam Del Rio S
Holdiay Inn Msn Vly-Stadium	3805 Murphy Canyon Rd
Holiday Inn Bayside	4875 North Harbor Dr
Holiday Inn Express	9888 Mira Mesa Bl
Holiday Inn Express	3950 Jupiter St
Holiday Inn Express - Old Town	3900 Old Town Av

APPENDIX B
List of Assessed Businesses - continued

Hotel Name	Hotel Location
Holiday Inn Express & Suites	5925 Lusk Bl
Holiday Inn Express/Sd/Mb/Pb	4610 De Soto St
Holiday Inn Harbor View	1617 01st Av
Holiday Inn Mission Bay/Seawor	3737 Sports Arena Bl
Holiday Inn Rancho Bernardo	17065 West Bernardo Dr
Holiday Inn San Diego North Mi	9335 Kearny Mesa Rd
Holiday Inn-Mission Valley	595 Hotel Circle South
Holiday Inn-S.D. On The Bay	1355 Harbor Dr
Homestead Village	9880 Pacific Heights Bl
Homestead Village M.V.	7444 Mission Valley Rd
Homewood Suites	11025 Vista Sorrento Py
Horton Grand Hotel	311 Island Av
Hotel Churchill	827 C St
Hotel La Jolla At The Shores	7955 La Jolla Shores Dr
Hotel Solamar	435 06th Av
Howard Johnson	1631 Hotel S Cr
Howard Johnson Inn	3330 Rosecrans St
Hyatt Regency Mission Bay Spa & Marina	1441 Quivira Rd
Hyatt Regency La Jolla	3777 La Jolla Village Dr
Hyatt Regency San Diego	One Market Pl
International Motor Inn	190 Calle Primera
Island Inn	202 Island Av
Island Palms Hotel Marina	2051 Shelter Island Dr
Kings Inn	1333 Hotel Circle South
La Jolla Beach Club Apartments	2000 Spindrift Dr
La Jolla Cove Suites	1155 Coast Bl
La Jolla Marriott 7fl	4240 La Jolla Village Dr
La Jolla Residence Inn	8901 Gilman Dr
La Pensione	606 W Date St
La Quinta Inn	2380 Moore St
La Quinta Inns & Suites	10185 Paseo Montril
La Valencia Hotel	1132 Prospect St
Lodge At Torrey Pines	11480 Nrth Torrey Pines Rd
Mission Valley Travelodge	1201 Hotel Circle S Cr
Mission Vally Resort	875 Hotel Circle South

APPENDIX B
List of Assessed Businesses - continued

Hotel Name	Hotel Location
Motel 6 #1419	1546 02nd Av
Motel 6 (Loc #98)	160 Calle Primera
Motel 6 (Loc#14)	2424 Hotel Circle N Cr
New Plaza Hotel	1037 04th Av
Oakwood Mission Valley	425 Cam Del Rio S
Ocean Park Inn	710 Grand Av
Old Town Inn	4444 Pacific Hy
Omni San Diego Hotel	675 L St
Otay Mesa Comfort Suites	2351 Otay Center Dr
Pacific Terrace	610 Diamond St
Padre Trail Inn	4200 Taylor St
Park Manor Suites	525 Spruce St
Pickwick Hotel	132 W Broadway
Premier Inn	2484 Hotel Circle Pl
Quality Inn	2901 Nimitz Bl
Quality Inn	1430 07th Av
Quality Suite Hotel	9880 Mira Mesa Bl
Radisson Hotel - San Diego	1433 Cam Del Rio S
Radisson Hotel Harbor View	1646 Front St
Radisson La Jolla	3299 Holiday Ct
Radisson Suite Hotel	11520 West Bernardo Ct
Ramada Inn & Suites	830 06th Av
Ramada Inn San Diego North	5550 Kearny Mesa Rd
Ramada Limited	1403 Rosecrans St
Ramada Plaza	2151 Hotel Circle South
Rancho Bernardo Inn	17550 Bernardo Oaks Dr
Red Lion Hanalei Hotel	2270 Hotel Circle North
Residence Inn - Central	5400 Kearny Mesa Rd
Residence Inn By Marriott	12011 Scripps Highlands Dr
Residence Inn By Marriott	11002 Rancho Carmel Dr
Residence Inn San Diego Downtn	1747 Pacific Hy
Residence Inn Sd Mv	1865 Hotel Circle South
S D Marriott Mission Valley	8757 Rio San Diego Dr
San Diego Marriott Courtyard	9650 Scranton Rd
San Diego Marriott Del Mar	11966 El Cam Real

APPENDIX B
List of Assessed Businesses - continued

Hotel Name	Hotel Location
San Diego Marriott Marina	333 West Harbor Dr
San Diego Old Town Courtyard	2435 Jefferson St
San Diego Paradise Point Resort	1404 West Vacation Rd
Sea Lodge Hotel	8110 Cam Del Oro
Shelter Pointe Hotel & Marina	1551 Shelter Island Dr
Sheraton Hrbr Isnd Hotel East	1380 Harbor Island Dr
Sheraton Suites San Diego	701 A St
Sommerset Hotel	606 Washington St
Sorrento Mesa Residence Inn	5995 Pacific Mesa Ct
Springhill Suites By Marriott	12032 Scripps Highlands Dr
Staybridge Suites Carmel Mtn	11855 Of Industry Av
Staybridge Suites Sorrento	6639 Mira Mesa Bl
Studio 819	819 University Av
Super 8 Motel	4380 Alvarado Canyon Rd
Super 8 Motel Bayview	1835 Columbia St
The Baltic Inn	521 06th Av
The Friendship Hotel	3942 08th Av
The Grande Colonial Hotel	910 Prospect St
The Hotel Of Rancho Bernardo	11611 Bernardo Plaza Ct
The J Street Inn	222 J St
Town & Country Hotel	500 Hotel N Cr
Travelodge - Airport City	2353 Pacific Hy
University Towers	5505 Montezuma Rd
US Grant	326 Broadway
Vagabond Inn	625 Hotel Circle South
Valli Hi Motel	655 W San Ysidro Bl
Vantaggio Suites	1736 State St
Villager Lodge	5343 Adobe Falls Rd
W San Diego	421 West B St
West Park Inn	1840 04th Av
Westgate Hotel	1055 02nd Av
Westin Hotel Horton Plaza	910 Broadway Cr
Woodfin Suite Hotel Sorr Mesa	10044 Pacific Mesa Bl
Wyndham Emerald Plaza Hotel	400 W Broadway
Wyndham Garden Hotel-S.D.North	5975 Lusk Bl

ATTACHMENTS

The following attachments are provided for information and reference purposes only. They are not meant to be construed as a part of the District Management Plan, rather they are provided as guidelines for deliberations and decisions to be made solely by the Board of Directors of the San Diego Tourism Promotion Corporation.

Attachment 1 – Framework for Application Criteria and Process

Attachment 2 – Memorandum of Understanding with San Diego Convention & Visitors Bureau

Attachment 3 – Memorandum of Understanding with San Diego North Convention & Visitors Bureau

Attachment 4 – Assumptions to Five-year Revenue Income and Distribution Budgets

ATTACHMENT 1

Framework For Application Criteria & Process

It is anticipated that the San Diego Tourism Promotion Corporation will solicit and/or receive applications for funding from numerous, diverse organizations, and entities. Specific application guidelines will be created and available once the SDTPC is appointed by the City to manage the Tourism Marketing District. Those guidelines, criteria and application will be created at the sole discretion of the Board of Directors of the San Diego Tourism Promotion Corporation. Changes to the guidelines, criteria and application can only be made by an action of the Board of Directors. The criteria below will form the basis for the subsequent guidelines:

Legal Status:

- Applicants must demonstrate proof of current legal status within the jurisdiction of the headquarters of their business or corporation.

Tourism Mission:

- While an applicant's primary mission need not be tourism related, the applicant's mission must include an acknowledgement of tourism marketing as a component of that mission.

Use of Funds:

- An applicant's income from the SDTPC must be solely used for the purpose of fulfilling the tourism marketing portion of its mission as articulated in its application for funding.

Track Record:

- An applicant must have a demonstrable history of successful, ongoing programming or business performance prior to submitting an application.

Location:

- Regardless of where an applicant is headquartered or physically located, or where a particular marketing program is implemented, 100% of the funding received from the SDTPC must be applied to, or in support of, programs designed for the measurable benefit of hotels (lodging businesses) within the City of San Diego.

Compliance:

- Former contractors of the City of San Diego must have submitted acceptable final report packages on any completed contract and be in good standing with the City.

Application:

- Each applicant for funding will be required to submit an "Application Request for Funding" that will require significant information about the applying organization or entity, as well as a specific proposal for how the requested funds will be spent, the expected result and the proposed method for measuring results. As a model for the type and depth of information required, it is suggested that prospective applicants become familiar with the Citywide Small Business Enhancement Program Grant Guidelines & Application, published by the City of San Diego City Planning and Community Investment Department Office of Small Business.

Fundamental Requirements:

- Fundamental to the funding of any application will be the clearly articulated benefit to hotels in the City of San Diego. While benefit may be delivered in numerous ways, by far the most important benefit will be measured in the delivery of room nights. Successful applications will clearly describe the strategy and tactics for delivering room nights as well as the number of room nights projected and estimated gross room revenue. Letters of intent for hotel room blocks and/or tentative agreements with hotels will provide the necessary back up to support the above projections and estimates.
- When considering these fundamental application requirements, priority will be given to:
    - Special need periods of the year
    - Special need geographic locations within the City
    - Incremental new room nights from existing programs or sponsoring organizations

Determining Return On Investment

- All successful applicants will clearly demonstrate a measurable Return On Investment (ROI) for the programs or services they propose. That Return On Investment can be determined in a number of different ways. Applicants are encouraged to develop and demonstrate their suggested method of measuring ROI for their particular program as a part of their application.

Application Timeline

- An application calendar and timeline will be published annually to guide applicants through the application process

Oral Presentation

- Should an application meet the fundamental requirements for consideration, and prior to any final decision, qualifying finalist may be invited to make a public, oral presentation before the SDTPC Board of Directors.

Contract Agreement

- Once the Board of Directors has approved funding and the SDTPC budget is approved by the City Council, a Contract Agreement is issued to the successful applicants. The Contract Agreement details the terms and conditions of the contract between the SDTPC and the organization and the organization's scope of work, anticipated results and mutually agreed upon method(s) for measuring those results.

ATTACHMENT 2

Draft Memorandum of Understanding with San Diego CVB

This is a Memorandum of Understanding (MOU) between the San Diego Tourism Promotion Corporation (SDTPC) and the San Diego Convention & Visitors Bureau. This MOU addresses Funding, Performance and Performance Measurement.

The following points of agreement shall be included in the Management Plan for the City of San Diego Tourism Marketing District:

1. Percentage Fixed Revenue
   San Diego CVB shall receive 50% of the annual gross revenue generated by the Tourism Marketing District. This figure represents minimum, base funding. Additional funding may be allocated contingent upon a successful application to the SDTPC.

2. Specific Use For City of San Diego Lodging Establishments
   The revenue received by San Diego CVB from the SDTPC will be segregated from other income and may be utilized to sell, market and promote (the City of San Diego to the benefit of) lodging establishments within the city limits of the City, and may include support activities such as critical operational expenses, including but not limited to salaries and benefits.

3. Annual Performance Audit
   For purposes of inclusion in an Annual Report to the City Council, San Diego CVB shall comply with and support an annual Performance Audit based on mutually agreed upon performance standards to measure a return on investment to the City generated by San Diego CVB activities funded by the SDTPC. It is acknowledged that some activities and programs may extend over multiple years, rendering a single year assessment problematic. This Performance Audit shall be performed by a mutually agreed upon third-party auditor, and shall be paid for by the San Diego CVB.

4. Annual Financial Audit
   For purposes of inclusion in an Annual Report to the City Council and general public distribution, San Diego CVB shall comply with and support an annual Financial Audit of all income and expenses relative to its operation. Specific focus of this Financial Audit will be the correct and appropriate use of SDTPC revenue to sell, market and promote (the City of San Diego to the benefit of) lodging establishments within the city limits of the City. This Financial Audit shall be performed by a third-party auditor selected by the San Diego CVB, and shall be paid for by the San Diego CVB.

5. Term
The effective term of the items specified in this memorandum shall be contiguous with the term of the Tourism Marketing District, 5 years, or as approved by the City Council.

6. Contract
San Diego CVB and the SDTPC shall execute a mutually agreed upon contract that will include all of the elements listed above, and that will provide for a clear understanding of the relationship between San Diego CVB and the SDTPC. This contract will include language defining required, mutually agreed upon performance standards and the funding consequences possible should those standards not be met. This contract will define the necessary market research into mutually agreed upon areas or subjects to be provided by the San Diego CVB.

7. Effective Date
The effective date will be the first day of collections from assessed businesses, as approved by the City Council.

ATTACHMENT 3

Draft Memorandum of Understanding with San Diego North CVB

This is a Memorandum of Understanding (MOU) between the San Diego Tourism Promotion Corporation and the San Diego North Convention & Visitors Bureau. This MOU addresses Funding, Performance and Performance Measurement.

The following points of agreement shall be included in the Management Plan for the City of San Diego Tourism Marketing District:

1. Percentage Fixed Revenue: San Diego North CVB shall receive 10% of the annual gross revenue generated by the Tourism Marketing District. This figure is both the minimum and the maximum annual funding available to San Diego North from the SDTPC.

2. Specific Use For City of San Diego Lodging Establishments: The revenue received by San Diego North CVB from the TMD will be segregated from other income and may be utilized to sell, market and promote (the northern portion of the City of San Diego to the benefit of) lodging establishments within the city limits of the City, and may include support activities such as critical operational expenses, including but not limited to salaries and benefits.

3. Annual Performance Audit: For purposes of inclusion in an Annual Report to the City Council, San Diego North CVB shall comply with and support an annual Performance Audit based on mutually agreed upon performance standards to measure a return on investment to the City generated by San Diego North CVB activities funded by the TMD. It is acknowledged that some activities and programs may estend over multiple years rendering a single year assessment problematic. This Performance Audit shall be performed by a mutually agreed upon third-party auditor, and shall be paid for by the San Diego North CVB.

4. Annual Financial Audit: For purposes of inclusion in an Annual Report to the City Council and general public distribution, San Diego North CVB shall comply with and support an annual Financial Audit of all income and expenses relative to its operation. Specific focus of this Financial Audit will be the correct and appropriate use of TMD revenue to sell, market and promote (the northern portion of the City of San Diego to the benefit of) lodging establishments within the city limits of the City. This Financial Audit shall be performed by a third-party auditor selected by the San Diego North CVB, and shall be paid for by the San Diego North CVB.

5. Term: The effective term of the items specified in this memorandum shall be contiguous with the term of the Tourism Marketing District, 5 years, or as approved by the City Council.

6. Contract: San Diego North CVB and the SDTPC shall execute a mutually agreed upon contract that will include all of the elements listed above, and that will provide for a clear understanding of the relationship between San Diego North CVB and the SDTPC. This contract will include language defining required, mutually agreed upon performance standards and the funding consequences possible should those standards not be met. This contract will define the necessary market research into mutually agreed upon areas or subjects to be provided by the San Diego North CVB.

7. Effective Date: The effective date will be the first day of collections from assessed businesses, as approved by the City Council.

ATTACHMENT 4

Assumptions to Revenue Income & Distribution Calculations

A. City projects $159.2 million in TOT revenue for FY '08.

B. Estimated TOT Revenue: Assumes 6% growth annually in TOT revenues through 2013.

C. Estimated TMD Revenue: Assumes the equivalent of 2 points of TOT.

D. Administration Fee Paid to City: Assumes an automatic annual escalator of 4.5%.

E. SDTPC Personnel Expenses: Assumes an automatic annual escalator of 4.5%

F. SDTPC Overhead Assumes an automatic annual escalator of 4.5%

G. Annual escalator of 4.5% is derived from actuarial assumptions used in calculating increases in City personnel costs in order to forecast changes to the City's pension obligation.

EXHIBIT B

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

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 provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

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. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

> No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:
>
> 1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
>
> 2. All of the following conditions are met:
>
> (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.

(b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.

(c) Any membership owned by the interested party abstains from voting on the matter.

(d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.

(e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.

(f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City 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, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than $5000 from a single contractor in a 12 month period:
   - ☐ No competitive procurement process is required.

2. Expenditures of between $5000 and $25,000 from a single contractor in a 12 month period:
   - ☐ Obtain three written price proposals or demonstrate why three bids could not be obtained.
   - ☐ Present price proposal information to full board for approval of contract or transaction.
   - ☐ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than $25,000 for goods and/or services from a single contractor in a 12 month period:
   - ☐ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
   - ☐ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
   - ☐ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
   - ☐ Record action taken by the board in meeting minutes and keep the proposals received on file.
   - ☐ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. 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 contractor to any reimbursement or payment for goods or services provided pursuant to the void contract. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

LAF:jrl
03/27/01

RECEIVED

330

(R-2008-880)
(COR. COPY) 4/22

RESOLUTION NUMBER R-303621

DATE OF FINAL PASSAGE APR 2 8 2008

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT WITH THE SAN DIEGO TOURISM PROMOTION CORPORATION FOR OPERATION OF THE TOURISM MARKETING DISTRICT.

WHEREAS, on May 22, 2007, the San Diego City Council [City Council] adopted the Tourism Marketing District [TMD] Procedural Ordinance, Ordinance O-19622 which amended Chapter 6, Article 1 of the San Diego Municipal Code by adding Division 25, effective June 29, 2007; and

WHEREAS, on October 15, 2007, City Council adopted Resolution R-303077 which approved the TMD Management Plan; and

WHEREAS, on December 3, 2007, City Council adopted Resolution R-303226 which: 1) established the TMD which became effective January 1, 2008; and 2) authorized the levying of assessments for a period of five years; and 3) authorized the Mayor to execute an Operating Agreement for the Tourism Marketing District; and

WHEREAS, on December 3, 2007, City Council further requested City Staff to bring the final Operating Agreement back to Council for review; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor is authorized to execute the TMD Operating Agreement with the San Diego Tourism Promotion Corporation for a five year period effective

April 1, 2008, through March 31, 2013. A copy of the Operating Agreement for the TMD is on file in the office of the City Clerk as Document No. RR 303621.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Kimberly K. Harris
Deputy City Attorney

KKH:bas
04/08/08
04/23/08 COR.COPY
Or.Dept: CP&CI
R-2008-880
MMS #6115

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 22 2008.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 4-28-08
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

R- 303621

Passed by the Council of The City of San Diego on April 22, 2008, by the following vote:

YEAS:	**PETERS, FAULCONER, ATKINS, MAIENSCHEIN, MADAFFER, & HUESO.**
NAYS:	**YOUNG & FRYE.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **GIL SANCHEZ**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-303621**, approved by the Mayor of The City of San Diego, California on **April 28, 2008**.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: _____, Deputy

EXHIBIT A

SAN DIEGO TOURISM MARKETING DISTRICT MANAGEMENT PLAN

SAN DIEGO TOURISM MARKETING DISTRICT MANAGEMENT PLAN

September 2007

Developed by a coalition of lodging business owners and managers
representing the San Diego County Hotel Motel Association
and the San Diego Lodging Industry Association.

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OVERVIEW AND EXECUTIVE SUMMARY

Conceived and developed by a coalition of lodging business owners and managers representing the San Diego County Hotel Motel Association and the San Diego Lodging Industry Association, the San Diego Tourism Marketing District (District) is a benefit assessment district proposed to improve tourism activity and hotel room night consumption in the City of San Diego.

History
As a result of diminishing public resources available for effective and competitive destination marketing, local lodging industry leadership began discussing alternative funding sources and available options over 5 years ago. Since that time, a working group comprised of lodging industry representatives has held dozens of meetings with proposed assessed businesses, stakeholder groups and interested parties. On May 8, 2007 the San Diego City Council adopted an enabling Procedural Ordinance that allows for the creation of a Tourism Marketing District. Herein, representatives of the San Diego Lodging Industry have taken steps to formalize a District Management Plan in hopes of gaining industry support to form the proposed District.

Location
The Proposed Tourism Marketing District will be citywide, inclusive of all areas within the city limits of the City of San Diego. There are no benefit zones proposed within the District. A map of the District is included in this Plan as Appendix A.

Assessed Businesses
The assessment is proposed to be levied upon 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 for each lodging *business* of 70 or more sleeping rooms in the City of San Diego. *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. *Transient* has the same meaning as in Municipal Code section 35.0102.

The assessment imposed is levied solely upon the lodging businesses within the district. The business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that said 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."

Method & Basis of Levying Assessment
The annual assessment is based upon 2% of gross room revenue from transient stays for lodging businesses with 70 or more sleeping rooms operating within the City of San Diego. The rate of 2% will remain fixed for the duration of this District. Certain room revenue will be exempt from assessment.

Budget
The District budget for the first six months of collections and disbursements is estimated to be approximately $14.2 million and $29.2 million for the first 12 months.

Activities
Revenue generated from the assessment will fund marketing programs to increase tourism and promote the City of San Diego as a tourist, meeting, convention and special event destination.

Formation
District formation requires submittal of petitions in support from lodging businesses representing more than 50% of the total annual assessment. After City staff verifies the petitions the matter goes to the City Council. The City Council will then require that a ballot be mailed to all affected hotels with the returns to be counted by the City Clerk. The City Council will then hold a hearing and be advised of results of the ballot count. The Council shall not establish the District nor shall it impose an assessment if there is a majority protest. A majority protest exists if ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected businesses. In the absence of a majority protest the Council may proceed with establishing the District by resolution.

Management & Oversight
The implementation of this District Management Plan will be the responsibility of the Board of Directors of the San Diego Tourism Promotion Corporation (SDTPC), a private non-profit entity composed exclusively of the assessed lodging businesses. Only business owners or owner's representative paying the tourism district assessment have the right to vote in annual elections of the association. And only business owners or owner's representative paying the tourism district assessment have the right to seek nomination or election to the board of directors of the association. Oversight is provided by the City to ensure that the expenditure of funds is consistent with the District Management Plan.

Proposed Timing and Duration of Activities
The District will begin operations January 1, 2008 or at a later date set by the City Council. Assessed businesses will be responsible for calculating the assessments beginning on the start-up date set by the City Council. Assessed businesses will be required to remit the assessment on a monthly basis beginning 45 days after the effective start date of the District. The District Management Plan is a five (5) year plan and will terminate with the expiration of the District. Each activity of the District will have its own schedule, but none will last longer than the duration of the District. After five years, hotel business owners may petition the City to extend the district for an additional 10 years subject to the requirements of the Tourism Marketing District Procedural Ordinance SDMC Section 61.2501 et seq.

WHAT IS A TOURISM MARKETING DISTRICT (TMD)?

The San Diego Tourism Marketing District follows the model of successful Tourism Business Improvement Districts (BID's) that utilize the efficiencies of private sector operation in the market-based promotion of local and regional tourism. Tourism BID's, such as the proposed SDTMD allow lodging and other tourism-related business owners to organize their efforts to increase tourism. In San Diego, lodging business owners within the district will assess

themselves in order to fund the District and those funds will be used to provide programs and services that specifically benefit the assessed lodging businesses.

San Diego Tourism Marketing District funded programs and services may include, but are not limited to:

- Marketing of the Area
- Tourism Promotion Activities
- Special Events and Programs

In California, Tourism BID's, such as the TMD, are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law), the Parking and Business Improvement District Law of 1989 (BID Law), or by ordinance of a Charter City. The local lodging businesses have chosen to ask the City of San Diego to create an enabling (procedural) ordinance modeled on the 1994 PBID Law. This State statute and the City ordinance allow for the establishment of an assessment district to raise funds within a specific geographic area; in this case the City of San Diego, for the purpose of promoting tourism and hotel room occupancy.

There are many benefits to Tourism BID's:

- Funds must be spent to benefit those who pay;
- Funds cannot be diverted for other government programs or expenditures;
- Tourism BID's are customized to fit the needs of each tourism district;
- Tourism BID's allow for a wide range of services;
- Requires petition support from lodging businesses paying over 50% of the annual proposed assessments (1994 PBID Law);
- Provides a stable funding source for tourism promotion.

The San Diego Tourism Marketing District will NOT fund:

- The acquisition, construction, installation or maintenance of any tangible 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 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 area, 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 to the area.
- Expenditures not consistent with the terms of this District Management Plan.

City's Promotional Responsibilities
As provided in the San Diego Municipal Code section 35.0128 the original 4% Transient Occupancy Tax, which was approved by San Diego voters, will continue to be used to promote the City.

To this end, the City will provide the SDTPC, on an annual basis, a statement detailing actual TOT revenues collected under Code section 35.0103 that are available for promoting the City. This statement will also describe the prescribed use of revenues from the City's TOT to include, but not be limited to:

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

TOURISM MARKETING DISTRICT ADMINISTRATION

CITY ADMINISTRATION AND OVERSIGHT

City requires petitions to be submitted to the City in support of establishing the TMD in accordance with SDMC 61.2501 et seq. If sufficient petitions are submitted in support of the proposed district then City Council shall adopt a Resolution of Intention to establish the district and shall cause a ballot to be mailed to all affected businesses and give notice of the required public hearing. If there is no majority protest then the City Council shall adopt a Resolution establishing the district and shall authorize the levying of assessments for a period of five (5) years.

The City of San Diego will oversee the collection of the assessments and will ensure that the expenditure of funds is consistent with the District Management Plan.

Initially, the City proposes to retain no more than $300,000 of TMD assessments on an annual basis, pro-rated at the establishment of the District and adjusted thereafter at the beginning of each fiscal year, to reflect an automatic annual escalator of 4.5%. These funds will be used to cover the costs of the City's administration of the District, as follows:

- City Planning & Community Investment Department - Economic Development Division
  Agreement monitoring and reimbursement of expenditures and coordination of annual City Council process.
- Office of the City Treasurer
  Processing and reporting of assessments remitted and auditing of reported/remitted assessments.

- Office of the City Auditor and Comptroller
  Approval of direct payments and issuance of checks and auditing of agreement between City and the "tourism marketing district association".
- Office of the City Attorney
  Preparation of resolutions and other documents required for annual City Council process and review and preparation of documents for administration of the District.

Prior to the beginning of each Fiscal year, the City Council shall consider, in an open meeting, the proposed services and activities for the fiscal year as presented in the annual District Management Plan.

SAN DIEGO TOURISM PROMOTION CORPORATION ADMINISTRATION

The enabling Procedural Ordinance provides that the City will contract with a designated nonprofit corporation to implement a plan and carry out specified activities, subject to the terms and conditions enumerated in the contract with that nonprofit. The City proposes to contract with the San Diego Tourism Promotion Corporation (SDTPC), a private, non-profit corporation, to serve as the San Diego Tourism Marketing District Association to manage the District assessments and to contract for implementation of the proposed marketing programs and services as outlined in the District Management Plan.

Purpose

The specific purpose of this private, non-profit corporation is to create a positive economic, fiscal and employment impact on lodging businesses in the City of San Diego through the effective and judicious allocation of its revenue and resources to measurably successful tourism promotion, marketing and advertising programs.

General Powers

Subject to the provisions and limitations of the California Nonprofit Mutual Benefit Corporation Law and any other applicable laws, and subject to any limitations of the articles of incorporation or 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 tourism marketing district assessment have the right to vote in annual elections of the association. And only business owners or business owner's representatives paying the tourism marketing district assessment have the right to seek nomination or election to the board of directors of the association. 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 association are intended and understood to represent and further the economic interest of the City's tourism industry. Board members or officers have a fundamental duty to advance the general welfare of the tourism industry in San Diego.

Initial Directors: The initial Board of Directors shall be appointed by the Incorporator of the Corporation, and shall serve for staggered terms of one, two or three years. At the first duly constituted meeting of the Board of Directors, the initial Board members shall draw lots to determine their individual term. It is anticipated that the initial Board of Directors will consist of (In alphabetical order):

Luis Barrios, Hacienda Hotel Old Town
Richard Bartell, Bartell Hotels
C. Terry Brown, Atlas Hotels
Patrick Duffy, Hilton La Jolla Torrey Pines
Bill Evans, Evans Hotels
Mohsen Khaleghi, Hyatt Regency Mission Bay Spa & Marina
Bob Rauch, Homewood Suites
Joe Terzi, Starwood Hotels
Ray Warren, Marriott Hotels

Board Nominations & Elections
Elections to the Board of Directors will be held annually beginning at the end of the first full fiscal year of operation for the Corporation. 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 the distribution and collection of ballots, will be defined in the Bylaws of the Corporation. SDTPC anticipates retaining a third-party contractor 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 the seating of new Board members.

Board Standards and Conduct
The San Diego Tourism Promotion Corporation will be organized as a 501(c)6, mutual benefit corporation, and will have as its purpose the management of the resources of the San Diego Tourism Marketing District. The primary measure of the success of the Corporation will be the benefit it delivers to the assessed businesses. Because the delivery of a 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 SDTPC.

In addition, State law provides, and the City's enabling Procedural Ordinance recognizes, that SDTPC 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."

However, SDTPC shall comply with Ralph M. Brown Act, California Government Code section 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 section 6250 *et. seq.*, for all documents relating to activities of the district.

Furthermore, the SDTPC 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 San Diego Tourism Promotion Corporation will serve as volunteers. They will receive no monetary compensation or remuneration 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, workman's compensation insurance, disability insurance, or paid vacation, will be provided.

Report of Activities
The SDTPC 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 full fiscal 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.

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:

- Any proposed changes to the boundaries of the tourism marketing district or to any benefit zones or classification of businesses within 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.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this Division.

The San Diego City Council [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 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 an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

Modifications of District Management Plan
The SDTPC may, at any time, request that the San Diego City Council modify the district management plan. Any modification of the district management plan shall be made pursuant to the following requirements:

- Upon the written request of the tourism marketing district association, the San Diego City Council [Council] may modify the district management plan after conducting one public hearing on the proposed modifications. The Council may modify the activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution to make the modifications after holding a required public hearing. Notice of the public hearing and the proposed modifications shall be published as provided in San Diego Municipal Code section 61.2507. If the modification includes the levy of a new or increased assessment, the Council shall comply with Code section 61.2507.
- The 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.

Marketing Support Programs Application Guidelines & Criteria

The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services that can deliver a measurable return on investment, and that are in addition to the programs fund by fixed allocations within its budget.

It is anticipated that the San Diego Tourism Promotion Corporation will solicit and/or receive applications for funding from numerous, diverse organizations, and entities. Specific application guidelines will be created and available soon after the SDTPC is appointed by the City to manage the Tourism Marketing District. Those guidelines, criteria and application will be created at the sole discretion of the Board of Directors of the San Diego Tourism Promotion Corporation. Changes to the guidelines, criteria and application can only be made by an action of the Board of Directors of the Corporation. (See Attachment 1, Framework for Application Criteria & Process.)

Limiting Contact Between Applicants and the Board of Directors: It will be vital that the application and allocation process for funding from the SDTPC be open, fair and efficient. To this end, the written submission of the 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, and to disclose any such contact or communication prior to participating in the consideration of that applicant's submission.

ACTIVITIES & BUDGETS

A general budget has been developed by lodging industry representatives to serve as a guideline in order that the San Diego Tourism Promotion Corporation (SDTPC) deliver measurable benefit and service levels throughout the District. An annual budget will be developed and approved by the SDTPC Board and included in the Report of Activities submitted to the City Council annually.

SDTPC: A NON-MARKETING ENTITY

The San Diego Tourism Promotion Corporation is not envisioned as a marketing entity, but rather as a funding conduit for the development and implementation of effective marketing programs and services that benefit the assessed businesses within the District. SDTPC will be responsible for the allocation and distribution of the available revenue and will contract with qualified third-party vendors to supply marketing programs and services as required and approved by the Board of Directors.

SDTPC BUDGET GUIDELINES

The San Diego Tourism Promotion Corporation (SDTPC) will contract for marketing programs and services to promote the City of San Diego as a tourism destination and to fund projects, programs, and activities that specifically benefit hotels within the boundaries of the District.

General Guidelines:

(a) Marketing programs and services will be broadly defined by the Board of the SDTPC in order to remain current with changing consumer demands, tourism products, and marketing and communication technologies.

(b) Marketing programs and services will take many traditional and/or innovative forms based on the target market and proposed strategy and tactics for implementation. Therefore, marketing programs and services could include, but not be limited to: i) advertising; ii) marketing promotion; iii) direct sales; iv) press and/or public relations; v) new product development; vi) prospective marketing; vii) visitor services; viii) market research; ix) e marketing & web strategies, x) partnership marketing; xi) special events, and more as identified.

(c) Marketing programs and services will seek to benefit all assessed hotels within the boundaries of the District through a diverse mix of projects, programs and activities. It is recognized that all marketing programs and services will have multi-level benefits to the hotels in the District. Primary benefits will be realized directly by hotels in the target market area or market segment served by a particular contract program or service. Secondary benefits will be realized by all hotels in the District through the successful implementation of marketing programs and services that

increase hotel occupancies, reduce available hotel inventory and create compression within the marketplace.

(d) Marketing programs will have measurable result. The Board of Directors of the SDTPC will establish and regularly update a clearly defined application process for proposed marketing programs. This application will articulate the required qualifications of applicants, the target return-on-investment, and the measurement of results, among other criteria.

Fixed Allocations:

(e) At a minimum, the SDTPC shall annually allocate fifty percent (50%) of its District revenue and resources to a single comprehensive entity for the purpose of destination marketing for the City of San Diego, which, for the initial five (5) year term of this District, shall be the San Diego Convention & Visitors Bureau or its successor organization. A draft Memorandum of Understanding between the San Diego Convention & Visitors Bureau and the San Diego Tourism Promotion Corporation is attached (Attachment 2) that outlines the general condition of the measurements for this fixed funding. This draft is provided within for information only and will be the basis for a legally binding contract between these same parties once the District is established. 50

(f) The SDTPC shall annually allocate ten percent (10%) of its District revenue and resources to a single comprehensive entity for the purpose of destination marketing for the northern region of the City of San Diego, which, for the initial five (5) year term of this District, shall be the San Diego North Convention & Visitors Bureau or its successor organization. This ten percent (10%) shall represent the annual minimum and maximum allocation available to the San Diego North Convention & Visitors Bureau. A draft Memorandum of Understanding between the San Diego North Convention & Visitors Bureau and the San Diego Tourism Promotion Corporation is attached (Attachment 3) that outlines the general conditions of and measurements for this fixed funding. This draft is provided within for information only and will be the basis for a legally binding contract between these same parties once the District is established. 10

(g) The SDTPC shall annually allocate five percent (5%) of its revenue to a marketing opportunity/catastrophe reserve fund for the specific purpose of maximizing unique and unforeseen opportunities or reacting to unforeseen situations to positively impact the tourism economy in the San Diego region. For the initial five (5) year term of the district, the SDTPC marketing opportunity/catastrophe reserve fund shall be capped at a maximum of $10,000,000 in principal contributions until such time as it is required for use. Interest returned on the holding and investment of the principal shall be re-invested into the SDTPC marketing opportunity/catastrophe reserve fund. 5

If the District is renewed following the initial five (5) year term, the available balance, including interest, of the SDTPC marketing opportunity/catastrophe reserve

fund shall be made available to the Corporation managing the renewed District. These previously accumulated funds shall be spent consistent with the allocations in this plan. Should the District not be renewed, the previously accumulated funds shall be proportionally refunded and distributed to the assessed businesses.

3%

(h) Operating Expenses: the SDTPC may annually allocate a maximum of three percent (3%) of its revenue to the operation and management of the SDTPC.

Marketing Support Programs:

(i) The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services, either directly or indirectly through a competitive application process, that can deliver a measurable return on investment, and that are in addition to the programs funded by fixed allocations within the budget.

SDTMD ANTICIPATED 5 YEAR REVENUE INCOME AND DISTRIBUTION

Estimated revenues and expenditures are shown for each fiscal year. Certain assumptions and calculations were utilized in developing the projections and budgets below. Those assumptions are listed separately in this document in Attachment 4.

Due to the anticipated mid-fiscal-year start of the District, the first and last fiscal years reflect approximately 6 months worth of activities.

Adjustments to Budget
Any Annual budget surplus or deficit will be rolled over into the following year's TMD budget. Assessments will be set accordingly, within the constraints of the annual adjustment, to adjust for surpluses or deficits that are carried forward.

Bonds
No Bonds shall be issued in connection with this District.

Budget Spreadsheet

TMD FIVE YEAR BUDGET						
	FY2008	**FY2009**	**FY2010**	**FY2011**	**FY2012**	**FY2013**
	Approx. 6 months	12 months	12 months	12 months	12 months	Approx 6 months
Estimated TOT Revenue	**$ 79,600,000**	**$168,752,000**	**$ 178,877,120**	**$ 189,609,747**	**$ 200,986,332**	**$106,477,000**
Estimated TMD Revenue	**$14,176,381**	**$30,053,928**	**$31,857,163**	**$33,768,593**	**$35,794,709**	**$18,971,196**
Fixed Allocations	**$9,186,396**	**$18,721,548**	**$19,114,298**	**$20,261,156**	**$21,476,825**	**$11,382,718**
San Diego CVB	$7,081,000	$15,026,964	$15,928,582	$16,884,297	$17,897,355	$9,485,598
San Diego North CVB	$1,416,200	$3,005,393	$3,185,716	$3,376,859	$3,579,471	$1,897,120
San Diego Film Commission *	$330,909	$330,908				
San Diego Bowl Game Association *	$195,569	$195,568				
SD International Sports Council *	$72,900	$72,900				
San Diego Hall of Champions *	$37,500	$37,500				
Accessible San Diego *	$32,520	$32,519				
Elite Racing/Rock & Roll Marathon *	$9,760	$9,759				
California State Games *	$7,714	$7,713				
San Diego Crew Classic *	$2,324	$2,324				
Opportunity/Catastrophe Reserve @ 5%	**$708,819**	**$1,502,696**	**$1,592,858**	**$1,688,430**	**$1,789,735**	**$948,560**
SDTPC Operating Budget @ 3%	**$425,291**	**$901,618**	**$955,715**	**$1,013,058**	**$1,073,841**	**$569,136**
Admin. Fee Paid to City	$150,000	$313,500	$327,608	$342,350	$357,756	$186,930
Available for Operating Expenses	$275,291	$588,118	$628,107	$670,708	$716,085	$382,206
Personnel						
Executive Director (Salary & Benefits)	$100,000	$209,000	$218,405	$228,233	$238,504	$124,618
Admin. Support (Salary & Benefits)	$30,000	$62,700	$65,522	$68,470	$71,551	$37,385
Contract Services						
Legal & Compliance/Corporate Secretary	$36,000	$72,000	$72,000	$72,000	$72,000	$36,000
Accounting/CPA/Corporate Treasurer	$36,000	$72,000	$72,000	$72,000	$72,000	$36,000
Audits (as required)	$30,000	$85,000	$85,000	$85,000	$85,000	$45,000
Overhead						
See Page 14	$35,000	$73,150	$76,442	$79,882	$83,476	$43,617
Contingency/Carry-over	$8,291	$14,268	$38,739	$65,123	$93,554	$59,585
Total Fixed Distribution	**$10,320,506**	**$21,125,862**	**$21,662,871**	**$22,962,644**	**$24,340,401**	**$12,900,414**
One-time Start-up Costs						
Reimburse Actual District Start-up Costs	$112,000	$0	$0	$0	$0	$0
Estimated City Start-up Costs	$60,000	$0	$0	$0	$0	$0
Total Start-up Costs	$172,000	$0	$0	$0	$0	$0
Total Variable Distribution	**$3,683,875**	**$8,928,066**	**$10,194,292**	**$10,805,949**	**$11,454,308**	**$6,070,782**
Marketing Support Programs	TBD	TBD	TBD	TBD	TBD	TBD
Competitive Application Process	TBD	TBD	TBD	TBD	TBD	TBD
*Groups with fixed funding from TMD for 12 months, shown here over 18 months budget cycle.						

Operating Expenses
The SDTPC may annually allocate a maximum of three percent (3%) of its revenue to the operation and management of the SDTPC. A detailed budget will be submitted and approved annually and shall include:

- Cost of service fees to be paid to the City of San Diego, including:
  One time actual start-up costs not to exceed $60,000 for:
  - System development including labor and hardware/software requirements
  - City Management time to establish policies and procedures, bring on additional staff, and implement program

  An annual amount of no more than $300,000 of TMD assessments, pro-rated at the establishment of the District and adjusted thereafter at the beginning of each fiscal year, to reflect an automatic annual escalator of 4.5%, for fixed cost increases for the following services:
  - CP&CI Economic Development division - Contract Management and Reimbursements
  - Office of the City Treasurer - Collection Administration, Management and Auditing
  - Office of the City Auditor and Comptroller-Check Disbursements and Program Auditing
  - Office of the City Attorney - Legal Review and Document Preparation
- Estimated operating expenses including wages, benefits, and administrative and overhead costs such as rent, supplies, utilities and travel;
- Estimated cost of directors and officers liability insurance in the amount of $5,000,000 per director, plus additional insurance as required by the City;
- As required, estimated cost of performance audits of contracted entities receiving funding from SDTPC unless otherwise stipulated;
- As required, estimated cost of an annual financial audit of the SDTPC.

FUNDING PROCESS

Method & Basis of Levying Assessment
The proposed annual assessment amount is 2% of gross room revenue, which is defined as "total consideration charged to a *transient* as shown on the guest receipt for the occupancy of a room, or portion thereof, in a Hotel."

Gross room revenue will exclude revenue derived from a person who has exercised occupancy or was entitled to occupancy for more than one month where a month is defined as a 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. Gross room revenues will also exclude certain revenues where exempt by treaty or by Federal or State laws or where transients are Federal or State Government officials exercising occupancy on government business as prescribed in the resolution establishing the district.

Transient occupancy taxes should not be included when calculating the assessment.

Total annualized assessments for the first year are estimated to be $29.2 million. There shall be no increase in the assessment rate for the term of the district. Total collections may change in subsequent years according to the inventory of hotel rooms, the room rates, and the occupancy levels. No other sources of funds are anticipated from the District.

Operators Duties and Accounting Procedures

(a) The amount of assessment, if passed on to each Transient, shall be separately stated from the amount of Rent charged and any other 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.

(b) Each business shall account separately for, and maintain separate monthly summary totals for, taxable and non-taxable Rent and for the assessment.

(c) Each business shall maintain its financial and accounting records in accordance with established 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, for a period of three years within the boundaries of this City, 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 Hotel shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

Time and Manner for Collecting Assessments

The collection of the assessments levied shall be made at the time and in the manner set forth by the San Diego City Council in the resolution establishing the district. It is proposed that assessments will be remitted on a monthly basis to the City Treasurer by each business using a self-reporting form that identifies the accounting periods for the previous month and the applicable gross room revenue and District assessment for each of those accounting periods.

Assessments levied for the purpose of providing improvements and promoting activities that benefit businesses are not taxes for the general benefit of a city, but are assessments for the activities which confer benefits upon the assessed businesses for which the activities are provided.

Penalties and Appeals
Pursuant to the resolution of establishment for the TMD, 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 establishment.

Any benefited business failing to remit the TMD assessment within the time required under the resolution of establishment shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency, and one-third of one percent (1/3 of 1%) for each day thereafter, including weekends and holidays. Any penalty assessed shall not exceed twenty-five percent (25%) of the amount of the assessment due payable for the entire reporting period. The penalty assessed shall be in addition to the amount of the assessment due during the period for which assessments were not timely paid.

In the event there is a determination by the City Treasurer that non-payment of an assessment is due to fraud, the City Treasurer may assess a penalty of twenty-five percent (25%) of the amount of the assessment for the period in which the fraud occurred. Such a penalty for fraud related to payments shall be assessed over the above any penalties assessed daily, as discussed above. A benefited business may, within fourteen (14) days after the service or mailing of a notice of penalty, make application in writing to the City Treasurer for a hearing of appeal. In exercising its appeal rights, a benefited business shall follow the same procedures articulated in San Diego Municipal Code Sections 35.0117 and 35.0118.

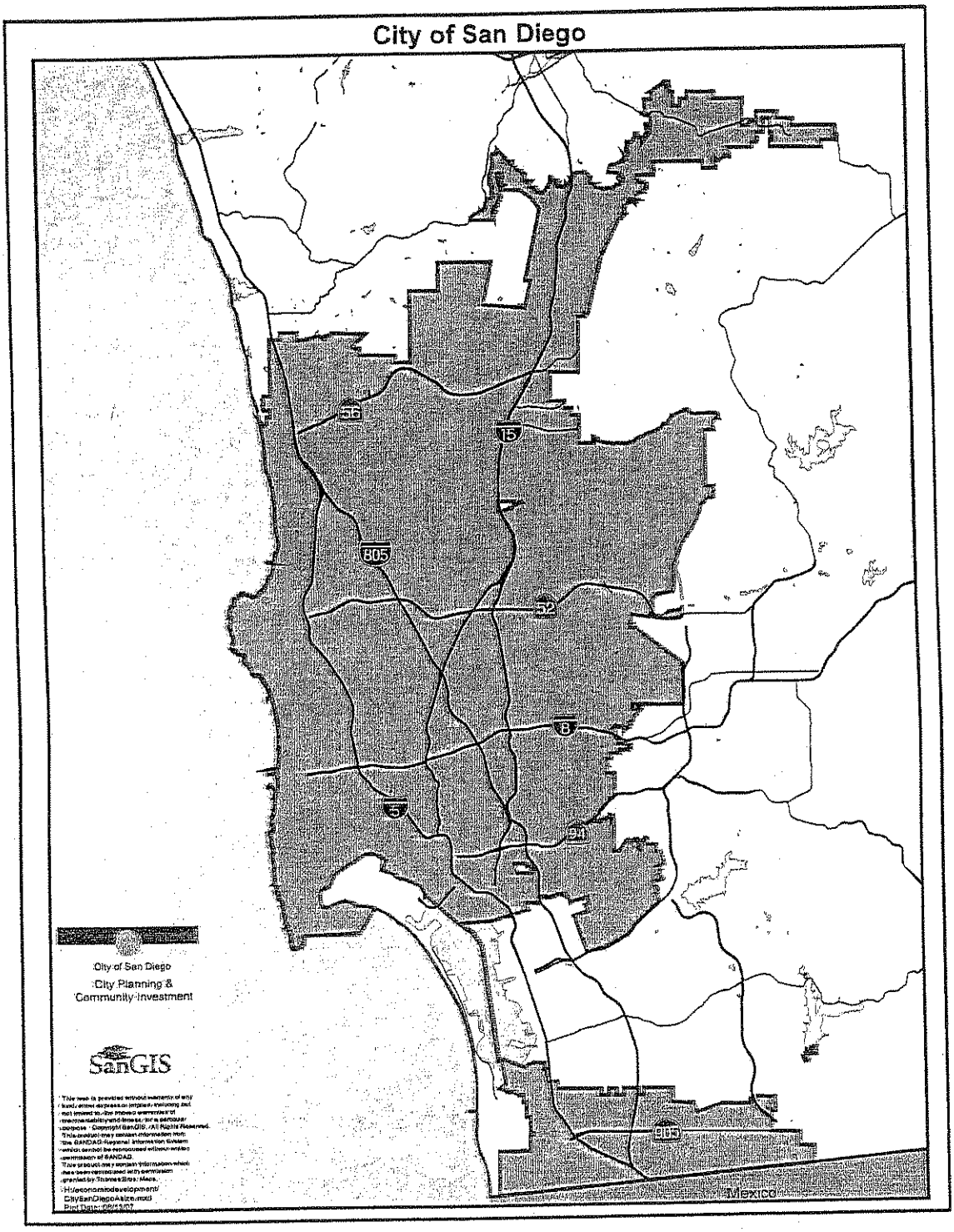
Assessments Based on Estimated Benefits
"Assessment" means a levy for the purpose of promoting activities which will benefit the businesses located within a tourism marketing district. Assessments levied under a tourism marketing district are not special taxes.

Assessments levied on businesses shall be levied on the basis of the degree of estimated benefit to the businesses within the tourism marketing district. The proposed assessment is a percentage of gross room revenue, and so when a hotel's revenue increases from the enhanced tourism marketing services provided through the TMD, the real dollar amount of the assessment will increase proportionately.

The district's activities are designed to provide benefits specifically for the assessed businesses by increasing tourism within the boundaries of the District and hence increasing hotel room occupancy and revenues. An indirect benefit may accrue to the surrounding community or to the public as a result of the activities to be provided with the assessment levied. These indirect benefits (if any) are incidental and inconsequential.

APPENDIX A

Map of District



APPENDIX B
List of Assessed Businesses

Hotel Name	Hotel Location
500 West Broadway	500 W Broadway
Bahia Resort Hotel	998 West Mission Bay Dr
Bay Club Hotel & Marina	2131 Shelter Island Dr
Beach Cottages, The	4255 Ocean Bl
Best Western Americana Inn	815 W San Ysidro Bl
Best Western Bayside Inn	555 W Ash St
Best Western Blue Sea Lodge	707 Pacific Beach Dr
Best Western Hacienda Hotel	4104 Harney St
Best Western Inn By The Sea	7830 Fay Av
Best Western Inn-Miramar	9310 Kearny Mesa Rd
Best Western Mission Bay	2575 Clairemont Dr
Best Western Seven Seas Lodge	411 Hotel Circle S Cr
Best Western Posada @ Yacht	5005 North Harbor Dr
Bristol Court Hotel	1055 01st Av
California Suites Hotel	5415 Clairemont Mesa Bl
Carmel Highland G & T Resort	14455 Penasquitos Dr
Catamaran Resort Hotel	3999 Mission Bl
Chateau La Jolla	233 Prospect St
Clarion Hotel Bayview	660 K St
Comfort Inn & Suites Hotel Cir	2201 Hotel Circle S Cr
Comfort Inn & Suites Zoo/Sw	2485 Hotel Circle Pl
Comfort Inn Airport-Old Town	1955 San Diego Av
Comfort Inn Gaslamp	660 G St
Comfort Suites	631 Cam Del Rio S
Courtyard By Marriott	8651 Spectrum Center Bl
Courtyard San Diego Downtown	530 Broadway
Dana Inn	1710 West Mission Bay Dr
Days Inn	4540 Mission Bay Dr
Days Inn	543 Hotel S Cr
Days Inn & Suites	5550 Clairemont Mesa Bl
Days Inn Suites-Point Loma	3350 Rosecrans St
Del Mar Hilton	15575 Jimmy Durante Bl
Doubletree Club Hotel	1515 Hotel Circle South
Doubletree Hotel Del Mar	11915 El Cam Real
Doubletree Hotel San Diego-M.V	7450 Hazard Center Dr

APPENDIX B
List of Assessed Businesses – continued

Hotel Name	Hotel Location
Econolodge	445 Hotel Circle S Cr
Economy Inn	230 Via De San Ysidro
Embassy Hotel	3645 Park Bl
Embassy Suites	601 Pacific Hy
Embassy Suites Hotel	4550 La Jolla Village Dr
Empress Hotel The	7766 Fay Av
Estancia La Jolla Hotel & Spa	9700 Torrey Pines Rd
Extended Stay America # 8787	3860 Murphy Canyon Rd
Extended Stay America #8573	2087 Hotel Circle South
E-Z 8 Motel Of Old Town	4747 Pacific Hy
E-Z 8 Motel-South Bay	1010 Outer Rd
E-Z 8 Motels-Sports Arena	3333 Channel Wy
Fairfield Inn & Suites	641 Cam Del Rio S
Four Points Hotel Sheraton	8110 Aero Dr
Golden West Hotel	720 04th Av
Good Nite Inn	4545 Waring Rd
Good Nite Inn	3880 Greenwood St
Half Moon Inn	2303 Shelter Island Dr
Hampstead Lafayette Hotel, Llc	2223 El Cajon Bl
Hampton Inn	5434 Kearny Mesa Rd
Hampton Inn Del Mar	11920 El Cam Real
Hampton Inn San Diego Downtown	1531 Pacific Hy
Hampton Inn Sea World/Airport	3888 Greenwood St
Handlery Hotel & Resort	950 North Hotel Cr
Hilton Garden Inn San Diego-Rb	17240 Bernardo Garden Dr
Hilton Harbor Island	1960 Harbor Island Dr
Hilton Hotel-San Diego	1775 East Mission Bay Dr
Hilton La Jolla Torrey Pines	10950 North Torrey Pines Rd
Hilton San Diego Gaslamp Qtr	401 K St
Hilton Sd Mission Valley	901 Cam Del Rio S
Holdiay Inn Msn Vly-Stadium	3805 Murphy Canyon Rd
Holiday Inn Bayside	4875 North Harbor Dr
Holiday Inn Express	9888 Mira Mesa Bl
Holiday Inn Express	3950 Jupiter St
Holiday Inn Express - Old Town	3900 Old Town Av

APPENDIX B
List of Assessed Businesses - continued

Hotel Name	Hotel Location
Holiday Inn Express & Suites	5925 Lusk Bl
Holiday Inn Express/Sd/Mb/Pb	4610 De Soto St
Holiday Inn Harbor View	1617 01st Av
Holiday Inn Mission Bay/Seawor	3737 Sports Arena Bl
Holiday Inn Rancho Bernardo	17065 West Bernardo Dr
Holiday Inn San Diego North Mi	9335 Kearny Mesa Rd
Holiday Inn-Mission Valley	595 Hotel Circle South
Holiday Inn-S.D. On The Bay	1355 Harbor Dr
Homestead Village	9880 Pacific Heights Bl
Homestead Village M.V.	7444 Mission Valley Rd
Homewood Suites	11025 Vista Sorrento Py
Horton Grand Hotel	311 Island Av
Hotel Churchill	827 C St
Hotel La Jolla At The Shores	7955 La Jolla Shores Dr
Hotel Solamar	435 06th Av
Howard Johnson	1631 Hotel S Cr
Howard Johnson Inn	3330 Rosecrans St
Hyatt Regency Mission Bay Spa & Marina	1441 Quivira Rd
Hyatt Regency La Jolla	3777 La Jolla Village Dr
Hyatt Regency San Diego	One Market Pl
International Motor Inn	190 Calle Primera
Island Inn	202 Island Av
Island Palms Hotel Marina	2051 Shelter Island Dr
Kings Inn	1333 Hotel Circle South
La Jolla Beach Club Apartments	2000 Spindrift Dr
La Jolla Cove Suites	1155 Coast Bl
La Jolla Marriott 7fl	4240 La Jolla Village Dr
La Jolla Residence Inn	8901 Gilman Dr
La Pensione	606 W Date St
La Quinta Inn	2380 Moore St
La Quinta Inns & Suites	10185 Paseo Montril
La Valencia Hotel	1132 Prospect St
Lodge At Torrey Pines	11480 Nrth Torrey Pines Rd
Mission Valley Travelodge	1201 Hotel Circle S Cr
Mission Vally Resort	875 Hotel Circle South

APPENDIX B
List of Assessed Businesses - continued

Hotel Name	Hotel Location
Motel 6 #1419	1546 02nd Av
Motel 6 (Loc #98)	160 Calle Primera
Motel 6 (Loc#14)	2424 Hotel Circle N Cr
New Plaza Hotel	1037 04th Av
Oakwood Mission Valley	425 Cam Del Rio S
Ocean Park Inn	710 Grand Av
Old Town Inn	4444 Pacific Hy
Omni San Diego Hotel	675 L St
Otay Mesa Comfort Suites	2351 Otay Center Dr
Pacific Terrace	610 Diamond St
Padre Trail Inn	4200 Taylor St
Park Manor Suites	525 Spruce St
Pickwick Hotel	132 W Broadway
Premier Inn	2484 Hotel Circle Pl
Quality Inn	2901 Nimitz Bl
Quality Inn	1430 07th Av
Quality Suite Hotel	9880 Mira Mesa Bl
Radisson Hotel - San Diego	1433 Cam Del Rio S
Radisson Hotel Harbor View	1646 Front St
Radisson La Jolla	3299 Holiday Ct
Radisson Suite Hotel	11520 West Bernardo Ct
Ramada Inn & Suites	830 06th Av
Ramada Inn San Diego North	5550 Kearny Mesa Rd
Ramada Limited	1403 Rosecrans St
Ramada Plaza	2151 Hotel Circle South
Rancho Bernardo Inn	17550 Bernardo Oaks Dr
Red Lion Hanalei Hotel	2270 Hotel Circle North
Residence Inn - Central	5400 Kearny Mesa Rd
Residence Inn By Marriott	12011 Scripps Highlands Dr
Residence Inn By Marriott	11002 Rancho Carmel Dr
Residence Inn San Diego Downtn	1747 Pacific Hy
Residence Inn Sd Mv	1865 Hotel Circle South
S D Marriott Mission Valley	8757 Rio San Diego Dr
San Diego Marriott Courtyard	9650 Scranton Rd
San Diego Marriott Del Mar	11966 El Cam Real

APPENDIX B
List of Assessed Businesses - continued

Hotel Name	Hotel Location
San Diego Marriott Marina	333 West Harbor Dr
San Diego Old Town Courtyard	2435 Jefferson St
San Diego Paradise Point Resort	1404 West Vacation Rd
Sea Lodge Hotel	8110 Cam Del Oro
Shelter Pointe Hotel & Marina	1551 Shelter Island Dr
Sheraton Hrbr Isnd Hotel East	1380 Harbor Island Dr
Sheraton Suites San Diego	701 A St
Sommerset Hotel	606 Washington St
Sorrento Mesa Residence Inn	5995 Pacific Mesa Ct
Springhill Suites By Marriott	12032 Scripps Highlands Dr
Staybridge Suites Carmel Mtn	11855 Of Industry Av
Staybridge Suites Sorrento	6639 Mira Mesa Bl
Studio 819	819 University Av
Super 8 Motel	4380 Alvarado Canyon Rd
Super 8 Motel Bayview	1835 Columbia St
The Baltic Inn	521 06th Av
The Friendship Hotel	3942 08th Av
The Grande Colonial Hotel	910 Prospect St
The Hotel Of Rancho Bernardo	11611 Bernardo Plaza Ct
The J Street Inn	222 J St
Town & Country Hotel	500 Hotel N Cr
Travelodge - Airport City	2353 Pacific Hy
University Towers	5505 Montezuma Rd
US Grant	326 Broadway
Vagabond Inn	625 Hotel Circle South
Valli Hi Motel	655 W San Ysidro Bl
Vantaggio Suites	1736 State St
Villager Lodge	5343 Adobe Falls Rd
W San Diego	421 West B St
West Park Inn	1840 04th Av
Westgate Hotel	1055 02nd Av
Westin Hotel Horton Plaza	910 Broadway Cr
Woodfin Suite Hotel Sorr Mesa	10044 Pacific Mesa Bl
Wyndham Emerald Plaza Hotel	400 W Broadway
Wyndham Garden Hotel-S.D.North	5975 Lusk Bl

ATTACHMENTS

The following attachments are provided for information and reference purposes only. They are not meant to be construed as a part of the District Management Plan, rather they are provided as guidelines for deliberations and decisions to be made solely by the Board of Directors of the San Diego Tourism Promotion Corporation.

Attachment 1 – Framework for Application Criteria and Process

Attachment 2 – Memorandum of Understanding with San Diego Convention & Visitors Bureau

Attachment 3 – Memorandum of Understanding with San Diego North Convention & Visitors Bureau

Attachment 4 – Assumptions to Five-year Revenue Income and Distribution Budgets

ATTACHMENT 1

Framework For Application Criteria & Process

It is anticipated that the San Diego Tourism Promotion Corporation will solicit and/or receive applications for funding from numerous, diverse organizations, and entities. Specific application guidelines will be created and available once the SDTPC is appointed by the City to manage the Tourism Marketing District. Those guidelines, criteria and application will be created at the sole discretion of the Board of Directors of the San Diego Tourism Promotion Corporation. Changes to the guidelines, criteria and application can only be made by an action of the Board of Directors. The criteria below will form the basis for the subsequent guidelines:

Legal Status:

- Applicants must demonstrate proof of current legal status within the jurisdiction of the headquarters of their business or corporation.

Tourism Mission:

- While an applicant's primary mission need not be tourism related, the applicant's mission must include an acknowledgement of tourism marketing as a component of that mission.

Use of Funds:

- An applicant's income from the SDTPC must be solely used for the purpose of fulfilling the tourism marketing portion of its mission as articulated in its application for funding.

Track Record:

- An applicant must have a demonstrable history of successful, ongoing programming or business performance prior to submitting an application.

Location:

- Regardless of where an applicant is headquartered or physically located, or where a particular marketing program is implemented, 100% of the funding received from the SDTPC must be applied to, or in support of, programs designed for the measurable benefit of hotels (lodging businesses) within the City of San Diego.

Compliance:

- Former contractors of the City of San Diego must have submitted acceptable final report packages on any completed contract and be in good standing with the City.

Application:

- Each applicant for funding will be required to submit an "Application Request for Funding" that will require significant information about the applying organization or entity, as well as a specific proposal for how the requested funds will be spent, the expected result and the proposed method for measuring results. As a model for the type and depth of information required, it is suggested that prospective applicants become familiar with the Citywide Small Business Enhancement Program Grant Guidelines & Application, published by the City of San Diego City Planning and Community Investment Department Office of Small Business.

Fundamental Requirements:

- Fundamental to the funding of any application will be the clearly articulated benefit to hotels in the City of San Diego. While benefit may be delivered in numerous ways, by far the most important benefit will be measured in the delivery of room nights. Successful applications will clearly describe the strategy and tactics for delivering room nights as well as the number of room nights projected and estimated gross room revenue. Letters of intent for hotel room blocks and/or tentative agreements with hotels will provide the necessary back up to support the above projections and estimates.
- When considering these fundamental application requirements, priority will be given to:
  - Special need periods of the year
  - Special need geographic locations within the City
  - Incremental new room nights from existing programs or sponsoring organizations

Determining Return On Investment

- All successful applicants will clearly demonstrate a measurable Return On Investment (ROI) for the programs or services they propose. That Return On Investment can be determined in a number of different ways. Applicants are encouraged to develop and demonstrate their suggested method of measuring ROI for their particular program as a part of their application.

Application Timeline

- An application calendar and timeline will be published annually to guide applicants through the application process

Oral Presentation

- Should an application meet the fundamental requirements for consideration, and prior to any final decision, qualifying finalist may be invited to make a public, oral presentation before the SDTPC Board of Directors.

Contract Agreement

- Once the Board of Directors has approved funding and the SDTPC budget is approved by the City Council, a Contract Agreement is issued to the successful applicants. The Contract Agreement details the terms and conditions of the contract between the SDTPC and the organization and the organization's scope of work, anticipated results and mutually agreed upon method(s) for measuring those results.

ATTACHMENT 2

Draft Memorandum of Understanding with San Diego CVB

This is a Memorandum of Understanding (MOU) between the San Diego Tourism Promotion Corporation (SDTPC) and the San Diego Convention & Visitors Bureau. This MOU addresses Funding, Performance and Performance Measurement.

The following points of agreement shall be included in the Management Plan for the City of San Diego Tourism Marketing District:

1. Percentage Fixed Revenue
   San Diego CVB shall receive 50% of the annual gross revenue generated by the Tourism Marketing District. This figure represents minimum, base funding. Additional funding may be allocated contingent upon a successful application to the SDTPC.

2. Specific Use For City of San Diego Lodging Establishments
   The revenue received by San Diego CVB from the SDTPC will be segregated from other income and may be utilized to sell, market and promote (the City of San Diego to the benefit of) lodging establishments within the city limits of the City, and may include support activities such as critical operational expenses, including but not limited to salaries and benefits.

3. Annual Performance Audit
   For purposes of inclusion in an Annual Report to the City Council, San Diego CVB shall comply with and support an annual Performance Audit based on mutually agreed upon performance standards to measure a return on investment to the City generated by San Diego CVB activities funded by the SDTPC. It is acknowledged that some activities and programs may extend over multiple years, rendering a single year assessment problematic. This Performance Audit shall be performed by a mutually agreed upon third-party auditor, and shall be paid for by the San Diego CVB.

4. Annual Financial Audit
   For purposes of inclusion in an Annual Report to the City Council and general public distribution, San Diego CVB shall comply with and support an annual Financial Audit of all income and expenses relative to its operation. Specific focus of this Financial Audit will be the correct and appropriate use of SDTPC revenue to sell, market and promote (the City of San Diego to the benefit of) lodging establishments within the city limits of the City. This Financial Audit shall be performed by a third-party auditor selected by the San Diego CVB, and shall be paid for by the San Diego CVB.

5. Term
The effective term of the items specified in this memorandum shall be contiguous with the term of the Tourism Marketing District, 5 years, or as approved by the City Council.

6. Contract
San Diego CVB and the SDTPC shall execute a mutually agreed upon contract that will include all of the elements listed above, and that will provide for a clear understanding of the relationship between San Diego CVB and the SDTPC. This contract will include language defining required, mutually agreed upon performance standards and the funding consequences possible should those standards not be met. This contract will define the necessary market research into mutually agreed upon areas or subjects to be provided by the San Diego CVB.

7. Effective Date
The effective date will be the first day of collections from assessed businesses, as approved by the City Council.

ATTACHMENT 3

Draft Memorandum of Understanding with San Diego North CVB

This is a Memorandum of Understanding (MOU) between the San Diego Tourism Promotion Corporation and the San Diego North Convention & Visitors Bureau. This MOU addresses Funding, Performance and Performance Measurement.

The following points of agreement shall be included in the Management Plan for the City of San Diego Tourism Marketing District:

1. Percentage Fixed Revenue: San Diego North CVB shall receive 10% of the annual gross revenue generated by the Tourism Marketing District. This figure is both the minimum and the maximum annual funding available to San Diego North from the SDTPC.

2. Specific Use For City of San Diego Lodging Establishments: The revenue received by San Diego North CVB from the TMD will be segregated from other income and may be utilized to sell, market and promote (the northern portion of the City of San Diego to the benefit of) lodging establishments within the city limits of the City, and may include support activities such as critical operational expenses, including but not limited to salaries and benefits.

3. Annual Performance Audit: For purposes of inclusion in an Annual Report to the City Council, San Diego North CVB shall comply with and support an annual Performance Audit based on mutually agreed upon performance standards to measure a return on investment to the City generated by San Diego North CVB activities funded by the TMD. It is acknowledged that some activities and programs may estend over multiple years rendering a single year assessment problematic. This Performance Audit shall be performed by a mutually agreed upon third-party auditor, and shall be paid for by the San Diego North CVB.

4. Annual Financial Audit: For purposes of inclusion in an Annual Report to the City Council and general public distribution, San Diego North CVB shall comply with and support an annual Financial Audit of all income and expenses relative to its operation. Specific focus of this Financial Audit will be the correct and appropriate use of TMD revenue to sell, market and promote (the northern portion of the City of San Diego to the benefit of) lodging establishments within the city limits of the City. This Financial Audit shall be performed by a third-party auditor selected by the San Diego North CVB, and shall be paid for by the San Diego North CVB.

5. Term: The effective term of the items specified in this memorandum shall be contiguous with the term of the Tourism Marketing District, 5 years, or as approved by the City Council.

6. Contract: San Diego North CVB and the SDTPC shall execute a mutually agreed upon contract that will include all of the elements listed above, and that will provide for a clear understanding of the relationship between San Diego North CVB and the SDTPC. This contract will include language defining required, mutually agreed upon performance standards and the funding consequences possible should those standards not be met. This contract will define the necessary market research into mutually agreed upon areas or subjects to be provided by the San Diego North CVB.

7. Effective Date: The effective date will be the first day of collections from assessed businesses, as approved by the City Council.

ATTACHMENT 4

Assumptions to Revenue Income & Distribution Calculations

A. City projects $159.2 million in TOT revenue for FY '08.

B. Estimated TOT Revenue: Assumes 6% growth annually in TOT revenues through 2013.

C. Estimated TMD Revenue: Assumes the equivalent of 2 points of TOT.

D. Administration Fee Paid to City: Assumes an automatic annual escalator of 4.5%.

E. SDTPC Personnel Expenses: Assumes an automatic annual escalator of 4.5%

F. SDTPC Overhead Assumes an automatic annual escalator of 4.5%

G. Annual escalator of 4.5% is derived from actuarial assumptions used in calculating increases in City personnel costs in order to forecast changes to the City's pension obligation.

EXHIBIT B

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

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 provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

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. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Conflict of Interest Standard - Contracts or Transactions

All nonprofit mutual benefit corporations and nonprofit public benefit corporations contracting with the City are subject to the following conflict of interest standard, which is based on the conflict of interest provisions of the California Corporations Code:

> No contract or transaction may be entered into by the corporation if one of its officers, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:
>
> 1. The action by the board is one fixing the compensation of a director or officer of the corporation; or
>
> 2. All of the following conditions are met:
>
> (a) The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter.

(b) The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties.

(c) Any membership owned by the interested party abstains from voting on the matter.

(d) The contract or transaction is just and reasonable to the corporation at the time it was authorized, approved or ratified.

(e) The interested party shall not actively participate in the decision about the transaction or contract, except to answer questions or provide a broad explanation.

(f) The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

3. A committee or person authorized by the board approved the transaction consistent with the standards in section 2 above, it was not reasonably practicable to obtain approval of the board prior to entering into the transaction, and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City 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, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than $5000 from a single contractor in a 12 month period:
   - ☐ No competitive procurement process is required.

2. Expenditures of between $5000 and $25,000 from a single contractor in a 12 month period:
   - ☐ Obtain three written price proposals or demonstrate why three bids could not be obtained.
   - ☐ Present price proposal information to full board for approval of contract or transaction.
   - ☐ Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than $25,000 for goods and/or services from a single contractor in a 12 month period:
   - ☐ Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.
   - ☐ Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.
   - ☐ Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.
   - ☐ Record action taken by the board in meeting minutes and keep the proposals received on file.
   - ☐ After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City, and/or removal of the director or member of the corporation from his or her position with the corporation. 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 contractor to any reimbursement or payment for goods or services provided pursuant to the void contract. A corporation and/or its director or member who violates this policy shall be subject to civil liability to the City for any damages caused as a result of the violation.

LAF:jrl
03/27/01