



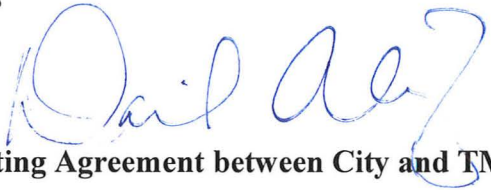
COUNCILMEMBER DAVID ALVAREZ

**City of San Diego
Council District Eight**

MEMORANDUM

DATE: March 28, 2013

TO: Honorable Mayor Bob Filner
Honorable City Councilmembers

FROM: Councilmember David Alvarez 

SUBJECT: First Amendment to 2013 Operating Agreement between City and TMD Corp.

The City and the San Diego TMD Corporation have been engaged in discussions to amend the 2013 Operating Agreement for the last couple months. I believe there has been significant progress in finding an acceptable compromise between the City and TMD on a number of important issues, that will make the operating agreement a stronger document and allow for effective marketing of San Diego as a tourist destination.

I believe that the following changes to the draft first amendment to the operating agreement before us today will provide language that protects tax payer dollars and significantly reduces the level of risk to the City's general fund:

- Replace section (b) "HOTEL INDEMNIFICATION" with the following language:
 - (b) HOTEL INDEMNIFICATION: Within 30 days of Council approval of this Amendment, at least the 20 of the 25 largest FY 2012 transient occupancy tax producing hotels in the TMD, or an equivalent amount of transient occupancy taxes collected in FY 2012, will execute agreements to hold harmless, indemnify, and defend the City, its elected officials and other officers, employees, agents and representatives from any and all claims, including but

not limited to third-party claims as well as the City's defense costs, including reasonable attorneys fees, if any, to effect refunds, reimbursements or relief from the collection of TMD assessments. Each individual hotel that executes such an agreement shall have the right to opt out annually. The Mayor is authorized to withhold collected assessment funds from any hotels not executing such agreements.

Change Section (i) "BALBOA PARK CENTENNIAL CELEBRATION" with the following language:

1. In the first sentence, delete the words "...up to ..." before 10%.

Implementation of the above changes will ensure that the City's general fund is protected at a significantly higher level from any claims relating to the collection of TMD assessments and will provide the public with a higher level of confidence that this agreement places the City at a lower level of risk. Additionally, it will ensure much needed funding will be provided for an important civic event for San Diego.

The importance of moving forward with this agreement cannot be stressed enough, as effectively marketing the City as a tourist destination is vital to the San Diego economy, however it is the City Council's duty as elected officials to ensure that there are adequate safeguards included in the agreement that protects the City's General Fund from significant risk. These changes accomplish both these goals.

I encourage the City Council to support the above changes and incorporate them into the proposed first amendment to the 2013 operating agreement between the City and the TMD Corporation.

CC:

Honorable City Attorney, Jan Goldsmith
Independent Budget Analyst, Andrea Tevlin