

1 [Contract with Owners' Association for administration/management of Fisherman's Wharf
2 Portside Community Benefit District.]

3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **administration/management of the business-based business improvement district**
5 **known as the "Fisherman's Wharf Portside Community Benefit District," pursuant to**
6 **Section 36651 of the Streets and Highways Code.**

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8 WHEREAS, on October 24, 2006, acting pursuant the California Property and Business
9 Improvement District Law of 1994 (Part 7 of Division 18 of the California Streets and
10 Highways Code, commencing with Section 36600), as augmented by Article 15 of the San
11 Francisco Business and Tax Regulations Code, the Board of Supervisors adopted Resolution
12 No. 586-06 ("Resolution of Intention") declaring the Board's intention to form a business-
13 based business improvement district and to levy assessments on businesses to be included
14 within the district, setting the public hearing, initiating mail ballot majority protest proceedings,
15 approving the Fisherman's Wharf Portside Community Benefit District Management District
16 Plan (the "Management District Plan" or "Plan"), making various findings and taking other
17 legislative actions required to form the proposed district and levy the proposed assessments
18 (Board File No. 061419); and,

19 WHEREAS, on December 12, 2006, acting pursuant to the aforementioned legal
20 authorities, the Board of Supervisors adopted Resolution No. 696-06 ("Resolution of
21 Formation"), establishing the business-based business improvement district designated as the
22 "Fisherman's Wharf Portside Community Benefit District" and levying multi-year special
23 assessments on Identified Businesses included within the District (the "Assessments") (Board
24 File No. 061660). The Tax Collector's designation for the Assessments for the Fisherman's
25 Wharf Portside Community Benefit District is Code No. F07; and,

1 WHEREAS, pursuant to the aforementioned legal authorities and the Resolution of
2 Formation, the Assessments may only be used to fund business-related services,
3 "Improvements" (as defined in Section 36610 of the Streets and Highways Code) and
4 "Activities" (as defined in Section 36613 of the Streets and Highways Code) within the District
5 in accordance with the Management District Plan (collectively, such authorized services,
6 improvements and activities are referred to as "District Programs"); and,

7 WHEREAS, the District is not a governmental, corporate or separate legal entity, but is
8 a geographic area containing all of the Identified Businesses subject to the Assessments for
9 District Programs described in the Plan and included in the annual budgets submitted to and
10 approved by the Board of Supervisors. The annual budget for District Programs for the first
11 year of operations is set forth in the Plan, and for subsequent years, shall be set forth in the
12 Annual Reports submitted to the Board of Supervisors as required by Section 36650 of the
13 Streets and Highways Code; and,

14 WHEREAS, pursuant to the Resolution of Formation and Sections 36614.5 and 36650
15 of the Streets and Highways Code, the Board of Supervisors may contract with a private
16 nonprofit entity referred to as an "Owners' Association" to administer the District Programs.
17 An Owners' Association may be an existing nonprofit entity or a newly formed nonprofit entity.
18 An Owners' Association is a private entity and may not be considered a public entity for any
19 purpose, nor may its board members or staff be considered to be public officials for any
20 purpose; provided, however, that an Owner's Association must comply with the Ralph M.
21 Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the
22 Government Code), at all times when its board of directors or any committee thereof hears,
23 considers or deliberates on matters concerning the District, and must comply with the
24 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
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1 Title 1 of the Government Code), for purposes of providing public access to records relating to
2 the District; and,

3 WHEREAS, an Owners' Association is obligated to hold in trust all funds it receives
4 from the City that are derived from the City's levy and collection of the Assessments, and to
5 use such funds exclusively for the purposes of implementing the Management District Plan
6 and administering, managing and providing District Programs set forth in the Plan, Resolution
7 of Formation, and annual budgets submitted by the Owners' Association and approved by the
8 Board of Supervisors; and,

9 WHEREAS, pursuant to the Resolution of Formation, the Mayor's Office of Economic
10 and Workforce Development is the City agency responsible for coordination between the City
11 and the Owners' Association for the District; and,

12 WHEREAS, the Mayor's Office of Economic and Workforce Development has
13 negotiated an agreement with the owners' California nonprofit corporation that also uses the
14 name Fisherman's Wharf Association, to, in good faith and with diligence as the Owners'
15 Association for the District, develop, implement, direct, manage, administer, operate and
16 ensure the timely provision of the District Programs ("Management Agreement" or
17 "Agreement"). The Management Agreement is on file with the Clerk of the Board of
18 Supervisors in File No. _____ and is incorporated herein by reference; and,

19 WHEREAS, pursuant to the Property and Business Improvement District Law of 1994,
20 the Resolution of Formation and the express terms of the Management Agreement, the
21 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
22 resolution; and,

23 WHEREAS, it is in the best interest of the City and the business owners within the
24 District for the City to enter into the Management Agreement with the owners' nonprofit
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1 corporation Fisherman's Wharf Association according to the terms and conditions set forth
2 therein; now, therefore, be it

3 RESOLVED, that the Board of Supervisors declares as follows:

4 Section 1. AUTHORIZATION TO EXECUTE CONTRACT. The Mayor's Office of
5 Economic and Workforce Development is duly authorized to execute the Management
6 Agreement on behalf of the City and County of San Francisco.

7 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
8 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
9 File No. _____, which is incorporated herein by reference.

10 Section 3. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.
11 The Mayor's Office of Economic and Workforce Development, Controller and all other
12 Departments, City Officers and Employees are authorized to take all actions, make
13 determinations, exercise discretion, grant or deny approval, and otherwise take all reasonable
14 steps necessary for full performance of the Management Agreement on behalf of the City and
15 County of San Francisco according to its terms.

16 Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
17 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
18 Board, the Mayor's Office of Economic and Workforce Development may execute
19 amendments to the Agreement on behalf of the City and County of San Francisco that are
20 consistent with the Management District Plan, Resolution of Formation, official City policies
21 and applicable law.

22 Section 5. DELIVERY. The Clerk of the Board of Supervisors shall cause certified
23 copies of this Resolution to be delivered to the owners' nonprofit corporation Fisherman's
24 Wharf Association and the Mayor's Office of Economic and Workforce Development.

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