

1 [Contract with Owners' Association for administration of Castro/Upper Market Community
2 Benefit District.]

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4 **Resolution approving an agreement with the nonprofit Owners' Association for**
5 **administration of the property-based business improvement district known as the**
6 **“Castro/Upper Market Community Benefit District” pursuant to Section 36651 of the**
7 **Streets and Highways Code.**

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9 WHEREAS, on June 7, 2005, acting pursuant to Article XIID of the California
10 Constitution ("Article XIID"), Section 53753 of the California Government Code, and the
11 Property and Business Improvement District Law of 1994, Part 7 of Division 18 of the
12 California Streets and Highways Code (commencing with Section 36600), as augmented by
13 Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15"), the Board
14 of Supervisors adopted Resolution No. 421-05 ("Resolution of Intention") declaring the
15 Board's intention to form a property-based business improvement district and to levy
16 assessments on parcels to be included within the district, setting the public hearing, initiating
17 mail ballot majority protest proceedings, approving the Castro/Upper Market Community
18 Benefit District Management District Plan (the "Management District Plan" or "Plan"), making
19 various findings and taking other legislative actions required to form the proposed district and
20 levy the proposed assessments (Board File No. 050924); and,

21 WHEREAS, on August 2, 2005, acting pursuant to the aforementioned legal
22 authorities, the Board of Supervisors adopted Resolution No. 582-05 ("Resolution of
23 Formation"), establishing the property-based business improvement district designated as the
24 "*Castro/Upper Market Community Benefit District*" and levying multi-year special assessments
25 on Identified Parcels (as defined in Section 53750(g) of the Government Code) included

1 within the District (the "Assessments")(Board File No. 051187). The Controller's designation
2 for the Assessments for the Castro/Upper Market Community Benefit District is Special
3 Assessment No. 63; and,

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

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

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

1 hears, considers or deliberates on matters concerning the District, and must comply with the
2 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
3 Title 1 of the Government Code), for purposes of providing public access to records relating
4 to the District; and,

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

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

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

21 WHEREAS, pursuant to the Property and Business Improvement District Law of 1994,
22 the Resolution of Formation and the express terms of the Management Agreement, the
23 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
24 resolution. In addition, pursuant to Charter Section 9.118, the Management Agreement is
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1 subject to approval by the Board of Supervisors by resolution because the term of the
2 Agreement is in excess of 10 years; and,

3 WHEREAS, it is in the best interest of the City and the property owners within the
4 District for the City to enter into the Management Agreement with the nonprofit corporation
5 Castro/Upper Market Community Benefit District according to the terms and conditions set
6 forth therein; now, therefore, be it

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

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

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

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

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

1 Section 5. DELIVERY. The Clerk of the Board of Supervisors shall cause certified
2 copies of this resolution to be delivered to the nonprofit corporation Castro/Upper Market
3 Community Benefit District and the Mayor's Office of Economic and Workforce Development.

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