

1 [Management Agreement with Owners' Association for administration/management of San
2 Francisco Tourism Improvement 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 "San Francisco Tourism Improvement District," pursuant to Section**
6 **36651 of the California Streets and Highways Code.**

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8 WHEREAS, on October 28, 2008, acting pursuant to Article XIID of the California
9 Constitution, Section 53753 of the California Government Code, and the California Property
10 and Business Improvement District Law of 1994 (Part 7 of Division 18 of the California Streets
11 and Highways Code, commencing with Section 36600), as augmented by Article 15 of the
12 San Francisco Business and Tax Regulations Code, the Board of Supervisors adopted
13 Resolution No. 430-08 ("Resolution of Intention") declaring the Board's intention to form a
14 business-based business improvement district and to levy assessments on businesses to be
15 included within the district, setting the public hearing, initiating mail ballot majority protest
16 proceedings, approving the Tourism Improvement District Management District Plan (the
17 "Management District Plan" or "Plan"), making various findings and taking other legislative
18 actions required to form the proposed district and levy the proposed assessments (Board File
19 No. 081338); and,

20 WHEREAS, on December 16, 2008, acting pursuant to the aforementioned legal
21 authorities, the Board of Supervisors adopted Resolution No. 504-08 ("Resolution of
22 Formation"), establishing the business-based business improvement district designated as the
23 "San Francisco Tourism Improvement District" and levying multi-year special assessments on
24 Identified businesses included within the District (the "Assessments") (Board File No.
25 081517); 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
25 Title 1 of the Government Code), for purposes of providing public access to records relating to

1 the District; and,

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

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

11 WHEREAS, the Office of Economic and Workforce Development has negotiated an
12 agreement with the owners' California nonprofit corporation that also uses the name San
13 Francisco Tourism Improvement District Management Corporation, to, in good faith and with
14 diligence as the Owners' Association for the District, develop, implement, direct, manage,
15 administer, operate and ensure the timely provision of the District Programs ("Management
16 Agreement" or "Agreement"). The Management Agreement, as amended at Government
17 Audit and Oversight Committee July 23, 2009, is on file with the Clerk of the Board of
18 Supervisors in File No. 090819 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 property owners within the
24 District for the City to enter into the Management Agreement with the owners' nonprofit
25 corporation San Francisco Tourism Improvement District Management Corporation according

1 to the terms and conditions set forth therein; now, therefore, be it

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

3 Section 1. AUTHORIZATION TO EXECUTE CONTRACT. The Office of Economic
4 and Workforce Development and the Treasurer and Tax Collector are duly authorized to
5 execute the Management Agreement with the San Francisco Tourism Improvement District
6 Management Corporation, 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 for the Tourism Improvement District as amended at
9 Government Audit and Oversight Committee on July 23, 2009 on file with the Clerk of the
10 Board of Supervisors in File No. 090819, which is incorporated herein by reference.

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

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

23 Section 5. DELIVERY. The Clerk of the Board of Supervisors shall cause certified
24 copies of this Resolution to be delivered to the owners' nonprofit corporation Tourism
25 Improvement District Management Corporation, the Office of Economic and Workforce

1 Development, and the Treasurer and Tax Collector.

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