

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

3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **administration of the property-based business improvement district known as the**
5 **“Fisherman's Wharf Community Benefit District” pursuant to Section 36651 of the**
6 **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. 386-05 ("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 Fisherman's Wharf Community Benefit
18 District Management District Plan (the "Management District Plan" or "Plan"), making various
19 findings and taking other legislative actions required to form the proposed district and levy the
20 proposed assessments (Board File No. 050878); and,

21 **WHEREAS**, on July 26, 2005, acting pursuant to the aforementioned legal authorities,
22 the Board of Supervisors adopted Resolution No. 540-05 ("Resolution of Formation"),
23 establishing the property-based business improvement district designated as the
24 "***Fisherman's Wharf Community Benefit District***" and levying multi-year special
25 assessments on Identified Parcels (as defined in Section 53750(g) of the Government Code)

1 included within the District (the "Assessments")(Board File No. 051184). The Controller's
2 designation for the Assessments for the Fisherman's Wharf Community Benefit District is
3 Special Assessment No. 64; 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 the
25 Government Code), at all times when its board of directors or any committee thereof hears,

1 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 to
4 the District; and,

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

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

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

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

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

4 **RESOLVED**, that the Board of Supervisors declares as follows:

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

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

11 **Section 3. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.**
12 The Mayor's Office of Economic and Workforce Development, Controller and all other
13 Departments, City Officers and Employees are authorized to take all actions, make
14 determinations, exercise discretion, grant or deny approval, and otherwise take all reasonable
15 steps necessary for full performance of the Management Agreement on behalf of the City and
16 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 Mayor's Office of Economic and Workforce Development may execute
20 amendments to the Agreement on behalf of the City and County of San Francisco that are
21 consistent with the Management District Plan, Resolution of Formation, official City policies
22 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 Fisherman's Wharf Association and the Mayor's
25 Office of Economic and Workforce Development.