

1 [Amendment - Moscone Expansion District Management District Plan]

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3 **Resolution approving amendments to the Moscone Expansion District Management**
4 **District Plan for the business-based business improvement district, known as the**
5 **“Moscone Expansion District,” in accordance with the Streets and Highways Code,**
6 **Section 36636, to require the monthly assessment, collection, and transfer of fees by**
7 **the Office of the Treasurer and Tax Collector; and an agreement with the nonprofit**
8 **Owners' Association for administration/management of the District in accordance with**
9 **the California Streets and Highways Code, Section 36651.**

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11 WHEREAS, On November 20, 2012, acting in accordance with Article XIID of the
12 California Constitution, Section 53753 of the California Government Code, and the California
13 Property and Business Improvement District Law of 1994 (Part 7 of Division 18 of the
14 California Streets and Highways Code, commencing with Section 36600), as augmented by
15 Article 15 of the San Francisco Business and Tax Regulations Code, the Board of Supervisors
16 adopted Resolution No. 416-12 ("Resolution of Intention") declaring the Board's intention to
17 form a business-based business improvement district, known as the “Moscone Expansion
18 District” (the “District” or “MED”), and to levy assessments on defined tourist hotel businesses
19 within the District, setting the public hearing, initiating mail ballot majority protest proceedings,
20 approving the Moscone Expansion District Management District Plan (the "Management
21 District Plan" or "Plan"), making various findings and taking other legislative actions required
22 to form the proposed district and levy the proposed assessments (Board File No. 120989);
23 and,

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1 WHEREAS, On February 5, 2013, acting in accordance with the aforementioned legal
2 authorities, the Board of Supervisors adopted Resolution No. 26-13 ("Resolution of
3 Formation"), establishing the Moscone Expansion District and levying multi-year special
4 assessments on identified businesses included within the District (the "Assessments") (Board
5 File No. 130043); and,

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

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

19 WHEREAS, In accordance with the Resolution of Formation and Sections 36614.5 and
20 36650 of the Streets and Highways Code, the City may contract with a private nonprofit entity
21 referred to as an "Owners' Association" to administer the District Programs. An Owners'
22 Association may be an existing nonprofit entity or a newly formed nonprofit entity. An Owners'
23 Association is a private entity and may not be considered a public entity for any purpose, nor
24 may its board members or staff be considered to be public officials for any purpose; provided,
25 however, that an Owner's Association must comply with the Ralph M. Brown Act (Chapter 9

1 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code),
2 at all times when its board of directors or any committee thereof hears, considers or
3 deliberates on matters concerning the District, and must comply with the California Public
4 Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the
5 Government Code), for purposes of providing public access to records relating to the District;
6 and,

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

13 WHEREAS, To finance all or a portion of certain additions and improvements to the
14 George R. Moscone Convention Center within the District (the "Project"), the City will issue or
15 execute bonds, financing leases (including certificates of participation therein) or similar
16 obligations (collectively, "City Obligations"), and a designated portion of the Assessments will
17 be pledged and applied to repay those City Obligations, which City Obligations are expected
18 to be issued or executed in 2017; and,

19 WHEREAS, Upon issuance of the City Obligations, in each fiscal year the City, in
20 accordance with the Plan, shall: (1) collect Assessment revenues from hotel businesses within
21 the District; (2) withhold and apply that portion of those revenues allocated to Development
22 Activities pursuant to the Management District Plan necessary to pay the District's portion of
23 debt service for the City Obligations (3) utilize any Surpluses (as defined in the Plan) to fund a
24 Stabilization Fund, Sinking Fund and repayment of the City's contribution toward any shortfall
25 in debt service costs from prior years, and to the MED to fund future development, expansion,

1 renovation, and capital improvements to the Moscone Center; and (4) transfer to the Owner's
2 Association the portion of revenue per the allocation outlined in the Management Plan; and,

3 WHEREAS, The Resolution of Formation states that the hotel businesses assessed by
4 the City within the MED will be billed quarterly and/or will complete and submit a quarterly
5 assessment payment form provided by the City, and that the Assessment payments will be
6 submitted by hotel businesses on a quarterly basis to the City's Office of the Treasurer and
7 Tax Collector or his or her designee ("Treasurer and Tax Collector"), or as otherwise
8 designated by the Board of Supervisors, based on the gross revenue collected for tourist
9 rooms each quarter. And the Management District Plan states that the Treasurer and Tax
10 Collector shall transfer the assessment payments on a quarterly basis to the Owners'
11 Association; and

12 WHEREAS, On October 1, 2013, the Board of Supervisors adopted Ordinance No.
13 206-13 (Board File No. 130784), authorizing the Treasurer and Tax Collector to collect
14 transient occupancy taxes on a monthly basis. The Treasurer and Tax Collector will be
15 implementing a new system for the monthly collection of taxes on January 1, 2014, which for
16 efficiency, would also be employed for the assessment and collection of fees; and

17 WHEREAS, San Francisco Tourism Improvement District Management Corporation
18 ("SFTIDMC" or "Nonprofit Corporation"), the Owner's Association for the District, in
19 accordance with Section 36636 of the Streets and Highways Code, has requested by letter
20 dated November 6, 2013, to the Board of Supervisors that the Management District Plan be
21 amended to provide for monthly assessment, payment, and transfer of fees based on gross
22 revenue collected for tourist rooms each month (the "TID Letter"), a copy of which is on file
23 with the Clerk of the Board of Supervisors in File No. 131128, which is declared to be a part of
24 this resolution as if set forth fully herein; and,

1 WHEREAS, Allowing monthly assessment, payment and transfer of fees as of January
2 1, 2014 is in the best interest of the City and District, and satisfies the request of the nonprofit
3 Owner’s Association; and,

4 WHEREAS, The Resolution of Formation provides that the Office of Economic and
5 Workforce Development is the City agency responsible for coordination between the City and
6 the Owners' Association for the District; and,

7 WHEREAS, The Office of Economic and Workforce Development has negotiated an
8 agreement with the SFTIDMC, to, in good faith and with diligence as the Owners' Association
9 for the District, develop, implement, direct, manage, administer, operate and ensure the timely
10 provision of the District Programs ("Management Agreement" or "Agreement"). The
11 Management Agreement is on file with the Clerk of the Board of Supervisors in File No.
12 131128, which is declared to be a part of this resolution as if set forth fully herein; and,

13 WHEREAS, The SFTIDMC also serves as the Owner’s Association for the San
14 Francisco Tourism District which is operative through December 31, 2023; and,

15 WHEREAS, As to the City Obligations, the Management Agreement requires the City
16 to indemnify and defend the Nonprofit Corporation from claims arising out of the City
17 Obligations or Assessments funds not disbursed to the Nonprofit Corporation (the “City
18 Obligations Indemnity”). The Management Agreement states:

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20 City shall indemnify and save harmless Corporation and its directors, officers, agents
21 and employees from, and, if requested, shall defend them against any and all loss,
22 cost, damage, injury, liability, and claims thereof arising out of or related to (a) the City
23 Indebtedness, and/or (b) the withholding, allocation or handling of Assessment funds
24 not disbursed to Corporation. The foregoing indemnity shall include, without limitation,
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1 reasonable fees of attorneys, consultants and experts and related costs and
2 Corporation's costs of investigating any claims against Corporation;

3
4 and

5 WHEREAS, On September 21, 2010, the Board of Supervisors adopted Ordinance No.
6 244-10 (the "Moscone Contracting Ordinance") authorizing the Tourism Improvement District
7 ("TID") to award an agreement to a qualified general contractor for construction activity in
8 connection with the Moscone Convention Center Improvement Project (all necessary
9 construction services in connection with the upgrade, renovation, and planning for a possible
10 expansion, of the San Francisco Moscone Convention Center, including capital
11 improvements, installation of state of the art technology and structural work to the North,
12 South and West facilities of the Moscone Convention Center) and agreements for labor,
13 equipment, material and supplies (Board File No. 101051), provided the agreements are
14 funded solely with assessment funds. The Moscone Contracting Ordinance requires
15 contracts that are to be funded with other City funds to be awarded by the Department of
16 Public Works (DPW), but authorizes DPW to novate such contracts to TID and or its general
17 contractor. Because the City owns the Moscone Center and for other reasons, the Moscone
18 Contracting Ordinance allows TID to assign to the City its legal rights in and to contracts with
19 regard to design defects, latent construction defects and warranties to provide the City the
20 legal right to pursue claims arising under the contracts after completion of the Moscone
21 Convention Center Improvement Project, provided, in exchange, the City releases the TID of
22 liability with respect to design and construction claims arising from or related to any acts or
23 omissions of the TID under such contracts; and,

24 WHEREAS, In accordance with the Moscone Contracting Ordinance, the Management
25 Agreement requires the Nonprofit Corporation to assign to the City its contracts in exchange

1 for a release from liability at the conclusion of construction, or on any corporate dissolution of
2 the Nonprofit Corporation, at the request of the City, in exchange for a release of liability with
3 respect to planning, design and/or construction activities for the Moscone Convention Center
4 expansion project . In addition, the City agrees to indemnify and defend the Nonprofit
5 Corporation, except for the Nonprofit Corporation’s sole negligence, recklessness or willful
6 misconduct, for any claims, losses and liabilities arising out of or related to the assigned
7 contracts or the expansion project (the “Assingment Indemnity”); and,

8 WHEREAS, It is in the best interest of the City and the property owners within the
9 District for the City to enter into the Management Agreement with the Nonprofit Corporation
10 according to the terms and conditions set forth therein; and,

11 WHEREAS, In accordance with the Property and Business Improvement District Law of
12 1994, the Resolution of Formation and the express terms of the Management Agreement, the
13 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
14 resolution; and,

15 WHEREAS, The Planning Department has determined that the actions contemplated in
16 this Resolution comply with the California Environmental Quality Act (California Public
17 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
18 Board of Supervisors in File No. 131128 and is incorporated herein by reference; now,
19 therefore, be it

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

21 Section 1. AMENDMENT TO MANAGEMENT DISTRICT PLAN. The Management
22 District Plan currently states:

- 23 • Method of Collection – quarterly, tax collectors office, etc. (Management Plan, p.
24 2);

- The MED assessment, including the collection and enforcement of any delinquent assessments and imposition of interest and penalties per City and County of San Francisco Business and Tax Regulations Code Article 6, as it may be amended from time to time, will be collected and enforced by the Treasurer and Tax Collector of the City (the *Treasurer and Tax Collector*). The Treasurer and Tax Collector shall transfer the assessment payments on a quarterly basis to the SFTDIMC, a non-profit corporation that is designated as the Owners Association for the District. (Management Plan, p. 27)

First Quarterly MED Assessment payment transferred to SFTIDMC	Not later than 45 days after the quarterly filing deadline following the effective date, above.
MED services initiated	Not later than 45 days after the quarterly filing deadline following the effective date, above.

(Management Plan, p. 32); and

Effective January 1, 2014, the preceding text of the Management Plan shall be amended to state the following in accordance with the TID Letter:

- Method of Collection – monthly, tax collectors office, etc. (Management Plan, p. 2);
- The MED assessment, including the collection and enforcement of any delinquent assessments and imposition of interest and penalties per City and County of San Francisco Business and Tax Regulations Code Article 6, as it

1 may be amended from time to time, will be collected and enforced by the Office
 2 of the Treasurer and Tax Collector of the City (the *Treasurer and Tax Collector*).
 3 The hotel businesses assessed shall be billed and/or shall file assessment
 4 payment forms, and submit assessment payments on a monthly basis to the
 5 Treasurer and Tax Collector, based on gross revenue collected for tourist rooms
 6 each month. The Treasurer and Tax Collector shall transfer the assessment
 7 payments on a monthly basis to the SFTIDMC, a non-profit corporation that is
 8 designated as the Owners Association for the District. (Management Plan, p.
 9 27); and

11 First MED Assessment payment 12 transferred to SFTIDMC	Not later than 45 days after the filing deadline following the effective date, above.
14 MED services initiated	Not later than 45 days after the filing deadline following the effective date, above.

17 (Management Plan, p. 32)

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 19 Notwithstanding anything else in the Plan, the intent of this *Resolution is to allow the* monthly
 20 assessment of fees by the Treasurer and Tax Collector, monthly payment of fees by the
 21 hotels, and monthly transfer of assessment payment to the District. Notwithstanding anything
 22 to the contrary in the Resolution of Formation, as of January 1, 2014, the Treasurer and Tax
 23 Collector shall act in accordance with the amendments to the Management Plan in this
 24 Section. A copy of the amended Management Plan is on file with the Clerk of the Board of
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1 Supervisors in File No. 131128, which is declared to be a part of this resolution as if set forth
2 fully herein.

3 Section 2. 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 3. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
8 approves the Management Agreement for the Moscone Expansion District, including the City
9 Obligations Indemnity and the Assignment Indemnity, on file with the Clerk of the Board of
10 Supervisors in File No. 131128.

11 Section 4. 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 5. 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 6. DELIVERY. The Clerk of the Board of Supervisors shall cause certified
24 copies of this Resolution to be delivered to the Owners' Association (SFTIDMC), the Office of
25 Economic and Workforce Development, and the Treasurer and Tax Collector.