

1 [Agreement - Owners' Association for Administration/Management of Top of Broadway
2 Community Benefit District]

3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **Administration/Management of the established property-based Community Benefit**
5 **District known as the "Top of Broadway Community Benefit District," pursuant to**
6 **California Streets and Highways Code, Section 36651, for a period commencing upon**
7 **Board approval to June 30, 2021.**

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9 WHEREAS, On June 4, 2013, acting pursuant to Article XIID of the California
10 Constitution, Section 53753 of the California Government Code, and the Property and
11 Business Improvement District Law of 1994 (Part 7 of Division 18 of the California Streets and
12 Highways Code, commencing with Section 36600), as augmented by Article 15 of the San
13 Francisco Business and Tax Regulations Code, the Board of Supervisors adopted Resolution
14 No. 165-13 ("Resolution of Intention") declaring the Board's intention to establish the property-
15 based special assessment district to be known as the Top of Broadway Community Benefit
16 District; and declaring the Board's intention to levy assessments on parcels to be included
17 within the district, setting the public hearing, initiating mail ballot majority protest proceedings,
18 approving the management district plan entitled "The Top of Broadway Community Benefit
19 District Management District Plan" (the "Management District Plan" or "Plan"), making various
20 findings, and taking other legislative actions required to form the proposed district and levy the
21 proposed assessments (Board File No. 130419); and

22 WHEREAS, On July 23, 2013, acting pursuant to the aforementioned legal authorities,
23 the Board of Supervisors adopted Resolution No. 263-13 ("Resolution to Establish," Board
24 File No. 130636), establishing the property-based Community Benefit District designated as
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1 the "Top of Broadway Community Benefit District" and levying multi-year special assessments
2 on Identified Parcels (as defined in Section 53750(g) of the Government Code) included within
3 the District (the "Assessments"); and the Controller's designation for the Assessments for the
4 Top of Broadway Community Benefit District is Special Assessment No. 76; and

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

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

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

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

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

12 WHEREAS, Pursuant to the Resolution to Establish, the Office of Economic and
13 Workforce Development is the City agency responsible for coordination between the City and
14 the Owners' Association for the District; and

15 WHEREAS, The Office of Economic and Workforce Development has negotiated an
16 agreement with the California nonprofit corporation Top of Broadway Community Benefit
17 District, Inc., to, in good faith and with diligence as the Owners' Association for the District,
18 develop, implement, direct, manage, administer, operate and ensure the timely provision of
19 the District Programs ("Management Agreement" or "Agreement"). The Management
20 Agreement is on file with the Clerk of the Board of Supervisors in File No. 140100, which is
21 hereby declared to be a part of this Resolution as if set forth fully herein; and

22 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994,
23 the Resolution to Establish and the express terms of the Management Agreement, the
24 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
25 Resolution; 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 Top of Broadway
3 Community Benefit District, Inc., according to the terms and conditions set forth therein; and

4 WHEREAS, The Planning Department has determined that the actions contemplated in
5 this Resolution comply with the California Environmental Quality Act (California Public
6 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
7 Board of Supervisors in File No. 140100 and is incorporated herein by reference; now,
8 therefore, be it

9 RESOLVED, That the Board of Supervisors declares as follows:

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

13 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
14 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
15 File No. 140100, which is hereby declared to be a part of this Resolution as if set forth fully
16 herein.

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

23 Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
24 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
25 Board, the Office of Economic and Workforce Development may execute amendments to the

1 Agreement on behalf of the City and County of San Francisco that are consistent with the
2 Management District Plan, Resolution to Establish, official City policies and applicable law.

3 Section 5. Within thirty (30) days of the agreement being fully executed by all parties
4 the Office of Economic and Workforce Development shall provide the final agreement to the
5 Clerk of the Board for inclusion into the official file.

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