

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 Section 36636 of the Streets and**
6 **Highways Code to require the monthly, instead of quarterly, assessment, collection**
7 **and transfer of assessments by the Office of the Treasurer and Tax Collector, and an**
8 **agreement with the nonprofit Owners' Association for administration/management of**
9 **the District in accordance with Section 36651 of the California Streets and Highways**
10 **Code.**

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

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 assessments
4 on identified businesses included within the District (the "Assessments") (Board File No.
5 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
13 entity, but is a geographic area containing all of the identified businesses subject to the
14 Assessments for District Programs described in the Plan and included in the annual budgets
15 submitted to and approved by the Board of Supervisors; the annual budget for District
16 Programs for the first year of operations is set forth in the Plan, and for subsequent years,
17 shall be set forth in the Annual Reports submitted to the Board of Supervisors as required by
18 Section 36650 of the Streets and Highways Code; and

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

1 Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the
2 Government Code), at all times when its board of directors or any committee thereof hears,
3 considers or deliberates on matters concerning the District, and must comply with the
4 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
5 Title 1 of the Government Code), for purposes of providing public access to records relating to
6 the District; 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
14 the George R. Moscone Convention Center within the District (the "Project"), the City will
15 issue or execute bonds, financing leases (including certificates of participation therein) or
16 similar obligations (collectively, "City Obligations"), and a designated portion of the
17 Assessments will be pledged and applied to repay those City Obligations, which City
18 Obligations are expected to be issued or executed in 2017; and

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

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

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

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

19 WHEREAS, San Francisco Tourism Improvement District Management Corporation
20 ("SFTIDMC" or "Nonprofit Corporation"), the Owner's Association for the District, in
21 accordance with Section 36636 of the Streets and Highways Code, has requested by letter
22 dated November 6, 2013 to the Board of Supervisors that the Management District Plan be
23 amended to provide for monthly, instead of quarterly, assessment, payment, and transfer of
24 funds based on gross revenue collected for tourist rooms each month (the "TID Letter"), a
25

1 copy of which is on file with the Clerk of the Board of Supervisors in File No. 131128, which is
2 declared to be a part of this resolution as if set forth fully herein; and

3 WHEREAS, Allowing monthly assessment, payment and transfer of funds as of
4 January 1, 2014 is in the best interest of the City and District, and satisfies the request of the
5 Owner's Association; and

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

9 WHEREAS, The Office of Economic and Workforce Development has negotiated an
10 agreement with the SFTIDMC, to, in good faith and with diligence as the Owners' Association
11 for the District, develop, implement, direct, manage, administer, operate and ensure the timely
12 provision of the District Programs ("Management Agreement" or "Agreement"). The
13 Management Agreement is on file with the Clerk of the Board of Supervisors in File No.
14 131128, which is declared to be a part of this resolution as if set forth fully herein; and

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

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

21
22 City shall indemnify and save harmless Corporation and its directors, officers, agents
23 and employees from, and, if requested, shall defend them against any and all loss,
24 cost, damage, injury, liability, and claims thereof arising out of or related to (a) the City
25 Indebtedness, and/or (b) the withholding, allocation or handling of Assessment funds

1 not disbursed to Corporation. The foregoing indemnity shall include, without limitation,
2 reasonable fees of attorneys, consultants and experts and related costs and
3 Corporation's costs of investigating any claims against Corporation;
4

5 and

6 WHEREAS, On September 21, 2010 the Board of Supervisors adopted Ordinance No.
7 244-10 (the "Moscone Contracting Ordinance") authorizing the Tourism Improvement District
8 ("TID") to award an agreement to a qualified general contractor for construction activity in
9 connection with the Moscone Convention Center Improvement Project (all necessary
10 construction services in connection with the upgrade, renovation, and planning for a possible
11 expansion, of the San Francisco Moscone Convention Center, including capital
12 improvements, installation of state of the art technology and structural work to the North,
13 South and West facilities of the Moscone Convention Center) and agreements for labor,
14 equipment, material and supplies (Board File No. 101051), provided the agreements are
15 funded solely with assessment funds. The Moscone Contracting Ordinance requires
16 contracts that are to be funded with other City funds to be awarded by the Department of
17 Public Works (DPW), but authorizes DPW to novate such contracts to TID and or its general
18 contractor. Because the City owns the Moscone Center and for other reasons, the Moscone
19 Contracting Ordinance allows TID to assign to the City its legal rights in and to contracts with
20 regard to design defects, latent construction defects and warranties to provide the City the
21 legal right to pursue claims arising under the contracts after completion of the Moscone
22 Convention Center Improvement Project, provided, in exchange, the City releases the TID of
23 liability with respect to design and construction claims arising from or related to any acts or
24 omissions of the TID under such contracts; and
25

1 WHEREAS, In accordance with the Moscone Contracting Ordinance, the Management
2 Agreement requires the Nonprofit Corporation to assign to the City its contracts in exchange
3 for a release from liability at the conclusion of construction, or on any corporate dissolution of
4 the Nonprofit Corporation, at the request of the City, in exchange for a release of liability with
5 respect to planning, design and/or construction activities for the Moscone Convention Center
6 expansion project . In addition, the City agrees to indemnify and defend the Nonprofit
7 Corporation, except for the Nonprofit Corporation's sole negligence, recklessness or willful
8 misconduct, for any claims, losses and liabilities arising out of or related to the assigned
9 contracts or the expansion project (the "Assignment Indemnity"); and

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

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

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

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

23 Section 1. AMENDMENT TO MANAGEMENT DISTRICT PLAN. The Management
24 District Plan currently states:

- Method of Collection – quarterly, 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 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);

1 and Tax Collector shall act in accordance with the amendments to the Management Plan in
2 this Section. A copy of the amended Management Plan is on file with the Clerk of the Board
3 of Supervisors in File No. 131128, which is declared to be a part of this resolution as if set
4 forth fully herein.

5 Section 2. AUTHORIZATION TO EXECUTE CONTRACT. The Office of Economic
6 and Workforce Development and the Treasurer and Tax Collector are duly authorized to
7 execute the Management Agreement with the San Francisco Tourism Improvement District
8 Management Corporation, on behalf of the City and County of San Francisco.

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

13 Section 4. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.
14 The Office of Economic and Workforce Development, Treasurer and Tax Collector, Controller,
15 and all other Departments, City Officers and Employees are authorized to take all actions,
16 make determinations, exercise discretion, grant or deny approval, and otherwise take all
17 reasonable steps necessary for full performance of the Management Agreement on behalf of
18 the City and County of San Francisco according to its terms.

19 Section 5. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
20 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
21 Board, the Office of Economic and Workforce Development and the Treasurer and Tax
22 Collector may execute amendments to the Agreement on behalf of the City and County of San
23 Francisco that are consistent with the Management District Plan, Resolution of Formation,
24 official City policies and applicable law.

1 Section 6. DELIVERY. The Clerk of the Board of Supervisors shall cause certified
2 copies of this Resolution to be delivered to the Owners' Association (SFTIDMC), the Office of
3 Economic and Workforce Development, and the Treasurer and Tax Collector.
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City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 131128

Date Passed: December 10, 2013

Resolution approving amendments to the Moscone Expansion District Management District Plan for the business-based business improvement district, known as the "Moscone Expansion District," in accordance with the California Streets and Highways Code, Section 36636, to require the monthly, instead of quarterly, assessment, collection, and transfer of assessments by the Office of the Treasurer and Tax Collector; and an agreement with the nonprofit Owners' Association for administration/management of the District in accordance with the California Streets and Highways Code, Section 36651.

December 04, 2013 Budget and Finance Committee - AMENDED

December 04, 2013 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 10, 2013 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 131128

I hereby certify that the foregoing
Resolution was ADOPTED on 12/10/2013 by
the Board of Supervisors of the City and
County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

12/13/13
Date Approved