

1 [Resolution to Establish - Moscone Expansion Business Improvement District]

2

3 **Resolution of formation to establish a business-based business improvement district**
4 **to be known as the “Moscone Expansion District;” levying assessments against**
5 **defined hotel businesses located in that district for 32 years; providing for the**
6 **determination, imposition, collection, and enforcement of the assessments; and**
7 **making environmental findings.**

8

9 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994
10 (California Streets and Highways Code §§36600 *et seq.*, the "1994 Act"), as augmented and
11 modified by Article 15 of the San Francisco Business and Tax Regulations Code (collectively
12 with the 1994 Act, the “Business Assessment Law) the Board of Supervisors (“Board of
13 Supervisors” or “Board) of the City and County of San Francisco (“City”) adopted Resolution
14 No. 416-12 on November 20, 2012, which Resolution was signed by the Mayor on November
15 26, 2012, declaring the City's intention to establish a business-based business improvement
16 district to be known as the “Moscone Expansion District” (“District” or “MED”) and to levy a
17 multi-year assessment on defined tourist hotel businesses in the District (“the Assessments”),
18 ordering a ballot election, and setting a time and place for a public meeting and a public
19 hearing ("Resolution of Intention," see BOS File No. 120989); and,

20 WHEREAS, The Resolution of Intention, among other things, approved the Moscone
21 Expansion District Management District Plan (including all Appendices) dated September 25,
22 2012 as updated November 14, 2012 (collectively, the "Management District Plan" or “Plan”),
23 the form of Notice of Public Meeting and Public Hearing, and the form of Assessment Ballots,
24 all of which are on file with Clerk of the Board of Supervisors in File No. 120989, and which

25

1 are hereby declared to be a part of this Resolution as if set forth fully herein; and,

2 WHEREAS, The Moscone Expansion District Management District Plan (including all
3 Appendices) dated September 25, 2012 as updated November 14, 2012 was again updated
4 January 29, 2013 (collectively, the "Management District Plan" or "Plan"), which January 29,
5 2013 update is on file with Clerk of the Board of Supervisors in File No. 130043, which is
6 hereby declared to be a part of this Resolution as if set forth fully herein; and,

7 WHEREAS, Evidence supporting the Assessments within the proposed District was
8 submitted to the Clerk of the Board of Supervisors as Appendices to the Management District
9 Plan; and,

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

17 WHEREAS, The term of the District will be thirty-two (32) years from and after the date
18 when the Assessments first are imposed on defined tourist hotel businesses ("tourist hotel
19 businesses" or "hotel businesses") within the District pursuant to this Resolution; and,

20 WHEREAS, The Board of Supervisors caused notice of a public meeting and a public
21 hearing to be issued concerning the proposed formation of the District and the proposed levy
22 of Assessments on tourist hotel businesses located within the District for a period of thirty-two
23 (32) years; and,

24 WHEREAS, The Board of Supervisors caused the notice of public meeting and public
25 hearing and ballots to be mailed to the record owner(s) of each tourist hotel business

1 proposed to be assessed within the District, as required by law; and,

2 WHEREAS, Pursuant to such notice, a public meeting concerning the proposed
3 formation of the District and the proposed levy of Assessments within such District was held
4 by the Board of Supervisors Budget and Finance Committee on January 23, 2013 at
5 11:00 a.m. in the Board's Legislative Chambers, Room 250, City Hall, One Dr. Carlton B.
6 Goodlett Place, San Francisco, California; and,

7 WHEREAS, At the public meeting, the testimony of all interested persons for or against
8 the proposed formation of the District and levy of Assessments was heard and considered,
9 including the extent of the District, the furnishing of specified types of improvements, services
10 and activities within the District, and the management and oversight of the District; and,

11 WHEREAS, Pursuant to such notice, a public hearing concerning the proposed
12 formation of the District and the proposed levy of Assessments within such District was held
13 before the Board of Supervisors on February 5, 2013, at 3:00 p.m., in the Board's Legislative
14 Chambers, located on the Second Floor of City Hall, One Dr. Carlton B. Goodlett Place, San
15 Francisco, California; and,

16 WHEREAS, At the public hearing, the testimony of all interested persons for or against
17 the proposed formation of the District and levy of Assessments was heard and considered,
18 including the extent of the District, the furnishing of specified types of improvements, services
19 and activities within the District, and the management and oversight of the District, and a full,
20 fair and complete hearing was held; and,

21 WHEREAS, If (1) hotel businesses representing a majority of the total estimated
22 Assessments proposed to be levied do not vote against formation of the District and levy of
23 Assessments (and therefore there is no majority protest pursuant to §36623(b) of the 1994
24 Act); and, (2) hotel businesses representing at least fifty percent (50%) of the total estimated
25 Assessments proposed to be levied on all hotel businesses in the District cast ballots; and,

1 (3) at least two-thirds (2/3) of the ballots that were cast (with each ballot weighted based on
2 such hotel business's estimated Assessment proposed to be levied, as provided in the
3 Management District Plan) are in favor of the formation of the District and levy of
4 Assessments, the Board of Supervisors may vote on whether to establish the District and levy
5 the Assessments; and,

6 WHEREAS, The Board of Supervisors received and considered all objections or
7 protests to the proposed Assessments that were not withdrawn; and,

8 WHEREAS, When the public hearing was closed, the City's Director of the Department
9 of Elections in conjunction with the City's Treasurer and Tax Collector tabulated the
10 assessment ballots submitted and not withdrawn, in support of or in opposition to the
11 proposed formation of the District and proposed Assessments, and provided the results to the
12 Board of Supervisors through the Clerk of the Board, as follows: (1) hotel businesses
13 representing a majority of the total estimated assessments proposed to be levied did not vote
14 against formation of the District and levy of Assessments (and therefore there is no majority
15 protest pursuant to §36623(b) of the 1994 Act); and, (2) hotel businesses representing at least
16 fifty percent (50%) of the total estimated Assessments proposed to be levied on all hotel
17 businesses in the District cast ballots; and (3) at least two-thirds (2/3) of the ballots that were
18 cast (weighted as set forth above) voted in favor of the formation of the District and levy of
19 Assessments; and,

20 WHEREAS, upon the adoption of this Resolution, all conditions, things and acts
21 required by law to exist, to happen and to be performed precedent to and as a condition of the
22 formation of the District and the levy of the Assessments will exist, have happened and have
23 been performed in due time, form and manner in accordance with applicable law, and the City
24 shall be authorized pursuant to its Charter, the Business Assessment Law and other
25 applicable law to determine, collect and enforce the Assessments; now therefore be it

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

2 Section 1. FINDING REGARDING RECITALS. The Board of Supervisors hereby
3 finds and determines that the foregoing recitals are true and correct.

4 Section 2. FINDING OF NO MAJORITY PROTEST. The Board of Supervisors
5 hereby finds and determines pursuant to §36623(b) of the 1994 Act, that a majority protest
6 does not exist with respect to the formation of the District and levy of the Assessments. All
7 objections or protests, both written and oral, are hereby duly overruled.

8 Section 3. FINDING OF BENEFITS. The Board of Supervisors hereby finds and
9 determines that: (A) the hotel businesses within the District that will be subject to the
10 Assessments are specially benefitted by the improvements, services and activities to be
11 funded by the Assessments as detailed in the Management District Plan; other businesses
12 within the District are not specially benefitted in such manner; and (C) the Moscone
13 Expansion Project is an "improvement" within the meaning of §36610 of the 1994 Act.

14 Section 4. FINDING OF TWO-THIRDS APPROVAL BY ELECTORATE. The Board
15 of Supervisors hereby finds and determines that (A) hotel businesses representing at least
16 fifty percent (50%) of the total estimated Assessments proposed to be levied on all hotel
17 businesses in the District cast ballots, and (B) at least two-thirds (2/3) of the ballots that were
18 cast (weighted as set forth above) voted in favor of the formation of the District and levy of
19 Assessments. The Board of Supervisors hereby further finds and determines that such
20 election, including the weighted voting set forth herein, satisfies the requirements of Articles
21 XIII A and XIII C of the California Constitution to the extent applicable.

22 Section 5. ESTABLISHMENT OF DISTRICT. Pursuant to the Business Assessment
23 Law, the Board of Supervisors hereby establishes a business improvement district designated
24 as the "Moscone Expansion District." The Assessments will be levied on defined businesses
25 within the District, rather than on property within the District.

1 Section 6. MANAGEMENT DISTRICT PLAN. The Board of Supervisors hereby
2 ratifies, approves and confirms its prior approval of the Management District Plan.

3 Section 7. BOUNDARIES AND ZONES; ASSESSED BUSINESSES.

4 A. Exterior Boundaries. The exterior boundaries of the District, and the zones within
5 the District (“Zones”), are as set forth in the map contained in the Management District Plan.
6 The District includes all hotel businesses generating revenue from tourist rooms that operate
7 in the District during the term of the District, including tourist hotel businesses that first open
8 for business after the adoption of this Resolution and operate during that term.

9 B. Zones. The District is divided into two Zones -- Zone 1 and Zone 2.

10 1. Zone 1. Zone 1 includes all tourist hotel businesses with addresses on or east of
11 Van Ness Avenue, on or east of South Van Ness Avenue, and on or north of 16th Street from
12 South Van Ness to the Bay, including all tourist hotel businesses east of Van Ness Avenue as
13 if it continued north to the Bay, and north of 16th Street as if it continued east to the Bay.

14 2. Zone 2 includes all tourist hotel businesses with addresses west of Van Ness
15 Avenue and South Van Ness Avenue, and all tourist hotel businesses south of 16th Street.

16 3. Reference is hereby made to the detailed map and the description and list of hotel
17 businesses in the Management District Plan known at the time of adoption of the Plan, as to
18 which hotel businesses currently are in which zone.

19 Failure to include a hotel business in the list of such businesses that is part of the
20 Management District Plan shall not exempt the business from Assessment under Section 9 or
21 from any other right or duty under this Resolution and the Management District Plan, if the
22 hotel business is located within the District and generates revenue from tourist rooms. If after
23 the passage of this Resolution the City identifies a hotel business that is located within the
24 District and generates revenue from tourist rooms, but is not included in the list of hotel
25

1 businesses that is part of the Management District Plan, the City Tax Collector shall assign
2 such business to Zone 1 or Zone 2, based on the location of the hotel.

3 Section 8. TERM OF THE DISTRICT. The term of the District will be thirty-two (32)
4 years from and after the Commencement Date. The "Commencement Date" will be the date
5 as of which the Assessments first are imposed on tourist hotel businesses, which will be the
6 later of (1) July 1, 2013, or (2) the first day of the first calendar quarter after a final judgment is
7 entered by a court validating the City Obligations and the related establishment of the District
8 and levy of the Assessments.

9 Section 9. ASSESSMENTS AND ASSESSMENT METHODOLOGY. Assessments
10 will be imposed and collected in each fiscal year to pay for the improvements, services and
11 activities to be provided within the District.

12 A. The Assessments will be paid by defined tourist hotel businesses within the District
13 based on gross revenue from tourist rooms in those hotels (determined in accordance with the
14 Management District Plan). Zone 1 hotel businesses will pay a higher rate of assessment
15 than Zone 2 hotel businesses because the benefits from the improvements, services and
16 activities to be provided within the District are expected to be greater for Zone 1 hotel
17 businesses, which are nearer and more readily accessible to Moscone Center and its
18 surrounding area via the City's transportation infrastructure.

19 1. Zone 1 Assessment Formula:

- 20 • With respect to gross revenue from tourist rooms generated during the period
21 beginning on the Commencement Date and continuing through December 31,
22 2013, the Zone 1 assessment rate shall be 0.50% of gross revenue from tourist
23 rooms.

- With respect to gross revenue from tourist rooms generated beginning January 1, 2014, until the scheduled expiration of the term of the District, the Zone 1 assessment rate shall be 1.25% of gross revenue from tourist rooms.

2. Zone 2 Assessment Formula:

- With respect to gross revenue from tourist rooms generated during the period beginning on the Commencement Date and continuing through the scheduled expiration of the term of the District, the Zone 2 assessment rate shall be 0.3125% of gross revenue from tourist rooms.

B. The maximum Assessments proposed to be collected for the first fiscal year of the District ending June 30, 2014, is \$19,332,000. The total amount of the Assessments imposed and collected each fiscal year thereafter may increase or decrease according to increases or decreases in the total actual gross revenue from tourist rooms for all hotel businesses within the District in such year. As set forth in the Management District Plan, the total maximum Assessments for each year of the District for years two (2) through thirty-two (32) reflects a potential increase of up to 10% over the previous year. The proposed assessment (that is, the total maximum amount of the Assessments that could be collected during the scheduled term of the District) is \$5,766,814,000.

C. The method and basis of determining, imposing, collecting and enforcing collection of the Assessments shall be as set forth in the Management District Plan.

1. The hotel businesses assessed by the City within the MED will be billed quarterly and/or will complete and submit a quarterly assessment payment form provided by the City. The Assessment payments will be submitted by hotel businesses on a quarterly basis to the City Treasurer and Tax Collector or his or her designee, or as otherwise designated by the Board of Supervisors, based on the gross revenue collected for tourist rooms each quarter.

1 2. All delinquent payments of Assessments shall be subject to interest and penalties.
2 The City Treasurer and Tax Collector will enforce imposition of interest and penalties and
3 collection of delinquent Assessments pursuant to the Business Assessment Law and Article 6
4 of the City Business and Tax Regulations Code, as it may be amended from time to time.

5 3. The Assessments collected will be distributed no less than four (4) times per year to
6 the owners' association (as defined in the 1994 Act) which administers and implements the
7 improvements, services and activities within the District pursuant to a management contract to
8 be entered into between the City and the owners' association.

9 Section 10. ISSUANCE OF CITY OBLIGATIONS. The Board of Supervisors hereby
10 determines and declares that the City will issue or execute City Obligations in an aggregate
11 principal amount of not to exceed \$507,880,000 to finance a portion of the costs of the
12 Moscone Expansion Project. The Board intends that debt service on the City Obligations,
13 although a payment obligation of the City, will be paid or reimbursed in specified amounts
14 from the Assessments. To that end, the Board of Supervisors hereby further determines and
15 declares that the City will issue and purchase obligations payable from the Assessments in
16 such form and substance as the City shall determine.

17 Subject to the budgetary and fiscal provisions of the City's Charter, the City will
18 contribute the following amounts towards payment of the City Obligations in accordance with
19 the Management District Plan:

20 A. \$8.2 million in fiscal year 2019 with an increase of 3% per year through fiscal year
21 2028 up to a maximum of \$10.7 million, with a continuing contribution of \$10.7 million per
22 fiscal year for the remainder of the term of the District (the "City's Base Contribution").

23 B. To the extent that the sum in any fiscal year of (1) Assessment revenues allocated
24 to Development Activities in the Management District Plan, plus (2) the City's Base
25 Contribution, is less than debt service payable in such fiscal year on the City Obligations (a

1 “Shortfall”), such Shortfalls will be paid by the City subject to reimbursement from future
2 Assessments as provided below.

3 Section 11. APPLICATION OF ASSESSMENT REVENUES.

4 A. For each fiscal year prior to the issuance of the City Obligations, the City shall
5 collect Assessment revenues from hotel businesses within the District and apply such
6 amounts pursuant to the Management District Plan.

7 B. Upon issuance of the City Obligations, in each fiscal year the City shall: (1) collect
8 Assessment revenues from hotel businesses within the District; (2) withhold and apply that
9 portion of those revenues allocated to Development Activities pursuant to the Management
10 District Plan necessary to pay the District’s portion of debt service for the City Obligations;
11 (3) utilize any Surplus Revenues (as defined below) to fund the Stabilization Fund and Sinking
12 Fund and repay the City’s contribution toward any Shortfall, and fund future development
13 expansion, renovation, and capital improvements; (4) and transfer to the SFTIDMC the portion
14 of revenue per the allocation outlined in the Management Plan.

15 “Surplus Revenues” means any excess Assessment revenue allocated to Development
16 Activities in the Management District Plan that are not needed to fund the District’s portion of
17 the debt service. Surpluses shall be applied as follows, as provided in the Management
18 District Plan:

19 1. To fund a Stabilization Fund to be held by the City in an amount not to exceed
20 \$15,000,000. The Stabilization Fund may be drawn upon by the City in any fiscal year to
21 cover a Shortfall. Such Stabilization Fund shall be replenished as needed throughout the
22 term of the District.

23 2. To fund a Sinking Fund to be held by the City in an amount equal to the aggregate
24 of annual debt service on the City Obligations, less the City’s Base Contribution, for all fiscal
25 years after the scheduled expiration of the term of the District.

1 3. To reimburse the City for Shortfalls as provided in Section 10.B., above.

2 4. To the owners' association which administers and implements the improvements,
3 services and activities within the District to fund future development, expansion, renovation,
4 and capital improvements to the Moscone Center.

5 5. Any funds remaining in the Stabilization Fund or Sinking Fund no longer needed for
6 debt service, *i.e.*, upon final maturity of the debt instruments, shall be allocated as set forth in
7 the Management District Plan.

8 As provided in the Management District Plan, the City shall have the sole discretion to
9 apply Surpluses among Funds No. 1 through No. 3, above, in the order it deems in the best
10 interests of the City.

11 Section 12. As set forth in the Management District Plan, the City will own the
12 Moscone Expansion Project and all other additions and improvements to the Moscone Center
13 financed by City funds and Assessment revenues.

14 Section 13. USE OF ASSESSMENT REVENUES FOR IMPROVEMENTS,
15 SERVICES AND ACTIVITIES.

16 A. The following proposed improvements, services and activities within the District are
17 hereby approved:

18 1. Planning, design, engineering, entitlement, construction, project management and
19 related services for the Moscone Expansion Project, including payment of debt service on the
20 City Obligations.

21 2. Funding of a Moscone Convention Center Incentive Fund to attract significant
22 meetings, tradeshow and conventions to the City by providing an offset against Moscone
23 Center rental costs.

1 3. Funding of a Moscone Convention Center Sales & Marketing Fund for increased
2 sales and marketing of convention business, with a focus on generating increased revenues
3 for hotel businesses that pay the Assessments.

4 4. Funding of capital improvements and renovations to the Moscone Center, including
5 a capital reserve fund to cover future upgrades and capital improvements.

6 5. Funding the formation, operation and administration of the District, and to establish
7 and maintain a contingency reserve.

8 6. Funding for development and implementation of future phases of expansion,
9 renovations or capital improvements, if there are funds available in excess of those needed
10 for the Moscone Expansion Project.

11 B. The above improvements, services and activities to be provided in the District will
12 be funded by the levy of the Assessments. Revenue from the levy of Assessments within the
13 District shall not be used to provide improvements, services or activities outside the District or
14 for any purpose other than the purposes specified in this Resolution and the Resolution of
15 Intention, including the Management District Plan.

16 Section 14. DISTRICT MANAGEMENT AND OVERSIGHT.

17 A. San Francisco Tourism Improvement District Management Corporation.

18 1. The improvements, services and activities within the District will be administered
19 and implemented by the San Francisco Tourism Improvement District Management
20 Corporation (“SFTIDMC”), a 501c(6) non-profit corporation, pursuant to a management
21 agreement with the City to be approved by the Board of Supervisors (“Management
22 Agreement”). The Business Assessment Law provides that such business owners’
23 associations may administer and implement the improvements, services and activities within
24 the District.

1 2. The Management Agreement will require that SFTIDMC shall hold Assessment
2 revenues it receives from the City in trust for the City, to be applied to pay costs of the
3 improvements, services and activities within the District authorized by the Management
4 District Plan.

5 3. The Management Agreement will provide as follows: (a) SFTIDMC shall deliver, at
6 no expense to the City, a balance sheet and the related statement of income and cash flows
7 with respect to the MED for each fiscal year (“financial statements”), all in reasonable detail
8 acceptable to City; and (b) an annual independent audit report by a Certified Public
9 Accountant (“CPA”) of all such MED funds; (c) the financial statements and CPA audit may be
10 funded from Assessment revenues as part of the administration costs with respect to the
11 MED; and, (d) at all times the Board of Supervisors shall reserve full rights of accounting of
12 such District funds.

13 4. The Management Agreement may provide such further management and financial
14 reporting requirements with respect to the MED as the SFTIDMC and the City shall agree.

15 B. OEWD and DPW Coordination and Oversight.

16 1. The Office of Economic and Workforce Development (“OEWD”) shall be the City
17 agency responsible for overseeing the Management Agreement between the City and the
18 SFTIDMC for the purposes of administering and implementing the MED. OEWD will also be
19 the City Agency responsible for coordinating the entitlement and environmental review
20 process for the Moscone Expansion Project, and will oversee expenditures related to the
21 entitlement and environmental review process.

22 2. The Department of Public Works (“DPW”) has direct fiscal oversight and primary
23 responsibility for overseeing the expenditure of MED funds for construction and support
24 services. In addition, DPW will provide oversight of MED funds spent on development and
25

1 renovation activities of the Moscone Center. All Requests for Proposals for Project design
2 and construction that are issued by the SFTIDMC will be reviewed by DPW.

3 3. The City and SFTIDMC will enter into a separate Memorandum of Understanding
4 that will outline specific roles and responsibilities for City and SFTIDMC regarding
5 management of the Moscone Expansion Project.

6 Section 15. AMENDMENTS. The tourist hotel businesses in the District established
7 by this Resolution shall be subject to any subsequent amendments to the Business
8 Assessment Law and Article 6 of the City Business and Tax Regulations Code.

9 Section 16. RECORDATION OF NOTICE AND DIAGRAM. The County Clerk is
10 hereby authorized and directed to record a notice and an assessment diagram pursuant to
11 §36627 of the 1994 Act, following adoption of this Resolution.

12 Section 17. LEVY OF ASSESSMENTS. The adoption of this Resolution and
13 recordation of the notice and assessment diagram pursuant to §36627 of the 1994 Act
14 constitutes the levy of the Assessments in each of the thirty-two (32) years identified in the
15 Management District Plan.

16 Section 18. ENVIRONMENTAL FINDINGS. The Planning Department has
17 determined that the actions contemplated in this Resolution to establish the Moscone
18 Expansion District and levy multi-year Assessments are in compliance with the California
19 Environmental Quality Act (California Public Resources Code §§21000 *et seq.*). Said
20 determination is on file with Clerk of the Board of Supervisors in File No. 130043, which is
21 hereby declared to be a part of this Resolution as if set forth fully herein.

22 Section 19. CONFLICTS. To the extent of any conflict between the Management
23 District Plan or the Resolution of Intention and this Resolution, the provisions of this
24 Resolution shall control.

1 Section 20. RATIFICATION OF PRIOR ACTIONS. All actions authorized and
2 approved by this Resolution but heretofore taken are hereby ratified, approved and confirmed
3 by the Board.

4 Section 21. GENERAL AUTHORITY. The appropriate officers of the City and their
5 duly authorized deputies, designees and agents are hereby authorized and directed, jointly
6 and severally, in consultation with the City Attorney, to take such actions and to execute and
7 deliver such certificates, agreements, requests or other documents as they may deem
8 necessary or desirable to accomplish the purposes of this Resolution, including but not limited
9 to the determination, imposition, collection and enforcement of the Assessments.

10 Section 22. PARTIAL INVALIDITY. Any provision of this Resolution found to be
11 prohibited by law shall be ineffective only to the extent of such prohibition, and shall not
12 invalidate the remainder of this Resolution.