FILE NO. 051968

RESOLUTION NO. 14-06

[[Contract with Owners' Association for administration of Castro/Upper Market Community Benefit District.]

Resolution approving an agreement with the nonprofit Owners' Association for administration of the property-based business improvement district known as the "Castro/Upper Market Community Benefit District" pursuant to Section 36651 of the Streets and Highways Code.

WHEREAS, on June 7, 2005, acting pursuant to Article XIIID of the California Constitution ("Article XIIID"), Section 53753 of the California Government Code, and the Property and Business Improvement District Law of 1994, Part 7 of Division 18 of the California Streets and Highways Code (commencing with Section 36600), as augmented by Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15"), the Board of Supervisors adopted Resolution No. 421-05 ("Resolution of Intention") declaring the Board's intention to form a property-based business improvement district and to levy assessments on parcels to be included within the district, setting the public hearing, initiating mail ballot majority protest proceedings, approving the Castro/Upper Market Community Benefit District Management District Plan (the "Management District Plan" or "Plan"), making various findings and taking other legislative actions required to form the proposed district and levy the proposed assessments (Board File No. 050924); and,

WHEREAS, on August 2, 2005, acting pursuant to the aforementioned legal authorities, the Board of Supervisors adopted Resolution No. 582-05 ("Resolution of Formation"), establishing the property-based business improvement district designated as the "Castro/Upper Market Community Benefit District" and levying multi-year special assessments

on Identified Parcels (as defined in Section 53750(g) of the Government Code) included within the District (the "Assessments")(Board File No. 051187). The Controller's designation for the Assessments for the Castro/Upper Market Community Benefit District is Special Assessment No. 63; and,

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

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

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

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

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

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

WHEREAS, the Mayor's Office of Economic and Workforce Development has negotiated an agreement with the California nonprofit corporation that also uses the name Castro/Upper Market Community Benefit District, to, in good faith and with diligence as the Owners' Association for the District, , develop, implement, direct, manage, administer, operate and ensure the timely provision of the District Programs ("Management Agreement" or "Agreement"). The Management Agreement is on file with the Clerk of the Board of Supervisors in File No. <u>DSIGL8</u> and is incorporated herein by reference; and,

WHEREAS, pursuant to the Property and Business Improvement District Law of 1994, the Resolution of Formation and the express terms of the Management Agreement, the Agreement shall not be binding unless the Board of Supervisors approves the Agreement by resolution. In addition, pursuant to Charter Section 9.118, the Management Agreement is

subject to approval by the Board of Supervisors by resolution because the term of the Agreement is in excess of 10 years; and,

WHEREAS, it is in the best interest of the City and the property owners within the District for the City to enter into the Management Agreement with the nonprofit corporation Castro/Upper Market Community Benefit District according to the terms and conditions set forth therein; now, therefore, be it

RESOLVED, that the Board of Supervisors declares as follows:

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

Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby approves the Management Agreement on file with the Clerk of the Board of Supervisors in File No.  $\underline{OS1968}$ , which is incorporated herein by reference.

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

Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the Board, the Mayor's Office of Economic and Workforce Development may execute amendments to the Agreement on behalf of the City and County of San Francisco that are consistent with the Management District Plan, Resolution of Formation, official City policies and applicable law.

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1	Section 5. DELIVERY. The Clerk of the Board of Supervisors shall cause certified
2	copies of this resolution to be delivered to the nonprofit corporation Castro/Upper Market
3	Community Benefit District and the Mayor's Office of Economic and Workforce Development.
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	Bevan Dufty

BOARD OF SUPERVISORS

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Tails

## Resolution

File Number: 051968

**Date Passed:** 

Resolution approving an agreement with the nonprofit Owners' Association for administration of the property-based business improvement district known as the "Castro/Upper Market Community Benefit District" pursuant to Section 36651 of the Streets and Highways Code.

January 10, 2006 Board of Supervisors - ADOPTED

Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval Excused: 1 - Alioto-Pier

File No. 051968

I hereby certify that the foregoing Resolution was ADOPTED on January 10, 2006 by the Board of Supervisors of the City and County of San Francisco.

JAN 12

**Date Approved** 

Gloria L. Young Clerk of the Board Mayor Gavin Newsom