

1 [Agreement - Owners' Association for Administration/Management of Ocean Avenue
2 Community Benefits District]

3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **administration/management of the property-based business improvement district**
5 **known as the "Ocean Avenue Community Benefits District," pursuant to Section 36651**
6 **of the California Streets and Highways Code.**

7
8 WHEREAS, On September 28, 2010 acting pursuant to Article XIID of the California
9 Constitution, Section 53753 of the California Government Code, and the California Property
10 and Business Improvement District Law of 1994 (Part 7 of Division 18 of the California Streets
11 and Highways Code, commencing with Section 36600), as augmented by Article 15 of the
12 San Francisco Business and Tax Regulations Code, the Board of Supervisors adopted
13 Resolution No. 437-10 ("Resolution of Intention") declaring the Board's intention to establish
14 the property-based special assessment district Ocean Avenue Community Benefits District
15 (CBD); and declaring the Board's intention to levy assessments on parcels to be included
16 within the district, setting the public hearing, initiating mail ballot majority protest proceedings,
17 approving the Ocean Avenue CBD Management District Plan (the "Management District Plan"
18 or "Plan"), making various findings and taking other legislative actions required to form the
19 proposed district and levy the proposed assessments (Board of Supervisors File No. 100991);
20 and,

21 WHEREAS, On December 14, 2010, acting pursuant to the aforementioned legal
22 authorities, the Board of Supervisors adopted Resolution No. 587-10 ("Resolution to
23 Establish"), establishing the property-based business improvement district designated as the
24 "Ocean Avenue Community Benefits District" and levying multi-year special assessments on
25 Identified Parcels (as defined in Section 53750(g) of the Government Code) included within

1 the District (the "Assessments") (Board File No. 101355); the Controller's designation for the
2 Assessments for the Ocean Avenue Community Benefits District is Special Assessment
3 No. 73; and,

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

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

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

1 considers or deliberates on matters concerning the District, and must comply with the
2 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
3 Title 1 of the Government Code), for purposes of providing public access to records relating to
4 the District; and,

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

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

14 WHEREAS, The Office of Economic and Workforce Development has negotiated an
15 agreement with the owners' California nonprofit corporation Ocean Avenue Association, to, in
16 good faith and with diligence as the Owners' Association for the District, develop, implement,
17 direct, manage, administer, operate and ensure the timely provision of the District Programs
18 ("Management Agreement" or "Agreement"). The Management Agreement is on file with the
19 Clerk of the Board of Supervisors in File No. 110438, which is hereby declared to be a part of
20 this Resolution as if set forth fully herein; and,

21 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994,
22 the Resolution to Establish and the express terms of the Management Agreement, the
23 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
24 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 owners' nonprofit
3 corporation Ocean Avenue Association, according to the terms and conditions set forth
4 therein; now, therefore, be it

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

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

9 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
10 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
11 File No. 110438, which is hereby declared to be a part of this Resolution as if set forth fully
12 herein.

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

19 Section 4. 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 may execute amendments to the
22 Agreement on behalf of the City and County of San Francisco that are consistent with the
23 Management District Plan, Resolution to Establish, 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 owners' nonprofit corporation Ocean Avenue
3 Association, and the Office of Economic and Workforce Development.
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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: 110438

Date Passed: May 24, 2011

Resolution approving an agreement with the nonprofit Owners' Association for administration/management of the property-based business improvement district known as the "Ocean Avenue Community Benefits District," pursuant to California Streets and Highways Code Section 36651.

May 12, 2011 Government Audit and Oversight Committee - RECOMMENDED

May 24, 2011 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110438

I hereby certify that the foregoing
Resolution was ADOPTED on 5/24/2011 by
the Board of Supervisors of the City and
County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Edwin Lee

5/31/2011

Date Approved