

File No. 120903

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date 09/26/2012

Board of Supervisors Meeting

Date _____

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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Victor Young Date September 21, 2012

Completed by: Victor Young Date _____

1 [Approving Updated Security Provisions for America's Cup Lease Disposition Agreement]

2 **Resolution approving revisions to the America's Cup Lease Disposition Agreement**
3 **with respect to the security for certain obligations of the City; authorizing and directing**
4 **the procurement of insurance coverage for the City's satisfaction of certain of such**
5 **obligations; reaffirming the direction for ongoing staff progress reports as to the**
6 **implementation of the America's Cup events; and authorizing related actions.**
7

8 WHEREAS, In December 2010 San Francisco was selected as the host city for the 34th
9 America's Cup and related activities (the "Event"); and
10

11 WHEREAS, At the time of such selection the City and County of San Francisco (the
12 "City"), the America's Cup Event Authority, LLC (the "Authority") and the San Francisco
13 America's Cup Organizing Committee ("ACOC") entered into the America's Cup Host and
14 Venue Agreement (the "Host Agreement") which set out the applicable rights and
15 responsibilities for each party in relation to preparation for and hosting the Events; and

16 WHEREAS, The Host Agreement included a number of responsibilities for the City and
17 ACOC, both in terms of ACOC's fundraising program over three years intended to defray up
18 to \$32 million of the public costs of hosting the events as well as the City responsibility to
19 deliver the venues and support services called for under the Host Agreement and the
20 associated implementation plans; and

21 WHEREAS, In July and August 2012 ACOC delivered a total of \$6,115,979.43 to the
22 City in reimbursement for the full amount of costs charged to the City's America's Cup budget
23 in fiscal year 2011-2012; and
24
25

1 WHEREAS, The Host Agreement also called for ACOC to deliver a security instrument
2 of up to a value of \$32 million to secure the performance by the City and ACOC of their
3 respective obligations under the Host Agreement (the "ACOC Security"); and

4 WHEREAS, City project and risk management staff worked with ACOC over the course
5 of late 2011 and early 2012 to investigate the availability of security instruments that would
6 provide the coverage called for under the Host Agreement; and

7 WHEREAS, On March 27, 2012, by its Resolution No. 109-12, this Board of
8 Supervisors (the "Board") approved a number of matters relating to the Events and provided
9 parameters for its delegation of authority to City officials to complete negotiations for and
10 execute a Lease Disposition Agreement (the "LDA") relating to the City's delivery of venues to
11 the Authority and other Event-related activities and responsibilities and the Authority's delivery
12 of security for its Event-related obligations; and

13 WHEREAS, At the time the LDA was approved by the Board the City's and the
14 Authority's respective responsibilities for improvements to prepare the various Port venues for
15 the Event had recently been revised, most notably the transfer of responsibility for Piers 30-32
16 Event upgrades from the Authority to the Port, together with the elimination of the Authority's
17 long-term development rights in consideration of improvements as contemplated under the
18 Host Agreement; and

19 WHEREAS, The staff presentation to the Board in conjunction with Resolution No. 109-
20 12 noted that further underwriting analysis would be needed to procure security for the parties'
21 respective Event-related obligations, including the revised construction responsibilities; and

22 WHEREAS, As negotiations continued the parties agreed that the security instruments
23 customarily available in the insurance markets were not sufficient to provide all coverage
24 sought under the terms of the Host Agreement, and that events and experience along the
25 waterfront (including impact of the recent Pier 29 fire on the City's ability to timely deliver key

1 Event venues) created certain priorities for the ACOC Security coverage in terms of providing
2 assurance as to the successful delivery of venues and municipal services in support of the
3 Events; and

4 WHEREAS, In acknowledgement of such discussions, and with an interest in
5 establishing other reciprocal rights, obligations, and indemnities contemplated by Resolution
6 No. 109-12 in time for the first San Francisco America's Cup World Series regatta in August
7 2012, the parties executed the LDA, a copy of which is on file with the Clerk of the Board in
8 File No. 120903 and incorporated herein by reference as though fully set forth, under the
9 authority delegated by the Board in such Resolution, subject to a condition under LDA Section
10 3.15 that City staff obtain Board and Port Commission approval for certain LDA terms relating
11 to the City's construction-related venue delivery obligations and the ACOC Security
12 arrangements that the parties negotiated after the Board's action in March 2012; and

13 WHEREAS, The LDA reflects the parties' agreement as to a composite approach to
14 each party's obligation to provide security for its performance to the other, which is intended to
15 provide a comprehensive security arrangement that accounts for the issues that could not be
16 addressed through the available insurance markets; and

17 WHEREAS, Under the LDA the City proposed to satisfy its obligation to provide the
18 ACOC Security through a combination of sources (taken together, the "LDA Security"),
19 including: (1) the City's use of liquidated damages and bond proceeds payable under the
20 Port's construction contracts and insurance for improvements at Piers 30-32 and Pier 27 and
21 for repairing the fire damage to Pier 29; (2) the City's payment of liquidated damages to the
22 Authority up to a maximum aggregate amount of \$5 million (the "LDA Damages") should the
23 City fail to deliver Pier 27 or Piers 30-32 to the Authority by March 1, 2012; and (3) a cash
24 collateral deposit held under an escrow agreement (the "Cash Collateral") to secure other City
25 obligations; and

1 WHEREAS, As security for its reciprocal obligations under the LDA the Authority
2 agreed to provide a third-party guaranty and an environmental security deposit to secure its
3 LDA obligations, including any required restoration of City venues after the Event; and

4 WHEREAS, The LDA requires the City to make an initial \$2.4 million deposit to fund
5 the Cash Collateral by January 15, 2013; the priority use of such funds would be to secure the
6 City's obligations to deliver construction projects for waterfront Event venues, including any
7 obligation to accelerate construction or prepare replacement space should its delivery of
8 Pier 27, or Piers 30-32, or fire-damaged Pier 29 be delayed beyond the LDA deadlines; and

9 WHEREAS, The LDA further calls for the Cash Collateral account to be replenished to
10 the full \$2.4 million amount by July 15, 2013 if necessary; and

11 WHEREAS, Beginning in July 2013, the priority for the use of such Cash Collateral
12 would be to secure the City's Event-related operational obligations over the course of July,
13 August, and September 2013; and

14 WHEREAS, In addition to the Port's contractual remedies, construction bonds, and
15 builder's risk insurance coverage available to mitigate the City's costs for construction delays
16 at Pier 27 and Piers 30-32, the City's Director of Risk Management has identified an
17 insurance product commonly known as owner's delay insurance (the "Insurance Policy") that
18 would provide coverage for liquidated damages on the two primary Port construction projects
19 needed for the events: the core and shell of the Pier 27 Cruise Terminal and the strengthening
20 of the Piers 30-32 deck to accommodate sailing team bases; and

21 WHEREAS, The Insurance Policy: (a) can be secured for a premium of \$1,015,000;
22 (b) has a self-insured retention of \$2.4 million (reflecting the amount of the Cash Collateral);
23 and (c) explicitly provides coverage for the LDA Damages for delays caused by covered
24 perils; and
25

1 WHEREAS, A summary of the proposed terms and conditions of the Insurance Policy
2 is on file with the Clerk of the Board in File No. 120903 and incorporated herein by reference
3 as though fully set forth; and

4 WHEREAS, In conjunction with the reduction in security to be provided for the City's
5 and ACOC's obligations from the \$32 million contemplated under the Host Agreement to the
6 City's obligation to provide LDA Security in the maximum amount of \$9.8 million (assuming
7 City payment of the full amount of LDA Damages for delayed venue delivery and the full
8 exhaustion of both the January and June 2013 \$2.4 million deposits to the Cash Collateral),
9 the Authority sought to incorporate changes to the force majeure provisions of the LDA under
10 which certain events will excuse the Port's obligation to deliver Pier 27 and Piers 30-32 by
11 March 1, 2013; and

12 WHEREAS, Subject to good faith efforts to obtain subsequent Board approval, the City
13 agreed to revise the force majeure provision to remove the following events: (a) fire;
14 (b) unusually severe weather; and (c) labor disputes or strikes directed at the City's
15 construction or other Event-related site preparation activities at Pier 27 or Piers 30-32; and

16 WHEREAS, The effect of this revision is that the City would be obligated under the
17 LDA to pay the Authority up to \$5 million in LDA Damages if the City is unable to deliver
18 Pier 27 or Piers 30-32 by March 1, 2013, even if the delay is caused by fire, unusually severe
19 weather, or a venue-directed strike; and

20 WHEREAS, The Insurance Policy would fund entirely the City's obligation to pay the
21 Authority up to \$5 million in LDA Damages if the City is unable to deliver Pier 27 or Piers 30-
22 32 by March 1, 2013 for the events listed in the draft declaration, which include fire or
23 unusually severe weather; and

24 WHEREAS, As an underwriting matter, however, insurers will not insure against delays
25 due to labor disputes as they are considered to be under the insured party's control; and

1 WHEREAS, Based on a review of City construction project experience over the past
2 several years, staff believes that a strike against the project is a remote risk and one that the
3 City can manage more directly than the other force majeure events that are outside of the
4 City's control; and

5 WHEREAS, Based on the factors above, the City's Director of Risk Management
6 recommends procurement of the Insurance Policy upon approval of this Resolution by the
7 Board; and

8 WHEREAS, The projected expenditures for the Events as reflected in the City's current
9 two-year budget included amounts sufficient to pay the premium for the Insurance Policy and
10 the deposits to the Cash Collateral referenced above, subject to reimbursement by ACOC;
11 now, therefore, be it

12 RESOLVED, That the changes to the definition of force majeure as specified in
13 Section 3.15 of the LDA are hereby approved; and, be it

14 FURTHER RESOLVED, That this Board hereby authorizes and directs the America's
15 Cup Project Director and the Director of Risk Management to take all steps to procure the
16 Insurance Policy described in this Resolution; and, be it

17 FURTHER RESOLVED, That this Board reaffirms its direction under Resolution
18 No. 109-12 to the America's Cup Project Director and the Executive Director of the Port, as
19 applicable, to provide the following progress reports: (i) to the City Controller and the Budget
20 & Finance Committee of the Board of Supervisors on a quarterly basis, a report on (A) ACOC
21 fundraising and transfers of such revenues to the City, (B) Port infrastructure expenditures in
22 preparation for the Event and (C) City operating expenditures for the Event; and (ii) if ACOC
23 does not contribute \$32 million to the City to defray its costs, a proposal for cost saving
24 measures to offset any shortfall from Event-related tax and fundraising revenues; and, be it

1 FURTHER RESOLVED, That this Board authorizes and urges the Director of the Risk
2 Management Division, the Executive Director of the Port, the Director of the Office of
3 Economic and Workforce Development and any other appropriate officers, agents or
4 employees of the City to take any and all steps (including, but not limited to, the execution and
5 delivery of any and all certificates, agreements, permits, notices, consents and other
6 instruments or documents), as they or any of them deems necessary or appropriate, in
7 consultation with the City Attorney, in order to consummate the transactions in accordance
8 with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution, such
9 determination to be conclusively evidenced by the execution and delivery by any such person
10 or persons of any such documents; and be it

11 FURTHER RESOLVED, That the Board of Supervisors approves, confirms and ratifies
12 all prior actions taken by the officials, employees and agents of the Port Commission or the
13 City with respect to the transactions and agreements described herein.

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Item 3
Files 12-0903

Departments:
Economic and Workforce Development; Office of Risk Management; Port

EXECUTIVE SUMMARY

Legislative Objectives

The proposed resolution would (a) approve revisions to the Lease Disposition Agreement (LDA) between the City and the America's Cup Event Authority ("Authority") with respect to the financial security for certain obligations to the City; (b) authorize and direct the procurement of insurance coverage for the City's satisfaction of certain such obligations; (c) reaffirm the direction for ongoing staff progress reports as to the implementation of the America's Cup events; and (d) authorize related actions.

Key Points

- On March 27, 2012, the Board of Supervisors approved the LDA between the City and the Authority, modifying provisions of the Host and Venue Agreement. Under the LDA, the City is responsible for completing infrastructure improvements to Piers 27, 29, and 30-32, and delivering these piers to the Authority by specified dates to be used as venues for the 34th America's Cup. On August 14, 2012, the Executive Director of the Port executed a revised LDA, subject to subsequent Board of Supervisors approval of certain provisions, as described in this report.
- Previously, the America's Cup Organizing Committee (ACOC) was required to obtain a \$32 million surety bond or other form of financial security to secure the performance of the City and the ACOC of their respective obligations under the Host and Venue Agreement. Because the ACOC had not been able to obtain the surety bond or other form of financial security by the date of the Board of Supervisors approval of the LDA on March 27, 2012, and because responsibility for infrastructure improvements to Port property was transferred from the Authority under the Host and Venue Agreement, to the Port under the LDA, the ACOC and City continued to negotiate on the form of financial security to be provided.
- Under the proposed resolution, the financial security would consist of (1) \$2,400,000 to be deposited by the City into a cash collateral account; (2) performance bonds to be secured by the construction contractor, Turner Construction Company, for Piers 27, 29, and 30-32; (3) liquidated damages of up to \$5,000,000 to be paid by the City for failure to deliver Piers 27 and 30-32 to the Authority by the specified date; and (4) the City's existing event and property insurance policies. The \$2,400,000 deposit as cash collateral and insurance premium of \$1,015,000, totaling \$3,415,000, are to be made from General Fund monies previously appropriated by the Board of Supervisors for the America's Cup in the Office of Economic and Workforce Development's FY 2012-13 budget. All expenditures incurred by the City, including the cash collateral deposit, the insurance premium payment, and liquidated damages are subject to reimbursement to the City by the ACOC.
- In addition, the proposed resolution approves changes to the force majeure provisions of the LDA, removing severe weather, labor disputes, and fire as causes of project delays not subject to liquidated damages. Therefore, under the revised language, the City would be liable to pay liquidated damages due to any delays in delivery of Piers 27 and 30-32 to the Authority by the specified dates, if such delays are caused by severe weather, fire, labor disputes, or other reasons not covered by force majeure. In order to insure the City against the costs of liquidated damages,

the ACOC will obtain an insurance policy that covers the City for delays due to severe weather, fire, and other causes. However, an insurance policy covering the City for delays due to labor disputes is not available for purchase.

- Under the Host and Venue Agreement between the City and the Authority, the ACOC is responsible to reimburse the City's actual costs for hosting the America's Cup in 2012 and 2013. To date, the ACOC has reimbursed the City \$6,115,979 for the City's costs incurred as of June 2012.

Fiscal Impacts

- The premium on the insurance policy is \$1,015,000, and the deductible is \$2,400,000. Therefore, in the event of a claim against the insurance policy, the total cost to the City would be no more than \$3,415,000. OEWD's FY 2012-13 General Fund appropriation, as previously approved by the Board of Supervisors, includes \$10 million for America's Cup-related costs, which would be the source of funding for the insurance policy. The ACOC is responsible to reimburse the City for the \$1,015,000 costs of the insurance policy premium, and the \$2,400,000 deductible (if necessary).
- The City is also required to deposit \$2,400,000 in a cash collateral account. These funds would be paid from the OEWD's FY 2012-13 budget, as noted above, and are subject to reimbursement to the City by the ACOC if the funds are drawn down.

Policy Consideration

- The Sponsor will be submitting an Amendment of the Whole at the Budget and Finance Committee's September 26, 2012 meeting. This report is based on the proposed Amendment of the Whole.
- The proposed resolution would require the City to expend \$1,015,000 to procure the insurance policy. In addition, the proposed resolution also requires the City to deposit \$2,400,000 in cash collateral, and would impose liabilities on the City, including (a) any additional deposits to the cash collateral to replenish draw-downs of the initial \$2,400,000 deposit, and (b) liquidated damages up to \$5 million not covered by the insurance policy.
- While the ACOC is responsible to reimburse the City for the \$1,015,000 insurance premium payment, and other costs if incurred, the availability of funds due to ACOC fundraising is not certain. The ACOC was to provide \$32 million in fundraising toward the City's operating and other costs for the America's Cup. To date, \$10.8 million has been collected and another \$2.2 million has been pledged, totaling \$13 million. Of this amount the ACOC has paid the City \$6.1 million for costs previously incurred for the America's Cup.
- Because the City could incur costs under the proposed resolution which may not be reimbursed to the City by the ACOC, we consider approval of the proposed resolution to be a policy matter for the Board of Supervisors. As previously recommended by the Budget and Legislative Analyst, the proposed resolution requires the America's Cup Project Director and Executive Director of the Port to report quarterly on (a) ACOC's fundraising efforts and the City's expenditures, and (b) any cost-savings measures taken by the City to offset any shortfall of America's Cup-related tax and fundraising revenues.

Recommendation

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

Under Article 3.15 of the America's Cup Lease Disposition Agreement (LDA), previously approved by the Board of Supervisors on March 27, 2012, Board of Supervisors approval is required for revisions to certain LDA terms related to the City's construction and venue delivery obligations because these changes materially increase the obligations or liabilities for the City.

Background

The 34th America's Cup is a series of international sailing races between the Golden Gate Yacht Club, the defender of the America's Cup, and three to four challengers, being hosted by the City in 2012 and 2013. On March 27, 2012, the Board of Supervisors approved the Lease Disposition Agreement (LDA) between the City and the America's Cup Event Authority (the "Authority") (File 12-0127), defining the Port properties to be used as venues for the America's Cup and the respective responsibilities of the City, Authority, and America's Cup Organizing Committee (ACOC) to prepare for and host the 34th America's Cup. The LDA replaced the previously proposed Development and Disposition Agreement and revised the Host and Venue Agreement previously approved by the Board of Supervisors on December 14, 2010 (File 10-1259). The LDA removed the Authority's long-term lease and development rights from the Host and Venue Agreement, including Authority investments in Port infrastructure. Instead, the Port would be responsible for completing necessary improvements at piers that would be used for the America's Cup, and the Authority would only make temporary use of the piers, returning them to the Port after the America's Cup event. The LDA defined the terms and conditions for which the Port would (a) provide venues to the Authority for the America's Cup, including the respective licenses or leases for these venues; and (b) make improvements to these venues in preparation of the America's Cup, at the Port's expense.

Piers 27, 29, and 30-32

Piers 27, 29, and 30-32, which are affected by the subject resolution, will be major venues for the America's Cup. In accordance with the Host and Venue Agreement and the LDA, Piers 27, 29, and 30-32 will be among those properties provided to the Authority rent-free for use for the America's Cup.

- **Piers 27 and 29** will be used by the Authority for race-viewing and team hospitality berths. In accordance with the LDA, the Port is scheduled to complete Phase I of the Pier 27 Cruise Terminal, which includes construction of the Cruise Terminal's core and shell, on or before March 1, 2013. The Authority will have use of Pier 27 and the adjacent Pier 29 for the America's Cup. Pier 29, which was damaged by fire in June 2012, is being repaired by Turner Construction Company ("Turner") under a Construction Management/General Contractor agreement between Turner and the Port. Delivery of Pier 29 from the Port to the Authority is also scheduled to take place on or before March 1, 2013, under the LDA.
- **Piers 30-32** will be used for the America's Cup team bases, including team offices for up to five teams, a crane to lift the 72-foot catamarans from the water onto Pier 32, and work space to accommodate up to five 72-foot catamarans. In accordance with the LDA, the Port is scheduled to complete improvements to Piers 30-32 by January 14, 2013.

The Executive Director of the Port executed the LDA on August 14, 2012, which revised some provisions of the LDA previously approved by the Board of Supervisors on March 27, 2012. Revisions that are now subject to Board of Supervisors approval are discussed below.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (a) approve revisions to the Lease Disposition Agreement (LDA), as previously approved by the Board of Supervisors, between the City and the America's Cup Event Authority ("Authority") with respect to the financial security for certain obligations to the City; (b) authorize and direct the procurement of insurance coverage for the City's satisfaction of certain such obligations; (c) reaffirm the direction for ongoing staff progress reports as to the implementation of the America's Cup events; and (d) authorize related actions.

Changes to the Financial Security Instrument Requirement

The Host and Venue Agreement, as previously approved by the Board of Supervisors, required the ACOC to obtain a \$32 million surety bond, or other form of financial security.¹ As the Budget and Legislative Analyst noted in a report to the Board of Supervisors dated March 22, 2012, "This \$32 million surety bond or financial security instrument constitutes the only asset to secure the performance of the City and the ACOC of their respective obligations under the Host and Venue Agreement. The Host and Venue Agreement limited each party's financial liability, due to a default of the Host and Venue Agreement, to the \$32 million surety bond or financial instrument." The ACOC had been unable to obtain any such form of financial security prior to the Board of Supervisors' approval of the LDA on March 27, 2012.

As shown on page 1 of Attachment I to this report, in the version of the LDA that was approved by the Board of Supervisors on March 27, 2012, Article 4 was left blank and as shown on page 5 of Attachment I, Section 7.11(c) Financial Liability Limitations, was left incomplete and concluded "Subject to further negotiation." Mr. Michael Martin, America's Cup Project Director, reported to the Budget and Legislative Analyst in March 2012 that the then-ongoing negotiations reflected the then-recent changes in the LDA in which the Port, rather than the Authority, was funding Port infrastructure improvements. According to the Budget and Legislative Analyst's March 22, 2012 report to the Board of Supervisors, "The ACOC, City staff, and the City's risk manager are continuing to try to identify a means by which the ACOC can obtain a financial security instrument in the amount of \$32 million that complies with the terms of the Host and Venue Agreement." Ultimately, however, the Office of Risk Management determined that such a financial security agreement did not exist in the form described in the Host and Venue Agreement, and therefore could not be obtained.

In lieu of the previously agreed upon financial security agreement, the LDA approved by the Executive Director of the Port on August 14, 2012, included a completely new financial security arrangement. Attachment I to this report provides the text of the entirely new LDA Article 4: Security for Parties' Secured Obligations, and the revised Section 7.11 Limitations of Liabilities

¹ Forms of financial security may include letter of credit or letter of guaranty.

of the Parties, to show the changes that occurred. According to Deputy City Attorney Joanne Sakai, the changes to LDA Article 4 are subject to Board of Supervisors approval, and the subject resolution has been revised to reflect this requirement.

The August 14, 2012 LDA removes ACOC's obligation to obtain the \$32 million security instrument, replacing it with the City's posting of the security, as described below. This change effectively shifts responsibility from the ACOC to the City to secure its obligations under the LDA, although, as noted below, the ACOC is responsible to reimburse the City for its actual costs out of available funds from its fundraising program. The August 14, 2012 LDA substitutes the following four requirements for the ACOC's \$32 million surety bond:

- \$2.4 million in deposits to fund a cash collateral deposit held under a cash collateral account² by January 15, 2013, and if used, to be replenished in full no later than July 15, 2013;
- Performance bonds to be provided by the construction contractor, Turner Construction Company (Turner) for Piers 30-32 infrastructure improvements, the Pier 27 Cruise Terminal Project, and the Pier 29 restoration work;
- Liquidated damages to be paid by the City (see below); and
- Proceeds of the City's existing event and property insurance policies.

These four requirements would assure the Authority that the City completes construction of infrastructure improvements to Piers 27, 29, and 30-32 by the dates required by the LDA (discussed further below). The (a) \$2.4 million to fund and, if necessary, replenish the cash collateral and (b) premium and the deductible for the City's insurance policy (described below) would be paid from the Office of Economic and Workforce Development's existing FY 2012-13 General Fund appropriation. The ACOC would be liable for reimbursing the City for any expenditures from the cash collateral and insurance policy, per the Memorandum of Understanding (MOU) between the City and the ACOC.

Assurances for On-Schedule Delivery of Piers 27, 29, and 30-32

The City would be liable for up to \$5 million in liquidated damages if the City fails to complete construction of infrastructure improvements to Piers 27 and 30-32 by the dates required by the LDA. Sections 1.2(b) and (c) of the LDA specify the schedule of liquidated damages that the Authority may demand from the City for delays in delivering Piers 27 or 30-32, for each day of delay beginning on March 1, 2013:

March 1- March 31, 2013: \$29,200 per day;
 April 1 -April 30, 2013: \$60,350 per day; and
 May 1- May 31, 2013: \$73,687 per day.

According to the America's Cup Project Manager, project and risk management staff propose that damages would be paid from available recoveries under the insurance policy³ that is one of

² Allowable uses of the cash collateral include (a) accelerating completion of Piers 27, 30-32, and Pier 80; (b) Authority relocation costs in the event Piers 27, 29, or 30-32 are unavailable by the agreed-upon dates; (c) the Authority's direct losses, subject to limitations under the Host and Venue Agreement; (d) meeting other LDA obligations; and (e) the City's Event-related costs, once all other cash collateral obligations have been satisfied.

the subjects of the proposed resolution. The insurance policy is described under "Force Majeure Changes," below.

Under the August 14, 2012 LDA, if the Port is unable to deliver the **Pier 27** venue to the Authority by March 1, 2013, the Authority may terminate the LDA on 10 days' notice to the Port. As an alternative to terminating the LDA, Section 7.4(a)(ii) of the LDA authorizes the Authority to pursue one or more of the following:

- Accept delivery of the Pier 27 venue before the Port has completed Phase I of the Cruise Terminal Project, if the Authority's proposed use can be safely accommodated, as determined by the Chief Harbor Engineer, comparable to the provision in the March 27, 2012 LDA;
- Require the City to provide \$2.4 million in cash collateral toward the \$2.4 million insurance deductible, described below and not previously required by the March 27, 2012 LDA, from which the City must draw to accelerate construction or secure functionally-equivalent space acceptable to the Authority; and
- Demand payment of liquidated damages if the Cruise Terminal Project is delivered after March 1, 2013, which was not previously required by the March 27, 2012 LDA.

On-time delivery of **Pier 29** from the Port to the Authority on or before March 1, 2013 is addressed under Section 1.2(d) of the LDA. The Port included requirements in the contract with Turner that Turner (a) pay liquidated damages of \$5,000 per day to the Port beginning on March 1, 2013, and continuing every day until the Pier 29 restoration work is complete, with the exception of punch list items;⁴(b) agrees to complete the punch list items and any other work required to complete the Pier 29 restoration contract after the Port has delivered Pier 29 to the Authority but no later than April 30, 2013, subject to the Authority's agreement, and during which time the Authority may share occupancy; and (c) provide a surety bond in the full amount of the Pier 29 restoration contract, guaranteeing payment and performance of the Pier 29 restoration work under which the authority will have the unilateral right to require the Port to call on the bond if the Pier 29 restoration work is not completed by March 1, 2013, subject to punch list items and specified long-lead items, if Turner's failure is caused by a payment default or other circumstances authorizing a call upon the bond.

The Board of Supervisors authorized the Port to enter into a contract with Turner for construction of infrastructure improvements to **Piers 30-32** in April 2012 (File 12-0282). The Port's contract with Turner for Piers 30-32 infrastructure improvements provides for liquidated damages of at least \$5,000 per day if the improvements are not completed by February 14, 2013.

The August 14, 2012 LDA does not provide a termination clause with regard to delivery of Piers 30-32. However, if the Port is unable to deliver **Piers 30-32** to the Authority by March 1, 2013, Section 7.4(d) of the LDA authorizes the Authority to pursue one or more of the following:

³ As is noted elsewhere in the report, delays arising from labor disputes would not be covered under the insurance policy.

⁴ The LDA defines "Punch List Items" as "items of construction that are unfinished when a work of improvement is substantially complete, customarily handled by a punch list."

- Require the City to draw upon the cash collateral to accelerate construction or secure functionally-equivalent space acceptable to the Authority;
- Demand payment of liquidated damages if Piers 30-32 is delivered after March 1, 2013; and
- Demand that the Port call upon the Piers 30-32 performance bond and enforce the liquidated damages provision in the Turner Construction Management/General Contractor agreement, if applicable.

According to Port Special Project Manager Mr. Brad Benson, the Port's construction work on Piers 27 and 29 are on-schedule to be completed on or before March 1, 2013. Piers 30-32 infrastructure improvements are being completed in two phases: Phase I was completed prior to the August 2012 America's Cup preliminary races; and Phase II will commence following the completion of the October 2012 America's Cup preliminary races. According to Port project manager Mr. Uday Prasad, Phase II of Piers 30-32 was scoped to be completed within the four month period of October 14, 2012 to February 14, 2013.

Force Majeure Changes and Insurance Policy Provisions

The August 14, 2012 LDA revises Section 3.15(a), changing conditions included in the force majeure provisions,⁵ subject to Board of Supervisors approval. These changes remove fire, unusually severe weather, and labor disputes from the force majeure, and would therefore leave the City liable for liquidated damages, as prescribed in the LDA, for delays in completing work on Piers 27 and 30-32 due to fire, unusually severe weather, and labor disputes. Such liquidated damages are capped at \$5 million under the LDA, and per the City's agreement with the ACOC, such liquidated damages would be reimbursable to the City from the ACOC.

Because the ACOC is intended to reimburse the City for liquidated damages arising from delay in delivering Piers 27 or 30-32 to the Authority by March 1, 2013 due to any reason not already covered by the force majeure, the ACOC worked with the City's Director of Risk Management to identify an insurance policy to cover up to \$5 million in the event that liquidated damages are assessed. The insurance policy currently under consideration (a) has a premium of \$1,015,000; (b) has a self-insured retention (i.e. deductible) of \$2,400,000; and (c) provides coverage in the event that delivery of Piers 27 and 30-32 occurs after March 1, 2013 due to fire or unusually severe weather. The costs of the \$1,015,000 premium and, if necessary, the \$2,400,000 deductible, would be paid from the Office of Economic and Workforce Development's FY 2012-13 operating budget, which includes a \$10 million General Fund allocation for America's Cup costs. Both the \$1,015,000 premium and, if necessary, the \$2,400,000 deductible would be refunded to the City by the ACOC through the ACOC's fundraising efforts.

The proposed resolution would authorize the Office of Risk Management to proceed with the procurement of the insurance policy.

⁵ *West's Encyclopedia of American Law, 2nd Edition*: force majeure "relates to the law of insurance and is frequently used in construction contracts to protect the parties in the event that a segment of the contract cannot be performed due to causes that are outside the control of the parties, such as natural disasters, that could not be evaded through the exercise of due care."

The City was unable to obtain insurance coverage for labor disputes that may delay the on-time delivery of Piers 27 or 30-32. According to Mr. Martin, the City has determined that the risk of labor dispute delaying Piers 27 and 30-32 is small, and that this is a risk over which the City has a reasonable amount of control.

In addition, the proposed resolution reaffirms the schedule of progress reports to be submitted to the Board of Supervisors as to the implementation of the America's Cup events. This progress report schedule was recommended by the Budget and Legislative Analyst's Office in its March 22, 2012 report to the Board of Supervisors.

FISCAL IMPACTS

The proposed resolution would authorize the Director of Risk Management to procure an insurance policy to cover up to \$5 million in liquidated damages resulting from delay in the City transferring Piers 27 or 30-32 to the America's Cup Event Authority (the "Authority") due to fire or unusually severe weather. The premium on the insurance policy is \$1,015,000, and the insurance policy has a deductible of \$2,400,000. Therefore, in the event of a claim against the insurance policy, the total cost to the City would be no more than \$3,415,000. The Office of Economic and Workforce Development's (OEWD) existing FY 2012-13 General Fund appropriation, which includes \$10 million for America's Cup-related costs, would be the source of funding for the insurance policy. The costs of the insurance policy, including both the \$1,015,000 premium and the \$2,400,000 deductible (if necessary) would be reimbursed to the City by the ACOC. The \$2,400,000 deductible amount would be payable from the cash collateral described below.

The proposed resolution, as amended, would authorize the City to (a) deposit \$2.4 million to the cash collateral required under the August 14, 2012 Lease Disposition Agreement (LDA); and (b) replenish the \$2.4 million cash collateral, in full, as prescribed under the August 14, 2012 LDA. The \$2.4 million initial deposit and any necessary replenishment deposits would be paid from the OEWD's existing FY 2012-13 and FY 2013-14 General Fund budgets. All deposits would be subject to reimbursement to the City by the ACOC.

ACOC Deposits and Fundraising, To-Date

The ACOC was to provide \$32 million in fundraising toward the City's operating and other costs for the America's Cup, not including funds for their own operations. According to Ms. Kyri McClellan, Chief Executive Officer for the ACOC, the ACOC has raised approximately \$13 million. The amount of \$13 million already raised includes (a) \$6.1 million paid to the City to reimburse the City's FY 2011-12 America's Cup costs, (b) \$2.4 million allocated to Host and Venue Agreement obligations, (c) \$1.1 million allocated to 18 months of ACOC operations, (d) \$2.2 million in pledges through January 2014, and (e) \$1.2 million in the ACOC's cash-on-hand.

POLICY CONSIDERATIONS

The Sponsor will Submit an Amendment to the September 26, 2012 Budget and Finance Committee Meeting

The Sponsor will submit an Amendment to the Budget and Finance Committee at its September 26, 2012 meeting, amending two clauses as follows (with changes underlined):

RESOLVED, That the changes to the definition of force majeure as specified in Section 3.15 of the LDA and the provisions relating to the LDA Security in Section 4.2 of the LDA are hereby approved; and, be it [...]

FURTHER RESOLVED, That this Board reaffirms its direction under Resolution No. 109-12 to the America's Cup Project Director and the Executive Director of the Port, as applicable, to provide the following progress reports: (i) to the City Controller and the Budget & Finance Committee of the Board of Supervisors on a quarterly basis, a report on (A) ACOC fundraising and transfers of such revenues to the City, (B) Port infrastructure expenditures in preparation for the Event and (C) City operating expenditures for the Event, including any draws upon the Cash Collateral; and (ii) if ACOC fundraising does not appear to be on track to enable ACOC to contribute to the City amounts sufficient to pay for City operating expenditures and other amounts to be reimbursed by ACOC fundraising, a proposal for cost saving measures to offset any shortfall from Event-related tax and fundraising revenues.

This report has been written, based on the Amendment of the Whole.

Delay or Inaction on the Proposed Resolution by October 17, 2012 Would Entitle the Authority to Terminate the LDA

Section 3.15 would remove fire, unusually severe weather, and labor disputes from the LDA force majeure clause. Under the LDA, Board of Supervisors approval of this force majeure change is required by October 17, 2012. Under Section 3.15(c), if the Board does not approve Section 3.15(a) by October 17, 2012, Section 3.15(c) states:

"the Authority will be entitled to terminate this Agreement in its entirety as its sole remedy, and upon termination, neither Party will have any recourse to the other Party, except for obligations of either Party that survive in accordance with Section 6.1(c) (Termination Rights: Survival); provided that the Authority must exercise its termination remedy under Section 3.15(b) (Conditions Subsequent Regarding Certain Force Majeure Events: Remedy), if at all, by providing notice in accordance with Article 8 (Notices) to the City no later than 5 p.m. (San Francisco time) on November 16, 2012. The Authority's failure to provide timely notice of termination under Section 3.15(b) (Conditions Subsequent Regarding Certain Force Majeure Events: Remedy) will constitute the Authority's irrevocable waiver of this termination right."

The Budget and Legislative Analyst notes that the Authority has the right, but not the requirement to terminate the Agreement.

While the Host and Venue Agreement states that the ACOC will endeavor to raise up to \$32 million to reimburse the City for costs of hosting the America's Cup, the full availability of the \$32 million to be raised by ACOC is not certain

Under the Host and Venue Agreement, the ACOC is intended to reimburse the City's actual costs for hosting the America's Cup in 2012 and 2013. The ACOC has reimbursed the City \$6,115,979 for the City's costs incurred as of June 2012.

The proposed resolution, which revises certain provisions of the LDA previously approved by the Board of Supervisors, would require the City to expend \$1,015,000 to procure the aforementioned insurance, which would be reimbursed by the ACOC. In addition, the proposed resolution requires the City to deposit \$2,400,000 in a cash collateral account, and would impose a liability on the City, including (a) any additional deposits to the cash collateral to replenish draw-downs of the initial \$2,400,000 deposit, and (b) liquidated damages up to \$5 million not covered by the insurance policy. The ACOC is responsible to reimburse the City for any draw-down on the cash collateral account or payment of liquidated damages not covered by the insurance policy, in the event that such costs should occur.

While the ACOC intends to reimburse the City for the \$1,015,000 insurance premium and other actual costs incurred by the City under the LDA, the availability of funds due to ACOC fundraising is not certain. Therefore, because the City could incur costs which may not be reimbursed, we consider approval of the proposed resolution to be a policy matter for the Board of Supervisors.

As previously recommended by the Budget and Legislative Analyst in the March 22, 2012 report to the Board of Supervisors, under the proposed resolution, the America's Cup Project Director and Executive Director of the Port is to report quarterly to the Board of Supervisors on (a) ACOC fundraising and transfer of funds to the City; (b) Port expenditures for infrastructure improvements; and (c) the City's operating expenditures. If the ACOC does not contribute the total amount of \$32 million to be raised by the ACOC, as provided by the Host and Venue Agreement, the America's Cup Project Director is to report to the Board of Supervisors on cost-savings measures to be taken by the City to offset any shortfall of America's Cup-related tax and fundraising revenues.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

**Attachment I: Changes to Lease Disposition Agreement (LDA)
 Article 4: Security for Parties' Secured Obligations
 Section 7.11: Limitations of Liabilities of the Parties**

LDA, as approved by Board of Supervisors, March 27, 2012

Article 4: Left Blank by Agreement of the Parties

LDA, as amended by Mayor, August 14, 2012

Article 4: Security for Parties' Secured Obligations

4.1. Authority Secured Obligations.

(a) **Scope.** The Authority has provided the City and Port with security in an amount and scope commensurate with the LDA Security as described below to secure the performance of or satisfy the following (all, collectively, the "Authority Secured Obligations"):

- (i) performance of the Authority Mitigation Measure regarding Recreation and Park Department property in and around Marina Green as provided in Section 3.2.4 (Park Resources) of Exhibit A;
- (ii) Restoration of the Venues before they are surrendered to the Port in accordance with Section 6.2 (Restoration After Termination) of this Agreement and Article 23 (Surrender) of the Venue Leases and Article 22 (Surrender) of the Venue Licenses; and
- (iii) security measures required to secure environmental obligations under Article 12 (Hazardous Materials) of the Venue Leases and Venue Licenses.

(b) **Guaranty.** The Authority must provide to the City a payment and performance guaranty with a maximum payment obligation of \$6 million (the "Guaranty") to secure the Authority Secured Obligations described in Section 4.1(a) (Authority Secured Obligations: Scope), which must be delivered to the City by the later of October 18, 2012 if the Board Approves Section 3.15 (Conditions Subsequent Regarding Certain Force Majeure Events) or, if the Board does not Approve Section 3.15 (Conditions Subsequent Regarding Certain Force Majeure Events), but the Authority does not elect to terminate this Agreement, then concurrently with the City's deposit of the Cash Collateral on January 15, 2013. The Guaranty must be made and delivered by a Third-Party guarantor ("Guarantor") and contain Guarantor's express representation that it has a Net Worth of \$12 million or more, which Guarantor must maintain until all of the Authority Security Obligations have been satisfied or waived. The Guaranty must be in form and substance Approved by the Port, in consultation with the City Attorney and the City's Risk Manager. Upon receipt of the Guaranty or earlier termination of this Agreement, the Port will cancel or return the \$250,000 guaranty that the Authority previously delivered to the Port in connection with an access license.

(c) **Environmental Oversight Deposit.** As partial security for the Authority Secured Obligations described in Section 4.1(a)(iii) (Authority Secured

Obligations: Scope) for all of the Venues in the aggregate, the Authority has provided a \$10,000 cash deposit (the "Environmental Oversight Deposit") to the Port. The Port is authorized to draw funds from the Environmental Oversight Deposit for the purposes specified in the Venue Leases and Venue Licenses, and the Authority must replenish the Environmental Oversight Deposit to \$10,000 following any draw.

(d) Independent Instruments. The Parties acknowledge that:

(i) Each form of Authority security is independent of the others and will operate independently to secure the distinct Authority Secured Obligations specified above.

(ii) The Port may draw on the Environmental Oversight Deposit according to the terms of the Venue Leases and Venue Licenses.

(e) Release of Security. The Port may make a demand on the Guaranty or draw upon the Environmental Oversight Deposit, as applicable, up to 60 days after the Term ends. If no Port Claim is outstanding on the 61 day after the Term ends; the Port will cancel and return the Guaranty and any remaining portion of the Environmental Oversight Deposit.

4.2. City Secured Obligations.

(a) Scope. The City has provided the LDA Security as security for the performance of the City's, including the Port's, and the ACOC's obligations under this Agreement (the "City Secured Obligations"). The Parties acknowledge that any Port obligation to pay the Authority for any Reimbursable Costs under this Agreement is an independent obligation of the Port that is not secured by the LDA Security or subject to the limitations on liability under Section 7.11(c) (Limitations on Liability of Parties: Financial Liability Limitations). The Authority has agreed to accept the following in full satisfaction of the ACOC's obligation to provide security under HVA § 9.3.

(b) Liquidated Damages: The City has agreed to pay the Authority liquidated damages under the following circumstances, without affecting the City's replenishment obligation under Section 4.2(c) (City Secured Obligations: Cash Collateral).

(i) The City will pay the Authority liquidated damages should the Delivery of Piers 30-32 or the Pier 27 Venue be delayed beyond March 1, 2013, subject to a cap of \$5 million, as described in Section 1.2(b) (Port Infrastructure Work: Piers 30-32 Work), Section 1.2(c)(iii) (Port Infrastructure Work: Cruise Terminal Work), and, if applicable, Section 3.15(b) (Conditions Subsequent Regarding Certain Force Majeure Events: Revised Definition of Force Majeure).

(ii) The City will pay the Authority liquidated damages should the Delivery of the Pier 29 Venue be delayed beyond March 1, 2013, as described in Section 1.2(d) (Port Infrastructure Work: Pier 29 Restoration Work).

(c) Cash Collateral.

(i) No later than January 15, 2013, the City will establish a cash escrow account in the amount of \$2.4 million at a San Francisco branch of a bona fide financial institution selected by the Authority and Approved by the City, held in the names of the City and the Authority subject to a control agreement or other instrument perfecting the Authority's security interest to its satisfaction (the "Cash Collateral"). The City is obligated to make this deposit even if ACOC has not raised and tendered to the City the full amount required to make the deposit; in such a circumstance any amount advanced by the City will be subject to reimbursement by the ACOC.

(ii) Disputes as to whether a claim is payable from Cash Collateral under this Agreement will be submitted for dispute resolution under Section 7.6 (Dispute Resolution).

(iii) Should a draw be made on the Cash Collateral at any time before July 1, 2013, the City is obligated to replenish the account no later than July 15, 2013, to a balance of \$2.4 million. The City is obligated to make this deposit even if ACOC has not raised and tendered to the City the full amount required to make the deposit; in such a circumstance any amount advanced by the City will be subject to reimbursement by the ACOC.

(iv) The Cash Collateral will secure, in addition to the City's other sources, payment of the following costs, to the extent other sources of funds are not immediately available:

(A) to accelerate and Complete the Cruise Terminal Project (which as defined does not include the Pier 29 Restoration Work) or to secure and prepare Functionally-Equivalent Space;

(B) to accelerate and Complete the remaining Piers 30-32 Work or the 2013 Pier 80 Work;

(C) to pay the Authority's Relocation Costs to the extent specified in Section 1.2(e) (Port Infrastructure Work Authority Expenditures);

(D) expressly subject to the limitations of HVA § 17.2 and Section 7.11(e) (Limitations on Liability of the Parties: Limitations on Damages), to compensate the Authority for direct Losses caused by any breach by the City or the ACOC under the HVA, for any Event of Default by the City under this Agreement, and any default by the Port under any Venue Lease or Venue License, and for any failure of performance by the City under the Implementation Plans;

(E) to pay the City, Port, or contractors retained by the City or the Port to provide the needed services on its behalf to meet any City, the Port, and ACOC obligations that are to be secured by the LDA Security under the HVA or this Agreement that are not

addressed specifically in Section 4.2(c)(iv) (City Secured Obligations: Cash Collateral), including meeting the City's obligations under the Implementation Plans; and

(F) to the extent any funds remain after all of the above obligations have been satisfied, to the City for the City's Event-related costs.

(v) The Parties will agree on a form of a demand notice to be submitted to the Claims Administrator for any draw on the Cash Collateral, under which the Parties will state their agreed use of funds to be drawn from the Cash Collateral.

(vi) The City's and the ACOC's obligations to perform other Event related activities will not be diminished by the exhaustion of the Cash Collateral.

(vii) The Parties intend for the Cash Collateral to be used only for the purposes specified in this Agreement Further, consistent with HVA § 17.2 and Section 7.11(e) (Limitations on Liability of the Parties: Limitations on Damages), the Parties agree that under no circumstances may Cash Collateral be used to pay consequential losses or damage, loss of profit, loss of business opportunity, or damage to goodwill.

(viii) If the Parties reasonably anticipate that the Cash Collateral will be insufficient to satisfy all foreseeable demands to be made by the Parties, then, to the extent necessary to satisfy the demands having priority:

(A) until June 30, 2013, demands made by the City, including any demand in accordance with Section 4.2(c)(iii) (City Secured Obligations: Cash Collateral), will have priority over demands made by the Authority; and

(B) beginning on July 1, 2013, demands made by the Authority will have priority over demands made by the City.

(d) **Independent Instruments.** The Parties acknowledge that:

(i) Each element of the LDA Security is independent of the other and will operate independently to secure the distinct City Secured Obligations specified above.

(ii) The Authority may require a draw on the Cash Collateral in accordance with the control agreement.

(e) **Release of LDA Security.** The Authority may make a demand on or draw upon (or require the ACOC or the City to make demand for or draw upon, as appropriate) the LDA Security until the dates below:

(i) Liquidated damages: for delayed Delivery of Piers 30-32, the Pier 27 Venue, and the Pier 29 Venue for the period beginning on March 1, 2013, and ending on June 10, 2013; and

(ii) Cash Collateral: 60 days after the later of the end of the Term or the conclusion of any dispute resolution proceedings regarding claims against Cash Collateral under Section 7.6 (Dispute Resolution).

<p>Section 7.11: Limitations of Liabilities of the Parties</p> <p>(a) Sources of Repayment. Except as otherwise provided in this Agreement, the Authority agrees that any and all obligations of the Port or the City arising out of or related to this Agreement are special and limited obligations of the Port and the City, as applicable, and the Port's and City's obligations to make any payments under this Agreement to implement this Agreement are restricted entirely to funding sources available to the Port and the City, each in its sole discretion, and from no other source.</p>	<p>If no Authority Claim is outstanding after all of the dates described above in Section 4.2(c) (City Secured Obligations: Release of LDA Security) have elapsed, the control agreement will provide for the Cash Collateral to be released to the City without further action by the Authority.</p> <p>Section 7.11: Limitations of Liabilities of the Parties</p> <p>(a) Sources of Repayment. Except as otherwise provided in this Agreement, the Authority agrees as follows.</p> <p>(i) All obligations of the Port or the City arising out of or related to this Agreement are special and limited obligations of the Port and the City, as applicable, and the Port's and City's obligations to make any payments under this Agreement to implement this Agreement are restricted entirely to funding sources available to the Port and the City, each in its sole discretion, and from no other source.</p> <p>(ii) More specifically, in no event may the Authority compel the City or the Port to use funds in or obligate the City General Fund or the Port Harbor Fund to reimburse the Authority for Reimbursable Costs or to satisfy any Authority Claim of damages for a breach by the Port under this Agreement.</p>
<p>(b) Indemnities. An Indemnified Party's recovery for any Loss under this Agreement will be limited to the amount of any available insurance (including surety bond) proceeds.</p>	<p>(b) Indemnities. An Indemnified Party's recovery on an Indemnified Claim for any Loss under Section 2.7 (General Indemnities) of this Agreement will be limited to the amount of proceeds available under insurance policies and bonds described in this Agreement, subject to any deductibles and self-insured retentions.</p>

<p>(c) Financial Liability Limitations. Under the HVA, each Party's financial liability following a default under this Agreement was to be subject to a \$32 million cap established under HVA § 17.4 and HVA § 17.5, not including Indemnification obligations or proceeds of HVA, however, the Parties agree that their respective liabilities for Claims of Breach under the HVA, default under this Agreement (excluding any Port obligation to pay for Reimbursable Costs), and any other Claim for a Loss arising in relation to the HVA, this Agreement or a Venue Lease or Venue License will be limited to the sources of recovery set forth in this Subsection. [Subject to further negotiation] <i>(Note: bracketed text in original)</i></p>	<p>(c) Financial Liability Limitations. Party's financial liability following a default under this Agreement was to be subject to a \$32 million cap established under HVA § 17.4 and HVA § 17.5, not including Indemnification obligations or proceeds of insurance. Consistent with the spirit of the HVA, however, the Parties agree that the Parties' respective monetary remedies for Hazardous Material Claims, Indemnified Claims, and Claims arising from any alleged Breach under the HVA, Event of Default under this Agreement, and any other Loss arising in relation to the HVA, this Agreement, or a Venue Lease or Venue License will be limited as set forth below.</p> <p>(i) The City's, including the Port's, and the Authority's remedies for any failure by the City to meet its obligations will be paid from the following sources:</p> <p>(A) the Cash Collateral;</p> <p>(B) the Piers 30-32 Performance Bond and performance bonds for the Cruise Terminal Project and the Pier 29 Restoration Work;</p> <p>(C) liquidated damages as provided in this Agreement;</p> <p>and</p> <p>(D) proceeds of the City's insurance policy described in Section 2.8(a) (City Insurance: Event Insurance).</p> <p>(ii) The City's, including the Port's, remedies for any failure by the Authority to meet its obligations will be paid from the following sources:</p> <p>(A) the Guaranty;</p> <p>(B) the Environmental Oversight Deposit; and</p> <p>(C) the proceeds of the Authority's insurance policy described in Section 2.8(b)(i) (Authority Insurance: Event Insurance).</p>
<p>(d) No Individual or Agent Liability. No member of the Board, the Port Commission, or Port or City Agent will incur any liability under this Agreement to the Authority or any successor in their individual capacities by reason of their actions under this Agreement or execution of this Agreement. Except as otherwise specifically provided by any security instrument, no Agent of the Authority will be personally liable to the Port or the City for any amount that may become due or on any obligations under this Agreement.</p>	<p>(d) No Individual or Agent Liability. No member of the Board, the Port Commission, or Port or City Agent will incur any liability under this Agreement to the Authority or any successor in their individual capacities by reason of their actions under this Agreement or execution of this Agreement. Except as otherwise specifically provided by any security instrument, no Agent of the Authority will be personally liable to the Port or the City for any amount that may become due or on any obligations under this Agreement.</p>

<p>(e) Limitations on Damages. In any action, including any dispute resolution proceeding under Section 11.6 (Dispute Resolution) between the Parties for damages, the damages may not include any indirect or consequential loss or damage, loss of profit, loss of business opportunity, or damage to goodwill.</p>	<p>(e) Limitations on Damages. The Parties agree, consistent with HVA §17.2, under no circumstances including any dispute resolution proceeding under Section 7.6 (Dispute Resolution) or other proceeding between the Parties for damages arising from alleged breaches under the HVA, this Agreement, or the Venue Leases and Venue Licenses, may the damages include any indirect or consequential loss or damage, loss of profit, loss of business opportunity, or damage to goodwill, except for the City's limited waiver solely for the purpose of allowing for payment of liquidated damages to the Authority for delayed Delivery of Piers 30-32 (or Pier 80 in the alternative), the Pier 27 Venue, or the Pier 29 Venue under Section 1.2(d) (Port Infrastructure Work).</p>
<p><i>The LDA approved by the Board on March 27, 2012 did not include a Section 7.11(f)</i></p>	<p>(f) Release. As consideration for the covenants and obligations under this Agreement, the Authority and the City, including Port, each on behalf of itself and its successors and assigns, agrees to waive any right to recover from, and forever releases the other Party and its Agents of and from any Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Party may now have or that may arise on account of or in any way be connected with this Agreement, the HVA, or the Venue Leases and Venue Licenses, to the extent not recoverable from the sources described in this Section.</p> <p>In connection with this release, the City (acting by and through the Port) and the Authority each acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:</p> <p style="text-align: center;">A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR WHEN OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.</p> <p style="text-align: center;">_____ Authority (<i>Monique Moyer signature</i>) City (by the Port)</p> <p>Each of the Authority and the City agrees that the release given in this Section covers unknown Claims to the extent Losses from such Claims are not recoverable from the applicable sources described in this Section. Accordingly, by entering into this Agreement, the Authority and the City each waives the benefits of Civil Code section 1542, or under any other statute or common law principle of similar effect. This release and waiver will survive termination of this Agreement.</p>

**Attachment II: Changes to Lease Disposition Agreement (LDA),
Section 3.14. Force Majeure and Other Delays
Section 3.15. Conditions Subsequent Regarding Certain Force Majeure Events.**

<p>LDA, as approved by Board of Supervisors, March 27, 2012</p>	<p>3.14 Force Majeure and Other Delays. (a) Extension. All dates and times by which any Party or Third Party must perform an obligation, satisfy a condition to the other Party's performance, or respond to a notice, request, or demand under this Agreement will be extended by Force Majeure, subject to the limits of Subsection (d) (Outside Delivery Date).</p>	<p>LDA, as amended by Mayor, August 14, 2012 and Requiring Further Board of Supervisors Approval, Subject to Proposed Resolution</p>
<p>(b) Notice. To obtain the benefit of an extension of time due to Force Majeure (in each instance, a "Force Majeure Delay"), the Party whose act is delayed (the "Delayed Party") must give notice within 30 days after the earlier of the event or discovery of the event causing the delay occur to the other Party of:</p> <p>(i) the cause of delay; (ii) if the Delayed Party does not discover the event until after more than 2 days after it occurred, the time elapsed between the event and discovery of the event and the reason for delay in discovering the event; and (iii) the Delayed Party's reasonable estimate of the length of the Force Majeure Delay.</p>	<p>(b) Notice. To obtain the benefit of an extension of time due to Force Majeure (in each instance, a "Force Majeure Delay"), the Party whose act is delayed (the "Delayed Party") must give notice within 30 days after the earlier of the event or discovery of the event causing the delay to occur to the other Party of:</p> <p>(i) the cause of delay; (ii) if the Delayed Party does not discover the event until after more than 2 days after it occurred, the time elapsed between the event and discovery of the event and the reason for delay in discovering the event; and (iii) the Delayed Party's reasonable estimate of the length of the Force Majeure Delay.</p>	<p>(b) Notice. To obtain the benefit of an extension of time due to Force Majeure (in each instance, a "Force Majeure Delay"), the Party whose act is delayed (the "Delayed Party") must give notice within 30 days after the earlier of the event or discovery of the event causing the delay to occur to the other Party of:</p> <p>(i) the cause of delay; (ii) if the Delayed Party does not discover the event until after more than 2 days after it occurred, the time elapsed between the event and discovery of the event and the reason for delay in discovering the event; and (iii) the Delayed Party's reasonable estimate of the length of the Force Majeure Delay.</p>
<p>(c) Effect of Notice or Failure to Provide Notice. Unless the Party receiving notice objects to the Delayed Party's estimate of the period of Force Majeure Delay within 5 days after timely receipt of a Force Majeure notice, the Force Majeure Delay will be the period specified in the notice, subject to Subsection (d) (Outside Delivery Date). A Delayed Party that does not provide timely notice will be deemed to have waived the benefit of its right to a Force Majeure Delay.</p>	<p>(c) Effect of Notice or Failure to Provide Notice. Unless the Party receiving notice objects to the Delayed Party's estimate of the period of Force Majeure Delay within 5 days after timely receipt of a Force Majeure notice, the Force Majeure Delay will be the period specified in the notice, subject to Subsection (d) (Outside Delivery Date). A Delayed Party that does not provide timely notice will be deemed to have waived the benefit of its right to a Force Majeure Delay.</p>	<p>(c) Effect of Notice or Failure to Provide Notice. Unless the Party receiving notice objects to the Delayed Party's estimate of the period of Force Majeure Delay within 5 days after timely receipt of a Force Majeure notice, the Force Majeure Delay will be the period specified in the notice. A Delayed Party that does not provide timely notice will be deemed to have waived the benefit of its right to a Force Majeure Delay.</p>
<p>(d) Outside Delivery Date. Under no circumstances may a Force Majeure Delay extend beyond the Outside Delivery Date for a Venue except by the Parties' written agreement.</p>	<p>(d) Outside Delivery Date. Under no circumstances may a Force Majeure Delay extend beyond the Outside Delivery Date for a Venue except by the Parties' written agreement.</p>	<p>Note: The LDA approved by the Mayor on August 14, 2012 did not include an "Outside Delivery Date section."</p>

(d) Section: Definitions. The following definitions will apply in the application of this Section

- (i) Subject to Section 3.15 (Conditions Subsequent Regarding Certain Force Majeure Events: Labor Disputes), "Force Majeure" means any of the following events beyond the Delayed Party's control, but only to the extent that the event delays or prevents a Party's performance: acts of nature (excluding unusually severe weather) or of the public enemy; acts of the government (not including issuance of Regulatory Approvals by Regulatory Agencies); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather; and substantial interruption of work caused by labor disputes or strikes directed at Event-related activities, including Improvements and Alterations at Venues.
 - (ii) "Litigation Force Majeure" means any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, that prevent the action that is being delayed, brought by a Third Party that challenges:
 - (A) the validity of any action taken by any City body, including the Planning Commission and the Port Commission, in connection with environmental review of the Project under CEQA or NEPA, Approvals relating to the Project, or any findings on which any action is predicated;
 - (B) the validity of any action taken by any other Regulatory Agency, including environmental review of the Project, or Regulatory Condition of Approval.
 - (C) the failure of any Regulatory Agency to impose a Regulatory Condition of Approval.
- Persons Controlled by or under the Common Control of the Authority or an Authority Affiliate, or any other Third Party assisted directly or indirectly in the proceeding by the Authority is excluded from the definition of Litigation Force Majeure.

(e) Definitions. The following definitions will apply in the application of this Section:

- (i) "Force Majeure" means events beyond the Delayed Party's reasonable control that prevent the action that is being delayed, including: acts of nature or of the public enemy; acts of the government (not including issuance of Regulatory Approvals by Regulatory Agencies); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather; and strikes or other substantial interruption of work because of labor disputes. The following are excluded from the definition of Force Majeure:
 - (A) the Authority's failure to secure anticipated financing for the Project unless caused by Force Majeure;
 - (B) the effect of Laws relating to sea level rise;
 - (C) any obligation under this Agreement that may be satisfied in full by the payment of a liquidated sum of money; and
 - (D) an event that does not cause an actual delay in a Party's ability to complete the action by the required date.
 - (ii) "Litigation Force Majeure" means any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, that prevent the action that is being delayed, brought by a Third Party that challenges:
 - (A) the validity of any action taken by any City body, including the Planning Commission and the Port Commission, in connection with environmental review of the Project under CEQA or NEPA, Approvals relating to the Project, or any findings on which any action is predicated;
 - (B) the validity of any action taken by any other Regulatory Agency, including environmental review of the Project; or
 - (C) the failure of any Regulatory Agency to impose a Regulatory Condition of Approval.
- Persons Controlled by or under the Common Control of the Authority or an Authority Affiliate, or any other Third Party assisted directly or indirectly in the proceeding by the Authority is excluded from the definition of Litigation Force Majeure.
- (iii) "Outside Delivery Date" means, for each Venue, the date that is 24 months after the Delivery Date specified in Schedule 1, which will be amended as necessary to reflect changes in the Event Plan.

(e) **Event Postponement.** The Port acknowledges that, independent of Force Majeure, the Authority has the right under the HVA § 12.1 to postpone any World Series regatta or Regatta for up to 12 months from the dates specified in the Venue Schedule, as revised from time to time in accordance with HVA §§ 3.3-3.4. This Agreement does not provide an independent basis for postponement of any regatta. The following will apply if the Authority elects to exercise this right under the HVA:

- (i) The Authority will provide the Port with a notice of the election, including the proposed dates for the anticipated postponement, concurrently with its notice to the City.
- (ii) The Authority will consult with the City to implement revisions to the Venue Schedule to accommodate the proposed postponement. The City will have the right to change the designated Venues for the Event, subject to applicable Regulatory Agency Approval, as long as the Event can be accommodated at those Venues to the Authority's satisfaction.
- (iii) The Port's economic good standing relies upon its continuing operation of the waterfront, including its ongoing leasing activities at non-Venue locations and its maritime operations. The Port's continuing operations will rely on its ability to use or lease portions of its facilities not in use as Event Venues, and the Port's Public Trust mission requires it to make Port property available for other Public Trust uses such as access for navigation, fishing, and commerce, when Venues are not being used for the Event. The Authority acknowledges that the Port may consider these factors when reviewing any proposed changes to the Venue Schedule.
- (iv) A postponement by the Authority will effect an automatic extension of dates for performance of the Parties under this Agreement, including the Delivery Dates for any Venue planned for use for the postponed regatta consistent with the revised Venue Schedule will be revised in accordance with HVA §§ 3.3-3.4.
- (v) This Subsection does not change any of the other rights or obligations under HVA § 12.1.

3.15. Conditions Subsequent Regarding Certain Force Majeure Events. The City has agreed to make the following good faith efforts with respect to certain Force Majeure events that might affect the Port's Delivery of the Pier 27 Venue or Piers 30-32:

- (a) **Labor Disputes, Fire, and Unusually Severe Weather.**
The City commits to seeking Approval to amend the LDA to provide for payment to the Authority of liquidated damages for Losses that may arise from delays caused by labor disputes or strikes directed at the City's construction or other Event-related site preparation activities at the Pier 27 Venue or Piers 30-32, fire, and unusually severe weather, subject to Approval by the Port Commission and the Board no later than October 17, 2012, in each such body's

(f) **Event Postponement.** The Port acknowledges that, independent of Force Majeure, the Authority has the right under the HVA § 12.1 to postpone any World Series regatta or Regatta for up to 12 months from the dates specified in the Event Plan, as revised from time to time in accordance with HVA §§ 3.3-3.4. This Agreement does not provide an independent basis for postponement of any regatta. The following will apply if the Authority elects to exercise this right under the HVA:

- (i) The Authority will provide the Port with a notice of the election, including the proposed dates for the anticipated postponement, concurrently with its notice to the City.
- (ii) The Authority will consult with the City, including the Port, to implement revisions to the Event Plan to accommodate the proposed postponement. The City will have the right to change the designated Venues for the Event, subject to applicable Regulatory Agency Approval, as long as the Event can be accommodated at those Venues to the Authority's satisfaction.
- (iii) A postponement by the Authority will effect an automatic extension of dates for performance of the Parties under this Agreement, including the Delivery Dates for any Venue planned for use for the postponed regatta consistent with the revised schedule, and the Event Plan will be revised in accordance with HVA §§ 3.3-3.4.
- (iv) This Subsection does not change any of the other rights or obligations under HVA § 12.1.

The LDA approved by the Board on March 27, 2012 did not include a Section 3.15

sole discretion. Should the City receive both required Approvals, delays caused by labor disputes or strikes directed at the City's construction or other Event related site preparation activities at the Pier 27 Venue or Piers 30-32, fire, or unusually severe weather, will not be Force Majeure events excusing the City's obligation to pay the Authority liquidated damages should the Delivery of Piers 30-32 or the Pier 27 Venue be delayed beyond March 1, 2013, as described in Section 1.1(b) (Port Infrastructure Work: Piers 30-32 Work) and Section 1.2(iii) (Port Infrastructure Work: Cruise Terminal Work), subject to the \$5 million cap. If the Authority directs the Port to secure and deliver Functionally-Equivalent Space for the Unavailable Venue, the Authority's Losses will include Relocation Costs. The City's costs of providing replacement space will not be counted towards the \$5 million cap, but will be paid or reimbursed from the Cash Collateral, subject to all conditions of Section 4.2(c) (City Secured Obligations: Cash Collateral).

(b) Revised Definition of Force Majeure. Effective when the City has obtained the Approvals necessary to implement Section 3.15(a) (Conditions Subsequent Regarding Certain Force Majeure Events: Labor Disputes, Fire, and Unusually Severe Weather), the definition of "Force Majeure" will be revised automatically to mean any of the following events beyond the Delayed Party's control, but only to the extent that the event delays or prevents the City's timely Delivery of the Pier 27 Venue or Piers 30-32: performance: acts of nature (excluding unusually severe weather) or. of the public enemy; acts of the government (not including issuance of Regulatory Approvals by Regulatory Agencies); floods, tidal waves; epidemics; quarantine restrictions; freight embargoes; and earthquakes.

(c) Remedy. Should the City be unable to obtain required Approvals under *Section Error! Reference source not found.* (Conditions Subsequent Regarding Certain Force Majeure Events: Labor Disputes, Fire, and Unusually Severe Weather), the Authority will be entitled to terminate this Agreement in its entirety as its sole remedy, and upon termination, neither Party will have any recourse to the other Party, except for obligations of either Party that survive in accordance with Section 6.1(c) (Termination Rights: Survival); provided that the Authority must exercise its termination remedy under Section 3.15(b) (Conditions Subsequent Regarding Certain Force Majeure Events: Remedy), if at all, by providing notice in accordance with Article 8 (Notices) to the City no later than 5 p.m. (San Francisco time) on November 16, 2012. The Authority's failure to provide timely notice of termination under Section 3.15(b) (Conditions Subsequent Regarding Certain Force Majeure Events: Remedy) will constitute the Authority's irrevocable waiver of this termination right. (*note: emphasis added*)



DECLARATION FORM

Declaration No. 001 attaching to and forming part of Policy No / UMR B_____

1. Insured	THE CITY AND COUNTY OF SAN FRANCISCO OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION
2. Project	Delivery of Venues to be located at Piers 27-29 and Piers 30-32 - to the America's Cup Event Authority, LLC for the 34 th America's Cup (the "Event").
3. Attachment Date	
4. Indemnity Period	From the Attachment Date to completion of the Event.
5. Contract	<p>1. The Lease Disposition Agreement ("LDA") by and between the Insured and Americas Cup Event Authority, LLC ("Authority") dated as of April 24, 2012, with an Effective Date of August 14, 2013.</p> <p>2. The Construction Manager/General Contractor Services Contract ("Turner GC/GM Contract") dated as of June 28, 2011 by and between Turner Construction Company ("Contractor") and the Insured and Modification #1 dated December 7, 2011, Modification #2 dated March 5, 2012, Modification #3 dated April 24, 2012 and Modification #4 dated May 24, 2012.</p>
6. Limit	US\$ 5,000,000.
7. Individual Excess	US\$ 2,400,000. However, this Individual Excess will apply after loss excess of the amount of Liquidated Damages imposed on the Contractor under the terms of the Construction Agreements.
8. Consequential Loss	<p>Coverage to apply in respect of:</p> <p>(1) additional costs necessarily incurred by the Insured to expedite completion and delivery of the Pier 27 Venue and Piers 30-32 Work in the event that it is established by the Insured and the Authority that there is reasonable expectation that completion and delivery of either or both said Venues will be delayed beyond March 1, 2013;</p> <p>(2) the insured's costs of relocating the Venue originally intended to be located at Piers 30-32 to Pier 80 in the event that it is established by the Insured and the Authority that there is reasonable expectation that completion and delivery of said Venue will be delayed beyond March 1, 2013 to such an extent that relocation of said Venue is required by the Insured's obligations pursuant to the LDA;</p>



	<p>(3) liquidated damages, payable to the Authority, assumed under and to be calculated in accordance with Section 1.2(b)(ii) of the LDA in the event that Delivery of the Venue at Piers 30-32 is delayed beyond March 1, 2013 in the following amounts:</p> <ul style="list-style-type: none"> • March 1 to March 31, 2013 - \$29,200 per day • April 1 to April 30, 2013 - \$60,350 per day • May 1 to May 31, 2013 - 73,687 per day <p>(4) the insured's costs of relocating the Pier 27 Venue, in whole or in part, to Functionally-Equivalent Space in event that it is established by the Insured and the Authority that there is reasonable expectation that completion and delivery of said Venue will be delayed beyond March 1, 2013 to such an extent that relocation of said Venue, in whole or in part, is required by the Insured's obligations pursuant to the LDA ;</p> <p>(5) liquidated damages, payable to the Authority, assumed under and to be calculated in accordance with Section 1.2(c)(iii) of the LDA in the event that Delivery of the Pier 27 Venue is delayed beyond March 1, 2013 in the following amounts:</p> <ul style="list-style-type: none"> • March 1 to March 31, 2013 - \$29,200 per day • April 1 to April 30, 2013 - \$60,350 per day • May 1 to May 31, 2013 - \$73,687 per day <p>(6) The Authority's costs for a required relocation of the piers 27 and 30-32 if such costs are payable be the Insured under the LDA point 1.2(e). The maximum possible indemnification for such costs is \$2,400,000.</p>
<p>9. Governing Law/Seat of Arbitration</p>	<p>New York.</p>
<p>10. Special Conditions</p>	<p><u>SC-1 Delay of the Event:</u></p> <p>In case that the Event has to be delayed or postponed due to any other reason than a delay in the construction of Pier 27 Venue – Phase 1 and/or Piers 30/32 – Phase 2, no cover shall be granted under this declaration.</p> <p><u>SC-2 Punch List Work</u></p> <p>If Substantial Completion of the Pier 27 Venue is achieved by March 1, 2013 delay in completion of Punch List Work will not result in payment of Liquidated Damages nor result in the relocation to an alternative location.</p> <p><u>SC-3 Substantial Completion by June 1, 2013</u></p> <p>If Substantial Completion of the Pier 27 Venue is achieved by June 1, 2013 no relocation to an alternative location will be required.</p>



<p>Special Conditions continued</p>	<p><u>SC-4 Relief and Excuse</u></p> <p>Liquidated Damages will not be payable for delays for which the LDA provides relief and excuse.</p> <p><u>SC-5 Pier 29</u></p> <p>Any acceleration costs or relocation cost related to Pier 29 are not covered under this policy</p> <p><u>SC-6 Definitions</u></p> <p>The terms "Delivery", "Venue(s)", "Pier 27 Venue", "Piers 30-32 Work", and "Functionally-Equivalent Space" shall have the same meanings assigned to those terms in the LDA.</p> <p>The terms "Substantial Completion" and "Punch List Work" shall have the same meaning assigned to those terms in the Turner GC/GM Contract.</p>
<p>11. Premium</p>	<p>US\$ 1,015,000</p> <p>Total Deductions: 23,5% ((including brokerage and 10% commission for AON)</p>
<p>12. Underwriting Information</p>	<p>Information on file with CRU and MLW and available to all Underwriters at all times.</p>



TYPE: ANNUAL MASTER POLICY (referred to hereinafter as this "Policy") to accept declared Projects (Declarations) attaching during the Policy Period in favour of the Insured with respect to Consequential Loss as specified in Section 8 of each Declaration Form, in connection with declared Projects located anywhere in the world.

NAMED INSURED: The City and County of San Francisco and its Related Entities and Affiliates (as defined herein), and Associated and/or Joint Venture Companies as specified in Section 1 of each Declaration Form. All Insureds may be referred to collectively as "Insured" or "the Insured".

ADDRESS: As specified in each Declaration Form.

INSURED INTEREST: As specified in each Declaration Form.

POLICY PERIOD: From 00.01 hrs on _____ 2012 to 00.01hrs on _____ 2013 Local Standard Time.

INSURERS: Great Lakes Reinsurance (UK) PLC.

INDEMNITY PERIOD: As specified in Section 4 in each Declaration Form.

LIMIT: Underwriters' maximum liability in respect of each declared Project is limited to US\$ 25,000,000 (or such greater/lesser amount as may be specified in Section 6 (Limit) of each Declaration Form or the equivalent in other currency as specified in the Declaration Form) in the aggregate for each declared Project. Underwriters' maximum cumulative and aggregate liability for indemnity in respect of all declared Projects attaching during the Policy Period shall not exceed US\$ 250,000,000 for this US\$ 25,000,000 XS US\$ 5,000,000 layer.

INDIVIDUAL EXCESS: Underwriters shall not be liable for the first US\$ 5,000,000 (or such greater/lesser amount as may be specified in Section 7 (Individual Excess) of each Declaration Form or the equivalent in other currency) in the aggregate of Consequential Loss as specified in Section 8 of each Declaration Form, which but for the existence of this Individual Excess would have been covered by this Policy, with respect to each Declaration hereunder (the "Individual Excess").

SITUATION: As specified in each Declaration.

CHOICE OF LAW AND JURISDICTION: This Policy shall be interpreted under and governed by the law as specified in Section 9 in each Declaration Form.

PREMIUM: As specified in Section 11 in each Declaration Form.

PAYMENT TERMS: As specified in Section 11 in each Declaration Form.



DECLARATIONS:

All Declarations shall be made in the form set forth in the Declaration Form attached hereto.

Declarations, including premium, terms, special conditions, endorsements, amendments, alterations and claim settlements are to be agreed by the Insured and Underwriters.

There is no duty of Underwriters to accept each and every Project submitted by the Insured during the Policy Period.

There is no duty of the Insured to insure each and every Project that has been submitted to Underwriters during the Policy Period.

This Policy can only be changed by a written endorsement that becomes a part of this Policy and is signed by Underwriters.

Where any duty or obligation of the Insured, or any Policy provision such as a Policy Condition, Policy Warranty or Exclusion applies to the Insured, that duty or obligation or Policy provision applies at a decision making level of Project Management or above, unless otherwise expressly provided in this Policy.

DEFINITIONS:

"Contract" means one or more agreements for engineering, procurement and/or construction work for a Project. The agreements specified in Section 5 (Contract) of the Declaration Form will collectively be considered the "Contract". Contract shall be attached to the Declaration Form.

"Related Entities and Affiliates" as used in the designation of Insured means (a) any entity participating in the performance of the engineering, procurement or construction of the applicable declared Project and (b) entities acting as guarantors thereof;

and either

(i) directly or indirectly through one or more intermediaries controls or is controlled by or under direct or indirect common control of the City and County of San Francisco or another Insured or an Insured set forth in Section 1 (Insured) of the applicable Declaration Form
or

(ii) directly or indirectly through one or more intermediaries owns or is owned by or under direct or indirect ownership, in whole or in part, of the City and County of San Francisco or any other Insured.

"Terrorism" as used in Exclusion (2) shall mean any act(s) of one or more persons or of any organization, the object of which includes, but is not limited to the intimidation or coercion of a government, the civilian population, or any segment thereof, in furtherance of political, social, religious or financial objectives, or any actions taken by or on behalf of any government, or any branch or division thereof (including, without limitation, the uniformed armed forces, militia, police, state security and anti-terrorism agencies) in responding to combating, defending or retaliating against any acts of terrorism.

"Insolvency" as used in Condition (10) means the Insured (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails or admits in writing in a judicial, regulatory or administrative proceeding or



filing its inability generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any

other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (i) results in a judgement of insolvency or bankruptcy or the entry of an order for the relief or the making of an order for its winding up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within thirty (30) calendar days of the institution or presentation thereof; (e) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for or for all or substantially all its assets; (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) calendar days thereafter; or (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified clauses (a) to (g) inclusive.

"Declarations", "Insured", "Project", "Attachment Date", "Indemnity Period", "Contractor", "Limit", "Individual Excess", "Special Conditions" and "Underwriting Information" shall have the meanings indicated in this Policy and/or within each Declaration, as the context requires.

INSURING AGREEMENT:

This Policy indemnifies the Insured for its ascertained net loss sustained in respect of Consequential Loss as specified in Section 8 of the Declaration Form as a result of:

(x) the occurrence during the Indemnity Period of any of the following event or events:

- Damage to major components/critical parts/services/equipment during transportation from suppliers and sub-contractors
- Contractor's / sub-contractor's / supplier's default
 - Due to property damage
 - Due to insolvency
- Natural perils, excluding earthquake
- Strike, work to rule action, go-slow or similar labour difficulty
- Inaccessibility of construction site, including illegal occupation
- Inaccessibility of harbor/airport/railway for shipments
- Loss of human capital / workmanship
- Unforeseen ground condition
- Loss of Services (power, water, gas, sewerage)

and/or

(y) any act of neglect, error or omission on the part of the Contractor, its subcontractors and/or suppliers of any tier in the work to be performed or provided by the Contractor under the Contract.



GENERAL POLICY CONDITIONS:

(1) **Notice of Loss / Due Diligence Clause / Claims Handling:**

It is a precondition to the coverage under any Declarations, that

- (a) Upon the discovery of any event likely to give rise to a claim under this Policy, the Insured shall immediately but no later than within 35 days of discovery by the Insured give written notice thereof to Underwriters hereon, and shall use due diligence and do and concur in doing all things reasonably practicable (including, but not limited to, the expenditure of reasonable amounts of money) to avoid or diminish any loss herein insured.

Such notification shall contain particulars sufficient to identify the occurrence and also such reasonably detailed information as necessary, such as but not limited to reasons and background information which constitute the Insured's Consequential Loss as well as type and approximate amount of such Consequential Loss.

The Insured shall cooperate with Underwriters and upon Underwriters request, shall assist in securing and giving evidence and providing any requested information, documents, etc at its own expense.

Failure on the insured's part to give such notice in the time period specified and/or provide such information and cooperation as requested by the Underwriters may result in the denial of the claim by the Underwriters.

Underwriters may appoint technical consultants or loss adjuster to assess and to handle the claim. All such persons may agree to enter into a confidentiality agreement.

- (b) **Payment of a claim.**

Loss(es) sustained in connection with the declared project(s) constitute a continuing obligation on the part of the Insured.

In consequence thereof, Underwriters hereby agree, upon a valid claim having been established to the satisfaction of Underwriters as falling within the terms of this Policy, to reimburse the Insured within 45 days from such date in respect of loss(es) sustained prior thereto and thereafter within 45 days of any further loss(es) sustained.

Such reimbursements shall be made on a provisional basis pending final determination and settlement of the Insured's actual loss sustained with respect thereto, provided however that in no circumstances shall Underwriters' maximum Liability exceed the maximum limit stated in Section 6 (Limit) of the Declaration Form. If, upon such final determination and settlement, it is determined that amounts advanced on a provisional basis were not in fact payable under this Policy, the Insured shall have the obligation to reimburse such amounts to Underwriters.

All claims will be settled in the currency of the underlying Contract.

The obligation of Underwriters shall be deemed to have been fulfilled when Underwriters pay the broker.

- (c) **Denial of a claim.**

All denials of a claim shall be in written form and give a written explanation in sufficient detail fully to inform the Insured of the reasons and basis for such denial, as well as the specific Policy provisions(s) relied upon for such denial.

- (d) **Disputes of a claim.**

All disputes arising out of a claim shall be handled in accordance with the Arbitration Clause.



(2) Non-Contribution Clause:

This Policy does not cover any loss or damage which at the time of the happening of such loss or damage is insured by or would, but for the existence of this Policy, be insured by any other existing Policy or Policies except in respect of any excess beyond the amount which would have been payable under such other Policy or Policies had this Policy not been effected.

(3) Subrogation Clause:

If Underwriters become liable to pay any loss under this Policy, Underwriters shall be subrogated, to the extent of such loss, to all the rights and remedies of the Insured against any party in respect of such loss and shall be entitled at their own expense to make claims and sue in the name of the Insured. The Insured shall give to Underwriters all such assistance in its power as Underwriters may require to secure their rights and remedies and, at Underwriters' request, shall execute all documents necessary to enable Underwriters effectively to bring suit in the name of the Insured including the execution and delivery of the customary form of loan receipt. The Insured is not entitled to waive any of Underwriters' rights of subrogation.

(4) Burden of Proof Clause:

In the event of denial by Underwriters of coverage under this Policy on the grounds that:

- (i) a Condition has been breached, and/or an Exclusion applies, and/or
- (ii) the Insured is not otherwise entitled to coverage under this Policy

the burden of proving that the loss is recoverable under this Policy shall fall upon the Insured.

(5) Arbitration Clause:

In accordance with the attached Arbitration Clause.

(6) Governing Law:

This Policy shall be interpreted under and governed by the law as specified in Section 9 of the Declaration Form.

(7) Cancellation:

This Policy or Declaration(s) made hereunder is/are non-cancellable except that:

- (a) any Declaration(s) may be cancelled by Underwriters in the event of non-payment of premium by the Insured or its agents in respect of any Declaration(s) by mailing to the Insured a notice in accordance with Clause (14) of the General Policy Conditions stating when, not less than 30 days thereafter, such cancellation will be effective. However if the Insured or its agents makes payment of said premium due in respect of any such Declaration(s) within such notification period, such notice of cancellation will be rescinded by Underwriters.
- (b) this Policy and any Declarations attaching hereto may be cancelled by Underwriters pursuant to General Policy Condition (10).
- (c) if a condition arises pursuant to General Policy Condition (10), Underwriters shall alternatively be entitled to opt to grant coverage subject to terms and conditions to be determined.

(8) It is a condition precedent of this Policy that:

- (a) the Contract with respect to each Declaration is signed and in force at the respective Attachment Date of each Declaration, and



- (b) the design of each declared Project is consistent with standard engineering practice, and incorporates neither:
- (i) any equipment or technology of a type without previous commercial application, such as but not limited to prototypes nor
 - (ii) any experimental method of construction.

If either (a) or (b) is not complied with, coverage with respect to such Declaration shall be null and void from the Attachment Date stated in Section 3 of the Declaration Form.

(9) No Benefit to Third Parties/Non-Assignment:

None of the provisions in this Policy shall be for the benefit of or be enforceable by any person other than the Underwriters and the Insured, except as provided in the declaration. The Insured shall not assign or transfer this Policy or the benefits or obligations thereof to any other party or person without Underwriters' prior written agreement.

(10) Change in the composition of the Insured:

The Insured undertakes to notify Underwriters within thirty (30) days if, during the Policy Period, the Insured consolidates, merges with, or sells all or substantially all of its assets to any other person or entity, or if another person or entity should acquire beneficial ownership of shares having a majority of the ordinary voting power in the election of directors, or in the case of insolvency of the Insured.

Upon receipt of such notice, Underwriters have the option to cancel this Policy and any Declarations attaching hereto.

(11) Information Truth and Materiality:

The statements and particulars of information contained in the Proposal Form and Information Summary and any questionnaire completed by the Insured at Underwriter's request submitted by or on behalf of the Insured and seen by Underwriters with respect to each Declaration are in all respects true and complete, are material and made to induce Underwriters to issue Declarations under this Policy, and are to be considered as incorporated in each Declaration.

The Insured acknowledges and agrees that it owes a duty to Underwriters to disclose any and all information that is relevant and/or material to Underwriters so as to enable it to determine whether to issue Declarations under this Policy at all or upon what terms. The Insured confirms that it has made full, complete, due and proper inquiries with respect to all such information and material and hereby confirms the completeness and accuracy of the information and material disclosed to Underwriters. Further, the Insured confirms that no information or material has been withheld from Underwriters that, if disclosed to Underwriters, would individually or taken together, materially affect the issuance of Declarations under this Policy or Underwriters Liability thereunder in any material manner.

The Insured undertakes to inform Underwriters of any material change to these statements and particulars of information (occurring prior to or subsequent to the Attachment Date of each Declaration), including but not limited to variations in the Contracts and Agreements submitted to Underwriters.

If any information or material is determined by the Underwriters to be inaccurate in any material manner, the Underwriters may, at their option and subject to the terms hereof, avoid this Policy, including all liability hereunder. This includes but is not limited to information on the status of the official authorization process for the project as well as the lawfulness of any action for the project.



(12) Misrepresentation:

This Policy and all Declarations shall be null and void if at any time the Insured has intentionally concealed or misrepresented any material fact(s) or circumstance(s) concerning this insurance or the subject thereof, or interest of the Insured therein, or in the case of fraud or false swearing by the Insured relating thereto.

Nothing in this General Policy Condition shall be held to weaken Underwriters' right to nullify any Declarations if General policy Condition 8 is not complied with.

(13) Examination of Insured:

The Insured shall submit to examination, and shall produce for examination, at such reasonable place as is designated by Underwriters or their representative, all documents in its possession or control that relate to the matters in question, and shall permit extracts and copies thereof to be made by Underwriters or their representatives.

(14) Notices:

Any notice or other communication required or permitted to be given pursuant to this Policy (a "Notice") shall be given in writing and shall be given when delivered by hand delivery, registered or certified mail, email and/or facsimile transmission to:

If to Underwriters:

Benedikt Schermutzki
Special Enterprise Risks
Munich Reinsurance Company
Königinstrasse 107
80802 Munich, Germany

+49 89 38 91-26 02
bschermutzki@munichre.com

If to the Insured:

Matt Hanson
Director Of Risk Management
City and County of San Francisco

Either party may from time to time change its address(es) for Notices hereunder by a Notice given in accordance with this General Policy Condition (14).

(15) Project Report Condition:

With respect to each Declaration, the Insured will provide Underwriters with regular progress reports in the form agreed to by the Insured and Underwriters and permit Underwriters' representative periodic site visits and meetings with the Insured and its subcontractors to review progress of construction and commissioning of the each Project. Progress Reports shall be provided quarterly.

(16) Several Liability Notice:

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscription. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.



POLICY EXCLUSIONS:

This Policy does not indemnify the Insured for any loss (es) sustained in respect of the Insured's Consequential Loss (as specified in Section 8 (Consequential Loss) of the Declaration Form) arising from:-

- (1) insolvency and/or financial default of any person, firm or corporation whether a party to this insurance or otherwise, excepting however the Contractor and its subcontractors and suppliers;
- (2) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or Terrorism;
- (3) any failure by the Insured to give, in a proper and timely manner, any notice required or permitted pursuant to the terms of the Contract which, but for the giving of such notice (in a proper and timely manner) would have entitled the Insured to relief and/or excuse under the Contract;
- (4) any willful, deliberate or intentional misconduct on the part of the Insured, including but not limited to willful, deliberate or intentional failure on the part of the Insured to comply with the terms of the Contract, violation of existing law and regulations, e.g. official degrees, licensing requirements and orders, or to obtain relief or excuse to which it is entitled under the provisions of the Contract;
- (5) any material change or variation to the statements and particulars of information described in Clause (11) of the General Policy Conditions (Information, Truth and Materiality), unless such change or variation is approved in writing by Underwriters prior to any loss under a Declaration, which approval shall not be unreasonably withheld or delayed;
- (6) any matter, fact or circumstance that is likely to give rise to a loss under each Declaration of which the Insured has knowledge or information at the Attachment Date of each Declaration;
- (7) any fraudulent act or fraudulent omission committed by the Insured;
- (8) any strike, work to rule action, go-slow or similar labour difficulty which is limited to employees of the Insured or is directed specifically and only to the insured project/s;
- (9) any costs incurred by or on behalf of the Insured in the defence of any claim. This includes also loss adjuster costs;
- (10) any loss(es) which are insured under the Delay in Start Up section of the Builder's Risk policy issued on the Project;
- (11) as a result of the issuance of a Change Order or a Construction Change Directive, unless issued as a direct result of a peril insured hereunder.
- (12) Any lawsuit which is in place during the time of underwriting or missing permits of any kind.



DECLARATION FORM
(To be completed at attachment of each Declaration)

Declaration No. [], attaching to and forming part of Policy No / UMR B _____
[USD 25,000,000 xs USD 5,000,000], and subject to the terms thereof.

1. Insured	
2. Project	
3. Attachment Date	
4. Indemnity Period	
5. Contract	
6. Limit	
7. Individual Excess	
8. Consequential Loss	
9. Governing Law/Seat of Arbitration	
10. Special Conditions	
11. Premium	
12. Underwriting Information	



Attachment 1

ARBITRATION

1. Amicable Settlement and Arbitration

1.1. Amicable Settlement

Any dispute shall be settled by an amicable effort on the part of the Parties affected. An attempt to arrive at a settlement shall be deemed to have failed as soon as either Party so notifies the other party in writing.

1.2. Arbitration

If an attempt of amicable settlement has failed, any dispute between the Parties Dispute shall be finally settled by the International Chamber of Commerce of Paris, under and by its Rules of Arbitration (hereinafter referred to as "Rules") by three arbitrators appointed in accordance with the Rules. All arbitrators shall be disinterested active or former executive officers of insurance or reinsurance companies or Underwriters at Lloyd's, London, or shall be lawyers with experience in construction law and with experience acting as an arbitrator in construction or construction insurance disputes. If there are two or more defendants, any nomination of an arbitrator by or on behalf of such defendants must be by shared agreement between them. If the defendants fail to agree on such shared nomination within the time-limit specified by the Rules, the proceedings against each of them must be separated.

1.3. Seat of Arbitration

The seat of arbitration shall be as specified in Section 9 in each Declaration Form. The procedural law of this place shall apply where the Rules are silent.

1.4. Language of Proceedings

The language to be used in the arbitration proceedings shall be English.

1.5. Substantiation of the Arbitral Resolution

The arbitral resolution shall be substantiated in writing. The arbitral tribunal shall also decide on the matter of costs of the arbitration and on the allocation of expenditure among the respective parties to the arbitration proceedings.

1.6. Fulfillment of Obligations

The existence of any kind of dispute between the Parties or submission to arbitration does not enable the Parties to suspend the fulfillment of its obligations in accordance with the Contract.

1.7. Final and binding decision

The Parties agree that any decision rendered by the arbitral tribunal shall be final and binding on the Parties. The Parties agree to exclude any right to appeal or otherwise to seek to challenge the arbitrator's decision, resolution or ruling in any court proceedings whatsoever.



Attachment 2

SERVICE OF SUIT CLAUSE (U.S.A.)

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon [Response] and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

24/4/86
NMA1998

The words "(or Reinsured)" and "(or reinsurance)", wherever used in this clause, are deemed deleted.



Attachment 3

INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
 - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
 - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
 - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
 - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes
 - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

10/11/03
CL370



**CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR**

LEASE DISPOSITION AGREEMENT

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

AMERICA'S CUP EVENT AUTHORITY, LLC

34TH AMERICA'S CUP VENUES

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
LESLIE KATZ, COMMISSIONER**

EFFECTIVE AUGUST 14, 2012

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TABLE OF CONTENTS

	<u>Page</u>
1. OVERVIEW	2
1.1. General.....	2
1.2. Port Infrastructure Work.....	7
1.3. Authority Work.....	15
1.4. Venues	16
1.5. Successive Defense Option.....	21
1.6. Term.....	22
1.7. Closing Conditions and Conditions Subsequent.....	22
2. AS IS CONDITION; INDEMNIFICATION	23
2.1. Condition of Venues	23
2.2. As Is	23
2.3. Risk of Loss Before Delivery	24
2.4. Risk of Loss After Delivery.....	25
2.5. Release	27
2.6. Environmental Matters	28
2.7. General Indemnities	29
2.8. Insurance.....	31
3. CONDITIONS TO DELIVERY OF VENUES.....	38
3.1. Agreement to Lease	38
3.2. Delivery	39
3.3. Conditions to the Port's Obligation to Deliver Venues	39
3.4. Satisfaction of the Port's Conditions Precedent	40
3.5. Conditions to the Authority's Obligation to Accept Delivery of Venues	40
3.6. Satisfaction of the Authority's Conditions Precedent	40
3.7. Mutual Obligation.....	41
3.8. Condition of Title to Venues	41
3.9. Taxes and Assessments.....	43
3.10. Compliance with Laws	43
3.11. Regulatory Approvals.....	43
3.12. Contacts with Regulatory Agencies.....	44
3.13. Public Relations and Outreach.....	45

3.14.	Force Majeure and Other Delays.....	45
3.15.	Conditions Subsequent Regarding Certain Force Majeure Events.....	47
4.	SECURITY FOR PARTIES' SECURED OBLIGATIONS	48
4.1.	Authority Secured Obligations	48
4.2.	City Secured Obligations.....	49
5.	ENCUMBRANCES AND LIENS	51
5.1.	No Mortgages	51
5.2.	Mechanics' Liens.....	51
6.	TERMINATION.....	51
6.1.	Termination Rights	51
6.2.	Restoration After Termination.....	52
7.	DEFAULTS AND REMEDIES; STANDARDS	52
7.1.	Authority Events of Default.....	52
7.2.	Remedies of the Port.....	53
7.3.	City Events of Default	54
7.4.	Remedies of the Authority	55
7.5.	Impact on Event	56
7.6.	Dispute Resolution.....	56
7.7.	Standards of Port Approval	57
7.8.	Standard Otherwise Applicable	57
7.9.	Authority for Port Approvals.....	58
7.10.	Payment of Costs	58
7.11.	Limited Liability of the Parties.....	59
8.	NOTICES	61
8.1.	Delivery	61
8.2.	Notice Addresses	61
8.3.	Change of Address.....	63
8.4.	Effective Date	63
9.	MISCELLANEOUS PROVISIONS	63
9.1.	California Law; Venue	63
9.2.	Entire Agreement; Conflict.....	63
9.3.	Counterparts.....	63
9.4.	Amendment.....	63

9.5.	Schedules	63
9.6.	Technical Corrections	63
9.7.	Severability	64
9.8.	Captions	64
9.9.	Authority to Contract	64
9.10.	Time is of the Essence	64
9.11.	Waiver	64
9.12.	Successors and Assigns	64
9.13.	Other Agreements	64
9.14.	Parties in Interest	64
9.15.	Broker	64
10.	CITY AND PORT REQUIREMENTS	65
10.1.	Nondiscrimination in City Contracts and Benefits Ordinance	65
10.2.	Prohibition on Political Activity with City Funds	66
10.3.	Graffiti Removal	66
10.4.	Requiring Health Benefits for Covered Employees	66
10.5.	Resource Efficiency Requirements	67
10.6.	Pesticide Prohibition	67
10.7.	MacBride Principles Northern Ireland	68
10.8.	Tropical Hardwood and Virgin Redwood Ban	68
10.9.	Preservative-Treated Wood Containing Arsenic	68
10.10.	Notification of Limitations on Contributions	68
10.11.	Sunshine Ordinance	68
10.12.	Conflicts of Interest	69
10.13.	Food Service Waste Reduction Ordinance	69
10.14.	Diesel Fuel Measures	69
11.	INTERPRETATION; DEFINITIONS	69
11.1.	Interpretation of Agreement	69
11.2.	Defined Terms	70

EXHIBITS AND SCHEDULES

EXHIBITS:

- A** Memorandum of Agreement as to Allocation of Certain Mitigation Measures in Adopted Mitigation, Monitoring, and Reporting Program
- B** Workforce Development Plan
- C** Form of Assignment of Rights

SCHEDULES:

- 1** Venue Schedule with Addendum (Delivery Schedule for Piers 27-29)
- 2** Schedule of Pre-Existing Tenancies
- 3** Schedule of Port Installations
- 4** Schedule for Completion of Port Infrastructure Work
- 5** Venue Repairs
- 6** Preliminary Site Plan for 2012 Fleet Week
- 7** Closing Conditions and Conditions Subsequent

LEASE DISPOSITION AGREEMENT

This LEASE DISPOSITION AGREEMENT (together with all exhibits and schedules, this "**Agreement**") by and between the CITY AND COUNTY OF SAN FRANCISCO (the "**City**"), acting by and through its PORT COMMISSION (the "**Port**" or the "**Port Commission**"), and AMERICA'S CUP EVENT AUTHORITY, LLC (the "**Authority**") is dated for reference purposes as of April 24, 2012, with an Effective Date as provided in **Section 1.6** (**Term**). Defined terms used in this Agreement have the meanings given to them in **Section 11.2** (**Defined Terms**).

RECITALS

A. The competition for the America's Cup, first held in 1851 at Cowes, England, is one of the oldest international sporting competitions and the world's premier yacht racing event. BMW Oracle Racing Team, racing for the Golden Gate Yacht Club of San Francisco ("**GGYC**"), won the 33rd America's Cup match in Valencia, Spain on February 14, 2010. GGYC is now trustee under the Deed of Gift dated October 24, 1887, between George L. Schuyler and the New York Yacht Club, as amended by final decisions of the Supreme Court of the State of New York (the "**Deed of Gift**"), governing the silver cup won by the yacht America in the first America's Cup competition. Under the Deed of Gift, GGYC is entrusted with the organization of the 34th America's Cup ("**AC34**" or the "**Event**").

B. GGYC received and accepted the challenge of Club Nautico di Roma of Rome, Italy, and the two clubs entered into The Protocol Governing the 34th America's Cup, dated September 9, 2010 and executed September 13, 2010 (as amended, the "**Protocol**"). After Club Nautico di Roma withdrew in May 2011, the Royal Swedish Yacht Club/KSSS succeeded Club Nautico di Roma as challenger of record under the Protocol.

C. GGYC appointed the Authority under section 4.2 of the Protocol to provide professional management and financial resources to AC34, in cooperation with America's Cup Race Management ("**ACRM**"), which was appointed under section 4.3 of the Protocol to provide neutral, independent, professional, and fair race management for AC34. GGYC selected San Francisco as the host city for AC34 on December 31, 2010. Under the 34th America's Cup Host and Venue Agreement (the "**HVA**") among the Authority, the City, and the San Francisco America's Cup Organizing Committee (the "**ACOC**") effective as of January 4, 2011 (the "**HVA Effective Date**"), certain of the America's Cup World Series regattas, the Louis Vuitton Cup (also known as the America's Cup Challenger Selection Series), the America's Cup Defender Series (if held), and the Match will be held in San Francisco Bay.

D. Under the HVA, the City agreed to provide Port land and water areas to the Authority for AC34-related uses (each, a "**Venue**") rent-free under leases (each, a "**Venue Lease**") and licenses (each, a "**Venue License**"), the Authority agreed to make certain capital improvements to improve the Venues and other Port property with the Port's Approval, and the City agreed to reimburse the Authority for its costs.

E. The City Planning Commission certified the final environmental impact report (the "**Final EIR**") for the AC34 project (the "**Project**") following analysis and review under the California Environmental Quality Act ("**CEQA**") by Motion No. 18514 in Case No. 2010.0493E on December 15, 2011. The Port Commission, by Port Resolution Nos. 11-79 and 11-80 adopted on December 16, 2011, adopted CEQA findings and a Mitigation Monitoring and Reporting Program (the "**MMRP**") and approved the Project and a Disposition and Development Agreement, which was a prior version of this Agreement. The San Francisco Board of Supervisors (the "**Board**") after hearing appeals to the Planning Commission's certification of the Final EIR at a hearing on January 24, 2012, affirmed the Planning Commission's action by Motion No. M12-011.

F. On February 27, 2012, the Authority advised the City that the Authority no longer desired to make major capital investments in Port property or assume the many risks of future

development under the proposed Disposition and Development Agreement. The Authority later proposed and the City agreed to consolidate the Event plan and reduce the number of Venues that the Authority will use for the Event. All Venues are subject to the common law Public Trust for commerce, navigation, and fisheries as interpreted by the State and the statutory trust imposed by the Burton Act, by which the State conveyed to the City, in trust and subject to certain terms, conditions, and reservations, the State's interest in certain tidelands (collectively, the "Public Trust"). Under the Burton Act and San Francisco Charter section 4.114, the Port administers and controls some 7½ miles of the San Francisco waterfront, including the Venues that are the subject of this Agreement.

G. The revised Project eliminates all long-term development sites. After review of these modifications, the Environmental Planning Division of the San Francisco Planning Department issued a Note to File on Changes to the Environmental Impact Report ("Note to File") dated March 20, 2012. The Note to File describes the revised Event plan, analyzes potential environmental effects of the proposed project as modified compared to the impacts identified in the Final EIR, and concludes that the proposed modifications would not result in any new significant environmental impacts or a substantial increase in the severity of previously identified environmental impacts and would not require supplemental environmental review beyond the Note to File or any new mitigation measures to reduce significant impacts of the Event.

H. The Board adopted CEQA Findings and the MMRP, conditionally approved this Agreement as an amendment to the HVA, and affirmed the HVA as amended, by Resolution No. 109-12 adopted on March 27, 2012. The Port Commission adopted CEQA Findings and the MMRP by Resolution No. 12-34, and conditionally approved this Agreement by Resolution No. 12-35 on April 24, 2012. References in this Agreement to the Project mean only AC34 Events described in the Final EIR and the Note to File.

I. This Agreement sets forth the terms and conditions for the Port's Delivery of Venues to the Authority for the revised Project, and provides for reimbursement to the Authority should the Authority construct capital Improvements benefitting Port Venues with the Port's Approval.

1. OVERVIEW

1.1. General.

(a) **Matters Addressed.** This Agreement is intended to address comprehensively, consistent with the HVA as amended by this Agreement, the following rights and obligations of the Parties as to:

(i) procedures by which the Port will provide Venues for the Event to the Authority under Venue Leases and Venue Licenses;

(ii) certain Improvements and repairs at Venues that the Port will perform in preparation for the Event;

(iii) provisions under which the Port may agree that the Authority will perform repairs to Venues and be reimbursed for related costs; and

(iv) provisions regarding insurance coverage and indemnities for all Event-related activities, including certain limitations on liability of the Parties.

(b) **Relationship to and Effect on the HVA.** Consistent with Section 1.1(a) (General: Matters Addressed), this Agreement implements, amends, and expands on certain provisions of the HVA. Except as specified otherwise in this Subsection or in related agreements between the Parties, the HVA will remain in full force and effect after the Effective Date.

(i) This Agreement supersedes the following HVA provisions in their entirety:

- (A) HVA § 5 (*Venues*), except for HVA § 5.2(d), which is amended and restated as set forth in Section 1.1(b)(ii)(F) (General: Relationship to and Effect on the HVA);
- (B) HVA § 6 (*Infrastructure and Other Site Preparation Work*);
- (C) HVA § 15 (*Indemnity*); and
- (D) HVA § 17.4 and HVA § 17.5 (*Limitations on Liability*).

(ii) This Agreement amends the HVA by:

(A) amending HVA § 2.2 by adding an additional provision for termination of the HVA in Section 6.1(b) (Termination Rights: Effect of Termination);

(B) adding the following as HVA § 2.4 (*Review Under CEQA and Other Contingencies*):

"In accordance with HVA § 2.1(a)(i), the City and the Authority, as joint "Project Sponsors" of the 34th America's Cup project, have agreed to allocate to the City or the Authority responsibility for certain mitigation measures for which the Project Sponsor is responsible under the Mitigation Monitoring and Reporting Program (the "MMRP") adopted by the Port Commission and the Board, to avoid any ambiguity or disagreement as to which Project Sponsor is responsible for mitigation measures so identified. The agreed allocation is set forth in the Memorandum of Agreement (the "MOA") attached as Exhibit A to the Lease Disposition Agreement dated as of April 24, 2012, between the Authority and the City (the "LDA"), which is incorporated by this reference and made a part of this Agreement. The MOA does not relieve either the City or the Authority of its obligation to comply with any mitigation measures assigned solely to it in the MMRP or otherwise applicable to its Event-related activities."

(C) deleting the following from Recital D: "*posting of the Bond (as defined below)*";

(D) deleting HVA § 7 (*Long Term Development Rights*) in its entirety; and

(E) making the following revisions to HVA § 9 (*Event Sponsorship, Bond and General Liability of the Committee*):

(1) deleting the following from HVA § 9.1(d): "*and/or call upon the Bond to compensate for the increased costs or reduced economic benefits resulting therefrom.*";

(2) deleting HVA § 9.3 in its entirety and replacing the deleted text with the following:

"The Authority has approved the provisions of this Agreement providing for payment to the Authority of liquidated damages and for the uses of the Cash Collateral described in Section 4.2(b) (City Secured Obligations: Liquidated Damages) of the LDA and has agreed that they will satisfy fully the Committee's obligation to provide the Authority with security for: (a) the City's (including the Port's) and the Committee's performance under this Agreement, the LDA, the Venue Leases, and the Venue Licenses, including its obligation to work with the Committee to raise funds to offset all of the stevedoring costs (excluding Authority personnel) associated with loading and unloading of up to two special purpose America's Cup ships transporting Competitors' and Officials' equipment between Pre-regattas and the Event; and (b) the Committee's payment of certain utility costs for Venues provided to the Authority as specified in Section 3.9 (Taxes and Assessments) of the LDA.";
and

(3) deleting the following from HVA § 9.4: "In addition to the Bond provided under Section 9.3 above,";

(F) substituting "LDA Security" for "Bond" in HVA § 17.4 (Limitations on Liability) and HVA § 20.1 (Definitions and Interpretation);

(G) amending and restating HVA § 5.2(d) as follows:

"Consistent with Section 3.9 (Taxes and Assessments) of the LDA, the Committee shall pay, or reimburse the City, including the Port, under the Memorandum of Understanding dated June 1, 2012 between the City and the Committee if the City or Port has paid (or in the case of clause (i), foregone receipt of), as appropriate, any of the following: (i) possessory interest taxes, utility taxes, and other taxes, fees, or charges imposed by the City or any Governmental Authorities, for or with respect to the possession and/or use of the Venues and all improvements, fixtures, and personal property located thereon, to the extent that the City has foregone payment that would otherwise be due to the City, or has made such payment to other Governmental Authorities, excluding any personal property taxes levied on the race, tender, spectator, or other vessels; (ii) payments to utility providers for the costs of all electricity, natural gas, water, sewage, and refuse removal (the "Utility Costs") under the Venue Leases, but only to the extent customary for Event use, including vessel mooring utility services, but specifically excluding Utility Costs associated with large scale removal or demolition of vessels or equipment; and (iii) payments to service providers to connect fiber-

optic cable for telephone and data communication services to the Venues as reasonably necessary for the Event, subject to the Authority's actions to moderate and limit the consumption of water, electricity, and gas to the extent feasible consistent with the operation of the Event. The Authority shall take appropriate actions in accordance with commercially reasonable and environmentally responsible practice.”; and

(H) Revising HVA §17.2 to read:

“Subject to Section 17.1 and except as specifically provided otherwise in the LDA, no Party to this Agreement shall be liable to any other Party for any indirect or consequential loss or damage, loss of profit, loss of business opportunity, or damage to goodwill.”

(c) **Controlling Laws.** Nothing in this Agreement affects the Parties' respective obligations to comply with applicable Laws and Regulatory Approvals with respect to all physical works of improvements, including construction, or installation of buildings, structures, fixtures, or other improvements at the Venues or other Port property (“**Improvements**”), alterations, installations, or additions to existing structures and Improvements (“**Alterations**”), repairs to Port facilities, and site preparation activities for the Event.

(d) **Prior Actions.** Before the Parties entered into this Agreement, all of the events described below occurred.

(i) The Parties' respective rights to terminate the HVA under HVA § 2 (*Review Under CEQA and Other Contingencies*) expired or were waived, and the Parties have waived any claim of Breach under the HVA.

(ii) The City and the Authority agreed upon the form and content of People Plan, Security Plan, Zero Waste Plan, Youth Involvement Plan, Workforce Development Plan, Ambush Marketing Plan, Advertising Plan, Water and Air Traffic Plan, and Sustainability Plan (collectively, the “**Implementation Plans**”), subject to further revision by agreement to the extent a Party's Approval is required by the HVA.

(iii) The U.S. Army Corps of Engineers (the “**Army Corps**”) has removed the Pier 36 pier and pilings in accordance with its agreement with the Port.

(iv) The Port entered into a construction contract for construction of the Brannan Street Wharf that requires Completion by June 30, 2013.

(v) The Port negotiated a contract under which it will relocate the shoreside power installation for Pier 27.

(vi) The Port gave the Authority the opportunity to review the Port's plans and specifications for Phase 1 of its Pier 27 cruise terminal project (Phase 1 only and specifically excluding fire damage repairs and restoration to the Pier 29 Venue, the “**Cruise Terminal Project**”) and comment on the timing, design, and scope of the Port's plans. Based on those plans and other discussions:

(A) The Parties have agreed to a schedule that will accommodate Phase 1 construction of the Cruise Terminal Project (as

described in the Turner GC/CM Contract), the Authority's planned activities at the Pier 27 Venue for the 2013 Events, and the Port's planned schedule to Complete the cruise terminal building.

(B) The Authority is satisfied that construction to be Completed in Phase 1 construction of the Cruise Terminal Project as described in the Turner GC/CM Contract will accommodate the Authority's physical requirements for its intended use consistent with the Venue Schedule.

(C) The Port is satisfied that the Authority's use of the new building for the Event will not compromise the Port's cruise terminal operational requirements.

(D) The Port has agreed to:

(1) provide the Authority with the opportunity to review and comment on any material modifications to the plans that the Authority has already reviewed;

(2) use reasonable efforts to accommodate the Authority's physical requirements for using the Pier 27 Venue to the extent those requirements are consistent with the Venue Schedule and do not compromise the Port's cruise terminal operational requirements; and

(3) include provisions in the Venue License for the Pier 27 Venue under which the Port retains all responsibility for building systems to the extent necessary to maintain applicable warranties in effect under the Turner CM/GC Contract or otherwise arising from the Cruise Terminal Project.

(vii) The Authority has:

(A) agreed to accept the liquidated damages payable under **Section 1.2** (Port Infrastructure Work) and the Cash Collateral, as described in and subject to the terms set forth in **Section Error! Reference source not found.** (City Secured Obligations: Cash Collateral), in full satisfaction of ACOC's obligation to provide the Authority with security under the HVA;

(B) entered into a separate agreement with the ACOC with respect to its obligations under the Sponsorship Program, which supersedes the ACOC's sponsorship obligations under the HVA;

(C) tendered the Environmental Oversight Deposit to the Port in full satisfaction of **Section 4.1(c)** (Authority Secured Obligations: Environmental Oversight Deposit); and

(D) delivered to the Port a Payment and Performance Guaranty with a maximum payment obligation of \$250,000 in connection with an access license the Port granted to the Authority, which will be cancelled or returned upon the earlier of: (1) the Authority's delivery to the Port of the Guaranty in satisfaction of **Section 4.1(b)** (Authority Secured Obligations: Guaranty); and (2) termination of this Agreement.

(viii) The Port began the Piers 30-32 Work and has Completed the portion of the Piers 30-32 Work that the Parties agree is needed for the Authority to use Piers 30-32 for the 2012 World Series races.

(ix) The City and Port have agreed to accept the security described in and subject to the terms set forth in **Section 4.1** (Authority Secured Obligations) in satisfaction of the Authority's obligations to provide security for its performance of the Authority Secured Obligations.

(x) The Port amended its lease with BAE Systems San Francisco Ship Repair, Inc. to enable the construction, operation, and financing of a new shoreside power system at the shipyard repair facility near Pier 70 in satisfaction of MMRP mitigation measure M-AQ-4e.

(xi) The Board approved the Port's 2012-2013 budget, which included an appropriation of \$1 million should the Port and the Authority enter into a separate agreement substantially in the form attached as *Exhibit C*. Immediately after executing this Agreement, the Parties will execute the separate agreement, under which:

(A) the Port is purchasing certain studies, plans, and specifications prepared by the Authority's consultants in anticipation of capital Improvements that the Authority would have performed on Port Venues, as identified in the agreement, in exchange for long-term development rights under the HVA, and that have continuing value to the Port; and

(B) the Port will pay the Authority \$1 million for the purchased materials within 30 days after execution of the agreement.

The Port's obligation to pay the Authority \$1 million will not be subject to any limitations on liability under this Agreement.

(xii) The City has agreed to and shall reimburse the Authority the sum of \$482,295.95 no later than August 31, 2012 for consultant costs it incurred in connection with the EIR, in accordance with *HVA § 2.1(b)*.

(xiii) The Authority agreed that, upon its receipt of payments described in **Section 1.1(d)(xi)** and (xii) (General: Prior Actions), neither the City nor the Port will owe the Authority any additional payment with respect to consultant costs the Authority incurred in connection with the HVA.

(xiv) The Port has relocated the floating drydock previously on Pier 80 to a site that is not a Venue, and will not relocate it to any Venue for the duration of the AC34 activities.

(xv) A fire on June 20, 2012 caused damage to Pier 29.

(e) **Delivery.** The Port will Deliver the Venues and the Parties will enter into Venue Leases and Venue Licenses in form and substance negotiated by the Parties, consistent with the Venue Lease form approved by the Port Commission by Resolution No. 12-35 on April 24, 2012. The Port will Deliver the Venues no later than the dates set forth in the Venue Schedule attached as *Schedule 1* (for each Venue, its "Delivery Date"), or as otherwise provided in this Agreement.

1.2. Port Infrastructure Work. The Port has committed to perform the Improvements described in this Section and in *Schedule 4* to prepare Venues for the Event at no cost to the Authority (the "Port Infrastructure Work") according to the Completion schedule in *Schedule 4*. The Port Infrastructure Work includes the following:

(a) **Piers 30-32 Work by Port.** The Port will Complete the work described in *Schedule 4* on Piers 30-32 to prepare the Venue for AC34 (the "Piers 30-32 Work"). The following will apply to the Piers 30-32 Work.

(i) As authorized by Board Ordinance No. 53-12 and Port Resolution No. 12-40, the Port's existing contract with Turner Construction Company ("Turner") for construction manager/general contractor services for the Cruise Terminal Project (the "Turner CM/GC Contract") was amended to include the Piers 30-32 Work.

(ii) If the Authority relinquishes possession of Piers 30-32 to the Port by October 22, 2012, the Port will Complete the Piers 30-32 Work according to team base plans the Authority previously provided to the Port by January 14, 2013, subject to Section 1.2(b)(ii) (Port Infrastructure Work: Piers 30-32 Work by Port) and the following conditions.

(A) The Authority must deliver any additional changes to its team base design to the Port for its review and Approval by August 23, 2012, and the Port will review the plans and provide its response to the Authority by August 29, 2012.

(B) If the Port Approves the changes, but anticipates that the changes will cause delays in Completing the Piers 30-32 Work, it will provide notice to the Authority of the amount of the expected delay, and the Delivery Date for Piers 30-32 will be extended day-for-day for delays caused by the Authority's requested changes. The Authority will have the option of reverting to the previously agreed-upon plans should it wish to avoid the delays.

(C) If the Port does not Approve the changes, the Piers 30-32 Work will proceed as previously agreed.

(iii) The Port required Turner to provide a surety bond in the full amount of the Turner CM/GC Contract in form and substance customary within the construction industry guaranteeing payment and performance of the Piers 30-32 Work (the "Piers 30-32 Performance Bond"). The Piers 30-32 Performance Bond provides the Authority with a unilateral right to require the Port to call on the Piers 30-32 Performance Bond if:

(D) the 2013 Piers 30-32 Work is not Completed by January 14, 2013; and

(E) Turner's failure is caused by a payment default or other circumstances authorizing a call upon the bond.

(iv) The Port included a liquidated damages clause in the Turner CM/GC Contract requiring payment of \$5,000 per day for each day after February 14, 2013 that the Piers 30-32 Work is not Complete.

(v) The Port will provide monthly written updates to the Authority, and the Parties will meet and confer regularly on the progress of the Piers 30-32 Work to discuss the likelihood that Turner will Complete all Piers 30-32 Work by January 14, 2013. If requested by the Authority, the Port will participate in monthly meetings regarding the progress of the remaining Piers 30-32 Work.

(b) **Triggering Circumstances.** Subject to Section 1.2(ii) (Port Infrastructure Work: Piers 30-32 Work by Port), if Turner does not Complete all Piers 30-32 Work by January 14, 2013, or any later date that the Authority accepts for Completion of the Piers 30-32 Work in its sole discretion, the Authority will have the following remedies, in addition to any other remedies provided under this Agreement, which are cumulative and not exclusive except where explicitly stated otherwise.

(i) The Authority may give notice to the Port requiring the Port to begin to construct immediately and to Complete no later than March 15, 2013 the additional temporary Improvements needed to accommodate team bases at Pier 80 in 2013 as described in *Schedule 4* (the "2013 Pier 80 Work"). Upon the Authority's direction, the Port will call on the Piers 30-32 Performance Bond and enforce the liquidated damages clause in the Turner CM/GC Contract. Any amounts that the Port receives under those contractual agreements will be applied to pay or reimburse the Port's actual costs to Complete the 2013 Pier 80 Work. If these sources are not sufficient to pay all Port costs to Complete the 2013 Pier 80 Work, as demonstrated by Proof of Payment, then the Authority will Approve a Port draw upon the Cash Collateral to pay for or reimburse itself for such remaining costs.

(ii) The Authority may make demand on the City, and the City agrees, to pay liquidated damages to the Authority up to the combined, aggregate sum of \$5 million for Piers 30-32 and the Pier 27 Venue, beginning on March 1, 2013, and continuing each day that Delivery of Piers 30-32 is delayed, according to the following schedule:

- (A) March 1 – March 31: \$29,200 per day;
- (B) April 1 – April 30: \$60,350 per day; and
- (C) May 1 – May 31: \$73,687 per day.

(iii) Should the Port or the City fail to pursue diligently the remedies under Section 1.2(a)(i)1.2(i) (Port Infrastructure Work: Piers 30-32 Work by Port) or to pay liquidated damages under Section 1.2(b)(ii) (Port Infrastructure Work: Piers 30-32 Work by Port) following the Authority's demand, the Authority's remedies will include the right to compel the City's and the Port's specific performance of any remedy to which the Authority is entitled, and the Port's right to make a demand for payment or performance under the Guaranty, or prosecute any actions or proceedings with respect to any prior demands for payment or performance under the Guaranty, will be suspended automatically from the date on which the Authority's demand is delivered to the Port until the Port or the City has taken the required action.

(c) **Cruise Terminal Work.**

(i) To provide the Authority with assurances as to the Port's ability to meet its construction schedule, the Port has engaged an independent consultant to perform a schedule review or "stress test" on the feasibility of the Port's schedule for Delivery and provided the Authority with a copy of the independent consultant's construction schedule review report and a complete copy of the Turner CM/GC Contract. Also, the Port agrees: (A) to provide the Authority with copies of any future amendments to the Turner CM/GC Contract promptly after execution; and (B) not to amend the Turner CM/GC Contract in any manner that delays or excuses any deadlines for performance of the Cruise Terminal Project or the remaining Piers 30-32 Work except with the Authority's Approval, which the Authority may grant or withhold in its sole discretion.

(ii) Recognizing the importance of the Pier 27 Venue to the Authority's planned hospitality and sponsorship events, the Port and the City will engage in a joint planning effort beginning no later than January 1, 2013. If on January 1, 2013, the Cruise Terminal Project appears behind schedule to achieve the March 1, 2013 Delivery Date, then the Parties agree to confer regarding accelerating construction of the Cruise Terminal Project or identifying and securing at no cost to the Authority Functionally-Equivalent Space to replace, for

the remainder of the Term, the portion of the Pier 27 Venue that cannot be Delivered by March 1, 2013.

(A) The Port will provide monthly written updates to the Authority and, if requested by the Authority, participate in monthly meetings, regarding the progress of the Cruise Terminal Project described in *Schedule 4*.

(B) If, based on these progress reports, the Parties agree that the Port is not on schedule to meet its obligations under this Subsection, the Port will prepare and promptly deliver a plan to the Authority that provides in reasonable detail measures (such as additional shifts) that the Port will undertake immediately at its sole cost (but with the right to reimbursement from sources identified in **Section 7.11(c)(i)** (Limitations on Liabilities of the Parties: Financial Liability Limitations) to meet the required schedule.

(C) If, despite its efforts, the Port is still not able to Deliver the Pier 27 Venue by March 1, 2013, in addition to any other remedies provided under this Agreement, the Authority may require the City and the Port to take the actions described below.

(1) The Authority may require the Port to halt construction, secure the portion of the cruise terminal building still under construction and the construction area at the Pier 27 Venue that cannot feasibly and safely be used for the Authority's intended purposes, as determined by the Chief Harbor Engineer, Deliver to the Authority the portion of the Pier 27 Venue that can feasibly and safely be used for the Authority's intended purposes, also as determined by the Chief Harbor Engineer.

As part of this remedy, the Authority may require the Port to secure and Deliver Functionally-Equivalent Space Approved by the Authority, which must replace the portion of the cruise terminal building that is not available for the Authority's use and be available for the Authority's use for the full term of the Piers 27-29 Venue License.

Port expenditures to implement this remedy will be paid or reimbursed from liquidated damages to the extent timely available under the Turner CM/GC Contract, project-related insurance policies or bonds, and, if additional funds are needed, as demonstrated by Proof of Payment, the Cash Collateral with the Authority's Approval.

(2) Alternatively, the Authority may require the Port to accelerate construction on the Cruise Terminal Project to reach Completion at the earliest possible date, with costs to accelerate Completion to be paid or reimbursed from liquidated damages to the extent timely available under the Turner CM/GC Contract, project-related insurance policies or bonds, and, if additional funds are needed, as demonstrated by Proof of Payment, the Cash Collateral with the Authority's Approval.

(3) If the Port uses Cash Collateral to implement any of the remedies described in **Section 1.2(ii)(C)(1) & (2)** (Port Infrastructure Work: Cruise Terminal Work), it will be obligated to replenish the Cash Collateral with all liquidated damages and other

project-related sources so received to the extent of the draw on Cash Collateral, but the Port will not be required to use any other sources should project-related sources be insufficient to fully replenish the Cash Collateral.

(4) In any case in which the Port draws on Cash Collateral to implement remedies under this Agreement because proceeds of a payment and performance bond or liquidated damages under its construction contract are not timely available, the Port's replenishment obligation will be separate from the City's replenishment obligation under **Section 4.2(c)(iii)** (City Secured Obligations: Cash Collateral).

(iii) In either case under **Section 1.2(ii)1.2(c)(ii)(C)(1) & (2)** (Port Infrastructure Work: Cruise Terminal Work), the Authority may make demand on the City, and the City agrees, to pay liquidated damages to the Authority up to the combined, aggregate sum of \$5 million for Piers 30-32 and the Pier 27 Venue, beginning on March 1, 2013, and continuing each day that Delivery of the Pier 27 Venue is delayed, according to the following schedule:

(D) March 1 – March 31: \$29,200 per day;

(E) April 1 – April 30: \$60,350 per day; and

(F) May 1 – May 31: \$73,687 per day.

(iv) Should the Port or the City fail to pursue diligently the remedies under **Section 1.2(c)(ii)** (Port Infrastructure Work: Cruise Terminal Work) or to pay liquidated damages under **Section 1.2(c)(iii)** (Port Infrastructure Work: Cruise Terminal Work) following the Authority's demand, the Authority's remedies will include the right to compel the City's and the Port's specific performance of any remedy to which the Authority is entitled, and the Port's right to make a demand for payment or performance under the Guaranty, or prosecute any actions or proceedings with respect to any prior demands for payment or performance under the Guaranty, will be suspended automatically from the date on which the Authority's demand is delivered to the Port until the Port or the City has taken the required action.

(d) **Pier 29 Restoration Work.**

(i) In accordance with *Schedule 4*, the Port will repair fire damage to and restore the Pier 29 bulkhead (the "**Pier 29 Venue**") and prepare the Pier 29 Venue for Delivery to the Authority by March 1, 2013 under this Agreement (the "**Pier 29 Restoration Work**") in consultation with the Port's insurer.

(ii) The Port has agreed to negotiate as described in more detail below, and subject to review and Approval by its casualty insurer, a design contract with Creegan + D'Angelo (the "**Pier 29 Design Contract**") and a contract with Turner to complete the Pier 29 Restoration Work, consisting of the reconstruction of the core and shell of the Pier 29 Venue and installation of electrical equipment, by March 1, 2013 (the "**Pier 29 Restoration Contract**"). The Port will give notice to the Authority when the Pier 29 Design Contract and the Pier 29 Restoration Contract have been Approved by the insurer and fully executed, but has no obligation to provide the plans for the Pier 29 Restoration Work to the Authority for its review or Approval. The Port also agrees not to take any action, or fail to take action, that would cause or excuse a performance delay under either the Pier 29 Design Contract or the Pier 29 Restoration Contract.

(iii) The Port has proposed to include in the Pier 29 Restoration Contract:

(A) a requirement that Turner pay liquidated damages of \$5,000 per day to the Port beginning on March 1, 2013, and continuing every day until the Pier 29 Restoration Work is Complete, subject to Punch List Items and long-lead items such as the fabrication and installation of windows conforming to the Secretary of the Interior's Standards for the Treatment of Historic Resources;

(B) Turner's agreement to Complete the Punch List Items and any other work required to Complete the Pier 29 Restoration Contract after the Port has Delivered Pier 29 to the Authority but no later than April 30, 2013, subject to the Authority's agreement, which it may grant or withhold in its sole discretion, to shared occupancy to the extent required for Turner to Complete the Pier 29 Restoration Contract; and

(C) a requirement that Turner provide a surety bond in the full amount of the Pier 29 Restoration Contract guaranteeing payment and performance of the Pier 29 Restoration Work under which the Authority will have the unilateral right to require the Port to call on the bond if the Pier 29 Restoration Work is not Completed by March 1, 2013, subject to Punch List Items and specified long-lead items, if Turner's failure is caused by a payment default or other circumstances authorizing a call upon the bond.

(iv) The Port agrees to provide monthly written updates to the Authority on the Pier 29 Restoration Work, and meet and confer with the Authority regularly on the progress on the Pier 29 Restoration Contract to discuss the likelihood that Turner will Complete the Pier 29 Restoration Work by March 1, 2013.

(v) If it appears that Turner will not be on schedule to Complete the Pier 29 Restoration Work by March 1, 2013, then the Authority can direct the Port, and the Port will be obligated, to:

(A) accelerate the Pier 29 Restoration Work, for which the Port will be entitled to reimbursement of its acceleration costs from the Cash Collateral, but only after the Authority has accepted Delivery of the Pier 27 Venue and Piers 30-32 (or their replacement Venues, if applicable), and the Cash Collateral is not needed to pay costs due to delayed Delivery of either the Pier 27 Venue or Piers 30-32; or

(B) secure and Deliver Functionally-Equivalent Space, for which the Port will be entitled to reimbursement of its costs to provide the replacement Venue from the Cash Collateral, but only after the Authority has accepted Delivery of the Pier 27 Venue and Piers 30-32 (or their replacement Venues, if applicable), and the Cash Collateral is not needed to pay costs due to delayed Delivery of either the Pier 27 Venue or Piers 30-32.

(vi) In any case in which the Port is entitled to payment of any liquidated damages from Turner, the Port will enforce the contract provisions diligently, and turn over to the Authority all sums the Port so collects as payment of liquidated damages to the Authority for delay losses. The Authority's right to receive and retain these liquidated damages is in addition to all other remedies provided under this Agreement. In addition, if the Port has drawn from Cash Collateral to pay for the costs to accelerate work at the Pier 29 Venue or to

provide a Functionally-Equivalent Space, the City will be obligated to replenish the Cash Collateral by the amount expended in providing the Authority's chosen remedy, separate from the City's replenishment obligation under **Section 4.2(c)(iii)** (City Secured Obligations: Cash Collateral).

(vii) If, despite its efforts, the Port is still not able to Deliver the Pier 29 Venue by March 1, 2013, in addition to any other remedies provided under this Agreement, the Authority may require the City and the Port to take the actions described below.

A. The Authority may require the Port to Deliver to the Authority the portion of the Pier 29 Venue that has been restored and can feasibly and safely be used for the Authority's intended purposes, as determined by the Chief Harbor Engineer, and Complete the balance of the Pier 29 Restoration Work subject to **Section 1.4(b)** (Venues: Joint Occupancy for Completion of Port Work).

As part of this remedy, the Authority may require the Port to secure and Deliver Functionally-Equivalent Space Approved by the Authority in accordance with **Section 1.4(h)** (Venues: Functionally-Equivalent Space), which must replace the portion of the Pier 29 Venue that is not available for the Authority's use and be available for the Authority's use for the full term of the Piers 27-29 Venue License.

Port expenditures to implement this remedy will be paid or reimbursed from liquidated damages to the extent timely available under project-related insurance policies or bonds, and, if additional funds are needed, as demonstrated by Proof of Payment, the Cash Collateral with the Authority's Approval.

B. Alternatively, the Authority may require the Port to accelerate the Pier 29 Restoration Work to reach Completion at the earliest possible date, with costs to accelerate Completion to be paid or reimbursed from project-related insurance policies or bonds, and, if additional funds are needed, as demonstrated by Proof of Payment, the Cash Collateral with the Authority's Approval.

C. If the Port uses Cash Collateral to implement either of the remedies described in **Section 1.2(d)(vii)(A) & (B)** (Port Infrastructure Work: Pier 29 Restoration Work), it will be obligated to replenish the Cash Collateral with the proceeds of project-related bonds and insurance the Port receives to the extent of the draw on Cash Collateral, but the Port will not be required to use any other sources should project-related sources be insufficient to fully replenish the Cash Collateral. In addition, if the Port has drawn from Cash Collateral to pay for the costs to accelerate work at the Pier 29 Venue or to provide a Functionally-Equivalent Space, the City will be obligated to replenish the Cash Collateral by the amount expended in providing the Authority's chosen remedy, separate from the City's replenishment obligation under **Section 4.2(c)(iii)** (City Secured Obligations: Cash Collateral).

(e) **Authority Expenditures.**

(i) The Authority will have the right to payment or reimbursement of its Relocation Costs in any of the following circumstances:

(A) the Authority elects under **Section 1.2(b)** (Port Infrastructure Work: Triggering Circumstances) to relocate the team bases

from Piers 30-32 to Pier 80 for the elements of the Event scheduled to be held in 2013;

(B) the Authority elects under **Section 1.2(c)** (Port Infrastructure Work: Cruise Terminal Work) to take Delivery of Functionally-Equivalent Space; or

(C) the Authority elects under **Section 1.2(d)** (Port Infrastructure Work: Pier 29 Restoration Work) to take Delivery of Functionally-Equivalent Space.

(ii) In any case described in **Section 1.2(e)** (Port Infrastructure Work: Authority Expenditures), the Authority's "Relocation Costs" means:

(A) costs to relocate to a Functionally-Equivalent Space for the balance of the Term that the Authority, ACRM, and Commercial Partners would not have incurred had the original Venue been Delivered by its Delivery Date;

(B) costs that the Authority, ACRM, and Commercial Partners incur if parking spaces are not provided as required under **Section 1.4(i)** (Venues: Parking); and

(C) where the Parties agree under **Section 1.4(h)** (Venues: Functionally-Equivalent Space) that it is feasible to relocate twice, relocating to the original Venue from a Functionally-Equivalent Space.

(iii) The Authority's Relocation Costs will be paid:

(A) as an element of liquidated damages under **Section 1.2(b)** (Port Infrastructure Work: Triggering Circumstances); **Section 1.2(c)** (Port Infrastructure Work: Cruise Terminal Work), or **Section 1.2(d)** (Port Infrastructure Work: Pier 29 Restoration Work), as applicable;

(B) from the Cash Collateral to the extent that the Relocation Costs exceed any applicable Authority recovery of liquidated damages for Relocation Costs under **Section 1.2(b)** (Port Infrastructure Work: Triggering Circumstances); **Section 1.2(c)** (Port Infrastructure Work: Cruise Terminal Work), or **Section 1.2(d)** (Port Infrastructure Work: Pier 29 Restoration Work), as applicable, subject to the priorities established in **Section 4.2(c)(vii)** (City Secured Obligations: Cash Collateral); and

(C) from the Cash Collateral for Relocation Costs related to any other Venues that are not timely Delivered, subject to the priorities established in **Section 4.2(c)(vii)** (City Secured Obligations: Cash Collateral).

(iv) Any payment or reimbursement to the Authority from Cash Collateral under this Section will be based on Proof of Payment and made with the Port's Approval.

(f) **Regulatory Conditions of Approval.** Except as provided in **Section 1.3(a)** (Authority Work: Reimbursable Work), the Port will Complete on a timely basis and at its sole cost any conditions (each, a "Regulatory Condition of Approval") that:

(i) are imposed by a Regulatory Agency other than the Port or the City under any Event-related permit for Port Infrastructure Work; and

(ii) require Improvements to Port property (such as fill removal at other Port locations to offset new fill authorized under the applicable Regulatory Approval to fulfill public benefit requirements).

(g) **Mitigation Measures.** Except as provided in Section 1.3(a) (Authority Work: Reimbursable Work), the Port will Complete when required any mitigation measures under the MMRP (each, a “**Mitigation Measure**”) that:

(iii) are associated with the performance of Port Infrastructure Work;
and

(iv) require Improvements to Port property, including the installation of a shoreside power facility at Pier 70.

(h) **Required Improvements to Venues.** Before the Effective Date, the Port and the Authority conducted a joint walk-through of the Venues and prepared the list attached as *Schedule 5* describing repairs and Improvements (other than Port Infrastructure Work) required for the Venues to comply with Port Building Code requirements for the Authority’s Event-related uses, in the order of priority in which the Port will perform the work. The Port has obtained and delivered to the Authority cost estimates for all items listed in *Schedule 5*. The Port will Complete at its sole cost the repairs in the listed order of priority (the “**Venue Repairs**”). The Port will use diligent efforts to substantially Complete the Venue Repairs before Delivery of the affected Venues, but if the Port is unable to do so, Section 1.4(b) (Venues: Joint Occupancy for Completion of Port Work) will apply.

(i) **Dispute Resolution.** The following disputes between the Parties will be submitted for dispute resolution under Section 7.6 (Dispute Resolution):

(i) whether any Venue Repairs are necessary to meet Port Building Code requirements for the Authority’s intended Event-related use of any Venue;
and

(ii) whether the Port substantially Completed Port Infrastructure Work or Venue Repairs as required.

1.3. Authority Work.

(a) **Reimbursable Work.** Whenever the Authority performs work that is reimbursable under this Agreement (“**Reimbursable Work**”), the Port will be obligated to reimburse the Authority for its actual Soft Costs and Hard Costs (“**Reimbursable Costs**”) as provided in this Subsection.

(i) The Port must Approve:

(A) the form of contract proposed for the Reimbursable Work, which must provide for a guaranteed maximum price (“**GMP contract**”);

(B) the initial scope of work contemplated under the proposed GMP contract;

(C) the proposed budget for all Soft Costs associated with the Reimbursable Work and the initial guaranteed maximum price for the GMP contract; and

(D) any change orders that in the aggregate would cause the guaranteed maximum price under the GMP contract to increase by 10 percent or more of the initial guaranteed maximum price.

(ii) The Port's customary procedures for construction as set forth in the applicable Venue Lease or Venue License will apply to any Reimbursable Work. Among other things, the Port will have the right to:

(A) receive copies of all proposed change orders and amendments to the GMP contract; and

(B) inspect the Completed Reimbursable Work for compliance with Approved Plans and Disapprove any items of Completed Reimbursable Work not in compliance with Approved Plans.

(iii) If the Authority believes that the actual cost of Reimbursable Work will exceed the Approved budget, the Authority must notify the Port as soon as practicable and provide proposed change orders to the Port for its review and Approval. Any disputes about whether the Port unreasonably Disapproved a proposed change order will be resolved by the procedures under **Section 7.6** (Dispute Resolution).

(b) **Other Work.** The Authority may elect to perform other Improvements, Alterations, and site preparation activities, including dredging that is not the Port's obligation under *Schedule 4* at the Authority's own cost and without any right to reimbursement under this Agreement. The Port's reasonable and customary procedures for construction as set forth in the applicable Venue Lease or Venue License will apply to the Authority's elective work under this Subsection.

(c) **Workforce Development Plan.** All work performed by the Authority under this Agreement must comply with the Workforce Development Plan attached as *Exhibit B* insofar as applicable.

1.4. Venues. The Parties have identified each of the piers, wharves, seawall lots, and building areas listed in the Venue Schedule attached as *Schedule 1* as a "Venue" for the Event.

(a) **Exclusive Use Except as Specified; Term.**

(i) The Port will provide the Authority with exclusive use of Venues under Venue Leases and Venue Licenses by the Delivery Dates (except for non-exclusive use of the Brannan Street Wharf and other Venues as specified in this Agreement) subject to the conditions below.

(ii) The Port will grant the Authority early access to a Venue for due diligence and site preparation (subject to permitting) through a license to the portions of a Venue that the Chief Harbor Engineer determines can safely accommodate the Authority's proposed activities in conjunction with any Port Infrastructure Work, Venue Repairs, or other activities planned to occur before the Venue's Delivery Date.

(iii) The Authority is obligated to return possession and control of all Venues to the Port no later than 6 months after the Match, any earlier date beyond which, in the Authority's good faith judgment, its continued use of any specific Venue is no longer reasonably necessary, or as otherwise specified in *Schedule 1* or any Venue Lease or Venue License. The Parties acknowledge that if the Authority gives notice under **Section 1.5** (Successive Defense Option), the Parties may agree to extend the Authority's return dates for some of the Venues pending negotiations on the AC35 Host Agreement.

(iv) Any disputes between the Parties as to whether the Authority's continued use of a specific Venue is reasonably necessary will be submitted for dispute resolution under **Section 7.6** (Dispute Resolution).

(b) **Joint Occupancy for Completion of Port Work.** If the Port has not substantially Completed Port Infrastructure Work or Venue Repairs on any Venue before its Delivery Date, the Port will be authorized to enter onto portions of the Venue reasonably necessary to Complete the work if all of the following conditions are satisfied:

- (i) the Authority chooses to accept Delivery of the Venue;
- (ii) the Authority Approves the portion of the Venue that will be subject to the Port's access and entry;
- (iii) the Parties agree on appropriate amendments to the applicable Venue Lease or Venue License; and
- (iv) the Chief Harbor Engineer has determined that the Authority's occupancy can be safely accommodated while the work continues.

(c) **Super Yacht Berthing.** The Port's obligation to Deliver Venues for super yacht berthing in the vicinity of Pier 9 and associated water areas and at Pier 14 North is conditioned upon all of the following.

(i) The Port and the Authority will jointly survey the waterfront to determine all Port facilities available to support super yacht berthing for the Event. The Authority must demonstrate to the Port's reasonable satisfaction (e.g., by executed berthing agreements) that locations other than the Pier 9 vicinity and Pier 14 North identified by the Port will not be sufficient to meet the Authority's Event-related super yacht berthing needs.

(ii) The Port will not be required to Deliver any part of Pier 14 North unless the Authority's super yacht berthing needs exceed the capacity of the Pier 9 vicinity.

(iii) The Authority must provide evidence of its need for any specific Pier 9 area or, if applicable, for Pier 14 North, to the Port as contemplated and by the date specified in *Schedule 4*.

(iv) The Port, after making good faith efforts, must succeed in obtaining amendments to the applicable leases or licenses with existing tenants of Pier 9 providing for tenant relocation before the Pier 9 Delivery Date.

(d) **Pier 27 Venue.** The Port will provide the Authority with exclusive use of Pier 27, Pier 29 (except for the portion constituting the Pier 29 Venue), Pier 29½, the valley between Pier 27 and Pier 29, and the Pier 29 Annex (Belt Railroad) building (collectively, the "Pier 27 Venue") for a race-viewing facility and team hospitality berths along the north apron between March 1, 2013 and September 30, 2013, a term that is intended to avoid creating a private use of the Venue that would violate Tax Laws applicable to the Cruise Terminal Project's financing. The Port will Deliver the Pier 27 Venue by a Venue License, subject to remaining Punch List Items, which will contain the provisions described below.

(i) The Port will Deliver the Pier 27 Venue in phases as shown in *Schedule 1* and the *Piers 27-29 Delivery Schedule Addendum to Schedule 1*, which the Parties agree will provide the Authority with sufficient time to Complete Event-related Improvements to the Pier 27 Venue in coordination with the Port's Cruise Terminal Project construction and operations.

(ii) The Port will have the right to berth cruise Vessels at the Pier 27 cruise terminal building between March 1, 2013 and May 31, 2013 with the Authority's Approval, which it may grant or withhold in its sole discretion by response delivered to the Port within 48 hours after its request. Any Port request to use the berth must be in writing and specify:

- (A) the name and operator of the cruise Vessel;
- (B) the duration of requested berthing rights;
- (C) the areas of the Pier 27 Venue that would be affected by the berthing, including the proposed footprint of a "Secured Area" as defined in and necessary to comply with a Facility Security Plan under the Maritime Transportation Security Act and Procedures; and
- (D) if known, the anticipated number of passengers embarking or disembarking, and the extent of Vessel provisioning that will occur while the Vessel is berthed.

(iii) To accommodate the Port's Cruise Terminal Project, the Authority's exclusive possession of the Pier 27 Venue will terminate one month after the Match. To the extent that the Chief Harbor Engineer determines that it does not affect construction safety requirements, the Authority will be allowed to retain non-exclusive use of portions of the Pier 27 Venue for the period beginning October 1, 2013 and ending 180 days after the Match, if reasonably necessary.

(iv) Notices, requests, and responses to be given under **Section 1.4(d)** (Venues: Pier 27 Venue) must be given by email delivered simultaneously to each of the Party's authorized representatives for this purpose, whose names and email addresses are:

(A) For the Authority: (1) Bob Billingham, bob.billingham@americascup.com; (2) Sam Hollis, sam.hollis@americascup.com; and (3) Charles Seaman, cseaman@reedsmith.com; and

(B) For the Port: (1) Peter Dailey, peter.dailey@sfport.com; (2) John Davey, john.davey@sfport.com; and (3) Michael Nerney, michael.nerney@sfport.com.

Either Party may change its authorized representative for the purpose of **Section 1.4(d)** (Venues: Pier 27 Venue) by email delivered to the other Party's authorized representatives.

(v) Any disputes between the Parties as to whether the Authority's continued use of a specific portion of the Pier 27 Venue is reasonably necessary will be submitted for dispute resolution under **Section 7.6** (Dispute Resolution).

(e) **Piers 30-32.** The Port will Deliver Piers 30-32 to the Authority under a Venue Lease concurrently with this Agreement, subject to the conditions below, for team bases, parking, public access, and other Event-related uses.

(i) The Port will Deliver exclusive possession of Piers 30-32 (subject to **Section 1.4(e)(iv)** (Venues: Piers 30-32)) for a period beginning upon execution of the Venue Lease for Piers 30-32 and ending October 21, 2012 for the 2012 World Series races. Between October 22, 2012 and February 28, 2013, the Port will use a portion of the Venue as a surface parking lot while concurrently completing the Piers 30-32 Work.

(ii) The Port will Deliver exclusive possession of Piers 30-32 for a period beginning March 1, 2013 and ending December 31, 2013 for the 2013 Events.

(iii) The Port will have the right to use the east berth of Piers 30-32 and related areas of Piers 30-32 for cruise terminal berthing under the conditions described in **Section 1.4(d)(ii)** (Venues: Pier 27 Venue) with respect to notice to

and Approval by the Authority. The Port agrees to use reasonable efforts to locate cruise terminal support services on these dates to minimize their impact on team bases and site preparation activities. The Port may exercise this right:

- (A) at any time when the Port is in possession of the Venue;
- (B) on September 26, 2012; and
- (C) for up to 5 days between March 1 and December 31, 2013.

(iv) During 2012 Fleet Week, the Port will have the right to use the east berth and additional areas of Piers 30-32 to meet berthing, security, and access needs for U.S. Naval Vessels in accordance with the preliminary site plan attached as *Schedule 6*.

(v) The Authority and the Port agree to meet and confer with the Navy at the appropriate time(s) to establish whether or not, at the Authority's sole discretion, the Navy's requested berthing, security, and access requirements can be accommodated by the Authority for 2013 Fleet Week at either Piers 30-32 or the deep water berth at Pier 27.

(f) **Pier 80.** The Port will provide the Authority with a Venue License for a portion of Pier 80. The Venue will be used for USA 17 storage; race operations, staging, and storage for the Event; and facilities for use by GGYC, Competitors, and Officials. The Venue License will:

(i) provide the Authority with expanded areas of exclusive use for specified periods in 2012 for the World Series races and in 2013 for all scheduled Regattas;

(ii) permit the Port to continue its maritime operations along Pier 80 Berth C (the east face) in recognition of Pier 80 as a Port maritime industrial complex designated as a port priority use area;

(iii) require the Parties, to the extent not inconsistent with Pier 80's designation as a port priority use area, to cooperate to avoid conflicts between the uses permitted under the Venue License and the Port's maritime industrial operations, or, where unavoidable, minimize conflicts; and

(iv) subject to any contrary provisions in the executed Pier 80 Venue License regarding its term, which will prevail over **Section 1.4(f)** (Venues: Pier 80), require the Authority to use best efforts to return to the Port possession of any part of the Pier 80 license area not in use by the Authority, GGYC, Competitors, or Officials as soon as practicable after the Pier 80 license area is no longer needed for the Event, except Shed A and adjacent land and water, which the Authority may retain until March 21, 2014 subject to the Port's right to use the existing rail through the retained area.

(g) **Pre-Delivery Damage.** Subject to **Section 2.3** (Risk of Loss Before Delivery), if a material deterioration in the physical condition of a Venue (the "Damaged Venue") between the Effective Date and the Damaged Venue's Delivery Date would materially adversely interfere with the Authority's use of the Damaged Venue for the Event, and the damage was not caused by the negligence or willful acts or omissions of the Authority or its Agents, then the Port must provide notice to the Authority of the condition of the Damaged Venue and provide Functionally-Equivalent Space to the Authority.

(h) **Functionally-Equivalent Space.** The following procedures will apply whenever the Port has an obligation under this Agreement to provide to the Authority a replacement Venue that is functionally equivalent ("Functionally-Equivalent Space") to

a Venue that can no longer be used as reflected in *Schedule 1* (the “Unavailable Venue”).

(i) To be Functionally-Equivalent Space, the proposed Functionally-Equivalent Space must be of similar size and have characteristics similar to the Unavailable Space. For example, if the Unavailable Venue is a warehouse shed, the proposed Functionally-Equivalent Space must be a building or other enclosed temporary or permanent space of similar area.

(ii) The Port must identify the Functionally-Equivalent Space that the Port will make available for the Event, subject to the Authority’s Approval as soon as possible (but in no event more than 30 days) after the Port learns of the event giving rise to the obligation to provide Functionally-Equivalent Space to replace an Unavailable Venue.

(iii) The Authority must give notice of its Approval or Disapproval of the proffered Functionally-Equivalent Space, or of the Authority’s demand under **Section 1.4(h)(vi)** (Venues: Functionally-Equivalent Space), to the Port no later than 30 days after the Port’s notice. If the Authority Disapproves of the proffered Functionally-Equivalent Space, the Port will have up to 30 days to give notice to the Authority of the next alternative Functionally-Equivalent Space that the Port will make available, and the Authority will have an additional 30 days to Approve or Disapprove the proffered Functionally-Equivalent Space or to make a demand for dispute resolution.

(iv) If the Authority does not accept either the first or second alternative Functionally-Equivalent Spaces that the Port offers to make available or deliver a timely demand for arbitration as provided in **Section 1.4(h)(ii)** (Venues: Functionally-Equivalent Space), then either Party will have the right to terminate this Agreement as to the Unavailable Venue, and the Authority will have the right to terminate this Agreement if it determines in its sole discretion that the loss of the Unavailable Venue would materially and adversely affect its ability to hold the Event. Neither Party will be liable to the other Party for any termination under this Subsection.

(v) Within 30 days after the Authority has Approved a proffered Functionally-Equivalent Space, it will submit to the Port proposed revisions to the Venue Schedule showing the Authority’s planned use and related site plan. The Authority also may propose that it be relocated a second time back to the previously-Unavailable Venue after it becomes available. The Port and the Authority will meet and confer on the feasibility of relocating the programmed Event-related activities twice. Any disagreement as to the feasibility of multiple relocations will be submitted for dispute resolution under **Section 7.6** (Dispute Resolution).

(vi) Any performance dates by either Party under this Agreement will be extended by the number of days between the Port’s notice and receipt by Authority of all necessary Regulatory and other Approvals to occupy the alternative Functionally-Equivalent Space for its planned use.

(vii) The Parties agree to submit any dispute over whether a proposed Functionally-Equivalent Space is functionally-equivalent to the Unavailable Venue for resolution under **Section 7.6** (Dispute Resolution).

(i) **Parking.** The Port will provide the Authority at no cost with up to 220 designated, contiguous spaces per day for users authorized by the Authority to park for Event-related use at Seawall Lot 330 and Seawall Lot 322-1. The Port will have the right to designate replacement parking spaces in other Port parking lots in locations no

less convenient for the Authority's use on 30 days' prior notice to the Authority. The Port and the Authority must agree to any such replacement parking spaces in good faith, such agreement not to be unreasonably withheld, conditioned, or delayed by either Party. The Port and the Authority will establish further details on parking at the staff level and in consultation with the applicable parking lot operators. No right of possession will attach to the parking rights, nor will the designated Port parking lots be Venues under this Agreement.

(j) **Non-Port Venues.** The Authority acknowledges that:

(i) The Port is not obligated to provide any water area at Pier 80 for berthing the USA 17.

(ii) If the Authority needs a temporary heliport for Event-related emergency services, media, and regatta operations, it will be located on property that is not under Port jurisdiction.

1.5. Successive Defense Option.

(a) **Conditions.** The Authority will have the option to extend its use of Venues for future America's Cup events (the "**Successive Defense Option**") if all of the conditions below are satisfied.

(i) GGYC succeeds in defending the America's Cup and gives notice to the City of GGYC's interest in exercising the Successive Defense Option.

(ii) The Authority is not in Breach of its obligations under the HVA.

(iii) GGYC selects San Francisco as the host city for the 35th America's Cup and related events ("**AC35**") on terms set forth in a new host city agreement between the City and GGYC or its designee to be negotiated in accordance with **Section 1.5(b)** (Successive Defense Option) (the "**AC35 Host Agreement**").

(iv) Any future use of Pier 80 under the AC35 Host Agreement complies with **Section 1.4(f)** (Venues: Pier 80).

(v) Any future license for the Pier 27 Venue under the AC35 Host Agreement includes provisions that would obligate the Authority to use the Pier 27 Venue for AC35 at times and in a manner that minimizes disruption and conflicts with ongoing Port cruise terminal operations.

(b) **AC35 Venues.** The City, acting through its Port Commission, is considering an exclusive negotiating agreement with a Third Party for the development of Piers 30-32 and Seawall Lot 330.

(i) Accordingly, the Parties agree that Piers 30-32 and Seawall Lot 330 will not be available for use in connection with any potential future AC35 events if GGYC is successful in its AC34 defense and the City is selected as the host city for AC35 should Piers 30-32 and Seawall Lot 330 be subject to any then-existing contractual development rights granted by the Port under or pursuant to such exclusive negotiating agreement.

(ii) The City agrees to negotiate in good faith an AC35 Host Agreement that includes a waterfront venue or venues suitable for hosting AC35 that is mutually acceptable to the City and the Authority and is subject to environmental review under CEQA and Board Approval in its sole and absolute discretion. To that end, within 90 days after the successful AC34 defense by GGYC, the Mayor's Office will present no less than two options for team base and AC35 event village sites for the Authority's review. The sites proposed must be in reasonable proximity to the race area for AC34, must be functionally-

equivalent to Piers 27-29, 19-23, and 30-32, Marina Green, and Seawall Lot 330 in terms of accommodating regatta, event, and partner activities but must not include any properties then under agreement for private long-term development. If the option the Authority chooses requires public infrastructure improvements to be performed by the Authority to host the AC35 activities, the City will offer long-term development rights and/or other reimbursement mechanisms during negotiations, subject to agreement of the Parties and all required Approvals. The Authority shall be entitled to select one of the presented options for purposes of negotiating appropriate provisions in the AC35 Host Agreement relating to the hosting of AC35 and upon completion of such negotiations the Mayor's Office will support GGYC (or its nominee) in gaining the required CEQA, Port Commission, and Board Approvals.

(c) **AC35 Host Agreement.** If the Authority notifies the City of GGYC's interest in exercising the Successive Defense Option, the Authority and the City, including the Port, will enter into good faith negotiations for an AC35 Host Agreement consistent with **Section 1.5(b)** (Successive Defense Option: AC35 Venues) and the disposition of AC34 Event-related tenant improvements after the Match and during AC35 Host Agreement negotiations, with the goal of concluding the AC35 Host Agreement negotiations by the end of the 6th full calendar month after the Match (i.e., March 31, 2014 if the Match concludes in September 2013).

(i) If the Parties have not concluded negotiations within the 6-month negotiating period, or agreed to extend the date by which negotiations must be concluded, either Party may terminate the negotiations by notice to the other Party, and neither will have any further obligations or liability to the other with respect to AC35.

(ii) If the Parties have concluded negotiations within the 6-month negotiating period (as it may be extended), the AC35 Host Agreement will be submitted to the Port Commission and the Board for their respective Approvals at the earliest opportunity, subject to each body's scheduling rules and procedures, notice requirements, and staff preparation time.

(iii) If the Parties have not successfully concluded negotiations within the 6-month negotiating period (as it may be extended), the Authority's right to extend the use of Venues under the Successive Defense Option will terminate automatically and the Port will have the right to require the Authority at its sole, unreimbursable cost to return the Venues free of all Event-related tenant improvements.

1.6. Term. The term of this Agreement, and all obligations of the Parties to comply with its terms, will begin on the date that it has been executed by all Parties (the "Effective Date") and continue until the latest to occur of the following dates (the "Term"):

(a) when all Venue Leases and Venue Licenses have expired or have been earlier terminated;

(b) when any holdover periods under Venue Leases and Venue Licenses have ended, and the Authority has surrendered all Venues to the Port;

(c) when the HVA has expired or has been earlier terminated; and

(d) this Agreement has been terminated.

1.7. Closing Conditions and Conditions Subsequent. The Parties acknowledge that they are closing and entering into this Agreement subject to certain conditions precedent and subsequent, all of which are essential to the Parties' agreement. *Schedule 7* lists all essential documents required before and after execution of this Agreement and dates by which certain

material conditions subsequent under this Agreement must be satisfied. A Party's failure to satisfy any such condition subsequent by its due date, subject to any obligation to meet and confer and right to cure, will be an Event of Default on the part of the non-performing Party.

2. AS IS CONDITION; INDEMNIFICATION

2.1. Condition of Venues. The Port will provide to the Authority, or make available for its review and copying, all documents and reports that are not legally privileged that the Port has in its possession after a reasonably diligent search of its records pertaining to the structural, physical, geotechnical, and environmental condition of each Venue, including any notices from any Regulatory Agency that the present use, condition, or operation of any Venue is in violation of any applicable Laws. The Port will provide the Authority with a privilege log listing any documents withheld on the grounds of legal privilege. The Parties agree to meet and confer in an attempt to resolve any disagreements regarding the Port's right to any claim of privilege.

2.2. As Is.

(a) **Acceptance.** Except for the Port Infrastructure Work, the Venue Repairs, and as provided in **Section 1.4(g)** (Venues: Pre-Delivery Damage) and **Section 2.3** (Risk of Loss Before Delivery), the Authority agrees to accept the Venues in their "As Is With All Faults" physical condition on their respective Delivery Dates and acknowledges that the Port is not preparing the Venues for the Event, except solely for:

(i) the Port's obligation to perform Port Infrastructure Work and Venue Repairs under **Section 1.2** (Port Infrastructure Work);

(ii) the Port's obligation to Deliver the Venues vacant except for pre-existing tenancies listed in **Schedule 2**, broom-clean, and cleared of personal property except as designated for retention by the Authority under Venue Leases and Venue Licenses on the conditions specified in **Section 3.5** (Conditions to the Authority's Obligation to Accept Delivery of Venues); and

(iii) any installations described in **Schedule 3**.

(b) **Port Records.** The Authority acknowledges that:

(i) The Port is providing the Authority a full opportunity to inspect all of the Port's public records relating to each Venue.

(ii) The Port has provided the Authority with copies of:

(A) a report, titled "*Technical Memorandum; Sea Level Rise Analysis*," dated March 2011, prepared by a joint venture between URS Corp. and AGS; and

(B) a report titled "*Sea Level Rise and Adaptation Study Coastal Inundation Report*," dated May 10, 2011, prepared by URS Corp.

(iii) The Port makes no representation or warranty as to the accuracy or completeness of any matters contained in its records.

(iv) The Authority is relying on its own due diligence, including review of Port records, in deciding to proceed with the Project.

(c) **Due Diligence.** The Authority may elect to perform inspections and investigations of each Venue, either independently or through its own experts including:

(i) the quality, nature, adequacy, and physical condition of each Venue;

(ii) the geotechnical and environmental condition of each Venue (including the soil and any groundwater);

- (iii) the suitability of each Venue for the Event; and
- (iv) the zoning, land use regulations, and other Laws governing use of or construction on each Venue.

(d) **No Representations.** The Authority specifically acknowledges and agrees that except as otherwise expressly provided in this Agreement or the Venue Leases or Venue Licenses, neither the City nor any of its Agents has made, and the City disclaims, any representation or warranty, express or implied, of any kind, with respect to the condition of any Venue, the suitability or fitness of any Venue or appurtenances to any Venue for the Event, any compliance with Laws, including applicable land use or zoning regulations, any matter affecting the use, value, occupancy, or enjoyment of any Venue, or any other matter pertaining to any Venue or the Project.

2.3. Risk of Loss Before Delivery. Except as expressly provided otherwise, the Port will not under any circumstances be liable to the Authority for any monetary damages that may result should any portion of the Venues be damaged or destroyed by fire or other casualty (including war, earthquake, tidal wave, or other acts of nature) (“Casualty”) at any time before Delivery to the Authority.

(a) **Damage Threshold.** If any insured Casualty damages a Venue before its Delivery, and the Authority estimates that the cost of repairs would be less than \$500,000, the following will apply.

(i) The Port will Deliver, and the Authority will accept Delivery of, the Damaged Venue if the other closing conditions are satisfied.

(ii) The Authority will repair the Damaged Venue subject to reimbursement of its Reimbursable Costs in accordance with **Section 1.3(a)** (Authority Work: Reimbursable Work).

(iii) The Port will pay or assign to the Authority all proceeds of property, earthquake, and flood insurance payable to the Port under insurance policies by reason of the Casualty, if any, up to the amount of the Authority’s actual Reimbursable Costs of repairs.

(iv) If the Casualty occurs by any reason other than the negligent or willful acts or omissions of the Authority or its Agents or Invitees, and insurance proceeds do not cover all of the Authority’s Reimbursable Costs of repairs, the Port will reimburse the Authority for the unpaid balance of Reimbursable Costs.

(b) **Damages Exceeding Threshold.** The following will apply to any insured Casualty that damages or destroys a Venue before its Delivery, if the Authority estimates that the cost of repair exceeds \$500,000.

(i) Either Party may elect either to terminate this Agreement as to the Damaged Venue on 30 days’ notice to the other Party without any further obligation or liability. Neither Party will be liable to the other Party for any termination under this Subsection.

(ii) The Authority may elect to:

(A) terminate this Agreement in its entirety on 30 days’ notice to the Port;

(B) accept Delivery of the Damaged Venue (which will void automatically any prior termination by the Port under **Section 2.3(b)(i)** (Risk of Loss Before Delivery: Damages Exceeding Threshold)); or

(C) require the Port to provide a functionally-equivalent alternative acceptable to the Authority in accordance with **Section 1.4(h)** (Venues: Functionally-Equivalent Space).

(iii) If the Authority elects to accept Delivery of the Damaged Venue:

(A) The Authority will repair the Damaged Venue subject to reimbursement of its Reimbursable Costs in accordance with **Section 1.3(a)** (Authority Work: Reimbursable Work).

(B) The Port will pay the Authority the amount by which the cost of Casualty repairs exceeds \$500,000, up to the extent of the Port's available insurance proceeds.

(C) If the negligent or willful acts or omissions of the Authority or its Agents or Invitees did not cause the Casualty (except to the extent that the Casualty is covered by the third-party insurance of the Authority's Agents or Invitees), the Port will reimburse the Authority for any remaining unpaid balance, up to the amount of the Port's insurance deductible.

(D) The Port will have no monetary liability to the Authority other than as expressly stated in **Section 2.3(b)(iii)** (Risk of Loss Before Delivery: Damages Exceeding Threshold).

(c) **Disputes.** Disputes arising under this Section will be resolved by the procedures under **Section 7.6** (Dispute Resolution).

2.4. Risk of Loss After Delivery.

(a) **Port Repair Notice.** If a Casualty damages any Venue after its Delivery, the Port will notify the Authority as soon as reasonably possible (and in any event within 60 days after the date of damage) of the Port's estimate of the amount of time that will be required to repair the Casualty damage (the "**Casualty Repair Period**") and whether or not the Port intends to repair the damage within the Casualty Repair Period.

(b) **Repair Obligation for Insured Casualty.** The Port must either repair any insured Casualty damage occurring after Delivery or provide the Authority with the opportunity to repair the damage as Reimbursable Work subject to **Section 1.3(a)** (Authority Work: Reimbursable Work). The Port's notice under **Section 2.4(a)** (Risk of Loss After Delivery: Port Repair Notice) must state that the Port will make the repairs or offer the Authority an election to perform the repairs.

(i) If the Port elects to repair the insured Casualty damage, it must begin and diligently attempt to Complete the repairs within the Casualty Repair Period, or any longer period reasonably necessary to Complete the work.

(ii) If the Authority elects to repair the insured Casualty damage, the Port will pay the Authority's Reimbursable Costs up to the amount of the Port's available insurance proceeds. If the negligent or willful acts or omissions of the Authority or its Agents or Invitees did not cause the Casualty (except to the extent that the Casualty is covered by the third-party insurance of the Authority's Agents or Invitees), the Port will reimburse the Authority for any remaining unpaid balance as Reimbursable Costs, up to the amount of the Port's insurance deductible. In this circumstance, the Port will have no liability to the Authority other than as expressly stated in **Section 2.4(b)(ii)** (Risk of Loss After Delivery: Repair Obligation for Insured Casualty).

(iii) If either Party elects to repair the Casualty damage, the Venue Lease or Venue License for the Damaged Venue will remain in effect.

(c) **No Repair Obligation for Uninsured Casualty.** The Port has no obligation to repair any uninsured Casualty damage or to allow the Authority to perform the repairs. But, if the Port elects to repair the uninsured Casualty damage within the Casualty Repair Period, and the Port appropriates funds to repair the damage and the Board approves the Port's supplemental appropriation, each in its sole discretion, the Port will repair the damage, and the Venue Lease or Venue License for the Damaged Venue will remain in effect.

(d) **Extended Repair Period.** The Port will notify the Authority promptly if the Port determines that it cannot Complete the Casualty repairs within the originally estimated Casualty Repair Period. The Port's notice to the Authority must state the Port's revised estimate of the Casualty Repair Period.

(e) **Port Termination Option.** If the Port elects not to appropriate funds for the repairs, or the Board does not approve the Port's supplemental appropriation, the Port may notify the Authority in its notice under **Section 2.4(a)** (Risk of Loss After Delivery: Port Repair Notice) of the Port's election to terminate the Venue Lease or Venue License for the Damaged Venue effective not less than 30 or more than 60 days after the date of the notice.

(f) **Authority Options.** If a Casualty damages or destroys a Venue while the applicable Venue Lease or Venue License is in effect, the Authority will have the options described in this Subsection.

(i) The Authority will have the right to terminate the applicable Venue Lease or Venue License on 30 days' notice to the Port.

(ii) If the Casualty would materially and adversely affect the Authority's ability to hold the Event, the Authority will have the right to terminate this Agreement in its entirety on 30 days' notice to the Port.

(iii) If the Authority does not wish the applicable Venue Lease or Venue License to terminate as provided in a Port notice under **Section 2.4(a)** (Risk of Loss After Delivery: Port Repair Notice), the Authority will have the options described below.

(A) The Authority may notify the Port that the Authority wishes to repair the damage. The Authority's notice must include its proposed scope of work and budget for the Port's Approval. If the Port Approves the Authority's proposed scope of work and budget, the Authority's repairs will be Reimbursable Work subject to **Section 1.3(a)** (Authority Work: Reimbursable Work) and the construction requirements of the applicable Venue Lease or Venue License. The Authority will be entitled to any casualty insurance proceeds that either it or the Port receives for the property damage, which the Authority must apply to its repair costs. The Port will reimburse as Reimbursable Costs the Authority's actual costs of Approved repairs up to the Approved budget to the extent the costs exceed insurance proceeds.

(B) The Authority may require the Port to provide Functionally-Equivalent Space to replace the Damaged Venue in accordance with **Section 1.4(h)** (Venues: Functionally-Equivalent Space).

(g) **Red Tag.** The Port will provide notice to the Authority whether the Port will repair the condition at a Venue for which the Chief Harbor Engineer issues a "red tag" or takes any other regulatory action that would prohibit the use of the Venue for the Event within 10 days after the Chief Harbor Engineer's regulatory action. The Authority will have 10 days after receipt of the Port's notice to make its demand that the Port

provide Functionally-Equivalent Space to replace the Damaged Venue in accordance with **Section 1.4(h)** (Venues: Functionally-Equivalent Space).

(h) **No Port Obligation.** The Port has no obligation to repair or reimburse the Authority for any damage to the Authority's personal property or any paneling, decorations, railings, floor coverings, or any repairs, Improvements, or Alterations that the Authority constructs, or installs, or makes on any Venue that are outside of any Port-Approved scope of work and budget for Reimbursable Work.

(i) **Waiver.** The Port and the Authority intend for this Article to govern fully in event of Casualty and, accordingly, the Port and the Authority each waives its rights under California Civil Code sections 1932(2), 1933(4), 1941, and 1942.

(j) **Disputes.** Disputes arising under this Section will be resolved by the procedures under **Section 7.6** (Dispute Resolution).

2.5. Release.

(a) **Matters Covered.** As part of its agreement to accept the Venues in their "As Is With All Faults" condition, except for the Port's obligations under **Section 1.2** (Port Infrastructure Work), **Section 1.4(g)** (Venues: Pre-Delivery Damage), and **Section 2.3** (Risk of Loss Before Delivery), effective upon Delivery of any Venue, the Authority, on behalf of itself and its successors and assigns, agrees to waive any right to recover from, and forever releases the Port, the City, and their Agents of and from any Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Authority may now have or that may arise on account of or in any way be connected with:

(i) the physical, geotechnical, or environmental condition of that Venue (including soils and groundwater conditions) (the "Existing Condition");

(ii) any applicable Laws, including Environmental Laws, subject to **Section 2.6(c)** (Environmental Matters: Environmental Indemnities) and any applicable Venue Lease and Venue License provisions regarding the Parties' respective rights and obligations with respect to any Pre-Existing Hazardous Material Condition as it exists on the applicable Delivery Date and to the extent Exacerbated by the Authority or its Agents or Invitees; and

(iii) any Claims the Authority may now or later have for Third Party Claims related to the Existing Condition of any Venue or any applicable Laws that arose during or relate to the period before the Venue was Delivered.

(b) **Effect of Release.** In connection with this release, the Authority acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR WHEN OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Authority

(c) **Scope.** The Authority agrees that the release given in this Section covers unknown Claims regarding the Existing Condition of each Venue and applicable Laws

pertaining to Existing Conditions. Accordingly, by entering into this Agreement, the Authority waives the benefits of Civil Code section 1542, or under any other statute or common law principle of similar effect. The Port acknowledges that the scope of the waiver and release given in this Section apply only to Existing Conditions and does not affect the Port's obligations under this Agreement or any Venue Lease or Venue License.

(d) **Survival.** This release and waiver will survive termination of this Agreement.

2.6. Environmental Matters. This Section applies to all Venues.

(a) **Pre-Delivery.** Before Delivery, the Authority must comply with all Environmental Laws applicable to its investigation and other activities at each Venue, and all uses, Improvements, and appurtenances of and to each Venue, as further provided in the applicable access license.

(b) **Post-Delivery.** The Parties' respective rights and obligations with respect to Hazardous Materials affecting any Venue after Delivery will be governed by **Section 2.6(c)** (Environmental Matters: Environmental Indemnities).

(c) **Environmental Indemnities.**

(i) The Port and the City will Indemnify the Authority, its Agents, and Authority Occupants (collectively, "**Authority Users**") from all Losses that are attributable to:

(A) Hazardous Material Claims arising from any Pre-Existing Hazardous Material Conditions at the Venues, except to the extent that Authority Users or members of the general public present on any wharf, pier, or land portion of any Venue (specifically excluding water areas of Venues) Exacerbate the Pre-Existing Hazardous Material Condition; and

(B) any Hazardous Materials subsequently brought upon or otherwise affecting any Venue caused by the act(s) or omission(s) of the Port or the City or their respective Agents.

(ii) The Authority will Indemnify the Port, the City, and their respective Agents (collectively, "**City Users**") from all Losses that are attributable to Hazardous Material Claims caused by Authority Users or members of the general public present on any wharf, pier, or land portion of any Venue (specifically excluding water areas of Venues).

(iii) If Authority Users Exacerbate any Pre-Existing Hazardous Material Condition, the respective obligations of the Port and the City on the one hand, and the Authority on the other hand, to Indemnify one another (as well as, respectively, the City Users and the Authority Users), will be apportioned in accordance with the degree of fault. An Indemnified Party's recovery for any Loss under this Section will be subject to the limitation of liability in **Section 7.11** (Limitations on Liability of the Parties).

(iv) For the purpose of **Section 2.6(c)** (Environmental Matters: Environmental Indemnities) only, the definition of "**Loss**" in **Section 11.2** (Defined Terms) is expanded to include:

(A) costs incurred for any Investigation or Remediation whether or not required by any Environmental Regulatory Agency or to restore the affected area to its condition before the act or circumstance that triggered Remediation obligations at any Venue; and

provide Functionally-Equivalent Space to replace the Damaged Venue in accordance with Section 1.4(h) (Venues: Functionally-Equivalent Space).

(h) **No Port Obligation.** The Port has no obligation to repair or reimburse the Authority for any damage to the Authority's personal property or any paneling, decorations, railings, floor coverings, or any repairs, Improvements, or Alterations that the Authority constructs, or installs, or makes on any Venue that are outside of any Port-Approved scope of work and budget for Reimbursable Work.

(i) **Waiver.** The Port and the Authority intend for this Article to govern fully in event of Casualty and, accordingly, the Port and the Authority each waives its rights under California Civil Code sections 1932(2), 1933(4), 1941, and 1942.

(j) **Disputes.** Disputes arising under this Section will be resolved by the procedures under Section 7.6 (Dispute Resolution).

2.5. Release.

(a) **Matters Covered.** As part of its agreement to accept the Venues in their "As Is With All Faults" condition, except for the Port's obligations under Section 1.2 (Port Infrastructure Work), Section 1.4(g) (Venues: Pre-Delivery Damage), and Section 2.3 (Risk of Loss Before Delivery), effective upon Delivery of any Venue, the Authority, on behalf of itself and its successors and assigns, agrees to waive any right to recover from, and forever releases the Port, the City, and their Agents of and from any Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Authority may now have or that may arise on account of or in any way be connected with:

(i) the physical, geotechnical, or environmental condition of that Venue (including soils and groundwater conditions) (the "Existing Condition");

(ii) any applicable Laws, including Environmental Laws, subject to Section 2.6(c) (Environmental Matters: Environmental Indemnities) and any applicable Venue Lease and Venue License provisions regarding the Parties' respective rights and obligations with respect to any Pre-Existing Hazardous Material Condition as it exists on the applicable Delivery Date and to the extent Exacerbated by the Authority or its Agents or Invitees; and

(iii) any Claims the Authority may now or later have for Third Party Claims related to the Existing Condition of any Venue or any applicable Laws that arose during or relate to the period before the Venue was Delivered.

(b) **Effect of Release.** In connection with this release, the Authority acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR WHEN OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.



Authority

(c) **Scope.** The Authority agrees that the release given in this Section covers unknown Claims regarding the Existing Condition of each Venue and applicable Laws pertaining to Existing Conditions. Accordingly, by entering into this Agreement, the Authority waives the benefits of Civil Code section 1542, or under any other statute or common law principle of similar effect. The Port acknowledges that the scope of the waiver and release given in this Section apply only to Existing Conditions and does not affect the Port's obligations under this Agreement or any Venue Lease or Venue License.

(d) **Survival.** This release and waiver will survive termination of this Agreement.

2.6. Environmental Matters. This Section applies to all Venues.

(a) **Pre-Delivery.** Before Delivery, the Authority must comply with all Environmental Laws applicable to its investigation and other activities at each Venue, and all uses, Improvements, and appurtenances of and to each Venue, as further provided in the applicable access license.

(b) **Post-Delivery.** The Parties' respective rights and obligations with respect to Hazardous Materials affecting any Venue after Delivery will be governed by Section 2.6(c) (Environmental Matters: Environmental Indemnities).

(c) **Environmental Indemnities.**

(i) The Port and the City will Indemnify the Authority, its Agents, and Authority Occupants (collectively, "Authority Users") from all Losses that are attributable to:

(A) Hazardous Material Claims arising from any Pre-Existing Hazardous Material Conditions at the Venues, except to the extent that Authority Users or members of the general public present on any wharf, pier, or land portion of any Venue (specifically excluding water areas of Venues) Exacerbate the Pre-Existing Hazardous Material Condition; and

(B) any Hazardous Materials subsequently brought upon or otherwise affecting any Venue caused by the act(s) or omission(s) of the Port or the City or their respective Agents.

(ii) The Authority will Indemnify the Port, the City, and their respective Agents (collectively, "City Users") from all Losses that are attributable to Hazardous Material Claims caused by Authority Users or members of the general public present on any wharf, pier, or land portion of any Venue (specifically excluding water areas of Venues).

(iii) If Authority Users Exacerbate any Pre-Existing Hazardous Material Condition, the respective obligations of the Port and the City on the one hand, and the Authority on the other hand, to Indemnify one another (as well as, respectively, the City Users and the Authority Users), will be apportioned in accordance with the degree of fault. An Indemnified Party's recovery for any Loss under this Section will be subject to the limitation of liability in Section 7.11 (Limitations on Liability of the Parties).

(iv) For the purpose of Section 2.6(c) (Environmental Matters: Environmental Indemnities) only, the definition of "Loss" in Section 11.2 (Defined Terms) is expanded to include:

(A) costs incurred for any Investigation or Remediation whether or not required by any Environmental Regulatory Agency or to restore the affected area to its condition before the act or circumstance that triggered Remediation obligations at any Venue; and

(B) sums a Party pays in response to Hazardous Material Claims and Environmental Regulatory Actions.

(d) **Hazardous Material Claims Against Third-Parties.** Nothing in this Agreement is intended in any way to preclude or limit the Authority from pursuing any Hazardous Material Claim the Authority may have against any Third Party, but the Authority may pursue Hazardous Material Claims against Third Parties only with the Port's prior Approval. If requested by the Authority, the Port will assign to the Authority any Hazardous Material Claims arising after Delivery of the affected Venue that the Port may have against any Third Parties.

2.7. General Indemnities.

(a) **Mutual Indemnification.** In addition to the obligations with respect to Hazardous Materials set forth in Section 2.6(c) (Environmental Matters: Environmental Indemnities), each Party must Indemnify (as applicable, the "Indemnitor") the other Party (as applicable, the "Indemnified Party") from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, occurring exclusively or primarily on property under the Indemnitor's control.

(i) In areas under shared control of the Parties, such as where City or Port enters property otherwise under the Authority's exclusive control for purposes of carrying out City or Port rights or obligations under the HVA, this Agreement, or a Venue Lease or Venue License, the Party that controls the activities in the area of shared control must Indemnify the Indemnified Party from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, the activities in the area under the Indemnitor's control. For the purpose of this Section, areas under the control of the Authority include all City-owned property that the Authority occupies under Venue Leases, Venue Licenses, and permits granted by the San Francisco Recreation and Parks Department.

(ii) The Authority agrees to indemnify the City from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, the Event-related activities of Competitors, including Oracle Racing, Inc. The Authority's obligation to indemnify under Section 2.7(a) (General Indemnities: Mutual Indemnification) applies only to the extent of City Losses that exceed any recovery under the applicable insurance policies of Competitors, including Oracle Racing, Inc.

(iii) This Section does not obviate the requirement for any Person to provide the City with a separate indemnity as provided in this Agreement or any Venue Lease, Venue License, or permit issued by the City; provided, however, that no separate indemnity may be imposed on Competitors, including Oracle Racing, Inc., under any Venue Lease, Venue License, or permit granted by the San Francisco Recreation and Parks Department under this Agreement.

(iv) The Authority's obligation under Section 2.7(a) (General Indemnities: Mutual Indemnification) includes Losses arising from the acts or omissions of the Authority, Authority Affiliates, Commercial Partners, and Authority Users to the extent that any of these Persons undertake Event-related activities on City-owned property with the express or implied Approval of the Authority, but without a grant of a right to occupancy or possession.

(b) **Exclusions.** The Indemnitor's obligations do not include any Claim arising from:

(i) an alleged Breach under the HVA;

- (ii) an alleged Event of Default under this Agreement; or
- (iii) any other Claim to the extent attributable to the negligence or willful misconduct of the Indemnified Party or any Agent of the Indemnified Party.

(c) **Scope of Indemnity.** The following apply to an Indemnitor's obligations under **Section 2.6(c)** (Environmental Matters: Environmental Indemnities) and this Section:

(i) The Indemnitor must defend the Indemnified Parties against any Hazardous Material Claims and other Claims that are actually or potentially within the scope of the Indemnification provisions of this Agreement (each, an "Indemnified Claim") even if the Indemnified Claims may be groundless, fraudulent, or false. If an Indemnified Claim is made against an Indemnified Party that falls within the scope of the Indemnification provisions of this Agreement, that Indemnified Party must provide notice to the Indemnitor of the Indemnified Claim within a reasonable time after learning of the Indemnified Claim and cooperate with the Indemnitor in the defense of the Indemnified Claim. An Indemnified Party's failure to provide the notice, however, will not affect the Indemnitor's Indemnification obligations except to the extent the Indemnitor is prejudiced by the failure.

(ii) The agreements to Indemnify under this Agreement are in addition to, and, except as specifically provided in **Section 2.6(c)** (Environmental Matters: Environmental Indemnities) and **Section 2.7(a)** (General Indemnities: Mutual Indemnification), may not be construed to limit or replace any other obligations or liabilities that the Port may have to the Authority or that the Authority may have to the Port under any access agreement as to any Venue until the Port and the Authority have entered into a Venue Lease or Venue License for that Venue. Venue Leases and Venue Licenses upon execution will effect a termination of any access agreements for the applicable Venue and will supersede the terminated access agreements in all respects, except as to obligations or other terms that explicitly survive termination.

(iii) The Indemnitor, at its option, will be entitled to control the defense, compromise, or settlement of any Indemnified Claim through counsel of the Indemnitor's own choice, subject to the Indemnified Party's right to object to counsel or Approve any settlement requiring the Indemnified Party to contribute funds other than insurance proceeds. In all cases the Indemnified Party will be entitled to participate in the defense, compromise, or settlement of any Indemnified Claim at its own cost. If the Indemnitor fails to take reasonable and appropriate action to defend the Indemnified Claim within a reasonable time after notice from the Indemnified Party describing in reasonable detail the nature of the Indemnitor's alleged failure, the Indemnified Party will have the right promptly to hire outside counsel (or to use the City Attorney if the Indemnified Party is the City, including the Port) to carry out the defense at the Indemnitor's cost, and the Indemnitor will be obligated to reimburse the Indemnified Party for its costs within 30 business days after the Indemnified Party's demand for payment. Any such demand must meet the requirements of **Section 7.10** (Payment of Costs).

(iv) The Indemnitor will be relieved of this responsibility as to an Indemnified Party that, after notice and demand, does not cooperate in the defense of any Indemnified Claim, including making witnesses and relevant documents and other records available to the Indemnitor and entering into appropriate joint defense agreements to preserve and protect the confidentiality of shared information.

(d) **Limitations.** An Indemnified Party's recovery for any Loss under this Section will be subject to Section 7.11 (Limitations on Liability of the Parties).

(e) **Term of Covered Acts; Survival.** The Indemnification obligations under this Agreement:

- (i) cover all acts and omissions of each Party occurring during the Term; and
- (ii) will survive the Term.

2.8. Insurance. Each Party has provided to the other Party evidence of the types, forms, and minimum amounts of insurance that will be available to cover Losses arising from Event-related risks and the Authority's occupancy of City property for the Event or as otherwise provided in this Agreement or in other agreements, leases, licenses or permits from the City, and each Party has Approved the other's Event-related insurance. The Parties agree that the Authority will not be required to provide coverages or limits in excess of those specified below in other Event-related agreements, leases, licenses, or permits from the City for activities on non-Port venues.

(a) **City Insurance.** The City agrees to satisfy the following insurance requirements.

(i) **Event Insurance.** Special event general liability insurance, or comparable commercial general liability insurance in a form and with coverage at least as broad as Insurance Services Office policy form ("ISO") CG 00 01, naming the Authority as an additional insured, with a minimum limit dedicated to the Event of \$100 million each occurrence and \$100 million aggregate, with any deductible or self-insured retention not to exceed \$1 million and providing at least the following coverages, which may be by endorsement, if applicable:

- (A) bodily injury, including injuries to spectators, and property damage;
- (B) Third Party Claims for accidents involving watercraft that is not owned or operated by the City consistent with coverage terms in ISO CG 00 01;
- (C) independent contractors to the City;
- (D) products liability and completed operations;
- (E) personal and advertising injury liability; and
- (F) acts of terrorism or sabotage with coverage at least as broad as current Federal Terrorism Risk Insurance Act coverage.

(ii) **Property Insurance.** "All risk" property insurance (excluding earthquake and flood) on all buildings and other Improvements owned by the City, with coverage equal to full replacement value.

(b) **Authority Insurance.** The Authority agrees to satisfy the following insurance requirements.

(i) **Event Insurance.** Special event general liability insurance, or comparable commercial general liability insurance in a form and with coverage at least as broad as ISO CG 00 01, with a minimum limit of \$50 million each occurrence and \$50 million aggregate, with any deductible or self-insured retention not to exceed \$1 million as of the Effective Date. The Authority must cause its commercial general liability insurance carrier to provide a current report on all pending and settled claims against, and remaining coverage under, the

policy for the City's review on June 1, 2013, and, purchase additional insurance coverage to provide a minimum limit of \$25 million each occurrence and \$25 million aggregate if the report indicates that available coverage is then below those limits due to claims for Authority activities other than those contemplated under this Agreement as to the Events and related activities in San Francisco. The Authority's policy must provide at least the following coverages, which may be by endorsement, if applicable:

- (A) bodily injury, including injuries to spectators;
- (B) broad form property damage, including coverages for all Permitted Uses under the Venue Leases and Venue Licenses, including Event-related uses;
- (C) independent contractors to the Authority;
- (D) products liability and completed operations;
- (E) personal and advertising injury liability;
- (F) fire damage and legal liability (with a sublimit of \$1 million) and explosion, collapse, and underground (XCU) coverage during any period in which the Authority is conducting any activity on or making any Improvements to any Venue with risk of explosion, collapse, or underground hazards;
- (G) acts of terrorism or sabotage; and
- (H) mobile equipment or unlicensed vehicles, such as forklifts, and employer's non-ownership liability.

(ii) U.S. Longshore and Harborworkers' Act Insurance; Jones Act; Workers' Compensation. Each as applicable, U.S. Longshore and Harborworkers' Act insurance in statutory amounts, and Jones Act insurance with limits of \$5 million and workers' compensation insurance in statutory amounts with employer's liability limit not less than \$2 million for each accident, injury or illness, covering all persons employed directly by the Authority in connection with the Event. If the Authority is self-insured for the insurance required under **Section 2.8(b)(ii)** (Insurance: Authority Insurance), it agrees to furnish to the Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(iii) Automobile Liability Insurance. Business automobile liability insurance in form at least as broad as ISO CA 00 01, with limits not less than \$5 million each occurrence combined single limit for bodily injury and property damage, including coverages for all owned, non-owned, and hired vehicles, which insurance is required if any automobiles or any other motor vehicles are operated in connection with the Authority's activities for the Event. If parking is a Permitted Use at any Venue, the Authority must also maintain Garage Keepers legal liability, with minimum limits of \$500,000 for up to 25 spaces garage capacity; \$1 million for 26-100 spaces garage capacity; \$2 million for 101-200 spaces garage capacity; and \$3 million for over 201 spaces garage capacity.

(iv) Property Insurance. Property insurance on an "all risk" form, excluding earthquake and flood, to the extent of full replacement value, covering all of the Authority's personal property used for the Event and any temporary Improvements or Alterations constructed by the Authority in, on, or about any Venue.

(v) Watercraft Liability Insurance. Protection and indemnity insurance or other form of watercraft liability insurance for owned and non-owned watercraft (if applicable), with limits not less than \$25 million each occurrence.

(vi) Marine General Liability. Marine general liability (MGL) (as applicable and if not included in Event insurance) with limits not less than \$10 million each occurrence and aggregate.

(vii) Hull and Machinery Insurance. Hull and machinery insurance covering owned, non-owned, and hired Vessels, with coverage for chartered or hired Vessels in accordance with the charter or rental agreement.

(viii) Liquor Liability Insurance. Host or liquor (or both, as applicable) liability insurance, with limits not less than \$10 million each occurrence combined single limit for bodily injury and property damage.

(ix) Vessel Pollution Liability Insurance. If operating watercraft with engines or fuel usage, vessel pollution liability insurance coverage with limits not less than \$1 million per occurrence and \$1 million in the aggregate with a deductible not to exceed \$50,000 or, with Port Approval, lesser limits and deductible readily available in the insurance market at a commercially reasonable cost. The insurance should cover liability imposed by Laws and include related Losses or damages including other Third Party Claims for any Loss arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or upon the navigable waters of the United States or the adjoining shorelines.

(c) Construction Activities. At all times during the Authority's construction of any Improvements or Alterations on any City property:

(i) Contractor Requirements. The Authority must require its contractors and subcontractors to maintain the following coverages:

(A) Commercial general liability insurance with limits of not less than \$5 million each occurrence and aggregates, including a "per project" general aggregate, on a policy form that is at least as broad as ISO CG 00 01, with the coverage for completed operations maintained continuously in force for at least 10 years after Completion of construction.

(B) Business automobile liability insurance with a policy limit of not less than \$5 million each occurrence on a policy form that is at least as broad as ISO CA 0001 covering automobile liability for Symbol 1 (any auto); if contractor or subcontractor is performing work that involves removal or treatment of Hazardous Materials or other regulated materials, the policy must specifically cover the type of work being performed and include: (1) MCS-90 endorsement along with specific endorsement limiting the reimbursement provisions of MCS-90 to the Named Insured; and (2) broadened pollution liability coverage at least as broad as coverage under ISO endorsement form CA 99 48.

(C) U.S. Longshore & Harborworkers Act coverage, if applicable, and workers' compensation coverage, both with statutory limits and employer's liability insurance with limits of not less than \$1 million each accident, injury or illness.

(D) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than \$1 million

each occurrence, or with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, and including Jones Act (if applicable), wreck removal and damages "In Rem" (the vessel).

(E) Marine general liability (MGL) (as applicable) with limits not less than \$10 million each occurrence and aggregate.

(F) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than \$5 million per occurrence and \$5 million in the aggregate with a deductible not to exceed \$50,000 or, with Port Approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under Laws, and include related Losses or damages including other Third Party Claims, for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or upon the navigable waters of the United States or the adjoining shorelines.

(G) Contractor's pollution legal liability insurance and Oil Pollution Act (OPA) insurance with combined single limit of \$5 million each claim, \$5 million annual renewable aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants; with coverage limits increased to \$25 million for any Vessel manufacturing or fabrication activities, as applicable. All pollution liability coverages must be endorsed to include non-owned disposal site coverage.

(ii) Authority Requirements.

(A) In addition, the Authority must carry "Builder's Risk" insurance on a "Special Form" coverage basis. The amount of coverage must be equal to the full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structure(s). The policy must provide coverage for "soft costs," such as design and engineering fees, code updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed \$50,000.

(B) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as the sole loss payees.

(C) Each insured must waive all rights of subrogation against each of the other insureds to the extent that the loss is covered by the Builder's Risk insurance and the insurance carrier must waive all rights of subrogation against all insureds. Settlement of any Claim will be made with the City and County of San Francisco.

(D) Builder's Risk insurance must include the following coverages: (1) all damages or loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit or stored on or off the site, to construction plant and temporary structures; (2) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable Law; (3) expediting expenses; (4) start-up and testing and machinery breakdown including electrical arcing; and

(5) consequential loss (lost revenues and costs of funding or financing when a covered risk causes delay in completing the work). Any amount the Port receives specifically for a consequential loss associated with delay to the Completion of the work will be credited against any liquidated damages for delay for which the contractor would otherwise be responsible.

(iii) Professional Services Requirements. The Authority must require architectural, design, engineering, geotechnical, and environmental professionals under contract with the Authority and/or its Agents for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than \$1 million each Claim, with respect to all professional services provided to the Authority for the Improvements or Alterations constructed by the Authority.

(d) **Insurance for ACRM and Competitors.**

(i) ACRM shall provide the coverages specified in Section 2.8(e)(i) & (ii) (Insurance: Insurance for Authority Occupants), to the extent applicable to its activities, except with respect to the following:

A. commercial general liability insurance as specified in Section 2.8(b)(i)(A)-(F) & (H) (Insurance: Authority Insurance) with limits of \$1 million per occurrence with umbrella coverage for up to \$24 million; and

B. watercraft liability as specified in Section 2.8(b)(v)-(vii) & (ix) (Insurance: Authority Insurance) with limits \$1 million per occurrence with umbrella coverage for up to \$20 million.

(ii) Competitors shall provide the same coverages required by the Protocol.

(iii) Any releases that the Authority obtains from ACRM and Competitors after the Effective Date must also release the City and the Port from liability to the same extent that the Authority is released, if and to the extent that the release relates to Event-related activities.

(e) **Insurance for Authority Occupants.**

(i) Except as specifically required otherwise in this Agreement, all Authority Occupants must meet or be covered by the following minimum insurance requirements throughout the term of their Event-related occupancy and all activities occurring on or about the occupied Venue related to such occupancy:

(A) commercial general liability insurance in a form and with coverage at least as broad as ISO CG 00 01, with limits not less than \$1 million each occurrence and \$2 million annual aggregate and the following coverages, each as applicable, must also be included by endorsement or otherwise, or addressed by a separate policy with the same minimum limits of \$1 million per occurrence, \$2 million aggregate: (1) for any vendor serving alcoholic beverages, host or liquor (as applicable) liability insurance; (2) media liability; and (3) discrimination and harassment (with no molestation exclusion);

(B) workers' compensation insurance in statutory amounts and employer's liability coverage in an amount not less than \$1 million, and if applicable Jones Act coverage with at least \$1 million in limits and/or U.S. Longshore and Harborworkers Act coverage with statutory limits,

covering all employees performing work in connection with the Event;
and

(C) business automobile liability insurance in a form and with coverage at least as broad as ISO CA 00 01 with limits not less than \$1 million each occurrence combined single limit covering owned, non-owned, and hired vehicles.

(ii) Authority Occupants engaged in the following activities must meet the following minimum coverages:

(A) aviation: aviation liability coverage with limits not less than \$25 million;

(B) bleacher erection: commercial general liability coverage on a policy form at least as broad as ISO CG 0001 with limits not less than \$5 million;

(C) pyrotechnics: commercial general liability coverage on a policy form at least as broad as ISO CG 0001 with limits not less than \$5 million; and

(D) concert promoters: commercial general liability coverage on a policy form at least as broad as ISO CG 0001 with limits not less than \$5 million.

(iii) Any releases that the Authority obtains from any persons covered by this Subsection must also release the City and the Port from liability to the same extent that the Authority is released.

(f) **Claims-Made Policies.** For any insurance required under **Section 2.8 (Insurance)** that uses a claims-made form of policy, coverage must be maintained continuously throughout the Term and without lapse for at least 3 years after the termination of this Agreement, so that Claims made after termination of this Agreement based on occurrences during the Term will be covered.

(g) **Payment of Premiums.** Each Party agrees to pay the premiums for maintaining all insurance required of that Party and to require all Agents and Invitees required to procure and maintain insurance to pay the required premiums.

(h) **Waiver of Subrogation Rights.** The City on the one hand, and the Authority and ACRM, on the other hand (each a "**Waiving Party**"), each waive any right of recovery against the other for any loss or damage sustained by that other Party in relation to the Event, contents of any Venue, or any operations at any Venue, whether or not caused by the fault or negligence of the other Party, to the extent the loss or damage is covered by insurance that is required to be purchased by the Waiving Party under **Section 2.8 (Insurance)** or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Event, but a party's failure to obtain the endorsement will not affect this waiver.

(i) **Right to Procure.** After 5 business days' prior notice to the other Party, each Party will have the right, but not the obligation, to obtain, and later continuously to maintain, any insurance required under **Section 2.8 (Insurance)** ("**Forced Coverage**") that the other Party (or any others specified in **Section 2.8(b) (Insurance: Authority Insurance)** and **Section 2.8(d) (Insurance: Insurance for Authority Occupants)** of this Section) failed to obtain or maintain, and to charge the reasonable cost of obtaining and maintaining that insurance to the other Party. If the other Party or other Person later obtains the required, but lapsed or missing insurance coverage, then the Party that

obtained the Forced Coverage agrees to cancel the insurance it obtained and to credit the appropriate Person with any premium refund subject to the terms of each insurance policy.

(j) **Notice of Cancellation.** Each policy that a Party is required to maintain under **Section 2.8 (Insurance)** must request that the insurer provide at least 30 days' advance written notice to the other Party of any cancellation of insurance, intent not to renew, or modification of any coverage terms that would eliminate any of the coverages required under this Section. If any insurer will not agree to provide advance notice of cancellation, intent not to renew, or modification of any coverage required under **Section 2.8 (Insurance)**, the Named Insured must provide a copy of the insurer's notice or notice of its discovery of the circumstance to the other Party immediately upon the insured's receipt or discovery of any pending or effective cancellation, intent not to renew, or modification of any coverage that would eliminate or reduce any of the coverages required under this Section.

(k) **General Insurance Matters.**

(i) All liability insurance policies (other than professional liability, workers' compensation, employer's liability, U.S. Longshore and Harborworkers Act coverage, Jones Act coverage, Hull & Machinery, Property, and Builder's Risk) required to be maintained by the Authority and its Agents and Invitees under this Agreement must include cross-liability coverage as respects the additional insureds and be endorsed to name as additional insureds the "*City and County of San Francisco, the San Francisco Port Commission, the San Francisco America's Cup Organizing Committee, and their Officers, Directors, Employees, Elected and Appointed Officials, and Agents,*" be primary to any other insurance or self-insurance maintained by the additional insureds for Claims arising under this Agreement, except for Claims that the City has specifically agreed to cover on a primary basis under the City's Event Liability insurance coverage as outlined below, and provide that coverage applies separately to each insured against whom complaint is made or suit is brought except for the limits of the company's liability.

(ii) The City's Event liability insurance policy must include cross-liability coverage as respects the additional insureds and separation of insureds language and be endorsed to name *America's Cup Event Authority, LLC, and its officers, directors, and employees* as additional insureds.

(iii) The City has agreed, subject to Risk Manager Approval, which will proceed expeditiously after relevant ACRM records and information have been provided, and which will not be unreasonably withheld, that City's Event liability insurance policy will include cross-liability coverage as respects the additional insureds and separation of insureds language and be endorsed to name *America's Cup Race Management, Inc. and its officers, directors, and employees* (but only as to its land-based, Event-related activities) as additional insureds.

(iv) The City's Event liability insurance coverage will be primary to any other insurance purchased and maintained by the Authority only as respects Claims that occur or arise from Event activities on property under the control of the City or the Port or their respective Agents during Race Periods. However, the City's Event Liability insurance coverage, including any deductible or self-insured retention, will be excess to any other primary or excess coverage maintained by any Person other than the Authority, and the City's Event Liability coverage, including any deductible or self-insured retention, will be excess to any primary and excess coverage maintained by the Authority for Claims that occur or

arise from Event activities on property under the control of the Authority or its Agents or its Invitees.

(v) These additional insured requirements may be met by a blanket endorsement or other endorsement(s) at least as broad as ISO 2010 combined with ISO 2037, providing coverage to the additional insureds for both ongoing and completed operations.

(vi) All Persons required to maintain insurance, and all insurance policies required to be maintained, under **Section 2.8** (Insurance) must waive any rights of subrogation against the "*City and County of San Francisco, San Francisco Port Commission, America's Cup Event Authority, LLC, America's Cup Race Management, Inc., San Francisco America's Cup Organizing Committee, and their respective Officers, Directors, Employees, Elected and Appointed Officials, and Agents.*"

(vii) The City has agreed to include waiver of subrogation in its Event policy against each of *America's Cup Event Authority LLC, America's Cup Race Management Inc., Oracle Racing, Inc., Artemis Racing, Team Korea, China Team, Energy Team, Ben Ainslie Racing, Emirates Team New Zealand and their respective Officers, Directors, Employees, Elected and Appointed Officials, and Agents.* The City agrees to include waiver of subrogation in its Event policy against Competitors added to the Event in the future in accordance with the Protocol, subject to notice from the Authority and due diligence review by and approval of the Risk Manager, which will not be unreasonably withheld.

(viii) All insurance policies required to be maintained under **Section 2.8** (Insurance) must be issued by an insurance company or companies, each with a general policy rating of not less than A- and a financial class of VIII or better, as determined by the latest edition of the Best's Insurance Guide published by A.M. Best Company, Inc. or its equivalent, and be authorized to do business in the State.

(ix) Before the Effective Date and not less than 10 days before the expiration date of any of the policies that the Parties are required to carry under **Section 2.8** (Insurance), each Party must deliver to the other Party reasonably acceptable evidence that policies complying with the requirements of this Section have been issued or renewed and are in force, with the payment in full of all premiums. Evidence of coverage that other Persons are required to carry under **Section 2.8** (Insurance) will be required before any such Persons enter onto any Venue subject to a Venue Lease or Venue License for Event-related activities.

3. CONDITIONS TO DELIVERY OF VENUES

3.1. Agreement to Lease. Subject to the Authority's satisfaction of all of the applicable conditions to the Delivery of Venues, unless waived by the Port, the Port agrees to Deliver possession of the Venues to the Authority ("**Deliver**"), and the Authority agrees to accept Delivery of the Venues from the Port, under the Venue Leases and Venue Licenses in accordance with this Agreement. Upon execution, the Venue Leases and Venue Licenses will supersede any prior licenses or access agreements for specific Venues and govern the Parties' respective rights and obligations regarding all matters specifically addressed in them regarding the applicable Venues. No Venue Leases, Venue Licenses, or memoranda of any of them will be recorded. The remaining terms and conditions of the Venue Leases will be no less favorable to the Authority than what the Port has agreed to with other highly sought after, "credit" tenants making significant Improvements to the premises or whose presence significantly enhances maritime and visitor-serving uses in or about Port properties.

3.2. Delivery. Delivery of the Venue Leases and Venue Licenses will be effective when all conditions set forth in this Article have been satisfied or waived.

(a) **Extension.** The Parties have agreed to the Delivery Dates specified in *Schedule I*, but the Port may not Deliver the Venue Lease or Venue License for a specific Venue until all of the conditions precedent specific to that Venue, as described in this Article, are either satisfied or waived by the Party for whose benefit the condition is imposed. If all of the conditions precedent are not satisfied or waived by the Delivery Date, either Party may extend the Delivery Date by giving the other Party notice specifying the extended Delivery Date, delivered no later than 10 business days before the Delivery Date. Unless the Party receiving the notice objects within 24 hours, the Delivery Date will be extended automatically to the date specified in the notice.

(b) **Termination as to Venue.**

(i) If a Venue is not Delivered by the Delivery Date because a condition to the Authority's obligation to accept Delivery has not been satisfied or waived, then the Authority may terminate this Agreement as to that Venue, and neither Party will have any further obligations under this Agreement with respect to that Venue except as otherwise expressly provided in this Agreement, unless the Delivery Date has been extended by the Parties' written agreement, in their respective sole discretion.

(ii) If a Venue is not Delivered by the Delivery Date solely because a condition to the Port's obligation to Deliver Venues has not been satisfied or waived, then either Port or Authority may terminate this Agreement as to that Venue, and neither Party will have any further obligations under this Agreement with respect to that Venue except as otherwise expressly provided in this Agreement (such as the continuing obligations under **Section 2.6(c)** (Environmental Matters: Environmental Indemnities) and **Section 2.7** (General Indemnities)), unless the Delivery Date has been extended by the Parties' written agreement, in their respective sole discretion.

(c) **Termination of Agreement.** In addition, if any one or more of the Venues are not Delivered by the applicable Delivery Date, then the Authority will have the right to terminate this Agreement in its entirety.

3.3. Conditions to the Port's Obligation to Deliver Venues. The following conditions precedent must have been satisfied by the Authority or waived by the Port before the Port will be obligated to Deliver any Venue to the Authority under the applicable Venue Lease or Venue License:

(a) No Authority Event of Default exists.

(b) The Authority has delivered to the Port at least 2 fully executed sets of the Venue Lease or Venue License.

(c) The Authority has performed all obligations under this Agreement required to be performed on its part before Delivery, if any.

(d) No changes in Laws (excluding Laws changed by the City or the Port) have occurred that would prevent the performance of the City's or the Port's obligations as contemplated above.

(e) The Authority has delivered to the Port a certificate to: (i) confirm the truth and accuracy of all the Authority's representations and warranties in this Agreement in all material aspects as of the Effective Date; and (ii) provide evidence of its authority to enter into the Venue Leases, Venue Licenses, this Agreement, and related transaction agreements.

(f) The Authority has furnished all required insurance endorsements or duplicate originals of insurance policies that the Authority is required to maintain under this Agreement.

(g) Port, Board, and other City Approvals required for the Venue Leases and Venue Licenses, and other Event-related agreements contemplated by this Agreement have been received, remain effective, and are final, binding, and non-appealable, except for any pending lawsuit initiated under CEQA.

(h) The Office of Economic and Workforce Development has Approved any submissions and agreements required under the Workforce Development Plan.

3.4. Satisfaction of the Port's Conditions Precedent.

(a) **Port's Benefit.** The conditions precedent set forth in **Section 3.3** (Conditions to the Port's Obligation to Deliver Venues) are intended solely for the Port's benefit. If any condition precedent is not satisfied on or before the required Delivery Date (subject to extension by Force Majeure), the Port's Executive Director may waive the condition in her discretion, or, if the Executive Director determines that waiver of the condition precedent materially affects the Port's rights, obligations, or expectations, then the Port Commission will have the right in its sole discretion to waive the condition precedent and authorize Delivery of the Venue by resolution at a Commission meeting.

(b) **Extension.** If the Authority is using reasonably diligent efforts to meet or satisfy the conditions precedent to Delivery, the Delivery Date will be extended for a reasonable period of time specified by the Authority, to allow the conditions precedent to be satisfied.

3.5. Conditions to the Authority's Obligation to Accept Delivery of Venues. The following conditions precedent must have been satisfied by the Port or waived by the Authority before it will be obligated to accept Delivery of any Venue from the Port:

(a) The Port has delivered a fully executed original of the applicable Venue Lease or Venue License.

(b) The Port has performed all obligations under this Agreement that the Port is required to perform before Delivery, unless the Parties have agreed to the Authority's occupancy subject to the Port's right to enter and access the Venue to the extent reasonably necessary until all Port Infrastructure Work and Venue Repairs are Complete.

(c) The Port is prepared to Deliver the Venue to the Authority under the applicable Venue Lease or Venue License subject only to the matters specified in **Section 3.8(c)** (Condition of Title to Venues: Port Requirement).

(d) No Port Event of Default exists.

(e) Neither the City nor the ACOC is in Breach of the HVA.

(f) Port, Board, and other City Approvals required for the Venue Leases, Venue Licenses, and other Event-related agreements contemplated by this Agreement have been received, remain effective, and are final, binding, and non-appealable.

(g) The Port has furnished to the Authority all required certificates of coverage and insurance endorsements for insurance policies the City is required to maintain under **Section 2.8(a)** (Insurance: City Insurance).

(h) The City has delivered the LDA Security if required to do so before the Delivery Date.

3.6. Satisfaction of the Authority's Conditions Precedent. The conditions precedent set forth above are intended solely for the benefit of the Authority. If any condition

precedent is not satisfied on or before the Delivery Date for a specific Venue, the Authority will have the right in its sole discretion either to waive the condition precedent and accept Delivery of the Venue (but without waiving any remedies under this Agreement) or, in the alternative, to terminate this Agreement to the extent permitted under **Section 3.2(b)(ii)** (Delivery: Termination as to Venue) and **Section 3.2(c)** (Delivery: Termination of Agreement). In addition, if the Port is using reasonably diligent efforts to meet the Authority's conditions precedent, the Delivery Date may be extended, at the Authority's sole option, for a reasonable period of time specified by the Authority.

3.7. Mutual Obligation. If all conditions precedent under **Section 3.3** (Conditions to the Port's Obligation to Deliver Venues) and **Section 3.5** (Conditions to the Authority's Obligation to Accept Delivery of Venues) have been satisfied or waived by the benefited Party on or before the applicable Delivery Date for a Venue, the Port will be obligated to Deliver the Venue and the Authority will be obligated to accept Delivery of the Venue. All conditions precedent not then satisfied or waived will be deemed waived by the Party benefited by the condition upon Delivery.

3.8. Condition of Title to Venues.

(a) **Public Trust.** The State transferred San Francisco harbor to the City in 1969 subject to the Public Trust, to be operated and managed by the Port under the broad powers granted by the Burton Act and applicable provisions of the San Francisco Charter. The Port agrees to Indemnify the Authority from any Third-Party Claim that the Port does not own or have the legal authority to grant to the Authority the interest in any Venue to be granted by the Venue Leases and Venue Licenses.

(b) **State's Reserved Rights.** The Authority acknowledges that each of the Venues is subject to the Public Trust, and that the State reserves certain subsurface mineral rights, subject to certain limitations, from a point of entry outside of each Venue under section 2 and section 3.5(c) of the Burton Act, which will be more particularly described in the Venue Leases and Venue Licenses.

(c) **Port Requirement.** Except for the Public Trust, the State's reserved rights, and Approved pre-existing tenancies specified in *Schedule 2* (if any), the Port's reserved rights as to the Pier 27 Venue, Piers 30-32, and Pier 80, and other matters to which the Authority agrees, the Port must Deliver to the Authority the Venues under and subject to the Venue Leases and Venue Licenses for the terms specified in the Venue Leases and Venue Licenses, free and clear of possession and rights of possession by Third Parties.

(d) **Cure Period.** If, on the Delivery Date, the Port is not able to Deliver a Venue other than the Pier 27 Venue or Piers 30-32 in the condition required under **Section 3.8(c)** (Condition of Title to Venues: Port Requirement), and that condition would materially and adversely affect the Authority's use of the applicable Venue for the Project, the Port will have up to 30 days after the Delivery Date to correct the condition. Delivery will be extended to the earlier of 10 business days after the condition is corrected or the expiration of the 30-day period.

(e) **No Material Changes.** Between the Effective Date and Delivery or earlier termination of this Agreement, the Port agrees not to:

(i) make any material physical changes to any Venue other than as required under **Section 1.2** (Port Infrastructure Work) or emergency work necessary to prevent harm to public health, safety, and welfare;

(ii) enter into any agreement affecting the right of possession to or condition of any Venue unless the agreement can be completed or terminated

before Delivery or the Authority, in its sole discretion, agrees to assume the agreement as of Delivery; or

(iii) take or permit any action that would materially alter any Venue.

The Port's agreement under this Subsection does not affect the Port's right to make repairs and maintenance to Venues as needed in the Port's judgment, or to enter onto any Venue to gain access to installations required to satisfy federal funding or Port security requirements.

(f) **Authority Options for Failure to Deliver.** If, despite its efforts under **Section 3.8(d)** (Condition of Title to Venues: Cure Period), the Port is unable to Deliver a Venue in the condition required under **Section 3.8(a)** (Condition of Title to Venues: Port Requirement) on the Delivery Date, as it may be extended in accordance with the terms of this Agreement, the following will apply:

(i) The Authority may elect to do one or more of the following by notice to the Port:

(A) terminate this Agreement in its entirety (in which case, the Authority must surrender possession of any previously Delivered Venues as of the date of termination) or as to the applicable Venue only;

(B) accept Delivery of the Venue under the Venue Lease or Venue License, with the following exclusive options:

(1) subject to the Port's continuing obligation to cure the condition of title; or

(2) conditioned on receipt of the Port's assignment to the Authority of the Port's rights and obligations under any pre-existing lease at the Venue for the term of the Venue Lease or Venue License and on the right to recover the costs of curing the condition as Reimbursable Costs;

(C) for Venues other than the Pier 27 Venue and Piers 30-32, extend the Delivery Date to permit the Port to cure the condition.

(D) for the Pier 27 Venue or Piers 30-32, exercise its remedies under **Section 1.2(b)(iii) & (iv)** (Port Infrastructure Work: Piers 30-32 Work by Port) and **Section 1.2(c)(ii)(C) & (D)** (Port Infrastructure Work: Cruise Terminal Work).

(ii) If the Authority accepts Delivery, the condition will be deemed waived but solely with respect to any action by the Authority against the Port, without prejudice to its right to make demand for payment from the Cash Collateral. In addition, the Port will cooperate with the Authority in any lawfully prosecuted unlawful detainer proceedings against any pre-existing tenants.

(iii) If the Authority fails to provide notice of its election within 10 days after the Delivery Date, the Port will provide Authority with notice of Authority's failure to provide notice. The Port's notice will:

(A) specify that the Authority must provide notice of its election within 10 days after the date of the Port's notice; and

(B) indicate whether the Authority's failure to provide timely notice will be deemed a waiver of this condition, or a termination of this Agreement as to that particular Venue.

(iv) In any case, the Authority will have no remedies other than Indemnification under Section 3.8(a) (Condition of Title to Venues: Public Trust) and remedies under Section 3.8(f) (Condition of Title to Venues: Authority Options for Failure to Deliver) against the Port for the condition.

(g) **Pre-Existing Tenancies.** The Authority has agreed to accept the Venues subject to the pre-existing tenancies listed on *Schedule 2*, with the Port retaining rental revenues.

3.9. Taxes and Assessments. The Port acknowledges ACOC's commitment under HVA § 5.2(d)(ii) to pay certain costs of the Authority's use and occupation of the Venues and the City's commitment under HVA § 10.2 to work with ACOC to raise funds to offset the Authority's stevedoring costs. The City and Port agree that the Authority will not be responsible for payment of Utility Costs, specifically including the following payments:

(a) to the City, all possessory interest taxes, utility taxes and other taxes, fees or charges imposed by the City or any Regulatory Agency for or with respect to the possession or use of the Venues and all Improvements, fixtures, and personal property located on the Venues, excluding any personal property taxes levied on the race, tender, spectator, or other Vessels;

(b) to the applicable utility provider, the costs of all electricity, natural gas, water, sewage, and refuse removal ("Utility Costs") under the Venue Leases and Venue Licenses, but only to the extent customary for Event uses, including Vessel mooring utility services, but specifically excluding Utility Costs associated with large scale removal or demolition of Vessels or equipment, and construction-related costs; and

(c) to the applicable service provider, the costs to connect fiber optic cable for telephone and data communication services to the Venues as reasonably necessary for the Event.

3.10. Compliance with Laws. The Authority understands and agrees that the Port is entering into this Agreement in its capacity as a landowner with a proprietary interest in each Venue and not as a Regulatory Agency with certain police powers. By entering into this Agreement, the Port is not modifying or limiting the obligations of the Authority to proceed with Event activities in accordance with all Laws. The Authority must comply with:

(a) all Laws applicable to Authority's uses under the Venue Leases and Venue Licenses (but nothing in this Agreement will diminish or otherwise alter the Port's obligations to ready the Venues for the Authority's use in accordance with Section 1.2 (Port Infrastructure Work));

(b) the allocation of responsibilities for the MMRP mitigation measures to the Authority, as specified in *Exhibit A* and HVA § 2:4, and all other MMRP mitigation measures applicable to the Authority's Event-related activities; and

(c) all requirements of all insurance policies that apply to the Venues, the Improvements, the Event, or the Authority's personal property.

3.11. Regulatory Approvals.

(a) **No Guarantee.** The Authority understands that certain Event-related activities at the Venues will require Regulatory Approvals by applicable Regulatory Agencies other than the Port. The Authority acknowledges that the City's obligation to use best efforts to obtain all Regulatory Approvals to host the Event under HVA § 1.2 is not a guarantee that the City will be able to secure all required Approvals for the Improvements and the Project.

(b) **Port Approval.** The Authority may not seek any Regulatory Approval relating to the use of any Port Venues without obtaining the Port's prior Approval.

Throughout the process for any Regulatory Approval, the Authority will consult and coordinate with the Port.

(i) The Port will cooperate with the Authority in its efforts to obtain Regulatory Approvals, but the Authority may not agree to the imposition of conditions or restrictions in its efforts to obtain a permit from any other Regulatory Agency if the Port is required to be a co-permittee or the conditions or restrictions could create any obligations on the Port's part without the Port's prior Approval. The Port will have the right to withhold its Approval if the proposed conditions would obligate the Port, as co-permittee, to perform work outside the applicable Venue premises and the Authority has not assumed the obligations to the Port's satisfaction.

(ii) The Port will provide the Authority with a notice stating the Port's Approval or Disapproval of permit conditions within 10 days after receiving the Authority's request, unless the Port's Executive Director determines that Port Commission or Board action is necessary, in which case, Port staff will seek appropriate action at the Port Commission and (if required) subsequent Board hearings after receipt of the Authority's request, subject to each body's agenda-setting procedures, notice requirements, and staff preparation time.

(iii) The Authority agrees to Indemnify the City, including the Port, from any Losses to the extent arising from the Authority's failure to obtain the Port's prior Approval of any conditions.

(c) **Right to Contest.** The Authority has the right to appeal or contest any condition imposed on the Authority or any Venue by any Regulatory Approval in any manner permitted by Law. The Authority must provide the Port with prior notice of any appeal or contest and keep the Port informed of the proceedings. The Authority must pay or discharge any fines, penalties, or corrective actions imposed as a result of the Authority's failure to comply with the terms of any Regulatory Approval. In addition to any other Indemnification provisions of this Agreement, the Authority must Indemnify the Port and the City from and against any and all Losses arising from the Authority's failure to comply with any Regulatory Approval or the appeal or contest of any Regulatory Condition of Approval except to the extent that Losses arise from the negligent or intentional acts or omissions of the Port acting in its proprietary capacity.

3.12. Contacts with Regulatory Agencies. The Authority acknowledges the importance to the Port's mission of maintaining professional working relations with FEMA, State Lands, San Francisco Bay Conservation and Development Commission ("BCDC"), and other Regulatory Agencies and undertaking the economic development, historic preservation, public access Improvements, and the repair and replacement of Port facilities in accordance with the Port's Public Trust obligations for Port lands. Accordingly, the Authority agrees as follows:

(a) **Port Relationships.** The Authority will notify Port of any substantive communications regarding the Project or any Venue with Regulatory Agency staff, counsel, or commission members, or members of the State Legislature or their staff or counsel and will not enter into any binding agreements with Regulatory Agencies related to the use of any Venue without the Port's prior Approval.

(b) **Studies.** The Authority will provide a copy of any required technical studies or reports pertaining to the physical condition of any Venue to the Port review and comment no less than 5 days before it is submitted to any Regulatory Agency.

(c) **Non-Substantive Contacts.** This requirement will not apply to communications in the ordinary course of business that do not involve substantive legal, strategic, design of Event-related Improvements, Event operations, or other material issues affecting the Project.

3.13. Public Relations and Outreach.

(a) **Port Media Issues.** The Parties acknowledge that the Event Advertising Plan developed in accordance with the HVA will govern promotional activities relating to the Event generally, but agree to cooperate in good faith on media communications relating to Port facilities, and Event-related Improvements ("**Port Media Issues**").

(b) **Notice.** The Authority agrees to:

(i) make reasonable, good faith efforts to notify the Port's designated media relations contact or one of its Project Managers before issuing any media communications regarding Port Media Issues; and

(ii) give timely notice to the Port of any media inquiry regarding Port Media Issues and of the Authority's response.

(c) **Exigent Circumstances.** When the Authority believes that exigent circumstances make it infeasible for the Authority to provide advance notice as provided in Section 3.13(b) (Public Relations and Outreach: Notice), the Authority agrees to contact orally and by email either the Port's media relations contact or one of its Project Managers, and the Port in its discretion may waive any applicable notice periods otherwise required under this Section.

(d) **General Promotion.** This Section will not:

(i) apply to communications regarding the Event made in the ordinary course of the Authority's business and informational brochures, flyers, and similar materials describing the Event;

(ii) preclude the Authority, its members, or its Agents from responding orally or in writing to media inquiries about its business, operations, its role in the Event, or Event activities; or

(iii) affect the Authority's right to market its other business activities, to the extent not expressly encompassed within Port Media Issues.

3.14. Force Majeure and Other Delays.

(a) **Extension.** All dates and times by which any Party or Third Party must perform an obligation, satisfy a condition to the other Party's performance, or respond to a notice, request, or demand under this Agreement will be extended by Force Majeure.

(b) **Notice.** To obtain the benefit of an extension of time due to Force Majeure (in each instance, a "**Force Majeure Delay**"), the Party whose act is delayed (the "**Delayed Party**") must give notice within 30 days after the earlier of the event or discovery of the event causing the delay to occur to the other Party of:

(i) the cause of delay;

(ii) if the Delayed Party does not discover the event until after more than 2 days after it occurred, the time elapsed between the event and discovery of the event and the reason for delay in discovering the event; and

(iii) the Delayed Party's reasonable estimate of the length of the Force Majeure Delay.

(c) **Effect of Notice or Failure to Provide Notice.** Unless the Party receiving notice objects to the Delayed Party's estimate of the period of Force Majeure Delay within 5 days after timely receipt of a Force Majeure notice, the Force Majeure Delay will be the period specified in the notice. A Delayed Party that does not provide timely notice will be deemed to have waived the benefit of its right to a Force Majeure Delay.

(d) **Definitions.** The following definitions will apply in the application of this Section:

(i) Subject to **Section 3.15** (Conditions Subsequent Regarding Certain Force Majeure Events: Labor Disputes), “**Force Majeure**” means any of the following events beyond the Delayed Party’s control, but only to the extent that the event delays or prevents a Party’s performance: acts of nature (excluding unusually severe weather) or of the public enemy; acts of the government (not including issuance of Regulatory Approvals by Regulatory Agencies); fires; floods, tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather; and substantial interruption of work caused by labor disputes or strikes directed at Event-related activities, including Improvements and Alterations at Venues.

(ii) “**Litigation Force Majeure**” means any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, that prevent the action that is being delayed, brought by a Third Party that challenges:

(A) the validity of any action taken by any City body, including the Planning Commission and the Port Commission, in connection with environmental review of the Project under CEQA or NEPA, Approvals relating to the Project, or any findings on which any action is predicated;

(B) the validity of any action taken by any other Regulatory Agency, including environmental review of the Project; or

(C) the failure of any Regulatory Agency to impose a Regulatory Condition of Approval.

Any proceeding brought by an Authority Affiliate or Agent, any Persons Controlled by or under the Common Control of the Authority or an Authority Affiliate, or any other Third Party assisted directly or indirectly in the proceeding by the Authority is excluded from the definition of Litigation Force Majeure.

(e) **Event Postponement.** The Port acknowledges that, independent of Force Majeure, the Authority has the right under the *HVA § 12.1* to postpone any World Series regatta or Regatta for up to 12 months from the dates specified in the Venue Schedule, as revised from time to time in accordance with *HVA §§ 3.3-3.4*. This Agreement does not provide an independent basis for postponement of any regatta. The following will apply if the Authority elects to exercise this right under the *HVA*:

(i) The Authority will provide the Port with a notice of the election, including the proposed dates for the anticipated postponement, concurrently with its notice to the City.

(ii) The Authority will consult with the City to implement revisions to the Venue Schedule to accommodate the proposed postponement. The City will have the right to change the designated Venues for the Event, subject to applicable Regulatory Agency Approval, as long as the Event can be accommodated at those Venues to the Authority’s satisfaction.

(iii) The Port’s economic good standing relies upon its continuing operation of the waterfront, including its ongoing leasing activities at non-Venue locations and its maritime operations. The Port’s continuing operations will rely on its ability to use or lease portions of its facilities not in use as Event Venues, and the Port’s Public Trust mission requires it to make Port property available for other Public Trust uses such as access for navigation, fishing, and commerce, when Venues are not being used for the Event. The Authority acknowledges that

the Port may consider these factors when reviewing any proposed changes to the Venue Schedule.

(iv) A postponement by the Authority will effect an automatic extension of dates for performance of the Parties under this Agreement, including the Delivery Dates for any Venue planned for use for the postponed regatta consistent with the revised Venue Schedule will be revised in accordance with *HVA §§ 3.3-3.4*.

(v) This Subsection does not change any of the other rights or obligations under *HVA § 12.1*.

3.15. Conditions Subsequent Regarding Certain Force Majeure Events. The City has agreed to make the following good faith efforts with respect to certain Force Majeure events that might affect the Port's Delivery of the Pier 27 Venue or Piers 30-32.

(a) **Labor Disputes, Fire, and Unusually Severe Weather.** The City commits to seeking Approval to amend the LDA to provide for payment to the Authority of liquidated damages for Losses that may arise from delays caused by labor disputes or strikes directed at the City's construction or other Event-related site preparation activities at the Pier 27 Venue or Piers 30-32, fire, and unusually severe weather, subject to Approval by the Port Commission and the Board no later than October 17, 2012, in each such body's sole discretion. Should the City receive both required Approvals, delays caused by labor disputes or strikes directed at the City's construction or other Event-related site preparation activities at the Pier 27 Venue or Piers 30-32, fire, or unusually severe weather, will not be Force Majeure events excusing the City's obligation to pay the Authority liquidated damages should the Delivery of Piers 30-32 or the Pier 27 Venue be delayed beyond March 1, 2013, as described in **Section 1.1(b)** (Port Infrastructure Work: Piers 30-32 Work) and **Section 1.2(iii)** (Port Infrastructure Work: Cruise Terminal Work), subject to the \$5 million cap. If the Authority directs the Port to secure and deliver Functionally-Equivalent Space for the Unavailable Venue, the Authority's Losses will include Relocation Costs. The City's costs of providing replacement space will not be counted towards the \$5 million cap, but will be paid or reimbursed from the Cash Collateral, subject to all conditions of **Section 4.2(c)** (City Secured Obligations: Cash Collateral).

(b) **Revised Definition of Force Majeure.** Effective when the City has obtained the Approvals necessary to implement **Section 3.15(a)** (Conditions Subsequent Regarding Certain Force Majeure Events: Labor Disputes, Fire, and Unusually Severe Weather), the definition of "**Force Majeure**" will be revised automatically to mean any of the following events beyond the Delayed Party's control, but only to the extent that the event delays or prevents the City's timely Delivery of the Pier 27 Venue or Piers 30-32: performance: acts of nature (excluding unusually severe weather) or of the public enemy; acts of the government (not including issuance of Regulatory Approvals by Regulatory Agencies); floods, tidal waves; epidemics; quarantine restrictions; freight embargoes; and earthquakes.

(c) **Remedy.** Should the City be unable to obtain required Approvals under **Section Error! Reference source not found.** (Conditions Subsequent Regarding Certain Force Majeure Events: Labor Disputes, Fire, and Unusually Severe Weather), the Authority will be entitled to terminate this Agreement in its entirety as its sole remedy, and upon termination, neither Party will have any recourse to the other Party, except for obligations of either Party that survive in accordance with **Section 6.1(c)** (Termination Rights: Survival); provided that the Authority must exercise its termination remedy under **Section 3.15(b)** (Conditions Subsequent Regarding Certain Force Majeure Events: Remedy), if at all, by providing notice in accordance with **Article 8** (Notices) to the City no later than 5 p.m. (San Francisco time) on November 16, 2012. The Authority's failure

to provide timely notice of termination under **Section 3.15(b)** (Conditions Subsequent Regarding Certain Force Majeure Events: Remedy) will constitute the Authority's irrevocable waiver of this termination right.

4. **SECURITY FOR PARTIES' SECURED OBLIGATIONS**

4.1. **Authority Secured Obligations.**

(a) **Scope.** The Authority has provided the City and Port with security in an amount and scope commensurate with the LDA Security as described below to secure the performance of or satisfy the following (all, collectively, the "**Authority Secured Obligations**"):

- (i) performance of the Authority Mitigation Measure regarding Recreation and Park Department property in and around Marina Green as provided in Section 3.2.4 (Park Resources) of *Exhibit A*;
- (ii) Restoration of the Venues before they are surrendered to the Port in accordance with **Section 6.2** (Restoration After Termination) of this Agreement and Article 23 (Surrender) of the Venue Leases and Article 22 (Surrender) of the Venue Licenses; and
- (iii) security measures required to secure environmental obligations under Article 12 (Hazardous Materials) of the Venue Leases and Venue Licenses.

(b) **Guaranty.** The Authority must provide to the City a payment and performance guaranty with a maximum payment obligation of \$6 million (the "**Guaranty**") to secure the Authority Secured Obligations described in **Section 4.1(a)** (Authority Secured Obligations: Scope), which must be delivered to the City by the later of October 18, 2012 if the Board Approves **Section 3.15** (Conditions Subsequent Regarding Certain Force Majeure Events) or, if the Board does not Approve **Section 3.15** (Conditions Subsequent Regarding Certain Force Majeure Events), but the Authority does not elect to terminate this Agreement, then concurrently with the City's deposit of the Cash Collateral on January 15, 2013. The Guaranty must be made and delivered by a Third-Party guarantor ("**Guarantor**") and contain Guarantor's express representation that it has a Net Worth of \$12 million or more, which Guarantor must maintain until all of the Authority Security Obligations have been satisfied or waived. The Guaranty must be in form and substance Approved by the Port, in consultation with the City Attorney and the City's Risk Manager. Upon receipt of the Guaranty or earlier termination of this Agreement, the Port will cancel or return the \$250,000 guaranty that the Authority previously delivered to the Port in connection with an access license.

(c) **Environmental Oversight Deposit.** As partial security for the Authority Secured Obligations described in **Section 4.1(a)(iii)** (Authority Secured Obligations: Scope) for all of the Venues in the aggregate, the Authority has provided a \$10,000 cash deposit (the "**Environmental Oversight Deposit**") to the Port. The Port is authorized to draw funds from the Environmental Oversight Deposit for the purposes specified in the Venue Leases and Venue Licenses, and the Authority must replenish the Environmental Oversight Deposit to \$10,000 following any draw.

(d) **Independent Instruments.** The Parties acknowledge that:

(i) Each form of Authority security is independent of the others and will operate independently to secure the distinct Authority Secured Obligations specified above.

(ii) The Port may draw on the Environmental Oversight Deposit according to the terms of the Venue Leases and Venue Licenses.

(e) **Release of Security.** The Port may make a demand on the Guaranty or draw upon the Environmental Oversight Deposit, as applicable, up to 60 days after the Term ends. If no Port Claim is outstanding on the 61st day after the Term ends; the Port will cancel and return the Guaranty and any remaining portion of the Environmental Oversight Deposit.

4.2. City Secured Obligations.

(a) **Scope.** The City has provided the LDA Security as security for the performance of the City's, including the Port's, and the ACOC's obligations under this Agreement (the "City Secured Obligations"). The Parties acknowledge that any Port obligation to pay the Authority for any Reimbursable Costs under this Agreement is an independent obligation of the Port that is not secured by the LDA Security or subject to the limitations on liability under Section 7.11(c) (Limitations on Liability of Parties: Financial Liability Limitations). The Authority has agreed to accept the following in full satisfaction of the ACOC's obligation to provide security under *HVA* § 9.3

(b) **Liquidated Damages:** The City has agreed to pay the Authority liquidated damages under the following circumstances, without affecting the City's replenishment obligation under Section 4.2(c) (City Secured Obligations: Cash Collateral).

(i) The City will pay the Authority liquidated damages should the Delivery of Piers 30-32 or the Pier 27 Venue be delayed beyond March 1, 2013, subject to a cap of \$5 million, as described in Section 1.2(b) (Port Infrastructure Work: Piers 30-32 Work), Section 1.2(c)(iii) (Port Infrastructure Work: Cruise Terminal Work), and, if applicable, Section 3.15(b) (Conditions Subsequent Regarding Certain Force Majeure Events: Revised Definition of Force Majeure).

(ii) The City will pay the Authority liquidated damages should the Delivery of the Pier 29 Venue be delayed beyond March 1, 2013, as described in Section 1.2(d) (Port Infrastructure Work: Pier 29 Restoration Work).

(c) Cash Collateral.

(i) No later than January 15, 2013, the City will establish a cash escrow account in the amount of \$2.4 million at a San Francisco branch of a bona fide financial institution selected by the Authority and Approved by the City, held in the names of the City and the Authority subject to a control agreement or other instrument perfecting the Authority's security interest to its satisfaction (the "Cash Collateral"). The City is obligated to make this deposit even if ACOC has not raised and tendered to the City the full amount required to make the deposit; in such a circumstance any amount advanced by the City will be subject to reimbursement by the ACOC.

(ii) Disputes as to whether a claim is payable from Cash Collateral under this Agreement will be submitted for dispute resolution under Section 7.6 (Dispute Resolution).

(iii) Should a draw be made on the Cash Collateral at any time before July 1, 2013, the City is obligated to replenish the account no later than July 15, 2013, to a balance of \$2.4 million. The City is obligated to make this deposit even if ACOC has not raised and tendered to the City the full amount required to make the deposit; in such a circumstance any amount advanced by the City will be subject to reimbursement by the ACOC.

(iv) The Cash Collateral will secure, in addition to the City's other sources, payment of the following costs, to the extent other sources of funds are not immediately available:

(A) to accelerate and Complete the Cruise Terminal Project (which as defined does not include the Pier 29 Restoration Work) or to secure and prepare Functionally-Equivalent Space;

(B) to accelerate and Complete the remaining Piers 30-32 Work or the 2013 Pier 80 Work;

(C) to pay the Authority's Relocation Costs to the extent specified in **Section 1.2(e)** (Port Infrastructure Work: Authority Expenditures);

(D) expressly subject to the limitations of *HVA § 17.2* and **Section 7.11(e)** (Limitations on Liability of the Parties: Limitations on Damages), to compensate the Authority for direct Losses caused by any breach by the City or the ACOC under the HVA, for any Event of Default by the City under this Agreement, for any default by the Port under any Venue Lease or Venue License, and for any failure of performance by the City under the Implementation Plans;

(E) to pay the City, Port, or contractors retained by the City or the Port to provide the needed services on its behalf to meet any City, the Port, and ACOC obligations that are to be secured by the LDA Security under the HVA or this Agreement that are not addressed specifically in **Section 4.2(c)(iv)** (City Secured Obligations: Cash Collateral), including meeting the City's obligations under the Implementation Plans; and

(F) to the extent any funds remain after all of the above obligations have been satisfied, to the City for the City's Event-related costs.

(v) The Parties will agree on a form of a demand notice to be submitted to the Claims Administrator for any draw on the Cash Collateral, under which the Parties will state their agreed use of funds to be drawn from the Cash Collateral.

(vi) The City's and the ACOC's obligations to perform other Event-related activities will not be diminished by the exhaustion of the Cash Collateral.

(vii) The Parties intend for the Cash Collateral to be used only for the purposes specified in this Agreement. Further, consistent with *HVA § 17.2* and **Section 7.11(e)** (Limitations on Liability of the Parties: Limitations on Damages), the Parties agree that under no circumstances may Cash Collateral be used to pay consequential losses or damage, loss of profit, loss of business opportunity, or damage to goodwill.

(viii) If the Parties reasonably anticipate that the Cash Collateral will be insufficient to satisfy all foreseeable demands to be made by the Parties, then, to the extent necessary to satisfy the demands having priority:

(A) until June 30, 2013, demands made by the City, including any demand in accordance with **Section 4.2(c)(iii)** (City Secured Obligations: Cash Collateral), will have priority over demands made by the Authority; and

(B) beginning on July 1, 2013, demands made by the Authority will have priority over demands made by the City.

(d) **Independent Instruments.** The Parties acknowledge that:

(i) Each element of the LDA Security is independent of the other and will operate independently to secure the distinct City Secured Obligations specified above.

(ii) The Authority may require a draw on the Cash Collateral in accordance with the control agreement.

(e) **Release of LDA Security.** The Authority may make a demand on or draw upon (or require the ACOC or the City to make demand for or draw upon, as appropriate) the LDA Security until the dates below:

(i) Liquidated damages: for delayed Delivery of Piers 30-32, the Pier 27 Venue, and the Pier 29 Venue for the period beginning on March 1, 2013, and ending on June 10, 2013; and

(ii) Cash Collateral: 60 days after the later of the end of the Term or the conclusion of any dispute resolution proceedings regarding claims against Cash Collateral under **Section 7.6** (Dispute Resolution).

If no Authority Claim is outstanding after all of the dates described above in **Section 4.2(c)** (City Secured Obligations: Release of LDA Security) have elapsed, the control agreement will provide for the Cash Collateral to be released to the City without further action by the Authority.

5. ENCUMBRANCES AND LIENS

5.1. No Mortgages. The Authority may not under any circumstance engage in any financing or other transaction encumbering the Port's fee interest, or the Authority's leasehold interest, in the Venues or under the Venue Leases, Venue Licenses, or this Agreement.

5.2. Mechanics' Liens. The Authority must keep the Venues, this Agreement, and the Improvements free from any liens arising out of any work performed, materials furnished, or obligations incurred by the Authority or its Agents. The Authority's failure to cause any such lien to be released of record or bonded or take other action acceptable the Port within 30 days after the Authority's receipt of final notice of the imposition of the lien will be a default under this Agreement and any applicable Venue Lease or Venue License, and the Port will have the right at its option to effect a release of the lien by any commercially reasonable means. The Authority must reimburse the Port for all costs the Port incurs to do so within 30 days after the Port's demand. The Authority will be permitted to contest the validity or amount of any tax, assessment, encumbrance, or other lien and to pursue any remedies associated with the contest, but the contest will be subject to all conditions in the Venue Leases and Venue Licenses.

6. TERMINATION

6.1. Termination Rights.

(a) **Terminating Events.** This Agreement may be terminated automatically upon the occurrence of certain events as provided in this Agreement (each, a "Terminating Event") or by a Party's election if expressly provided under this Agreement and, except as otherwise provided in this Agreement or in the HVA, without any liability on the terminating Party's part. To the extent provided in **Section 3.14** (Force Majeure and Other Delays) or **Section 3.15** (Conditions Subsequent Regarding Certain Force Majeure Events), as applicable, a noticed event of Force Majeure will cause an extension of date on which performance under this Agreement is due.

(b) **Effect of Termination.** The termination of this Agreement in its entirety will effect an automatic termination of the HVA, without further action of either Party or ACOC. In addition, this Agreement will terminate automatically on the date that the

HVA terminates following either the Authority's or the City's exercise of a termination right under the HVA.

(c) **Survival.** Indemnification and payment obligations of either Party under the HVA, this Agreement, and the Venue Leases and Venue Licenses, the Authority's obligations under Article 23 of the Venue Leases (Surrender) and Article 22 of the Venue Licenses (Surrender), and any other obligations that expressly survive termination of any of these documents will survive the termination of this Agreement, subject to extension or restatement in the AC35 Host Agreement.

(d) **Authority Default.** The Authority will not be entitled to reimbursement for any Reimbursable Work that the Authority performs at any affected Venue or other Port property after an Authority Event of Default giving rise to termination.

6.2. Restoration After Termination. If the termination is caused for any reason other than a Port Event of Default, the Authority will be liable for any costs, to the extent exceeding available insurance proceeds, that the Port incurs to restore any affected Venue or other Port property following the termination of a Venue Lease or Venue License or this Agreement to a condition that is the lesser of:

- (a) the condition of the applicable Venue at Delivery; or
- (b) a safe condition as determined by the Chief Harbor Engineer.

7. DEFAULTS AND REMEDIES; STANDARDS

7.1. Authority Events of Default. Subject to Force Majeure, the occurrence of any of the following will constitute an event of default by the Authority under this Agreement if not cured by the expiration of any applicable notice and cure period (each, an "Authority Event of Default").

(a) **Nonpayment.** The Authority fails to pay any amount required to be paid under this Agreement when due and the failure continues for 30 days after notice from the Port to the Authority.

(b) **Project Requirements.** The Authority fails to comply with the applicable construction requirements for any Reimbursable Work, if any, including the requirements of the Workforce Development Plan, and the Authority does not cure the default within 30 days after receipt of the Port's notice specifying the items missing or due, or if the cure cannot reasonably be completed within the 30-day period, the Authority does not complete the cure within a reasonable time.

(c) **Insolvency.** The Authority files a petition for relief, or an order for relief is entered against the Authority, in any case under applicable bankruptcy or insolvency Law, or any comparable Law, if not dismissed or stayed within 120 days; a writ of execution is levied on this Agreement that is not released within 60 days; a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of the Authority, and the appointment is not dismissed within 120 days; or the Authority makes a general assignment for the benefit of its creditors.

(d) **Conditions Subsequent.**

(i) The Authority fails to deliver the Guaranty when required under this Agreement.

(ii) Guarantor fails to meet its obligations under the Guaranty or the Guarantor no longer meets the Net Worth requirements under **Section 4.1(b)** (Authority Secured Obligations: Guaranty), and Authority fails to provide a substitute Guaranty from a Guarantor meeting the Net Worth requirement within 30 days after the Port's notice of the failure.

(iii) The Authority fails to satisfy timely any other condition subsequent specified in *Schedule 7* for which it is responsible.

(e) **Environmental Oversight Deposit.** The Authority fails to replenish the Environmental Oversight Deposit after a draw as required or attempts to prevent the Port or City from making a draw.

(f) **Interference with Remedies.**

(i) Subject to **Section 4.2(c)(viii)** (City Secured Obligations: Cash Collateral), the Authority fails to Approve a proposed draw from the Cash Collateral after the Port has delivered documents reasonably evidencing the need and proposed use of the funds.

(ii) The Authority otherwise interferes with or refuses to accept the City's or the Port's performance of any obligation or remedy under this Agreement.

(g) **Insurance.** The Authority fails to maintain Event insurance coverage as required by **Section 2.8(b)** (Insurance: Authority Insurance).

(h) **Other Defaults.** The Authority violates any other covenant, or fails to perform any other obligation to be performed by the Authority under this Agreement and the violation or failure continues more than 30 days after notice from the Port specifying the nature of the violation or failure, or, if the cure cannot reasonably be completed within the 30-day period, the Authority does not complete the cure within a reasonable time.

7.2. Remedies of the Port. The Port will be entitled to all remedies permitted at law or in equity, including the remedies under this Agreement, as set forth below or elsewhere in this Agreement after an Authority Event of Default, or as provided in any Venue Lease or Venue License as applicable, unless otherwise limited in this Agreement.

(a) **Termination.** The Port may terminate this Agreement on 30 days' notice to the Authority, but in any case where the Authority Event of Default is limited to an Event of Default under a specific Venue Lease or Venue License, the termination will be effective as to only the Venue affected by the Authority Event of Default.

(b) **Security.** If the Authority Event of Default relates to an Authority Secured Obligation, the Port may make demand on or draw upon the applicable security. The Port will not be entitled to make a demand for payment or performance, or prosecute any actions or proceedings with respect to any prior demands for payment or performance, under the Guaranty during the period beginning on its receipt of any demand by the Authority based on its claim that the Port or the City has failed to pursue diligently any of its remedies or met any obligation to pay liquidated damages related to the Cruise Terminal Project, the 2013 Piers 30-32 Work, or the Pier 29 Restoration Work until the Port or the City has taken the required action.

(c) **Excused Performance.** Under **Section 7.8(c)** (Standard Otherwise Applicable: Failure to Cooperate), the City and the Port may be relieved of any obligation to perform a remedy to the extent that the Authority's failure to cooperate prevents the City's or the Port's performance, and the Authority and Guarantor may be relieved of any obligation to perform a remedy to the extent that the City's or the Port's failure to cooperate prevents the Authority's performance.

(d) **Specific Performance.** Consistent with the HVA and as an essential inducement to the City's (including the Port) acceptance of the security that the Authority has provided under **Section 4.1** (Authority Secured Obligations), the Port may institute an

action for specific performance, which may take the form of mandatory or prohibitive injunctive relief if the City prevails in the action.

(e) **Workforce Development Plan.** For any Authority Event of Default under the Workforce Development Plan, the Port and City will have only the remedies prescribed in the plan.

7.3. City Events of Default. Subject to Force Majeure, the occurrence of any of the following will constitute an event of default by the City under this Agreement if not cured by the expiration of any applicable notice and cure period (each, a "City Event of Default").

(a) **Delivery.** The Port's conditions to Delivery for a Venue have been satisfied or waived by the Port, and the Port fails to Deliver the applicable Venue Lease or Venue License to the Authority in violation of this Agreement, and the failure continues for more than 5 days after receipt of the Authority's notice.

(b) **Port Improvements.** The Port fails to Complete the Port Infrastructure Work when required under this Agreement, and the Port does not cure the default within 15 days after receipt of the Authority's notice specifying the items missing or due, or if the cure cannot reasonably be completed within the 15-day period, the Port does not complete the cure within a reasonable time.

(c) **Construction Delays.**

(i) A Port act or omission excuses the obligation of Turner to Complete Improvements to the Pier 27 Venue or to Piers 30-32 when due under the Turner CM/GC Contract.

(ii) The Port fails to call upon the Piers 30-32 Performance Bond or enforce the liquidated damages clause in its contract for the Piers 30-32 Work following the Authority's demand.

(iii) The Port fails to enforce the liquidated damages clause in the Turner CM/GC Contract for the Cruise Terminal Work following the Authority's demand.

(iv) The Port fails to enforce the liquidated damages clause in the Pier 29 Restoration Contract following the Authority's demand, or fails to turn over to the Authority all liquidated damages the Port receives under the Pier 29 Restoration Contract.

(v) The City fails to pay the Authority liquidated damages when required under this Agreement or upon the Authority's later demand.

(d) **Cash Collateral.**

(i) The City fails to fund the Cash Collateral in full when required under this Agreement.

(ii) The City fails to draw funds from the Cash Collateral or apply funds drawn from the Cash Collateral for the uses that the Cash Collateral secures.

(iii) The City draws from the Cash Collateral without the Authority's Approval.

(iv) The City fails to replenish the Cash Collateral as required.

(v) Subject to **Section 4.2(c)(viii)** (City Secured Obligations: Cash Collateral), the City fails to Approve a proposed draw by the Authority from the Cash Collateral after the Authority has delivered documents reasonably evidencing the need and proposed use of the funds.

(e) **Interference.** The City interferes with, or refuses to accept, the Authority's performance of any obligation or remedy under this Agreement.

(f) **Insurance.** The City fails to maintain Event insurance coverage as required by Section 2.8(a) (Insurance: City Insurance).

(g) **Conditions Subsequent.** The City fails to satisfy timely any other condition subsequent specified in *Schedule 7* for which it is responsible.

(h) **Other Defaults.** The Port fails to perform any other obligation under this Agreement within 30 days after the Authority's notice to the Port, or, if the cure cannot reasonably be completed within the 30-day period, the Port does complete the cure within a reasonable time.

7.4. Remedies of the Authority. The Authority will be entitled to all remedies permitted at law or in equity, including the remedies under this Agreement as set forth below or elsewhere in this Agreement after a City Event of Default, or as provided in any Venue Lease or Venue License as applicable, unless otherwise limited in this Agreement.

(a) **The Pier 27 Venue.**

(i) The Authority may terminate this Agreement as to the Pier 27 Venue on 10 days' notice to the Port if the Port fails to Deliver the Pier 27 Venue to Authority under the Venue License by its Delivery Date.

(ii) In the alternative, the Authority may:

(A) accept Delivery of the Pier 27 Venue before the Port has Completed the Cruise Terminal Project if the Authority's proposed use can be safely accommodated, as determined by the Chief Harbor Engineer;

(B) require the City to draw upon the Cash Collateral to accelerate construction or secure Functionally-Equivalent Space acceptable to the Authority; and

(C) demand payment of liquidated damages if the Cruise Terminal Project is delivered after March 1, 2013.

(b) **Termination.** The Authority may terminate this Agreement on 30 days' notice to the Port, but if the City Event of Default is limited to an Event of Default under a specific Venue Lease or Venue License, the termination will be effective as to only the Venue affected by the City Event of Default, unless the default would materially and adversely affect the Authority's ability to hold the Event in accordance with the Venue Schedule.

(c) **LDA Security.** The Authority may make a claim against the Cash Collateral for any City Event of Default or other event that is secured by the LDA Security, as appropriate under the circumstances.

(d) **Piers 30-32 Security.** With respect to any delay in the Completion of the Piers 30-32 Work, the Authority may:

(i) require the City to draw upon the Cash Collateral to accelerate construction or secure Functionally-Equivalent Space acceptable to the Authority;

(ii) demand payment of liquidated damages if Piers 30-32 is delivered after March 1, 2013; and

(iii) demand that the Port call upon the Piers 30-32 Performance Bond and enforce the liquidated damages provision in the Turner CM/GC Contract, if applicable.

(e) **Specific Performance.** Consistent with the HVA and as an essential inducement to the Authority's acceptance of the LDA Security provided under **Section 4.2 (City Secured Obligations)**, the Authority may institute an action for specific performance, which may take the form of mandatory or prohibitive injunctive relief if the Authority prevails in the action. The Port will not be entitled to make a demand for payment or performance, or prosecute any actions or proceedings with respect to any prior demands for payment or performance, under the Guaranty during the period beginning on its receipt of any demand by the Authority based on its claim that the Port or the City has failed to pursue diligently any of its remedies or met any obligation to pay liquidated damages related to the Cruise Terminal Project, the 2013 Piers 30-32 Work, or the Pier 29 Restoration Work until the Port or the City has taken the required action.

7.5. Impact on Event. In any case where an Authority Event of Default could materially impair the Authority's ability to stage the Event in the City, the Authority may cure the default by paying to the Port the amount of damages, including attorneys' fees and other costs, that the Port has incurred due to the Authority Event of Default. The Parties will submit disputes under this Section for dispute resolution under **Section 7.6 (Dispute Resolution)**.

7.6. Dispute Resolution. The Parties agree to submit any dispute over the matters specifically described in this Agreement as subject to dispute resolution to a neutral dispute resolution provider as provided below. No Party may be compelled to submit to dispute resolution under this Section a matter that is not explicitly subject to a dispute resolution proceeding under this Agreement.

(a) **Mediation.** The Parties may agree to submit any matter to non-binding mediation proceedings held in San Francisco, California. Each Party will be responsible for one-half of the required mediation fee and will bear its own attorneys' fees and costs.

(b) **Arbitration.** Binding arbitration will be strictly limited to the issues specified in this Agreement. Any arbitration will be held in San Francisco, California and be conducted as provided in this Subsection.

(i) A Party may initiate arbitration by providing a notice to the other Party requesting arbitration, specifying with particularity the Section of this Agreement authorizing arbitration of the dispute, the nature of the dispute, and the initiating Party's demand to resolve the dispute. The Parties will meet to designate the arbitrator within 10 business days after the effective date of the arbitration notice. If the Parties cannot agree on a single arbitrator within the 10-business day period, then either Party may request that the American Arbitration Association in San Francisco, California designate the arbitrator, and the other Party will be deemed to have Approved an appointment made in response to such a request. The appointed arbitrator must have at least 10 years' experience handling complex transactions involving commercial real estate in the San Francisco Bay Area and accept the appointment on the conditions specified in this Agreement in writing.

(ii) Each Party initially will advance 50 percent of the required arbitration fee. Within 15 days after the arbitrator has accepted the appointment, each Party will submit its written statement of its position, together with relevant attachments, to the arbitrator and to the other Party.

(iii) The arbitrator will be entitled to:

- (A) decide the matter on the written submissions;
- (B) hold an evidentiary hearing upon reasonable prior notice to the Parties;

(C) enter a default decision against a Party that does not deliver its arbitration statement or appear at the hearing and require that Party to pay the other Party's attorneys' fees and costs of arbitration;

(D) enter a decision that funds must be returned to Cash Collateral, consistent with Section 4.2(c)(ii) (City Secured Obligations: Cash Collateral) and

(E) award attorneys' fees and arbitration costs to the prevailing Party, but only if the arbitrator finds that the arbitration request was frivolous or was brought in bad faith.

(iv) The arbitrator will have no power to:

(A) decide any matter that is not a matter specifically subject to dispute resolution under this Agreement (unless the Parties agree otherwise) and presented in a Party's arbitration statement;

(B) add to, subtract from, disregard, modify, or otherwise alter this Agreement or any other written agreement between the Parties;

(C) negotiate new agreements or provisions between the Parties;

(D) award damages of any kind or award attorneys' fees and arbitration costs except as provided in this Subsection; or

(E) issue a temporary restraining order or a preliminary or permanent injunction.

(v) The arbitrator must agree to issue a written decision within 10 business days after the later of the delivery of the arbitration statements or the evidentiary hearing unless the Parties agree otherwise. The arbitrator's decision will be final and binding, and each Party expressly waives any right to de novo judicial review for any reason.

7.7. Standards of Port Approval. The Authority is bringing an international sporting event to the waterfront in accordance with the HVA and this Agreement. In recognition of the economic benefits that the City will derive from the Event, the City and Port agree to provide rent-free Venues to the Authority and to perform all other obligations described in this Agreement. The Authority acknowledges that, because the Port holds Port lands in trust for the people of the State, the Port has an obligation to ensure that all Improvements benefit the Public Trust and the use of any public resources to reimburse the Authority is consistent with the HVA and this Agreement. The Parties agree that the Approval standards below will apply to implementation of this Agreement except where otherwise specified.

(a) **Regulatory Capacity.** The City when acting in its regulatory capacity, may exercise its regulatory authority in accordance with applicable Law.

(b) **Proprietary Capacity.** The City when acting in its proprietary capacity as landlord, will make determinations in its reasonable judgment. All Authority Improvements and Alterations will be subject to the Port's customarily reserved rights as a landlord to approve the scope of work, constructions plans and specifications, and change orders, and to oversee and inspect capital Improvements made to Port property.

7.8. Standard Otherwise Applicable. Except as expressly provided otherwise or when the City or Port is acting in its regulatory capacity, the following standards will apply to the Parties' conduct under this Agreement.

(a) **Advance Writings Required.** Whenever a Party's Approval or waiver is required:

(i) the Approval or waiver must be obtained in advance and in writing; and

(ii) the Party whose Approval or waiver is sought may not unreasonably withhold, condition, or delay its Approval or waiver, as applicable.

(b) **Commercial Reasonableness.** Whenever a Party is permitted to make a judgment, form an opinion, judge the sufficiency of the other Party's performance, or exercise discretion in taking (or refraining from taking) any action or making any determination, that Party must employ commercially reasonable standards in doing so. In general, the Parties' conduct in implementing this Agreement, including construction of Improvements, Disapprovals, demands for performance, requests for additional information, and any exercise of an election or option, must be commercially reasonable.

(c) **Failure to Cooperate.** The Authority and the City, including the Port, acknowledge that the implementation of this Agreement and the remedies provided to a Party for the other Party's default or failure to perform an obligation under this Agreement are predicated upon their cooperation throughout the Event, and agree that to the extent that either Party prevents the other Party's performance, the Party whose performance was prevented may be excused from performing.

7.9. Authority for Port Approvals. The Port Director, or her designee, is authorized to execute on behalf of the Port any documents and any contracts, agreements, memoranda or similar documents with state, regional, or local authorities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement to the extent of the authority granted under the Port Commission and Board resolutions Approving this Agreement and that do not materially increase the obligations of the City, if the Port Director determines, after consultation with the City Attorney, that the document is necessary or proper and in the Port's best interests. The Port Director's signature on any documents will be conclusive evidence of her determination. Wherever this Agreement requires or permits Port to give its Approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of Port, the Port Director, or her designee, will be authorized to execute the instrument on behalf of Port, except as otherwise provided by applicable Laws, including the City's Charter.

7.10. Payment of Costs. The following procedures will apply to any demand from one Party to the other Party for payment required under this Agreement, except as otherwise provided under this Agreement.

(a) **Demand.** The Party seeking payment must deliver any demand for payment to the other Party together with Proof of Payment. The Party obligated to pay will have the right to conduct an audit of the other Party's claimed costs by a CPA, and the Party seeking payment must cooperate in providing information necessary for the audit. The Party conducting the audit will bear its own audit costs unless the audit reveals that the other Party's costs are overstated by 5 percent or more, in which case, the amount of the reimbursement will be reduced by the amount of the CPA's fee.

(b) **Time for Payment.** Except where other procedures are specified in this Agreement, the Party obligated to make payment must satisfy the payment demand within 30 days after receipt of the demand for payment.

(c) **Definitions.** The following will apply to a Party's right to payment or obligation to make a payment:

(i) The term "**action**" means any judicial, quasi-judicial proceeding, alternative dispute resolution proceeding, and includes any complaint, cross-complaint, counterclaim, bankruptcy case, adversary proceeding, and appeal.

(ii) The phrase "**attorneys' fees**" means reasonable attorneys' fees and related costs, including all costs of litigation, such as fees of attorneys,

consultants, testing, and experts, judicial, quasi-judicial, and non-judicial litigation costs, costs for document copying, exhibit preparation, carriers, postage, and communications, and related costs. For attorneys in the City's Office of the City Attorney, attorneys' fees will be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

(iii) The term "costs" means all fees and costs directly arising from or relating to the matter giving rise to the right to payment and must in all cases be reasonable.

7.11. Limitations on Liability of the Parties.

(a) **Sources of Repayment.** Except as otherwise provided in this Agreement, the Authority agrees as follows.

(i) All obligations of the Port or the City arising out of or related to this Agreement are special and limited obligations of the Port and the City, as applicable, and the Port's and City's obligations to make any payments under this Agreement to implement this Agreement are restricted entirely to funding sources available to the Port and the City, each in its sole discretion, and from no other source.

(ii) More specifically, in no event may the Authority compel the City or the Port to use funds in or obligate the City General Fund or the Port Harbor Fund to reimburse the Authority for Reimbursable Costs or to satisfy any Authority Claim of damages for a breach by the Port under this Agreement.

(b) **Indemnities.** An Indemnified Party's recovery on an Indemnified Claim for any Loss under Section 2.7 (General Indemnities) of this Agreement will be limited to the amount of proceeds available under insurance policies and bonds described in this Agreement, subject to any deductibles and self-insured retentions.

(c) **Financial Liability Limitations.** Under the HVA, each Party's financial liability following a default under this Agreement was to be subject to a \$32 million cap established under HVA § 17.4 and HVA § 17.5, not including Indemnification obligations or proceeds of insurance. Consistent with the spirit of the HVA, however, the Parties agree that the Parties' respective monetary remedies for Hazardous Material Claims, Indemnified Claims, and Claims arising from any alleged Breach under the HVA, Event of Default under this Agreement, and any other Loss arising in relation to the HVA, this Agreement, or a Venue Lease or Venue License will be limited as set forth below.

(i) The City's, including the Port's, and the Authority's remedies for any failure by the City to meet its obligations will be paid from the following sources:

- (A) the Cash Collateral;
- (B) the Piers 30-32 Performance Bond and performance bonds for the Cruise Terminal Project and the Pier 29 Restoration Work;
- (C) liquidated damages as provided in this Agreement; and
- (D) proceeds of the City's insurance policy described in Section 2.8(a) (City Insurance: Event Insurance).

(ii) The City's, including the Port's, remedies for any failure by the Authority to meet its obligations will be paid from the following sources:

- (A) the Guaranty;
- (B) the Environmental Oversight Deposit; and
- (C) the proceeds of the Authority's insurance policy described in **Section 2.8(b)(i)** (Authority Insurance: Event Insurance).

(d) **No Individual or Agent Liability.** No member of the Board, the Port Commission, or Port or City Agent will incur any liability under this Agreement to the Authority or any successor in their individual capacities by reason of their actions under this Agreement or execution of this Agreement. Except as otherwise specifically provided by any security instrument, no Agent of the Authority will be personally liable to the Port or the City for any amount that may become due or on any obligations under this Agreement.

(e) **Limitations on Damages.** The Parties agree, consistent with *HVA § 17.2*, under no circumstances including any dispute resolution proceeding under **Section 7.6** (Dispute Resolution) or other proceeding between the Parties for damages arising from alleged breaches under the HVA, this Agreement, or the Venue Leases and Venue Licenses, may the damages include any indirect or consequential loss or damage, loss of profit, loss of business opportunity, or damage to goodwill, except for the City's limited waiver solely for the purpose of allowing for payment of liquidated damages to the Authority for delayed Delivery of Piers 30-32 (or Pier 80 in the alternative), the Pier 27 Venue, or the Pier 29 Venue under **Section 1.2(d)** (Port Infrastructure Work).

(f) **Release.** As consideration for the covenants and obligations under this Agreement, the Authority and the City, including Port, each on behalf of itself and its successors and assigns, agrees to waive any right to recover from, and forever releases the other Party and its Agents of and from any Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Party may now have or that may arise on account of or in any way be connected with this Agreement, the HVA, or the Venue Leases and Venue Licenses, to the extent not recoverable from the sources described in this Section.

In connection with this release, the City (acting by and through the Port) and the Authority each acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR WHEN OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Authority
Mouzer Moyer

City (by the Port)

Each of the Authority and the City agrees that the release given in this Section covers unknown Claims to the extent Losses from such Claims are not recoverable from the applicable sources described in this Section. Accordingly, by entering into this Agreement, the Authority and the City each waives the benefits of Civil Code

consultants, testing, and experts, judicial, quasi-judicial, and non-judicial litigation costs, costs for document copying, exhibit preparation, carriers, postage, and communications, and related costs. For attorneys in the City's Office of the City Attorney, attorneys' fees will be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

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(i) All obligations of the Port or the City arising out of or related to this Agreement are special and limited obligations of the Port and the City, as applicable, and the Port's and City's obligations to make any payments under this Agreement to implement this Agreement are restricted entirely to funding sources available to the Port and the City, each in its sole discretion, and from no other source.

(ii) More specifically, in no event may the Authority compel the City or the Port to use funds in or obligate the City General Fund or the Port Harbor Fund to reimburse the Authority for Reimbursable Costs or to satisfy any Authority Claim of damages for a breach by the Port under this Agreement.

(b) **Indemnities.** An Indemnified Party's recovery on an Indemnified Claim for any Loss under Section 2.7 (General Indemnities) of this Agreement will be limited to the amount of proceeds available under insurance policies and bonds described in this Agreement, subject to any deductibles and self-insured retentions.

(c) **Financial Liability Limitations.** Under the HVA, each Party's financial liability following a default under this Agreement was to be subject to a \$32 million cap established under HVA § 17.4 and HVA § 17.5, not including Indemnification obligations or proceeds of insurance. Consistent with the spirit of the HVA, however, the Parties agree that the Parties' respective monetary remedies for Hazardous Material Claims, Indemnified Claims, and Claims arising from any alleged Breach under the HVA, Event of Default under this Agreement, and any other Loss arising in relation to the HVA, this Agreement, or a Venue Lease or Venue License will be limited as set forth below.

(i) The City's, including the Port's, and the Authority's remedies for any failure by the City to meet its obligations will be paid from the following sources:

- (A) the Cash Collateral;
- (B) the Piers 30-32 Performance Bond and performance bonds for the Cruise Terminal Project and the Pier 29 Restoration Work;
- (C) liquidated damages as provided in this Agreement; and
- (D) proceeds of the City's insurance policy described in Section 2.8(a) (City Insurance: Event Insurance).

(ii) The City's, including the Port's, remedies for any failure by the Authority to meet its obligations will be paid from the following sources:

- (A) the Guaranty;
- (B) the Environmental Oversight Deposit; and
- (C) the proceeds of the Authority's insurance policy described in Section 2.8(b)(i) (Authority Insurance: Event Insurance).

(d) **No Individual or Agent Liability.** No member of the Board, the Port Commission, or Port or City Agent will incur any liability under this Agreement to the Authority or any successor in their individual capacities by reason of their actions under this Agreement or execution of this Agreement. Except as otherwise specifically provided by any security instrument, no Agent of the Authority will be personally liable to the Port or the City for any amount that may become due or on any obligations under this Agreement.

(e) **Limitations on Damages.** The Parties agree, consistent with *HVA § 17.2*, under no circumstances including any dispute resolution proceeding under Section 7.6 (Dispute Resolution) or other proceeding between the Parties for damages arising from alleged breaches under the HVA, this Agreement, or the Venue Leases and Venue Licenses, may the damages include any indirect or consequential loss or damage, loss of profit, loss of business opportunity, or damage to goodwill, except for the City's limited waiver solely for the purpose of allowing for payment of liquidated damages to the Authority for delayed Delivery of Piers 30-32 (or Pier 80 in the alternative), the Pier 27 Venue, or the Pier 29 Venue under Section 1.2(d) (Port Infrastructure Work).

(f) **Release.** As consideration for the covenants and obligations under this Agreement, the Authority and the City, including Port, each on behalf of itself and its successors and assigns, agrees to waive any right to recover from, and forever releases the other Party and its Agents of and from any Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Party may now have or that may arise on account of or in any way be connected with this Agreement, the HVA, or the Venue Leases and Venue Licenses, to the extent not recoverable from the sources described in this Section.

In connection with this release, the City (acting by and through the Port) and the Authority each acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

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WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO
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HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH
THE DEBTOR.



Authority

City (by the Port)

Each of the Authority and the City agrees that the release given in this Section covers unknown Claims to the extent Losses from such Claims are not recoverable from the applicable sources described in this Section. Accordingly, by entering into this Agreement, the Authority and the City each waives the benefits of Civil Code

section 1542, or under any other statute or common law principle of similar effect. This release and waiver will survive termination of this Agreement.

8. NOTICES

8.1. Delivery.

(a) **Manner of Delivery.** Except as otherwise provided in this Agreement, any notices (including notice of Approval or Disapproval) required or permitted by this Agreement must be in writing and be delivered by:

- (i) hand delivery;
- (ii) first class United States mail, postage prepaid; or
- (iii) overnight delivery by a nationally recognized courier or the United State Postal Service, delivery charges prepaid.

(b) **Prohibited Manner of Delivery.** Except as otherwise provided in this Agreement, notices may not be given by facsimile or electronic mail, but either Party may deliver a courtesy copy of a notice by facsimile or electronic mail.

8.2. Notice Addresses. Addresses for notice are:

To the Authority:

Chief Executive Officer
America's Cup Event Authority LLC
Pier 23, Suite 100
San Francisco, CA 94111
Att'n: Stephen Barclay

Telephone: (415) 370-4820
Email: stephen.barclay@americacup.com

America's Cup Event Authority LLC
Pier 23, Suite 100
San Francisco, CA 94111
Att'n: Sam Hollis

Telephone: (415) 370-4820
Email: sam.hollis@americacup.com

With a copies to:

Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Att'n: Charles H. Seaman

Telephone: (415) 659-5910
Facsimile: (415) 391-8269
Email: cseaman@reedsmith.com

To the City:

Executive Director
Office of Economic and Workforce Development
City Hall, Room 448
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Att'n: Jennifer Matz

Telephone: (415) 554-6511
Facsimile: (415) 554-4565
Email: jennifer.matz@sfgov.org

With a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Att'n: Rob Maerz

Telephone: (415) 554-4700
Facsimile: (415) 554-4763
Email: robert.maerz@sfgov.org

To the Port:

Executive Director
Port of San Francisco
Pier 1
San Francisco, California 94111
Att'n: Monique Moyer

Telephone: (415) 274-0400
Facsimile: (415) 274-0494
Email: monique.moyer@sfport.com

With a copy to:

General Counsel
Port of San Francisco
Pier 1
San Francisco, California 94111
Att'n: Eileen Malley

Telephone: (415) 274-0400
Facsimile: (415) 274-0494
Email: eileen.malley@sfgov.org

To the ACOC:

America's Cup Organizing Committee
Pier 1
San Francisco, CA 94111
Att'n: Kyri McClellan

Telephone: (415) 813-1672
Facsimile: (415) 705-8683
Email: kyri@sfacoc.org

With a copy to:

Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94105-2228
Att'n: Nathaniel M. Cartmell III

Telephone: (415) 983-1570
Facsimile: (415) 983-1200
Email: Nathaniel.Cartmell@pillsburylaw.com

8.3. Change of Address. Notices given under **Article 8** (Notices) to a Party must be delivered to that Party's mailing address, unless superseded by a notice of a change in that Party's mailing address for notices, given to the other Parties in the manner provided above.

8.4. Effective Date. All notices under this Agreement will be deemed to be duly delivered:

- (a) on the date personal delivery actually occurs;
- (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or
- (c) the business day after the business day deposited for overnight delivery.

9. MISCELLANEOUS PROVISIONS

9.1. California Law; Venue. This Agreement must be construed and interpreted in accordance with the laws of the State of California and City's Charter. Each Party agrees that venue is proper in and consents to the jurisdiction of the Superior Court for the City and County of San Francisco.

9.2. Entire Agreement; Conflict. This Agreement contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to its subject matter, specifically including the HVA provisions specified in **Section 1.1(b)** (General: Relationship to and Effect on the HVA), are superseded by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement may be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

9.3. Counterparts. This Agreement may be executed and delivered in any number of counterparts (including by fax, pdf, or other electronic means), each of which will be deemed an original, but all of which will constitute the same document.

9.4. Amendment. This Agreement may be amended from time to time by the written agreement of the Port and the Authority executed by the Port and the Authority. No amendment to this Agreement will be valid unless it is in writing and signed by all of the Parties.

9.5. Schedules. The Parties agree that all attached Schedules may be revised from time to time by agreement based on changed circumstances and experience drawn from the 2012 Events. The Parties' agreement will be evidenced by the initials of an authorized signatory of each Party and each revised Schedule will be attached to and supersede the Schedule being revised in accordance with **Section 11.1(b)** (Interpretation of Agreement: Attachments).

9.6. Technical Corrections. The Parties reserve the right, by agreement of the Port's Executive Director and the Authority, to enter into memoranda of corrections to this Agreement to reflect any corrections that do not change the Parties' substantive rights. Any memorandum of corrections will be a part of this Agreement upon its full execution.

9.7. Severability. Except as otherwise specifically provided in this Agreement, a judgment or court order invalidating any provision of this Agreement, or its application to any person, will not affect any other provision of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement will continue in full effect, unless enforcement of this Agreement as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Agreement.

9.8. Captions. Any caption preceding the text of any section, paragraph, or subsection or in the table of contents is included only for convenience of reference and will be disregarded in the construction and interpretation of this Agreement.

9.9. Authority to Contract. If the Authority signs as a corporation, limited liability company or a partnership, each of the Persons executing this Agreement on behalf of the Authority represents and warrants that the Authority is a duly authorized and existing entity, that the Authority has and is qualified to do business in California, that the Authority has full right and authority to enter into this Agreement, and that each of the Persons signing on the Authority's behalf is authorized to do so. At the Port's request, the Authority must provide the Port with evidence satisfactory to the Port confirming these representations and warranties.

9.10. Time is of the Essence. Time is of the essence with respect to each provision of this Agreement.

9.11. Waiver. None of the following will constitute a waiver of any default under, or of either Party's right to demand strict compliance with, this Agreement: (a) one Party's failure to insist on the other Party's strict performance of any obligation under this Agreement; (b) one Party's failure to exercise any right, power, or remedy arising from the other Party's failure to perform its obligations for any length of time; or (c) one Party's acceptance of any partial performance by the other Party before the default is cured. One Party's Approval of any act by the other Party requiring Approval may not be deemed to waive or render unnecessary the Approving Party's subsequent Approval of any later act by the other Party. Either Party's waiver of any default must be in writing and will not waive any other default concerning the same or any other provision of this Agreement.

9.12. Successors and Assigns. This Agreement will be binding on and inure to the benefit of the successors and assigns of the Parties.

9.13. Other Agreements. The obligations of the Authority under this Agreement will be those of a Party and, except as expressly provided otherwise, not as an owner or tenant of property at any Venue. Nothing in this Agreement may be construed as affecting the Port's or the Authority's rights, or duties to perform their respective obligations under the HVA (as amended by this Agreement) and any applicable Law. If this Agreement creates ambiguity in relation to or conflicts with any provision of the HVA relating to the Venue Leases or Venue Licenses, this Agreement will prevail.

9.14. Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or may be construed to confer upon or to give to any Person other than the Port, the City, and the Authority any rights, remedies, or Claims under this Agreement or any covenants, conditions, or stipulations of this Agreement. All covenants, conditions, promises, and agreements in this Agreement by or on behalf of the Port or the Authority will be for the sole and exclusive benefit of the Port, the City, and the Authority, subject to Section 9.12 (Successors and Assigns).

9.15. Broker. The Port will not pay a finder's or broker's fee in connection with this Agreement or any other document contemplated by this Agreement. The Authority agrees to Indemnify the Port from any costs the Port incurs if any broker claims a commission in connection with this Agreement or any other document contemplated by this Agreement.

10. CITY AND PORT REQUIREMENTS

The Authority has reviewed, understands, and is ready, willing, and able to comply with the terms of this Article, except to the extent modified by the Board or the designated City department or agency with the authority to do so. This Article contains only summaries of City and Port requirements, each of which is incorporated by reference as if fully stated. *The Authority acknowledges that City and Port requirements in effect when Venue Leases and Venue Licenses are executed will apply to all Authority contractors, subcontractors, Subtenants, and any other Authority parties, as applicable.* The following summary is for the Authority's convenience only; the Authority is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at www.sfgov.org. References to specific laws in this Article refer to the San Francisco municipal codes unless specified otherwise.

10.1. Nondiscrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Agreement, the Authority covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter, or in retaliation for opposition to any practices forbidden under Administrative Code chapter 12 of against any employee of the Authority, any City employee working with the Authority, any applicant for employment with the Authority, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Authority in the City.

(b) **Subleases and Other Contracts.** The Authority must include in all subleases and other contracts relating to the Venues a nondiscrimination clause applicable to each subtenant or other contractor in substantially the form of **Section 10.1(a)** (Nondiscrimination in City Contracts and Benefits Ordinance: Covenant Not to Discriminate). In addition, the Authority must incorporate by reference in all subleases and other contracts the provisions of Administrative Code sections 12B.2(a), 12B.2(c)-(k) and 12C.3 and must require all Subtenants and other contractors to comply with these provisions.

(c) **Nondiscrimination in Benefits.** The Authority does not as of the date of this Agreement and will not at any time while this Agreement is in effect, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving costs, pension and retirement benefits, or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local Law authorizing the registration, subject to the conditions under Administrative Code section 12B.2.

(d) **HRC Form.** On or before the Parties enter into the Venue Leases and Venue Licenses, the Authority must execute and deliver to the Port the "Nondiscrimination in Contracts and Benefits" form Approved by the San Francisco Human Rights Commission.

(e) **Penalties.** The Authority understands that under Administrative Code section 12B.2(h), the Authority may be subject to a monetary penalty (currently \$50) for

each person for each calendar day during which the Authority discriminated against that person.

10.2. Prohibition on Political Activity with City Funds. Under Administrative Code chapter 12G, the Authority may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in the performance of the services required under this Agreement. The Authority agrees to comply with chapter 12G and any implementing rules and regulations promulgated by the Controller. If the Authority violates this Section, in addition to any other rights or remedies available, City may: (a) terminate this Agreement; and (b) prohibit the Authority from bidding on or receiving any new City contract for a period of 2 years. The Controller will not consider the Authority's use of profit as a violation of this Section.

10.3. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the city and its residents, and to prevent the further spread of graffiti.

The Authority agrees to remove all graffiti from any real property owned or leased by the Authority in the city within 48 hours of the earlier of the Authority's: (a) discovery or notification of the graffiti; or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the Approval of the Port, its Agents, the Authority, or its Agents and that is visible from the public right-of-way, but does not include: (i) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code, or the San Francisco Building Code; or (ii) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*).

10.4. Requiring Health Benefits for Covered Employees. Unless exempt, the Authority agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as under Administrative Code chapter 12Q, including the implementing regulations. Capitalized terms used in this Section and not defined in this Agreement will have the meanings assigned to them in chapter 12Q.

(a) If, within 30 days after receiving notice of a breach of this Agreement for violating the HCAO, the Authority fails to cure the breach or, if the breach cannot reasonably be cured within the 30-day period, the Authority fails to commence efforts to cure within the period, or later fails to diligently pursue the cure to completion, the City will have the remedies in section 12Q.5(f). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

(b) Any sublease or contract regarding services to be performed on the Venues entered into by the Authority must require the subtenant or contractor and subcontractors, as applicable, to comply with the requirements of the HCAO and must contain contractual obligations substantially the same as those under the HCAO. The

Authority must notify the Purchasing Department when the Authority enters into a sublease or contract and must certify to the Purchasing Department that the Authority has notified the subtenant or contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the subtenant or contractor through written agreement with the subtenant or contractor. The Authority will be responsible for ensuring compliance with the HCAO for each subtenant, contractor, and subcontractor performing services on the Venues. If any subtenant, contractor, or subcontractor fails to comply, the City may pursue the remedies under Administrative Code section 12Q.5 against the Authority based on the subtenant's, contractor's, or subcontractor's failure to comply, provided that the Purchasing Department has first provided the Authority with notice and an opportunity to cure the violation.

(c) The Authority may not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(d) The Authority represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(e) Promptly following any request, the Authority must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, contractors and subcontractors. Within 5 business days after any City request, the Authority must provide the City with access to pertinent records relating to any the Authority's compliance with the HCAO. In addition, the City and its Agents may conduct random audits of the Authority at any time during the term of this Agreement. The Authority agrees to cooperate with the City in connection with any audit.

(f) If a subcontractor is exempt from the HCAO because the amount payable to the subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000 (or \$50,000 for nonprofits) in that Fiscal Year, but the subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to the subcontractor to equal or exceed \$75,000 in that Fiscal Year, then all of the subcontractor's contracts with the City and relating to City-owned property will be later subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000 in the Fiscal Year.

10.5. Resource Efficiency Requirements. The Project will be subject to Chapter 7 of the San Francisco Environment Code. Accordingly, the Project must meet certain resource efficient requirements. The Authority agrees that it will design the Project to comply with Chapter 7 of the San Francisco Environment Code, as may be amended from time to time, or any similar law.

10.6. Pesticide Prohibition. The Authority must comply with Environment Code chapter 3 (the "Pesticide Ordinance"), which: (a) prohibits use of certain pesticides on City property; (b) requires posting certain notices and maintaining certain records regarding pesticide usage; and (c) requires the Authority to submit to the Port an integrated pest management (IPM) plan that: (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that the Authority may need to apply to the Venues during the term of this Agreement; (ii) describes the steps the Authority must take to meet the City's IPM policy; and (iii) identifies, by name, title, address and telephone number, an individual to act as the Authority's primary IPM contact person with the City. In addition, the Authority must comply with sections 303(a) and 303(b) of the Pesticide Ordinance. Through the Port, the Authority may seek a determination from the City's Commission on the Environment that the Authority is exempt

from complying with certain the portions of the Pesticide Ordinance with respect to this Agreement, as provided in section 307 of the Pesticide Ordinance. The Port will cooperate with the Authority, at the Authority's sole cost, if the Authority seeks in good faith an exemption under the Pesticide Ordinance.

10.7. MacBride Principles Northern Ireland. The Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

10.8. Tropical Hardwood and Virgin Redwood Ban. The Port and City urge the Authority not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood product. Except as expressly permitted by Environment Code sections 802(b) and 803(b), the Authority may not provide any items to the construction of Improvements, or otherwise in the performance of this Agreement that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If the Authority fails to comply in good faith with any of the provisions of Environment Code chapter 8, the Authority will be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or 5 percent of the total amount of the contract dollars, whichever is greater.

10.9. Preservative-Treated Wood Containing Arsenic. The Authority may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless the Department of Environment grants the Authority an exemption from the requirements of Environment Code chapter 3. The term "**preservative-treated wood containing arsenic**" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Authority may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude the Authority from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

10.10. Notification of Limitations on Contributions. The Authority acknowledges that it is familiar with Campaign and Governmental Conduct Code section 1.126 (the "**Conduct Code**"), which prohibits any person who contracts with the City for the sale or lease any land or building to or from the City whenever the transaction would require the Approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to the officer, or candidate for office, or committee controlled by the officer or candidate at any time from the commencement of negotiations for the contract until the termination of negotiations for the contract or a specified amount of time (currently 6 months) has elapsed from the date the contract is Approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

10.11. Sunshine Ordinance. In accordance with Administrative Code section 67.24(e), contracts, contractors' bids, responses to requests for proposals, and all other records of communications between the Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the

disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided to the Port that is within the scope of this Section will be made available to the public on request.

10.12. Conflicts of Interest. The Authority acknowledges that it is familiar with the provisions of San Francisco Charter, article III, chapter 2, section 15.103 of City's Campaign and Governmental Conduct Code, and California Government Code sections 87100 *et seq.* and sections 1090 *et seq.*, certifies that it does not know of any facts that would constitute a violation of these provisions, and agrees that if the Authority becomes aware of any fact during the term of this Agreement, the Authority will notify the Port immediately.

10.13. Food Service Waste Reduction Ordinance. The Authority agrees to comply fully with and be bound by the Food Service Waste Reduction Ordinance (Env. Code ch. 16), including implementing guidelines and rules. The Authority agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Authority agrees that the sums of \$100 in liquidated damages for the first breach, \$200 in liquidated damages for the second breach in the same year, and \$500 in liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the City will incur based on a violation, established in light of the circumstances existing when this Agreement was made. These amounts will not be considered a penalty, but rather agreed monetary damages sustained by the City because of the Authority's failure to comply with this provision.

10.14. Diesel Fuel Measures. The Authority must minimize exhaust emissions from operating equipment and trucks during construction. At a minimum, the Authority will maintain vehicles and equipment in good condition and well-tuned to minimize emissions, ensure that vehicles and equipment run only when necessary, and prohibit running engines when vehicles and equipment are not in use or when queuing. The Authority must also make good faith efforts to use low-emission diesel fuel or alternative low-emission fuels for all petroleum hydrocarbon-powered equipment used on the Venues, and to explore emerging new technologies for reducing diesel particulate matter, such as catalytic particulate traps, which currently are under study by the California Air Resources Board. Identifying sources of viable alternative low-emission fuels, retrofitting or purchasing new or late-model equipment to use such fuels to the extent reasonably feasible, and using low-emission fuels to the extent reasonably practicable are examples of "good faith efforts." In addition, the Authority will encourage independent truckers contracting with the Authority to move materials to and from the Venues to use low-emission fuels if possible, including if reasonably feasible, providing the truckers with economic incentives to retrofit equipment or take other measures necessary to use low-emission fuels.

11. INTERPRETATION; DEFINITIONS

11.1. Interpretation of Agreement.

(a) **Headings and Terms.** Unless otherwise specified, any reference in this Agreement to an Article, Section, Exhibit, Attachment, or defined term, will mean an Article, Section, Exhibit, Attachment, or defined term in this Agreement. Any reference to an Article or a Section includes all subsections, clauses, and subparagraphs of that Article or Section.

(b) **Attachments.** All exhibits, schedules, supplements, and other addenda attached to this Agreement are incorporated in and part of this Agreement, and all references to a specific document means the document as amended, replaced, supplemented, clarified, corrected, or superseded at any time while any obligations under this Agreement are outstanding.

(c) **Words of Inclusion.** The words “including,” “such as,” or similar terms when following any general term may not be construed to limit the term to the specific terms that follow, whether or not followed by language of non-limitation, such as “without limitation,” “including, but not limited to,” or similar words, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term and to be followed by the phrase “without limitation” or “but not limited to.”

(d) **Attributed Acts.** References in this Agreement to a Party’s acts or omissions will mean acts or omissions by the Party and its Agents unless the context requires or specifically stated otherwise.

(e) **Captions.** The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Agreement. Wherever reference is made to any provision “in this Agreement,” “in this Agreement,” “hereof,” or similar terms, the reference will be deemed to refer to any reasonably related provisions of this Agreement in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Agreement.

(f) **Laws.** References to all Laws, including specific statutes, relating to the rights and obligations of either Party mean the Laws in effect on the Effective Date and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time while any obligations under this Agreement are outstanding, whether or not foreseen or contemplated by the Parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(g) **No Party Drafter.** This Agreement has been negotiated at arm’s length between persons sophisticated and knowledgeable in the matters addressed. In addition, each Party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Agreement must be construed as a whole according to their common meaning to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the Party responsible for drafting any part of this Agreement. If the Recitals conflict with the remaining provisions of this Agreement, the remaining provisions will prevail.

(h) **Costs.** The Party on which any obligation is imposed in this Agreement will be solely responsible for paying all costs and costs incurred in performing the obligation, unless specifically provided otherwise.

(i) **Gender; Correlating Terms.** Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of “waive” applies to “waiver,” “waivers,” “waived,” “waiving,” etc.).

(j) **Days.** References to days mean calendar days unless otherwise specified, except if the last day on which a Party must give notice, respond to a notice, or take any other action under this Agreement occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

11.2. Defined Terms. The following terms have the meanings given to them below or are defined where indicated. Defined terms that are not capitalized below are not capitalized when used in this Agreement.

“2013 Pier 80 Work” is defined in Section 1.2(b)(i).

“AC34” is defined in Recital A.

“AC35” is defined in Section 1.5(a)(iii).

“AC35 Host Agreement” is defined in Section 1.5(a)(iii).

“ACOC” is defined in Recital C.

“ACRM” is defined in Recital C.

“action” is defined in Section 7.10(c)(i)

“Affiliate” means one Person and any other Person from time to time controlled by, or under common control of the first Person, where control means ownership, directly or indirectly, of 50 percent or more of the outstanding voting securities or capital stock of the other Person, or any other comparable equity or ownership.

“Agents” when used with reference to either Party, or any other Person, means the officers, directors, employees, agents, contractors, and subcontractors of the Party or other Person, and their respective Agents, heirs, legal representatives, successors, and assigns. For the Authority, “Agents” include Authority Affiliates, Event Sponsors, Commercial Partners, Officials, Competitors, and their respective Agents.

“Agreement” is defined in the preamble.

“alcoholic beverage” has the meaning set forth in California Business and Professions Code section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for consumption.

“Alterations” is defined in Section 1.1(c).

“Approve” means a Party’s consent to or approval of a request, action, or other matter, and, when appropriate in the context, will be construed to mean a Regulatory Approval by a Regulatory Agency.

“Army Corps” is defined in Section 1.1(d)(iii).

“attorneys’ fees” is defined in Section 7.10(c)(ii).

“Authority” is defined in the preamble.

“Authority Affiliate” means ACRM and any other Person from time to time controlled by, or under common control of the Authority or ACRM, where control means ownership, directly or indirectly, of 50 percent or more of the outstanding voting securities or capital stock of the other Person, or any other comparable equity or ownership.

“Authority Event of Default” is defined in Section 7.1.

“Authority Occupant” means a Person other than the Authority who regularly occupies a Venue with the Authority’s permission or agreement, not including members of the general public. Examples include vendors, performers, and service providers who perform an Event-related use.

“Authority Users” is defined in 2.6(c)(i).

“Authority Secured Obligations” is defined in Section 4.1(a).

“BCDC” is defined in Section 3.12.

“Board” is defined in Recital E.

“Breach” is defined in the HVA.

“Burton Act” means chapter 1333 of statutes of 1968, as amended.

"business day" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by the Port.

"Cash Collateral" is defined in 4.2(c).

"Casualty" is defined in Section 2.3.

"Casualty Repair Period" is defined in Section 2.4(a).

"CEQA" is defined in Recital E.

"Chief Harbor Engineer" means the Chief Harbor Engineer of the Port (or any successor officer designated by or under law), acting in that capacity under this Agreement.

"City" is defined in the preamble, and includes the Port unless otherwise expressly stated or required by the context of its use.

"City Event of Default" is defined in Section 7.3.

"City General Fund" means the City's general operating fund, into which taxes are deposited, excluding dedicated revenue sources for certain municipal services, capital projects, and debt service.

"City Secured Obligations" is defined in Section 4.2(a).

"City Users" is defined in Section 2.6(c)(ii).

"Claim" means a demand or action seeking equitable relief, mandamus, specific performance, or any other relief available at law or in equity for Losses arising from: (a) any accident, injury to, or death of any Person, or loss or damage to or destruction of any property or any other pecuniary interest, including goodwill, intellectual property, and business and leasing opportunities occurring at any time from any cause while this Agreement is in effect; or (b) an Authority or City Event of Default; or (c) each Party's acts or omissions in relation to Event operations; or (d) any work performed by or on behalf of a Party in relation to Event operations; or (e) a Party's failure to obtain or comply with any Regulatory Approval; or (f) mechanic's, materialman's, or other liens; or (g) claims for a finder's fee or broker's commission for this Agreement; or (h) an Environmental Regulatory Action or claim made or threatened by any Third Party against any Party relating to a Loss resulting from the presence, Release, or threatened Release of any Hazardous Materials, including Losses based in common law.

"Commercial Partner" means any entity to which the Authority, any Competitor, or any of their respective Affiliates grants from time to time any advertising, promotional, or marketing rights in relation to the Event.

"Common Control" means two Persons that are both Controlled by the same other Person.

"Competitor" means a team selected by GGYC to participate in the America's Cup Defender Series, if any, or a yacht club (and its representative team) whose challenge has been accepted by GGYC.

"Complete" in relation to the construction of any specific repairs, Alterations, or Improvements means that the Party has constructed or installed and Completed all aspects of the repairs, Alterations, or Improvements in compliance with applicable Laws, Regulatory Approvals, and this Agreement.

"Conduct Code" is defined in Section 10.10.

"Control" means the ownership (indirect or direct) by one Person of more than 50 percent of the profits or capital of another Person.

"Construction Documents" means schematic drawings, preliminary construction documents, and final construction documents, as applicable to repairs, Alterations, or Improvements to be made.

"Core Benefits" is defined in Section 10.1(c).

"costs" is defined in Section 7.10(c)(iii).

"CPA" means an independent certified public accounting firm.

"Cruise Terminal Project" is defined in Section 1.1(d)(vi).

"Damaged Venue" is defined in Section 1.4(g).

"Deed of Gift" is defined in Recital A.

"Defender" means GGYC and the racing team representing GGYC in AC34, currently the Oracle Racing.

"Delayed Party" is defined in Section 3.14(b).

"Deliver" is defined in Section 3.1.

"Delivery Date" is defined in Section 1.1(e).

"Disapprove" means that a Party does not consent to or Approve of a request or other matter under this Agreement.

"DMMO" means the Dredged Material Management Office, which is a joint program of the Army Corps, RWQCB, BCDC, State Lands, and EPA, with the participation of the California Department of Fish and Game, the National Marine Fisheries Service, and the Fish and Wildlife Service.

"Effective Date" is defined in Section 1.6.

"Environmental Law" means any Law relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of any Venue.

"Environmental Oversight Deposit" is defined in Section 4.1(c).

"Environmental Regulatory Action" means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the EPA, the United States Occupational Safety and Health Administration, Department of Labor, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, the California Division of Occupational Safety & Health, Department of Industrial Relations, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, the Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any Approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on any Venue and any closure permit.

"EPA" means the United States Environmental Protection Agency.

“Event” is defined in Recital A.

“Event of Default” means a City Event of Default or an Authority Event of Default.

“Event Jury” is defined in the Protocol.

“Event Sponsor” means a Person that has entered into a sponsorship agreement for the Event with the Authority.

“Exacerbate” means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission, but excluding any situation where the effect of the act is unavoidable if the Authority has strictly complied with applicable Laws and Regulatory Approvals and employed best management practices and prudent measures in performing the act.

“Existing Condition” is defined in Section 2.5(a)(i).

“FEMA” means the Federal Emergency Management Agency.

“Final EIR” is defined in Recital E.

“Fiscal Year” means the period commencing on July 1 of any year and ending on the following June 30.

“Force Majeure” is defined in Section 3.14(d)(i).

“Force Majeure Delay” is defined in Section 3.14(b) and may be revised in accordance with Section 3.15(b).

“Forced Coverage” is defined in Section 2.8(h).

“Functionally-Equivalent Space” is defined in Section 1.4(h).

“GAAP” means generally accepted accounting principles, consistently applied.

“GMP contract” is defined in 1.3(a)(i)(A).

“GGYC” is defined in Recital A.

“graffiti” is defined in Section 10.3.

“Guarantor” is defined in Section 4.1(b).

“Guaranty” is defined in Section 4.1(b).

“Handle” means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

“Hard Costs” means payments made by or on behalf of the Authority after the Effective Date for Reimbursable Work for: (a) labor and materials required in connection with the Reimbursable Work; and (b) building permits. Hard Costs do not include: (i) any amounts that cannot be reasonably verified by Proof of Payment; (ii) Soft Costs; or (iii) any cost that the Parties agree through consultation.

“Hazardous Material” means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos-containing materials, and presumed asbestos-containing materials, whether or not part of the structure of any existing Improvements on any Venue, any Improvements to be constructed on any Venue by or on behalf

of the Authority, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Claim" means a Claim arising from the presence or alleged presence of any Hazardous Materials in, on, under, or about any Venue.

"HCAO" is defined in Section 10.4.

"HRC" means the City's Human Rights Commission.

"HVA" is defined in Recital C.

"HVA Effective Date" is defined in Recital C.

"Implementations Plans" is defined in Section 1.1(d)(ii).

"Improvements" is defined in Section 1.1(c).

"Indemnified Claim" is defined in Section 2.7(c)(i).

"Indemnified Party" is defined in Section 2.7(a).

"Indemnify" means to indemnify, protect, defend, and hold harmless forever.

"Indemnitor" is defined in Section 2.7(a).

"Investigate" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under, or about any Venue, other Port property, or the environment, and includes preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitee" means the clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, vendors, suppliers, assignees, and Subtenants of a Person, any other Person whose rights arise through them, and members of the general public present on any property under a Party's possession and control. For purposes of Section 2.8 (Insurance), "Invitees" of the Authority include Commercial Partners and Authority Occupants.

"ISO" is defined in Section 2.8(a)(i).

"Law" means any present or future federal, state, regional, or local law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan and City construction requirements), any Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Venues, and any recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Venues, whether in effect when this Agreement is executed or at any later time and whether or not within the present contemplation of the parties, and as amended, supplemented, clarified, or corrected from time to time.

"LBE" means local business enterprises, as certified by HRC.

"LDA Security" means the security provided by the City as described in Section 4.2(b).

"LEED" means Leadership in Energy and Environmental Design under the standards of the U.S. Green Building Council.

"Litigation Force Majeure" is defined in Section 3.14(d)(ii).

"Loss" means compensation, damages, contribution, cost recovery, demand, direct and vicarious liability, fine, judgment and award, lawsuit or other proceeding, lien, loss, penalty,

right, settlement, interest, and attorneys' fees in relation to a Claim, as amended by Section 2.6(c)(iv) in relation to a Hazardous Material Claim.

"Maritime Transportation Security Act of 2002 and Procedures" means the Maritime Transportation Security Act of 2002 Public Law 107-295 November 25, 2002 and its implementing regulations and procedures at 33 CFR Chapter I, Subchapter H, Parts 101 through 107, as amended from time to time.

"Match" means a series of races between GGYC, represented by its Defender, and its challenger to determine the winner of the 34th America's Cup.

"Mitigation Measure" is defined in Section 1.2(g).

"MMRP" is defined in Recital E.

"Net Worth" is defined in the Guaranty.

"Note to File" is defined in Recital G.

"Official" means the person appointed to be the Regatta Director for the Event under the Protocol, any regatta officials appointed by the Regatta Director, members of the Event Jury appointed under the Protocol, and other Persons assisting with the organization or management of the Event.

"Party" means the Authority, the City, or any of their successors or assigns, as relevant in the context.

"Permitted Use" has the meaning set forth in a Venue Lease or Venue License.

"Person" means any natural person, corporation (including any business trust), limited liability entity, partnership, joint venture or any other entity or association, or governmental or other political subdivision or agency.

"Pesticide Ordinance" is defined in Section 10.6.

"Pier 27 Venue" is defined in Section 1.4(d).

"Pier 29 Design Contract" is defined in Section 1.2(d).

"Pier 29 Restoration Contract" is defined in Section 1.2(d)(ii).

"Pier 29 Restoration Work" is defined in Section 1.2(d)(i).

"Pier 29 Venue" is defined in Section 1.2(d)(i).

"Piers 30-32 Performance Bond" is defined in Section 1.2(a).

"Piers 30-32 Work" is defined in Section 1.2(a).

"Plans" means the applicable final Construction Documents and Regulatory Approvals for Alterations and Improvements.

"Port" is defined in the preamble.

"Port Commission" is defined in the preamble.

"Port Director" means the Executive Director of the Port or any Person acting as such through a proper delegation of authority under Port policy (or any successor officer designated by or under law).

"Port Harbor Fund" means the harbor trust fund established in compliance with section 4 of the Burton Act, the use of which is governed by the Burton Act, the Agreement Regarding the Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco, and San Francisco Charter section B6.406.

"Port Infrastructure Work" is defined in Section 1.2.

"Port Media Issues" is defined in Section 3.13(a).

"Pre-Existing Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about any Venue that occurs before the Authority takes possession of the Venue.

"preservative-treated wood containing arsenic" is defined in Section 10.9.

"Project" is defined in Recital E.

"Proof of Payment" means a cancelled check, an invoice marked "paid," a wire confirmation demonstrating delivery of a direct transfer of funds, an executed and acknowledged unconditional lien release, or other evidence demonstrating payment to the reasonable satisfaction of the Party obligated to pay or whose Approval is required for payment to be made, demonstrating that the costs were commercially reasonable and were actually incurred.

"Protocol" is defined in Recital B.

"Public Trust" is defined in Recital F.

"Punch List Items" means items of construction that are unfinished when a work of improvement is substantially Complete, customarily handled by a punch list.

"Race Day" means any day on which a World Series race or Regatta is scheduled and held.

"Race Period" means a period beginning 30 days before a Race Day and ending 5 days after a race ends.

"Regatta" means the Louis Vuitton Cup, America's Cup Challenger Series, the America's Cup Defender Series (if any), and the Match.

"Regatta Director" means the Person appointed as such under the Protocol.

"Regulatory Agency" means the municipal, county (including the City), regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commission of the City (each in its regulatory capacity), Port's Chief Harbor Engineer, the DMMO, State Lands, the Army Corps, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"Regulatory Approval" means any authorization, Approval, license, registration, or permit required or issued by any Regulatory Agency.

"Regulatory Condition of Approval" is defined in Section 1.2(f).

"Reimbursable Costs" is defined in Section 1.3(a).

"Reimbursable Work" is defined in Section 1.3(a).

"Release" means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about any part of any Venue, other Port property, or the environment.

"Relocation Costs" is defined in Section 1.2(e)(ii).

"Remediate" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "Remediation" also includes the creation of a remedial work plan to be Approved by the appropriate Environmental Regulatory Agency when required.

“RWQCB” means the San Francisco Bay Regional Water Quality Control Board

“saltwater immersion” is defined in Section 10.9.

“Soft Costs” means payments made by or on behalf of the Authority for Reimbursable Work or for certain pre-LDA costs described in Section 1.1(xi) & (xii) for: (a) Third-Party consultants necessary to perform the work, such as attorneys, project management, workforce coordinators, lighting, architectural, and engineering; (b) costs for owner’s representative, not to exceed 2 percent of the cost of the work; (c) builder’s insurance; (d) construction management fees that do not exceed 4 percent of the cost of the work; and (e) safety and security measures. Soft Costs do not include: (i) any amounts that cannot be reasonably verified by Proof of Payment; (ii) Hard Costs; (iii) the portion of any cost that is commercially unreasonable as of the date the obligation to pay the cost was incurred; (iv) costs of meeting any Indemnification obligation; (v) costs related to the Authority’s negotiation of the HVA or this Agreement; (vi) the Authority’s (or Authority Affiliate’s) corporate office, personnel, and overhead costs; and (vii) the Authority’s financing costs.

“State” means the State of California.

“State Lands” means the California State Lands Commission.

“Subtenants” means subtenants, licensees, vendors, concessionaires, or others lawfully occupying the Venues or any part of the Venues by contract or other arrangement with the Authority.

“Successive Defense Option” is defined in Section 1.5(a).

“Tax Laws” means the Internal Revenue Code of 1986, as amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Internal Revenue Code.

“Term” is defined in Section 1.6.

“Terminating Event” is defined in Section 6.1(a).

“Third Party” means a Person other than a Party.

“Turner” is defined in Section 1.2(a)(i).

“Turner CM/GC Contract” is defined in Section 1.2(a)(i).

“Unavailable Venue” is defined in 1.4(h).

“Underwriter” is defined in Section 4.2(b).

“Utility Costs” is defined in Section 3.9(b).

“Venue” is defined in Recital D.

“Venue Lease” is defined in Recital D.

“Venue License” is defined in Recital D.

“Venue Repairs” is defined in Section 1.2(h).

“Vessel” means any watercraft vessel, ship, or boat, including any Vessel qualified to race in any World Series race or Regatta in accordance with the Protocol and Vessels used for activities associated with the AC34 Event, and other yachts, vessels of the U.S. Navy or navy of any foreign nation, ocean research vessels, water taxis, recreational boats, passenger ferry vessels, barges, work skiffs, floats, tow-boats, excursion vessels, tall ships, and vessels engaged in historical or ceremonial maritime events.

“Waiving Party” is defined in Section 2.8(g).

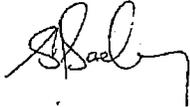
“World Series” is defined in the HVA.

[Remainder of page intentionally left blank.]

Executed as of the last date set forth below.

DEVELOPER:

**AMERICA'S CUP EVENT AUTHORITY,
LLC, a California limited liability company**

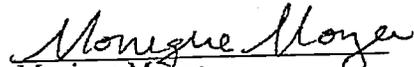
By: 

Stephen Barclay
Chief Executive Officer

Date: August 14, 2012

PORT:

**CITY AND COUNTY OF SAN
FRANCISCO,**
a municipal corporation, operating by and
through the San Francisco Port Commission

By: 

Monique Moyer
Executive Director

Date: 8/14/12

Authorized by:
Port Resolution Nos. 12-34 & 12-35
and Board Resolution No. 109-12

RECOMMENDED:

By: 

Todd Rufo, Director
Office of Economic and Workforce
Development

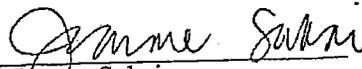
**APPROVED AS TO RISK
MANAGEMENT MEASURES**

By: 

Matt Hansen
City Risk Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 

Joanne Sakai
Deputy City Attorney



Fwd: Approval to use your electronic signature
Sam Hollis to: Joanne Sakai, Rona Sandler
Cc: Brad Benson

08/14/2012 03:30 PM

Joanne,

Please see email approval from Stephen as requested (which I was getting already, for our own internal processes) to use his electronic signature on the closing documents today.

Sam



Sam Hollis

mobile +1 415 370 4820 (US)
email sam.hollis@americascup.com
skype sam.hollis2
address America's Cup Headquarters
Pier 23, Suite 100
San Francisco, California 94111

FOLLOW US:



Begin forwarded message:

From: Stephen Barclay <stephen.barclay@americascup.com>
Date: 14 August 2012 15:19:42 PDT
To: Sam Hollis <sam.hollis@americascup.com>
Cc: Julie Sutherland <julie.sutherland@americascup.com>
Subject: Re: Approval to use your electronic signature

Yes, you are approved to use my electronic signature while I am overseas to sign the LDA, leases and other relevant documents.

Stephen

On 14/08/2012, at 11:15 PM, Sam Hollis <sam.hollis@americascup.com> wrote:

Stephen,

As just discussed on the phone, please reply to this email to confirm that you are happy for me to use your electronic signature on the LDA, Venue Leases, Venue Licenses and other documentation required as part of the closing of the LDA that we are working on today. I will also use your electronic signature on a written resolution of Oracle Racing, Inc. that approves entry into all of the aforementioned documentation.

Thank you.

Sam



Sam Hollis

mobile +1 415 370 4820 (US)
email sam.hollis@americascup.com
skype sam.hollis2
address America's Cup Headquarters
Pier 23, Suite 100
San Francisco, California 94111

FOLLOW US:



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WARNING: Computer viruses can be transmitted by e-mail. Although we have taken steps to ensure that this e-mail and attachments are free from any virus, the recipient should also check this. We accept no liability for any damage caused by any virus transmitted by this e-mail and it is your responsibility to scan or otherwise check this e-mail and any attachments.

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Consultation on AC LDA Revisions
Rosenfield, Ben. to: Moyer, Monique
Cc: "Sakai, Joanne", "Maerz, Robert"
Jesse", "mikemartin@sbcglobal.net"

08/14/2012 08:23 PM

, "Benson, Brad", "Smith,

History: This message has been replied to.

Monique,

Thank you and other City staff for consultation with me regarding the revised America's Cup LDA, as required by Board of Supervisor's resolution 109-12.

Such consultation has not extend to Section 3.15 of the LDA, under which the City will be obligated for up to \$5 million in the aggregate in liquidated damages if its delivery of the cruise terminal building or Piers 30-32 is delayed, with the benefit of the usual force majeure exclusions for fire, unusually severe weather, and labor disputes, which is expressly subject to future approval by the Board of Supervisors in its sole discretion.

Ben

CONSENT

By executing this Consent below, San Francisco America's Cup Organizing Committee consents to and agrees to be bound by the amendments to the HVA effected by **Section 1.1(b)** (General: Relationship to and Effect on the HVA) and **Section 6.1(b)** (Termination: Effect of Termination) of this Agreement, and specifically acknowledges its commitment under HVA § 5.2(d), as amended and restated in **Section 1.1(b)(ii)(G)** (General: Relationship to and Effect on the HVA) and described in **Section 3.9** (Taxes and Assessments).

SAN FRANCISCO AMERICA'S CUP ORGANIZING COMMITTEE

By: Mark Buell 8/16/2012
Mark Buell, Chairman

[Page intentionally left blank.]

EXHIBIT A
MOA re Allocation of MMRP Measures
(To be attached.)

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Memorandum of Agreement

This Memorandum of Agreement (including all attached exhibits, this "MOA" or "Agreement") is made in reference to and is a part of the Lease Disposition Agreement (the "LDA") entered into by and between the America's Cup Event Authority ("Event Authority") and the City and County of San Francisco (the "City"), acting by and through the San Francisco Port Commission (collectively, the "Parties"), dated as of March 27, 2012, and will be effective as of the effective date of the LDA (the "Effective Date").

Recitals

The competition for the America's Cup, first held in 1851 at Cowes, England, is one of the oldest international sporting competitions and the world's premier yacht racing event. BMW Oracle Racing Team, racing for the Golden Gate Yacht Club of San Francisco ("GGYC"), won the 33rd America's Cup match in Valencia, Spain on February 14, 2010. GGYC is now trustee under the Deed of Gift dated October 24, 1887, between George L. Schuyler and the New York Yacht Club, as amended by final decisions of the Supreme Court of the State of New York (the "Deed of Gift"), governing the silver cup won by the yacht America in the first America's Cup competition. Under the Deed of Gift, GGYC is entrusted with the organization of the 34th America's Cup ("AC34" or the "Event").

GGYC appointed the Event Authority to provide professional management and financial resources to AC34. GGYC selected San Francisco as the host city for AC34 on December 31, 2010. Under the 34th America's Cup Host and Venue Agreement (the "HVA") among Event Authority, the City, and the America's Cup Organizing Committee (the "ACOC"), certain of the America's Cup World Series pre-regattas, the America's Cup Challenger Series, the America's Cup Defender Series (if held), and the America's Cup Match will be held in San Francisco Bay. On the Effective Date, the LDA and this Agreement will become parts of the HVA.

Under the HVA, the City agreed to provide Port land and water areas to the Event Authority for AC34-related uses (each, a "Venue") rent-free under leases (each, a "Venue Lease") and licenses (each, a "Venue License"), Event Authority agreed to make certain capital improvements to improve the Venues and other Port property.

The City Planning Commission certified the final environmental impact report (the "Final EIR") for the AC34 project (the "Project") following analysis and review under the California Environmental Quality Act ("CEQA") by Motion No. 18514 in Case No. 2010.0493E on December 15, 2011. The San Francisco Board of Supervisors (the "Board") after hearing appeals to the Planning Commission's certification of the Final EIR at a hearing on January 24, 2012, affirmed the Planning Commission's action by Motion No. M12-11. The Board adopted CEQA Findings and a Mitigation Monitoring and Reporting Program, conditionally approved the LDA as an amendment to the HVA, affirmed the HVA as amended, approved this MOA, and took other related actions by Resolution No. 109-12 adopted on March 27, 2012. References in this Agreement to the Project mean only AC34 Events, and not the potential long-term developments, described in the Final EIR.

Pursuant to this Agreement, the City will agree to pay all costs and take all actions assigned to it under the MMRP and further allocates between the City on the one hand and the Event Authority on the other, those mitigation measures set forth in the MMRP that are collectively assigned to the City (or one or more of its departments) and Event Authority. This Agreement also sets forth the understanding between the City and Event Authority of allocation of responsibility for costs and actions taken pursuant to the Implementation Plans (as that term is defined herein) and the costs and actions that may be required in the future to procure certain permits or approvals from other governmental or regulatory agencies, including the costs of any related or associated environmental review of such permits or approvals.

Agreement

1. City direct obligations mitigation measures under the MMRP The City hereby agrees to assume responsibility at its sole cost and expense for all the mitigation measures set forth in the MMRP that are designated as "City" obligations:

2. Allocation of shared obligations under the MMRP The MMRP attached hereto designated certain mitigation measures as obligations of the City (or one of its agencies) and the Event Authority (and/or its contractors). These mitigation measures are described below. The parties acknowledge and agree that the Project Sponsor mitigation measures shall be allocated between them as follows:

2.1 City Obligations. The City agrees, at its sole cost and expense, to implement the following mitigation measures of the MMRP or as otherwise required under permits required to implement the event:

- (a) Shoreside power project at Pier 70 (Mit. Measure M-AQ-4e);
- (b) Operational and construction mitigation measures to reduce emissions to the extent applicable to City operations; vehicles and construction activities (Mit. Measure M-AQ-2d); and
- (c) Protection of recreational resources (Mit. Measure M-BI-1a, also special event permits with the National Park Service ("NPS")): The City agrees to bear certain costs arising from or associated with activities in the parks, as noted below:
 - (i) operational planning for the Marina Green;
 - (ii) operational costs of traffic coordinators at Marina Green and in NPS lands; and
 - (iii) costs of shuttle operations or other transportation mitigations at Marina Green and in NPS lands.

2.2 Event Authority Obligations. The Event Authority agrees, at its sole cost and expense, to implement the following mitigation measures of the MMRP:

(a) Operational and construction mitigation measures to reduce emissions to the extent applicable to Event Authority operations, vehicles and construction activities (Mit. Measure M-AQ-2a, 2b, 2c, 2d, 2e, 2f, 4a, 4b, 4c, 4d and 5); and

(b) Eelgrass mooring mitigation to relocate or update moorings from eelgrass beds (required by National Marine Fisheries Service).

2.3 Joint Efforts.

2.3.1 Notice to Boaters and Boater Pledge. Event Authority and the City will cooperate in devising the boater pledge program (required by the Regional Water Quality Control Board) and the Visiting Mariners Information (also known as the Notice to Boaters) (Mit. Measure M-BI-12) as follows:

(a) To implement the boater pledge, flag and notice programs described above, the City will:

(i) cooperate with the Event Authority in devising the boater pledge program, including but not limited to convening applicable regulatory agencies and stakeholders to develop an implementation plan for distributing and collecting the boater pledge agreements and distributing flags; and

(ii) develop, produce and distribute the Notice to Boaters.

(b) To implement the boater pledge, flag and notice programs described above, the Event Authority will:

(i) cooperate with the City in devising the boater pledge program and the Notice to Boaters;

(ii) procure the flags for the boater pledge program and will provide a point of contact for distributing and collecting the boater pledge agreements and distributing flags; and

(iii) prepare certain printed materials and direct boaters to the America's Cup and/or appropriate partner's website for information on the boater pledge.

2.3.2 National Park Service and San Francisco Bay Mitigations. The parties have negotiated revised contractual arrangements between them that will allow the City to provide up to \$3 million in funding for environmental mitigation and operational costs in NPS lands as well as on San Francisco Bay. These costs are anticipated to include but are not limited to the requirements for resource monitors and augmented law enforcement as agreed to under the CEQA and National Environmental Policy Act ("NEPA") environmental review processes. The Event Authority agrees to pay any additional mitigation or operational costs associated with any permits that allow the Event Authority

to establish Event-related programming or other activations in NPS lands. For the avoidance of doubt, the parties hereby agree that the Event Authority will not be liable for any NPS mitigation or operational costs if the Event Authority does not seek authorization to establish programming in NPS lands.

3. Implementation Plan Responsibility In addition to the MMRP, the City has formulated a number of "Implementation Plans" to address issues relating to management of the Event, such as maintenance of park resources and deployment of law enforcement personnel. Except as otherwise specified herein, Event Authority and the City agree to allocate certain responsibilities under the Implementation Plans as set forth below. In addition, certain implementation measures set forth in the Water and Air Traffic Plan, and the Public Safety Plan (collectively, the "Shared Plans") are shared between the City and the Event Authority as follows:

3.1.1 Public Safety. The City agrees to bear all costs arising from or associated with the Public Safety Plan. The City further agrees to pay for training of staff to be made available to augment existing law enforcement capacity in NPS lands, subject to availability of qualified applicants under criteria to be determined by the San Francisco Police Department.

3.1.2 Water and Air Traffic Plan. The City shall coordinate among and convene all applicable regulatory agencies in reviewing the Water and Air Traffic Plan and shall be responsible for the tasks set forth in Section 2.3 above pertaining to boater pledges and the Notice to Boaters.

3.1.3 Waste Management. Insofar as the Zero Waste Plan agreed by the parties by its terms addresses only the Port venues, the parties wish to further define the waste management responsibilities to make them consistent across all Event locations, including NPS lands. Accordingly, the City:

- (a) will be responsible for providing trash/recycling/compost removal from all Authority Event sites;
- (b) will provide appropriate containers and related equipment to facilitate such services at all Event sites;
- (c) will also be responsible for post-processing services if needed after further discussions with the Event Authority as to appropriate source control procedures;
- (d) will be responsible for provision of sufficient toilets and their servicing at Port Event sites; and
- (e) will be responsible for street cleaning at all Event sites.

The Authority shall bear responsibility for:

which as shown in the Zero Waste Plan and in accordance with City law includes but is not limited to the following;

- (a) all other waste management activities within its programmed sites,
- (b) developing a recycling plan;
- (c) coordination with the City in planning for location of collection containers and carts as well as access routes and collection schedules;
- (d) developing vendor agreements regarding types of acceptable materials;
- (e) developing and implementing appropriate signage; and
- (f) implementing appropriate source controls to ensure appropriate management of the respective waste streams as further described in the Zero Waste Plan.

For areas that are not programmed by the Authority the City will perform all waste management and cleanup services. Upon approval of this Agreement the parties agree to update the Zero Waste Plan to reflect this division of responsibility.

3.2 Event Authority Obligations for Plan Implementation. Event Authority shall, at its sole cost and expense:

3.2.1 Public Safety. Under the Public Safety Plan, provide security for areas of Venues subject to the exclusive control of Event Authority (i.e. within areas requiring special authorization, ticketing or other non-public access).

3.2.2 Water and Air Traffic. Event Authority will cooperate with the City in devising the Water and Air Traffic Plan and shall implement those MMRP measures set forth in Section 2.3(b) above pertaining to boater pledges and flags.

3.2.3 Sustainability Plan. Event Authority shall be responsible for implementing the Sustainability Plan.

3.2.4 Park Resources. Under the Park Events Operations Plan, the Event Authority shall:

- (a) perform a pre-and post-event assessment of City park facilities;
- (b) ensure that any park lands utilized for Event Authority programming are returned in an equivalent or better state than prior to the Event; and
- (c) post security for the obligation set forth in clause (b) in a form reasonably agreed by the parties in conjunction with the issuance of a permit to use such City park lands.

4. Cost Allocation for Permits and Activities for Non-City Permits and Lands□

4.1 The City agrees, at its sole cost and expense to fund planning expenses as required to obtain NPS permits (including all NPS and City costs associated with or arising from any environmental review of any proposed actions under NEPA, the National Historic Preservation Act, the Endangered Species Act or any other federal law, regulation or policy). This obligation includes only the costs of the City and NPS and their respective consultants in performing these actions; it does not extend to costs of consultants or legal advisors retained by the Event Authority to participate in such processes.

AMERICA'S CUP EVENT AUTHORITY, LLC,
a California limited liability company

By _____
Stephen Barclay,
Chief Executive Officer

Date: _____

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation

By _____
Edwin M. Lee, Mayor

Date: _____

Approved as to Form:
Dennis J. Herrera, City Attorney

By _____
Deputy City Attorney

AC34 PROJECT – MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures Adopted as Conditions of Approval.)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>CULTURAL RESOURCES/MITIGATION MEASURES</p> <p>Mitigation Measure M-CP-1b: Protection of Historic Resources due to Indirect Damage</p> <p>As described in the Project Description, the Parks Event Operations Plan will be prepared and implemented in support of the proposed project. This mitigation measure requires that this plan shall incorporate specific elements to protect cultural resources through the use of removable protective fencing, signage, area closures, pre- and post-event conditions assessments, and educational and awareness programs. Federal and state agencies would likely require these or similar measures pursuant to their mission and regulatory obligations under federal and state law. Implementation of this plan would protect historic resources due to indirect damage from event activities. The plan shall contain, at a minimum, the following measures to protect historic resources.</p> <ul style="list-style-type: none"> Fencing and Signage: The project sponsor shall protect the integrity of historic earthen fortifications and other fragile historic resources by the installation of fencing and signage. The fencing shall consist of, for example, filter fabric backed with welded mesh set into the ground. These fences should be light enough for removal between 2012 and 2013 race events, but would be obvious deterrents to visitors. The fencing shall also have signs announcing that these are sensitive historic areas and that entry is prohibited. Fencing location/length and signage type shall be determined in consultation with the appropriate land authority where indirect impacts are anticipated (e.g., National Park Service (NPS), the Presidio Trust, or California Department of Parks and Recreation (CDPR)). Area Closures: Access to certain historic sites that cannot be sufficiently protected through the use of fencing and signage shall be closed to the public during the duration of the AC34 events. The exact locations and timing of the closures are to be determined in consultation with the appropriate land authority where the indirect impacts are anticipated (e.g., NPS, the Presidio Trust, or CDPR). Pre- and Post-Event Conditions Assessment and Repair: Prior to the 2012 AC34 events, the project sponsor shall ensure that qualified cultural resources personnel assess the existing condition of the historic earthen fortifications and other fragile historic resources that could be subject to erosion from increased visitation. Standardized site assessment forms, similar to those used by the National Park Service, shall be completed for all such affected historic resources. Forms include thorough photo documentation, description, and GIS location information. The exact 	<p>ACEA and OEWD</p>	<p>Parks Event Operations Plan shall be completed and approved by appropriate land authority (e.g., NPS and CDPR) prior to the 2012 AC34 events.</p> <p>A completed and approved copy shall be submitted to the ERO prior to the 2012 AC34 events.</p> <p>Fencing and Signage and Area Closures: To be installed prior to 2012 AC34 events and removed after the 2012 AC34 events; then reinstalled prior to 2013 AC34 events and removed after the 2013 AC34 events.</p> <p>Pre- and Post-Event Conditions Assessment and Repair: Pre-conditions assessment prior to 2012 AC34 events; post-events assessment following completion of 2013 AC34</p>	<p>SF Planning Department and the ERO, and appropriate land authority, including NPS and CDPR</p>	<p>Considered complete upon verification by SF Planning Department and ERO, and appropriate land authority, including NPS and CDPR</p>

DBW = California Department of Boating and Waterways
EP = San Francisco, Environmental Planning Department
ERO = San Francisco Environmental Review Officer
NIMES = National Marine Fisheries Service
NPS = National Park Service
OEWD = SF Office of Economic and Workforce Development

Port = Port of San Francisco
SDPRH = San Francisco Department of Public Health
SFMTA = San Francisco Municipal Transportation Agency
SFUC = San Francisco Public Utilities Commission
SFRPD = SF Recreation and Parks Department
USEPA = United States Environmental Protection Agency
USCG = United States Coast Guard

ACEA = America's Cup Event Authority
ACRM = America's Cup Race Management
BCDC = SF Bay Conservation and Development Commission
CAFB = California Air Resources Board
CDFG = California Department of Fish and Game
CDPR = California Department of Parks and Recreation
CSLC = California State Lands Commission

AC34 PROJECT – MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures Adopted as Conditions of Approval.)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>CULTURAL RESOURCES/MITIGATION MEASURES (cont.) <i>America's Cup (cont.)</i></p> <p>Mitigation Measure M-CR-1b: Protection of Historic Resources due to Indirect Damage (cont.)</p> <p>number of resources to be recorded, and the exact methods of recordation, shall be determined in consultation with the appropriate land authority where the indirect impacts are anticipated (e.g., NPS, the Presidio Trust, or CDPRI). Following the 2013 AC34 event, the project sponsor shall ensure that qualified cultural resources personnel reassess the condition of historic resources identified above. Any unintended damage to historic resources as a result of the AC34 event will be repaired by the project sponsor to its pre-event condition.</p> <ul style="list-style-type: none"> Educational and Awareness Programs: The project sponsor shall create an educational program that increases the public awareness of the sensitivity of historic resources during the AC34 events and encourages public participation in the protection of such resources. The exact nature of the program shall be determined in consultation with the appropriate land authority where the indirect impacts are anticipated (e.g., NPS, the Presidio Trust, or CDPRI). Crowd Control: The project sponsor shall ensure that crowd control personnel and volunteers are posted at or near the historic areas susceptible to erosion in order to direct visitors away from those sensitive locations. The exact number, location, and timing of the crowd control volunteers shall be determined in consultation with the appropriate land authority where the indirect impacts are anticipated (e.g., NPS, the Presidio Trust, or CDPRI). <p>Mitigation Measure M-CR-1c: Protection of Historic Resources due to Direct Damage</p> <p>The project sponsors shall ensure that any plans which call for the attachment, anchoring, or bracing of temporary structural elements to existing historic buildings, structures, or objects (e.g., the stone facade of the historic Marina Seawall) are reviewed for the compliance with the Secretary's Standards by a qualified architectural historian, or in the alternative, a qualified architectural historian shall develop a proposed plan for such attachments setting forth appropriate techniques to govern and guide such activities that are consistent with the Secretary's Standards (the "Temporary Structure Approach").</p>	<p>ACEA and architectural historian</p>	<p>events</p> <p><i>Educational and Awareness Programs: Prior to 2012 AC34 events</i></p> <p><i>Crowd Control: During 2012 and 2013 AC34 events</i></p>	<p>Planning Department and ERO, and appropriate land authority, including SRRPD</p>	<p>Considered complete upon verification by Planning Department and ERO and issuance of permits</p>

ACBA = America's Cup Event Authority
ACRM = America's Cup Race Management
BCDC = SF Bay Conservation and Development Commission
CABD = California Air Resources Board
CDPF = California Department of Fish and Game
CDPR = California Department of Parks and Recreation
CSLC = California State Lands Commission

DBW = California Department of Boating and Waterways
EP = San Francisco Department of Environmental Planning
ERD = San Francisco Environmental Review Officer
NMPF = National Marine Fisheries Service
NPS = National Park Service
OEWD = SF Office of Economic and Workforce Development

Port = Port of San Francisco
SPDPH = San Francisco Department of Public Health
SMTA = San Francisco Municipal Transportation Agency
SFPUC = San Francisco Public Utilities Commission
SFRPD = SF Recreation and Parks Department
USFPA = United States Environmental Protection Agency
USCG = United States Coast Guard

AC34 PROJECT – MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures Adopted as Conditions of Approval.)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Mitigation Measure M-CP-1c: Protection of Historic Resources due to Direct Damage (cont)</p> <p>which plan will be reviewed by the Department of City Planning for consistency with the Secretary's Standards before implementation. Removal of any such attachments, anchors, or bracing shall be fully reversible and include post-removal stabilization of historic materials to prevent long-term degradation in condition. Any unintended damage to historic resources as a result of the AC34 event will be repaired by the project sponsors to its pre-event condition.</p> <p>Mitigation Measure M-CP-1d: Protection of the Northeast Waterfront Historic District from Teatro Zinzanni Relocation</p> <p>If Teatro Zinzanni opts to relocate to Seawall Lot 324 within the Northeast Waterfront Historic District, prior to the execution of any Port lease, Teatro Zinzanni shall present the proposed relocation project design to the Historic Preservation Commission (HPC), which shall review the proposed project and make findings that the proposed design complies with Article 10, Appendix D of the Planning Code and the Secretary's Standards. Specifically, the HPC shall make specific findings that the proposed project complies with Sections 6 and 7 of Article 10, Appendix D, incorporated here by reference, which provide additional requirements for Certificates of Appropriateness in the Northeast Waterfront Historic District. These additional requirements address the architectural and visual characteristics that define this district, including façade line continuity, fenestration and design elements for new construction, and appropriate roof treatments. If the HPC does not make these findings, the Port shall not approve the proposed lease on Seawall Lot 324.</p>	Teatro Zinzanni	Prior to the execution of Port lease for Seawall Lot 324	Port of San Francisco and Historic Preservation Commission	Considered complete upon issuance of findings by HPC and execution of lease
<p>Mitigation Measure M-CP-2: Inadvertent Discovery of Archeological Resources or Shipwrecks</p> <p>The following measures shall be implemented should construction activities result in the inadvertent discovery of a cultural resource:</p> <p>To avoid any potential adverse effect from the proposed project on inadvertently discovered buried or submerged historic resources, as defined in CEQA Guidelines Section 15064.5(a)(c), the project sponsor will distribute the Planning Department's archeological resource "ALEKT" sheet to the project prime contractor, to any project</p>	ACEA	Prior to any soils-disturbing activity.	Distribution of "ALEKT" sheet among contractors and crew; ACEA to provide ERO with a signed affidavit	Prior to any soils-disturbing activity. Considered complete upon ERO receipt of affidavit

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AC34 PROJECT – MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures Adopted as Conditions of Approval.)

Mitigation Measures Adopted as Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>CULTURAL RESOURCE MITIGATION MEASURES (cont.) Amber Cup (cont.)</p> <p>Mitigation Measure M-CP-2: Inadvertent Discovery of Archeological Resources or Shipwrecks (cont.)</p> <p>subcontractor firms (including demolition, excavation, grading, foundation, pile driving, etc.); and/or to utilities firms involved in soil- or Bay bottom-disturbing activities within the project site. Prior to any soil- or Bay bottom-disturbing activities being undertaken, each contractor is responsible for ensuring that the ALERT sheet is circulated to all field personnel, including machine operators, field crew, pile drivers, supervisory personnel, etc. The project sponsor will provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractor(s), and utilities firm) confirming that all field personnel have received copies of the ALERT sheet.</p> <p>In the event that any indication of a potential cultural resource is encountered during soil- or Bay bottom-disturbing activities (such as in-water pile driving for temporary berths and seismic improvements to Piers 30-32), the head foreman and/or project sponsor shall immediately notify the ERO and shall suspend soil- or Bay bottom-disturbing activities within 50 feet of the find until the ERO has determined what additional measures should be undertaken. Abandoned shipwrecks, archeological sites and historic resources in submerged lands of California are under the jurisdiction of the California State Lands Commission (CSLC). In the case of an inadvertent discovery of a submerged archeological site, shipwreck or related artifacts, the ERO shall contact and initiate consultation with the CSLC staff within 2 business days of such discovery.</p> <p>If the ERO (in consultation with the CSLC staff, if applicable) determines that an archeological resource may be present within the project site, the project sponsor shall retain the services of an archeological consultant from the pool of qualified archeological consultants maintained by the Planning Department archaeologist. In the event of a shipwreck a qualified maritime archeological consultant shall be retained. The archeological consultant will advise the ERO as to whether the discovery is an archeological resource that retains sufficient integrity and is of potential scientific/historical/cultural significance. If an archeological resource is present, the archeological consultant will identify and evaluate the archeological</p>	<p>ACPA and archeological consultant</p>	<p>During any soils-disturbing activity</p>	<p>Notification of ERO if any archeological resources encountered</p>	<p>During any soils-disturbing activity. Considered complete upon notification of ERO</p>
<p>If the ERO (in consultation with the CSLC staff, if applicable) determines that an archeological resource may be present within the project site, the project sponsor shall retain the services of an archeological consultant from the pool of qualified archeological consultants maintained by the Planning Department archaeologist. In the event of a shipwreck a qualified maritime archeological consultant shall be retained. The archeological consultant will advise the ERO as to whether the discovery is an archeological resource that retains sufficient integrity and is of potential scientific/historical/cultural significance. If an archeological resource is present, the archeological consultant will identify and evaluate the archeological</p>	<p>ACPA and archeological consultant</p>	<p>Before resumption of any soils-disturbing activity (if suspended)</p>	<p>Archeological consultant shall advise the ERO and ERO may require additional measures, in consultation with CSLC if applicable</p>	<p>Prior to resumption of soils-disturbing activity. Considered complete upon ERO approval of archeological consultant's recommendations</p>

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<p>Mitigation Measure M-CT-2: Inadvertent Discovery of Archeological Resources or Shipwrecks (cont.)</p> <p>resource. The archeological consultant will make a recommendation as to what action, if any, is warranted. Based on this information, the ERO (in consultation with the CSLC, if applicable) may require, if warranted, specific additional measures to be implemented by the project sponsor no more than forty eight (48) hours from receipt of such recommendation.</p> <p>Measures might include: preservation in situ of the archeological resource; an archeological monitoring program; or an archeological evaluation program. If an archeological monitoring or evaluation program is required, it shall be consistent with the Environmental Planning (EP) division of the Planning Department guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.</p> <p>The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO (and the CSLC staff, if applicable). This report shall include an evaluation of the historical significance of any discovered archeological resource, as well as a description of the archeological and historical research methods employed in any archeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p> <p>Once approved by the ERO, copies of the FARR shall be distributed as follows: the relevant California Historical Resources Information System Information Center shall receive one (1) copy and the ERO shall receive a copy of the transmittal letter of the FARR to the Information Center. The EP and the CSLC staff (if applicable) shall receive one bound, one unbound, and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. The project sponsor shall receive</p>	<p>ACEA and archeological consultant</p> <p>ACEA and archeological consultant</p>	<p>Following completion of any required archaeological field program</p> <p>Following completion of FARR</p>	<p>Archeological consultant submits draft FARR to ERO for approval</p> <p>Distribute FARR. Submittal to ERO of affidavit of FARR distribution</p>	<p>Prior to issuance of final certificate of occupancy. Considered complete upon ERO approval of draft FARR</p> <p>Prior to resumption of soils-disturbing activities. Considered complete upon Planning Department receipt of FARR</p>

CULTURAL RESOURCES MITIGATION MONITORING AND REPORTING PROGRAM

America's Cup (cont.)

Mitigation Measure M-CT-2: Inadvertent Discovery of Archeological Resources or Shipwrecks (cont.)

resource. The archeological consultant will make a recommendation as to what action, if any, is warranted. Based on this information, the ERO (in consultation with the CSLC, if applicable) may require, if warranted, specific additional measures to be implemented by the project sponsor no more than forty eight (48) hours from receipt of such recommendation.

Measures might include: preservation in situ of the archeological resource; an archeological monitoring program; or an archeological evaluation program. If an archeological monitoring or evaluation program is required, it shall be consistent with the Environmental Planning (EP) division of the Planning Department guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.

The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO (and the CSLC staff, if applicable). This report shall include an evaluation of the historical significance of any discovered archeological resource, as well as a description of the archeological and historical research methods employed in any archeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: the relevant California Historical Resources Information System Information Center shall receive one (1) copy and the ERO shall receive a copy of the transmittal letter of the FARR to the Information Center. The EP and the CSLC staff (if applicable) shall receive one bound, one unbound, and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. The project sponsor shall receive

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CULTURAL RESOURCES MITIGATION MEASURES (cont)				
America's Cup (cont)				
<p>Mitigation Measure M-CR-2: Inadvertent Discovery of Archeological Resources or Shipwrecks (cont)</p> <p>copies of the FARR in the number requested. In instances of high public interest in or the high interpretive value of the resource, the ERO or the CSLC staff may require a different final report content, format, and distribution than that presented above.</p>				
<p>Mitigation Measure M-CR-4: Inadvertent Discovery of Human Remains</p> <p>The following measures shall be implemented should construction activities result in the inadvertent discovery of human remains:</p> <p>The treatment of any human remains and associated or unassociated funerary objects discovered during soil-disturbing activities shall comply with applicable state laws. Such treatment would include immediate notification of the City and County of San Francisco Coroner. In the event of the coroner's determination that the human remains are Native American, the coroner shall notify of the Native American Heritage Commission, which would appoint a Most Likely Descendant (MLD) (PRC Section 5097.98). The archeological consultant, the project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters. If the MLD and the other parties could not agree on the reburial method, the project sponsor shall follow Section 5097.98(b) of the PRC, which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."</p>	<p>ACEA and archeological consultant</p>	<p>During any soils-disturbing activity</p>	<p>Archeological consultant shall advise the County Coroner, MLD</p>	<p>Considered complete upon completion of soils-disturbing activities</p>
<p>Mitigation Measure M-LT-CR: Mitigation of Cultural Resources from Long-Term Development, General (NA)</p>				
CULTURAL RESOURCES MITIGATION MEASURES (cont)				
America's Cup (cont)				
<p>Mitigation Measure M-LT-CR-a: Mitigation of Cultural Resources from Long-Term</p>				

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NA

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Development, Piers 30-32 Performance Criteria (NA)				NA
Mitigation Measure M-LT-CP-b: Mitigation of Cultural Resources from Long-Term Development, Historic Piers Performance Criteria (NA)				
TRANSPORTATION AND CIRCULATION MITIGATION MEASURES				
America's Cup				
Mitigation Measure M-TR-1: People Plan Specific Provisions As part of the proposed project, the City would develop and implement a People Plan consisting of a variety of interrelated programs to facilitate access by all modes to and from the AC34 event venues, while maintaining acceptable conditions for residents, commuters, businesses and visitors. To address specific impacts identified in this EIR, the programs in the People Plan shall be developed to accommodate weekday and weekend events at various levels of spectator attendance and shall include specific provisions described below. The People Plan shall include, but not be limited to, the following programs: M-TR-1a: Traffic Monitoring and Management Program As a means to reduce congestion in the vicinity of the venue sites and on access roadways to and from the sites, the City shall develop and implement a Traffic Monitoring and Management Program that could include the following measures:	OEWD and SFMTA	People Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to the ERO prior to the 2012 AC34 events.	Planning Department and ERO, and SFMTA	Considered complete upon verification by Planning Department and ERO
<ul style="list-style-type: none"> • Preferred spectator routes; • Bus priority streets; • New bus lanes; • Extension of existing bus-only lanes; • Bicycle priority streets; • On-street parking restrictions; • Traffic control officer deployment; 				
TRANSPORTATION AND CIRCULATION MITIGATION MEASURES (cont.)				
America's Cup (cont.)				
M-TR-1a: Traffic Monitoring and Management Program (cont.)				
<ul style="list-style-type: none"> • Coordination with other events (e.g., ballgames, roadway construction projects); • Roadway closures; • Restricted access streets; 				

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<p>• Diversion plans related to roadway closures;</p> <p>• Event signage including weekend detour signs; and</p> <p>• Media announcements of roadway closures and detour signs.</p> <p>M-TR-1b: Transit Operating Plan</p> <p>As part of the People Plan, the City shall develop and implement a transit operating plan to provide additional transit service to accommodate peak transit demands during the AC34 project events. Elements of the plan (as developed to date) could include, but are not limited to:</p> <ul style="list-style-type: none"> • Increased service hours and frequency on 30X-Marina Express, which would run every 8 minutes on all event days, including weekends; • Supplemental 30L-Marina, which would run every 6 minutes in the peak direction of travel (e.g., towards the waterfront through the mid-afternoon, and from the waterfront through the evening). The service would run between the Caltrain terminal and the intersection of Beach/Broderick (via Third/Fourth, Stockton, Broadway, Van Ness, and Lombard). • Supplemental 47L-Van Ness, which would run every 10 minutes in the peak direction of travel throughout the day. Service would be provided between the Civic Center BART/Muni station and North Point Street, via Van Ness Avenue. Providing the supplemental service within a temporary bus lane is currently being considered. • Increased frequencies on the 108-Treasure Island, which would run every 10 minutes on all event days, including weekends. <p>M-TR-1b: Transit Operating Plan (cont.)</p> <ul style="list-style-type: none"> • Increased frequencies on the F-Market & Wharves historic streetcar between the Ferry Building and Fisherman's Wharf (i.e., at Pier 39), which would run every 5 minutes throughout the day. • New E-Embarcadero historic streetcar service between Caltrain and Pier 39. This service would need to use the double-ended historic streetcars, and would run every 20 minutes throughout the day. • Supplemental Muni Metro Shuttle. This light rail vehicle service would run within the Market Street tunnel between the Embarcadero station and the West Portal station. 	<p>OEWD and SFMTA</p>	<p>Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>

TRANSFORMATION AND GROWTH IN THE GATEWAY DISTRICTS (cont.)
Appendix G, Table 1.1

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<p>Mitigation Measures Adopted As Conditions of Approval</p> <p>Shuttle service would be provided every 20 minutes on weekends only.</p> <p>M-TR-1c: Satellite Parking Facility Program</p> <p>As a means to reduce the number of vehicles traveling to and from the northern waterfront, the City shall implement satellite parking facilities and frequent transit or shuttle service between the satellite parking facilities and the various venues. Parking facilities could include existing public and private garages and lots, as well as other undeveloped parcels such as Mission Bay Lot A and Candlestick Park.</p>	<p>OEWD and SEMTA</p>	<p>Satellite Parking Facility Program shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SEMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>
<p>M-TR-1d: Public Information Program</p> <p>As a means to facilitate access to and from venues and spectator viewing areas by all modes, while encouraging the use of transit and alternate modes, the City shall develop and implement a Public Information Program. For event days that overlap with other special events, a coordinated public information program shall be developed and provided to the public. The program shall provide:</p> <ul style="list-style-type: none"> • Access information for all modes before, during and after the events; • Maps and guidelines; • Special signage; 	<p>OEWD and SEMTA</p>	<p>Public Information Program provisions shall be completed and submitted to ERO prior to the 2012 AC34 events. Program shall begin no less than one month prior to 2012 AC34 events and repeated no less than one month prior to 2013 AC34 events</p>	<p>Planning Department and ERO, and SEMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>
<p>TRANSITATION AND CIRCULATION MITIGATION MEASURES (cont.)</p>				
<p>M-TR-1d: Public Information Program (cont.)</p> <ul style="list-style-type: none"> • Marketing campaign to encourage transit use and bicycle use to event sites; • Web-based event information; • Media and press releases to update information on a regular basis; and • Public information for commuters, businesses and deliveries. <p>Mitigation Measure M-TR-17: Additional Muni Transit Service</p> <p>As part of the People Plan, the City shall develop and implement a transit operating plan to provide additional transit service to and from the Presidio, Crissy Field, and Marina venues accommodate peak transit demands on weekdays and weekends, and to and from Fisherman's Wharf on weekends. This transit service would need to be in addition to that identified in Mitigation Measure M-TR-1b.</p>	<p>OEWD and SEMTA</p>	<p>People Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SEMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>

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<p>Mitigation Measure M-TR-18: Additional Presidio Shuttle Service</p> <p>As part of the People Plan, the City shall work with the Presidio Trust, Golden Gate Transit and SFMTA to develop and implement a transit operating plan to provide additional transit service linking Presidio destinations with Chissy Field and downtown regional service providers. Additional PresidioGo service could be provided by implementing PresidioGo on weekend days, and by providing an additional PresidioGo shuttle service between the Lombard Gate (near the terminus of the 41-Union and 45-Union-Stockton Muni bus lines) and Chissy Field on weekend days.</p>	<p>OEWD and SFMTA</p>	<p>People Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>
<p>Mitigation Measure M-TR-19: Additional AC Transit Capacity</p> <p>As part of the People Plan, the City shall work with AC Transit and other regional transit providers (i.e., BART, WETA) to develop and implement an operating plan that would accommodate peak transit demands during the AC34 project events to and from the East Bay.</p>	<p>OEWD and SFMTA</p>	<p>People Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>
<p>TRANSITATION AND CIRCULATION MEASURES (cont.)</p>				
<p><i>America's Cup (cont.)</i></p>				
<p>Mitigation Measure M-TR-19: Additional AC Transit Capacity (cont.)</p> <p>While the analysis above describes the capacity shortfall during the Saturday midday peak hour, additional capacity would need to be provided throughout the day as well as on Sundays. It is likely that the span of additional service would be from approximately 10:00 a.m. to 8:00 p.m. with varied levels of service throughout that time period. The additional AC Transit service could be provided by, but not be limited to, the following supplemental lines:</p> <ul style="list-style-type: none"> • The Berkeley (F) Route: This route provides service generally from UC Berkeley to the Temporary Transbay Terminal through Ashby BART and Emeryville. • The Oakland (NL) Route: This route provides service generally from Mills College to the Temporary Transbay Terminal through MacArthur Boulevard and West Grand Avenue. • Alameda (O) Route: This route provides service generally from Fruitvale to the Temporary Transbay Terminal through Alameda. • Treasure Island Route: This route would provide service generally from one of the BART Stations (MacArthur or West Oakland) to Treasure Island. 				

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<p>Mitigation Measure M-TR-20: Additional BART Transit Service</p> <p>As part of the People Plan, the City shall work with BART and other regional transit providers (i.e., AC Transit, WETA) to develop and implement an operating plan that would accommodate peak transit demands during the AC34 events to and from the East Bay and South Bay.</p> <p>While the analysis above describes the capacity shortfall during the Saturday midday peak hour, additional capacity would need to be provided throughout the day as well as on Sundays. It is likely that the span of additional service would be from approximately 10:00 a.m. to 8:00 p.m. with varied levels of service throughout that time period. The additional East Bay BART service could be provided by, but not limited to, executing weekday service during the weekends or by operating longer trains. The People Plan is expected to develop a transit operating plan that would formalize the details of the additional service (span of service, days of service, headways, etc.) and could include a different arrangement than providing weekday service on weekends.</p>	<p>OEWD and SFMTA</p>	<p>Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>
<p>Mitigation Measure M-TR-21: Additional WETA Transit Service</p> <p>As part of the People Plan, the City shall work with WETA and other regional transit providers (i.e., BART, AC Transit) to develop and implement an operating plan that would accommodate peak transit demands during the AC34 events to and from the East Bay.</p> <p>While the analysis above describes the capacity shortfall during the Saturday midday peak hour, additional capacity would need to be provided throughout the day as well as</p>	<p>OEWD and SFMTA</p>	<p>Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>

TRANSPORTATION AND CIRCULATION MITIGATION MEASURES (continued)

Alameda County

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<p>on Sundays. It is likely that the span of additional service would be from approximately 10:00 a.m. to 8:00 p.m. with varied levels of service throughout that time period. The additional WETA ferry service could be provided by, but not be limited to, the following supplemental lines:</p> <ul style="list-style-type: none"> • Vallejo Baylink Service: This service operates from the terminal at the Vallejo waterfront west of downtown directly to the San Francisco Ferry Building and to Pier 41 in Fisherman's Wharf. One additional vessel with a capacity for 300 passengers could be added to the existing weekend service. 				
<p>TRANSPOINTEMENT AND REGULATORY MITIGATION MEASURES (CONT.)</p>				
<p>Mitigation Measure M-TR-21: Additional WETA Transit Service (cont.)</p> <ul style="list-style-type: none"> • Alameda/Oakland Bay Service (AOFBS): This service operates from Main Street in Alameda and from Clay Street in Oakland to the San Francisco Ferry Building and to Pier 41 in Fisherman's Wharf. One additional vessel with a capacity of approximately 325 to 375 passengers could be added to the existing weekend service. • Additional midday off-peak service could also be provided between the Ferry Building and/or Piers 39-41, if there is sufficient capacity to berth the ferries. <p>The supplemental routes described above are intended to illustrate the type and alignment of additional service that could be provided during the AC34 2012 events. However, the People Plan is expected to develop a transit operating plan that would formalize the details of the additional service (specific routes, span of service, days of service, headways, types of ferries, etc.) and could include different routes or service schedules than what is described above. This would allow for the flexibility to adjust service in response to demand during the AC34 2012 events and ultimately during the AC34 2013 events.</p>	<p>OEWD and SEMTA</p>	<p>Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SEMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>
<p>Mitigation Measure M-TR-22: Additional Golden Gate Transit Service</p> <p>As part of the People Plan, the City shall work with Golden Gate Transit and other regional transit providers (i.e., WETA) to develop and implement an operating plan that would accommodate peak transit demands during the AC34 events to and from the North Bay.</p> <p>While the analysis above describes the capacity shortfall during the Saturday midday peak hour, additional capacity would need to be provided throughout the day as well as on Sundays. It is likely that the span of additional service would be from approximately 10:00 a.m. to 8:00 p.m. with varied levels of service throughout that time period. The additional Golden Gate Transit bus service may be able to pick up local passengers within San Francisco at existing Golden Gate Transit and Muni bus stops. The bus service</p>				

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<p>Mitigation Measures Adopted As Conditions of Approval.</p> <p>could be provided by, but not be limited to, the following supplemental lines.</p> <ul style="list-style-type: none"> Route 93: This route would begin at the Golden Gate Bridge Toll Plaza and continue to the San Francisco Civic Center area via Lombard, Van Ness, Golden Gate, Hyde, Eighth, and Mission Streets to Sixth and Howard Streets in the outbound direction, Eighth, and Mission Streets to Sixth and Howard Streets in the inbound direction. 				
<p>MITIGATION AND CIRCULATION MITIGATION MEASURES (cont.)</p> <p><i>America's Cup</i></p> <p>Mitigation Measure M-TR-22: Additional Golden Gate Transit Service (cont.)</p> <p>and via Seventh, McAllister, Van Ness, and Lombard to the Golden Gate Bridge Toll Plaza in the inbound direction. A variation of this route could terminate at the Richardson/Francisco transfer point rather than at the Golden Gate Bridge Toll Plaza, provided sufficient turn-around space is available.</p> <ul style="list-style-type: none"> Route 4: To supplement Route 93, a "short" Route 4 could operate between the Manzanita Park & Ride in Mill Valley to the Financial District. This route would travel on U.S. 101 through the Golden Gate Bridge Toll Plaza and continue to the San Francisco Financial District via Lombard, Van Ness, North Point, Polk, Beach, Embarcadero, and Battery, across Market Street to Howard, Eight and Harrison Streets in the inbound direction, and via Harrison, Ninth, Folsom, Fremont, Front, Pine, Sansome, The Embarcadero, North Point, Van Ness and Lombard to the Manzanita Park & Ride in the inbound direction. <p>The supplemental routes described above are intended to illustrate the type and alignment of additional service that could be provided during the AC34 2012 events. However, the People Plan is expected to develop a transit operating plan that would formalize the details of the additional service (specific routes, span of service, days of service, headways, types of buses, etc.) and could include different routes than what is described above. This would allow for the flexibility to adjust service in response to demand during the AC34 2012 events and ultimately during the AC34 2013 events.</p>				
<p>Mitigation Measure M-TR-23: Additional Bike & Gold Transit Service</p> <p>As part of the People Plan, the City shall work with Blue & Gold and other regional transit providers (i.e., Golden Gate Transit) to develop and implement an operating plan that would accommodate peak transit demands during the AC34 events to and from the North Bay.</p> <p>While the analysis above describes the capacity shortfall during the Saturday midday peak hour, additional capacity would need to be provided by Blue & Gold and/or Golden Gate Bay.</p>	<p>OEWD and SFMTA</p>	<p>Plan shall be completed and approved by appropriate transportation agencies; and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>

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TRANSPORTATION AND/OR QUALITY MITIGATION MEASURES (cont.)				
<p>Mitigation Measure M-TR-23: Additional Blue & Gold Transit Service (cont.)</p> <p>span of additional service would be from approximately 10:00 a.m. to 8:00 p.m. with varied levels of service throughout that time period. Blue & Gold currently provides additional ferry service during special events – for example, additional evening service from Tiburon to San Francisco for the Fourth of July fireworks show. Similar additional service could be provided during the AC34 2012 events.</p>				
<p>Mitigation Measure M-TR-24: Additional Caltrain Transit Service</p> <p>As part of the People Plan, the City shall work with Caltrain and other regional transit providers (i.e., BART, SamTrans) to develop and implement an operating plan that would accommodate peak transit demands during the AC34 events to and from the South Bay.</p> <p>While the analysis above describes the capacity shortfall during the Saturday midday peak hour, additional capacity would need to be provided throughout the day as well as on Sundays. It is likely that the span of additional service would be from approximately 10:00 a.m. to 8:00 p.m. with varied levels of service throughout that time period. The People Plan is expected to develop a transit operating plan that would formalize the details of the additional service (span of service, days of service, headways, stop locations, etc.). If any, this would allow for the flexibility to adjust service in response to demand during the AC34 2012 events, and ultimately during the AC34 2013 events.</p>	<p>OEWD and SFMTA</p>	<p>Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>
<p>Mitigation Measure M-TR-25: Additional SamTrans Transit Service</p> <p>As part of the People Plan, the City shall work with SamTrans and other regional transit providers (i.e., BART, Caltrain) to develop an operating plan that would accommodate peak transit demands during the AC34 events to and from the South Bay.</p> <p>While the analysis above describes the capacity shortfall during the Saturday midday peak hour, additional capacity would need to be provided throughout the day as well as on Sundays. It is likely that the span of additional service would be from approximately 10:00 a.m. to 8:00 p.m. with varied levels of service throughout that time period. Whether the additional service could be provided by SamTrans is uncertain. However, additional service from and to the South Bay could be provided by, but not be limited to the following:</p>	<p>OEWD and SFMTA</p>	<p>Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.</p>	<p>Planning Department and ERO, and SFMTA</p>	<p>Considered complete upon verification by Planning Department and ERO</p>

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TRANSITATION AND CIRCULATION MITIGATION MEASURES (cont.)				
<i>America's Cup (cont.)</i>				
<p>Mitigation Measure M-TR-25: Additional SamTrans Transit Service (cont.)</p> <ul style="list-style-type: none"> <i>Supplemental BART Service:</i> BART could increase its service to and from the South Bay by providing service similar to that seen on weekdays or by operating longer trains (10 cars per train) to increase the capacity of the existing weekend service. <p>The People Plan is expected to develop a transit operating plan that would formalize the details of the additional service (span of service, days of service, headways, stop locations, etc) and could include a different arrangement than providing described above. This would allow for the flexibility to adjust service in response to demand during the AC34 2012 events and ultimately during the AC34 2013 events.</p>	OEWD and SFMTA	Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.	Planning Department and ERO, and SFMTA	Considered complete upon verification by Planning Department and ERO
<p>Mitigation Measure M-TR-26a: Barricade to Protect Transit Lanes.</p> <p>The AC34 2012 events have the potential to adversely impact the operations of the F-Market & Wharves line in the Fisherman Wharf area, particularly on Jefferson Street. As part of the People Plan, the City shall create a strategy for protecting the F-Market & Wharves right-of-way for safety and operational efficiency (i.e., to ensure delay to streetcar service is minimized. The strategy could include, but not be limited to, erecting removable barricades along the F-Market & Wharves tracks in order to contain pedestrian overflow and direct crossings to existing crosswalks.</p>	OEWD and SFMTA	Plan shall be completed and approved by appropriate transportation agencies, and a completed and approved copy shall be submitted to ERO prior to the 2012 AC34 events.	Planning Department and ERO, and SFMTA	Considered complete upon verification by Planning Department and ERO
<p>Mitigation Measure M-TR-26b: Traffic Control Officers at Key Intersections</p> <p>The AC34 2012 events have the potential to adversely impact the operations of Muni, Golden Gate Transit, and AC Transit service in downtown San Francisco. As part of the People Plan, the City shall develop a strategy for implementation of traffic control officers at intersections that key transit routes travel through.</p>	NA	NA	NA	NA
NOISE AND VIBRATION MITIGATION MEASURES				
<i>America's Cup</i>				
<p>Mitigation Measure M-NO-1a: Noise Controls During Construction</p>	ACEA and construction contractor	Construction specifications showing adherence to	Port, Planning Department and ERO	Following completion of all construction activities

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<p>The following practices shall be incorporated into the construction contract agreement documents to be implemented by the construction contractor:</p> <ul style="list-style-type: none"> • Provide enclosures and mufflers for stationary equipment, shroud or shield impact tools, and install barriers around particularly noisy activities at the construction sites so that the line of sight between the construction activities and nearby sensitive receptor locations is blocked; • Use construction equipment with lower noise emission ratings whenever possible, particularly for air compressors; • Provide sound-control devices on equipment no less effective than those provided by the manufacturer; • Locate stationary equipment, material stockpiles, and vehicle staging areas as far as practicable from sensitive receptor locations; • Prohibit unnecessary idling of internal combustion engines; and <p>Require applicable construction-related vehicles and equipment to use designated truck routes to travel to and from the project sites.</p> <p>Mitigation Measure M-NO-11b: Pile Driving Noise-Reducing Techniques and Muffling Devices</p> <p>The AC34 project sponsors shall require the construction contractor to use noise-reducing pile-driving techniques if nearby structures are subject to pile-driving noise and vibration. These techniques shall include installing intake and exhaust mufflers on pile-driving equipment, vibrating piles into place when feasible, and installing shrouds around the pile-driving hammer where feasible.</p> <p>Construction contractors shall be required to use construction equipment with state-of-the-art noise shielding and muffling devices. In addition, at least 48 hours prior to pile-driving activities, the project sponsors shall notify building owners and occupants within 500 feet of the project site of the dates, hours, and expected duration of such activities.</p>	<p>ACEA and construction contractor</p>	<p>measure shall be submitted to ERO prior to commencement of activities. Measures shall be implemented during construction.</p>	<p>Port, Planning Department and ERO</p>	<p>Following completion of all pile-driving activities</p>

NOISE AND VIBRATION MITIGATION MEASURES (cont.)

Mitigation Measure M-NO-11b: Pile Driving Noise-Reducing Techniques and Muffling Devices (cont.)

In addition, implementation of this measure shall be coordinated with Mitigation Measure M-BI-11a (Impact Hammer Pile Driving Noise Reduction for Protection of Fish) (see Section 5.14, Biological Resources), which requires the AC34 project sponsors to

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<p>Mitigation Measure M-NO-2a: Selection, Shielding or Acoustical Enclosures for Generators at Piers 27-29 and Marina Green and Use of Electrical Service at Piers 27-29</p> <p>At Piers 27-29, the AC34 project sponsor shall use utility electricity in lieu of generators, if available; if electricity requirements exceed available power, the AC34 project sponsor shall use generators. The AC34 project sponsor shall provide shielding or acoustical enclosures for generators at Piers 27-29 and the Marina Green. Specification sheets for generators indicate that Level 1 sound enclosures will dampen noise levels by 5 dBA for the size of generators proposed. Additionally, the project sponsor shall achieve a performance standard of 60 dBA at the Crissy Field Center when educational activities are in progress.</p> <p>Mitigation Measure M-NO-2b: Noise Control Plan for Entertainment Venues</p> <p>The AC34 project sponsors shall develop and implement a Noise Control Plan for operations at the proposed entertainment venues to reduce the severity of potential noise impacts from public address and/or amplified music. This Noise Control Plan shall contain the following elements:</p> <ul style="list-style-type: none"> The project sponsor shall comply with noise controls and restrictions in applicable entertainment permit requirements for designated AC34 events. 	ACEA and construction contractor	Generator specifications showing adherence to measure shall be submitted to ERO prior to commencement of activities.	Port, SFRPD, Planning Department and ERO	Following completion of all AC34 events
<p>Mitigation Measure M-NO-2b: Noise Control Plan for Entertainment Venues (cont.)</p> <p>Where not otherwise addressed in City permits, amplification levels generally shall be established commensurate with the City's fixed residential interior noise limits of 50 dBA daytime (7:00 a.m. to 10:00 p.m.) and 45 dBA nighttime (10:00 p.m. to 7:00 a.m.). Volume settings at each entertainment venue shall be identified during the first week of events using noise monitoring at the nearest residences of concern, performed by a qualified acoustical technician in association with the project sponsors. No building attenuation shall be assumed for residences that would not be expected to have mechanical ventilation systems.</p>	ACEA	Noise Control Plan should be approved by San Francisco Entertainment Commission and submitted to ERO by June 2012. Plan provisions shall be implemented during AC34 events.	Planning Department and ERO, and San Francisco Entertainment Commission, NPS, and SFRPD on lands within their respective jurisdictions	Following completion of all AC34 events

NOISE AND VIBRATION MITIGATION MEASURES (cont.)
America's Cup (cont.)

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<ul style="list-style-type: none"> Speaker systems shall be directed toward the Bay, away from the nearest sensitive receptors to the degree feasible. A point of contact shall be designated by the project sponsors to respond to noise complaints and to ensure compliance with the first two measures above. This person shall work with the San Francisco Entertainment Commission to establish set-up and operational conditions appropriate to each of the venues with regard to compliance with requirements of Section 47.2 of the San Francisco Police Code. 	ACEA and geotechnical engineer	Assessment shall be completed and submitted to Port Engineer and Planning Department ERO prior to pile-driving. Monitoring shall occur during pile-driving	Port of San Francisco Chief Harbor Engineer; Planning Department and ERO	Following completion of all pile-driving activities
<p align="center">NOISE AND VIBRATION MITIGATION MEASURES (cont.)</p> <p align="center"><i>Amelia's Ship (cont.)</i></p> <p>Mitigation Measure M-NO-3: Pre-Construction Assessment to Minimize Structural Pile-Driving Vibration Impacts on Adjacent Historic Buildings and Structures and Vibration Monitoring (cont.)</p> <p>The pre-construction assessment shall include a monitoring program to detect ground settlement or lateral movement of structures in the vicinity of pile-driving activities. Monitoring results shall be submitted to the Port's Chief Harbor Engineer. In the event of unacceptable ground movement with the potential to cause structural damage, as determined by the Chief Harbor Engineer, all impact work shall cease and corrective measures shall be implemented to minimize the risk to the subject, or adjacent, historic structure.</p>				
<p>Mitigation Measure M-LT-NOA: Mitigation of Noise from Long-Term Development on Port Properties (NA)</p>				

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<p>Mitigation Measure M-LT-NOB: Mitigation of Interior and Exterior Noise from New Residential Developments of Seawall Lot 330 (NA)</p>	NA			
<p>AVIATION</p>				
<p>Mitigation Measure M-AQ-2a: Construction Vehicle Emissions Minimization</p> <p>To reduce construction vehicle emissions, the project sponsor shall incorporate the following into construction specifications:</p> <ul style="list-style-type: none"> Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure, Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. 	ACEA and construction contractor	Manufacturing specifications shall be submitted to ERO prior to construction. Certified mechanic shall check equipment prior to, and during, demolition and construction activities and submit affidavit to ERO.	Planning Department and ERO; Port and SRRPD for properties within their respective jurisdictions	Following completion of all construction and demolition activities
<p>Mitigation Measure M-AQ-2b: Construction Vehicle Emissions Minimization (cont.)</p> <ul style="list-style-type: none"> The project sponsor shall ensure that construction contract specifications include a requirement that on-road diesel trucks used to transport spoils consist of 2007 or newer model-year trucks with factory-built engines. All on-road diesel trucks shall be required to have emission control labels as specified in 13 CCR 2183(c). The construction contract specifications shall require that the contractor submit to the Environmental Review Officer (ERO) a comprehensive inventory of all on-road trucks used to haul spoils. The inventory shall include each vehicle's license plate number, the engine production year, and a notation of whether the truck is in possession of an emission control label as defined in 13 CCR. The contractor shall update the inventory and submit it monthly to the ERO throughout the duration of the project. 	ACEA and construction contractor	Contract specifications shall be submitted to Planning Department and ERO prior to construction and demolition. Equipment	Planning Department and ERO; Port and SRRPD for properties within their respective jurisdictions	Following completion of all construction and demolition activities
<p>Mitigation Measure M-AQ-2b: Off-Road Construction Equipment</p> <p>The project sponsors shall ensure that construction contract specifications include a requirement that all off-road construction equipment be equipped with diesel engines meeting USEPA Tier 3 standards for NOx and PM (Tier 2 standards if greater than 750 hp)</p>				

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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>or better. The following types of equipment¹ were identified as available for rental in Tier 3 models, or are candidates for retrofitting with emissions control technology, due to their expected operating modes (i.e., fairly constant use at high revolution per minute):</p> <ul style="list-style-type: none"> • Excavators • Backhoes • Rubber-Tired Dozers • Concrete Boom Pumps • Concrete Trailer Pumps • Concrete Placing Booms • Compressors 		<p>shall be used during demolition and construction activities</p>		
MIR (cont.)				
America's Cup (cont.)				
<p>Mitigation Measure M-AQ-2b: Off-Road Construction Equipment (cont.)</p> <ul style="list-style-type: none"> • Soil Mix Drill Rigs • Soldier Pile Rigs • Shoring Drill Rigs <p>At construction locations where power demands allow it, propane generators shall be used in lieu of diesel powered generators. Diesel generators used for project construction shall meet Tier 4 emissions standards.</p> <p>In addition to the Tier 3 emissions standard requirement, all equipment must be equipped with a CARB Level 3 Verified Diesel Emission Control System (VDECS) for PM control, where feasible. The construction contractor shall provide proof in the form of a manufacturer's engineering evaluation or other proof to the satisfaction of the Environmental Review Officer that a CARB-verified Level 3 VDECS is not feasible for a particular equipment type.</p> <p>Should it be determined by the construction contractor or its subcontractors that compliance with the emissions control requirements of this mitigation measure is infeasible for any of the above-listed construction equipment, the construction contractor shall demonstrate an alternative method of compliance that achieves an equivalent reduction in the project's fleetwide NOx and PM emissions. If alternative means of compliance with the emissions</p>	<p>ACEA and construction contractor</p>	<p>Contract specifications shall be submitted to Planning Department and ERO prior to construction and demolition. Equipment shall be used during demolition and construction activities</p>	<p>Planning Department and ERO; Port and SERPD for properties within their respective jurisdictions</p>	<p>Following completion of all construction and demolition activities</p>

¹ <http://her3vental.com/>

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<p>exhaust requirements are further determined to be infeasible, the construction contractor shall document to the satisfaction of the Environmental Review Officer, that the contractor has complied with this mitigation measure.</p> <p>Mitigation Measure M-AQ-2c: Off-Road Construction Equipment - Electricity Use Hydropower electricity supplied by a public utility shall be used where available at pier construction sites in lieu of temporary diesel or gasoline-powered generators and compressors. Existing utility service or temporary new utility service shall be the preferred power alternative, unless proven infeasible at each location where generators are proposed.</p>	ACEA and construction contractor	Contract specifications shall be submitted to Planning Department and ERO prior to construction and demolition.	Port, Planning Department and ERO	Following completion of all construction and demolition activities
<p>Mitigation Measure M-AQ-2d: Off-Road Construction Equipment - Best Management Practices (BMPs) The following types of measures are required on construction equipment:</p> <ol style="list-style-type: none"> 1. Use of CARB-verified diesel oxidation catalysis and catalyzed diesel particulate traps if not already included in the design of the equipment to meet Tier 3 standards, or not already required as part of Mitigation Measure M-AQ-2b above. 2. Install high-pressure fuel injectors on construction equipment vehicles. 3. Provide on-site services to minimize truck traffic in or near residential areas, including, but not limited to, the following services: meal or cafeteria services, automated teller machines, etc. <p>The Port shall implement a process by which to select additional BMPs to further reduce air emissions during construction. The Port shall determine the BMPs once the contractor identifies and secures a final equipment list.</p> <p>Mitigation Measure M-AQ-2e: Off-Road Construction Equipment - Engine Standards for Harbor Craft Used in Construction All harbor craft with C1 or C2 marine engines used in construction must utilize a USEPA Tier-3 engine, or cleaner, if feasible.</p> <p>Should it be determined by the construction contractor or its subcontractors that compliance with the emissions control requirements of this mitigation measure is infeasible for any of the harbor craft used in construction, the construction contractor shall demonstrate an alternative method of compliance that achieves an equivalent reduction in the project's</p>	ACEA, Port, and construction contractor	Contract specifications shall be submitted to Planning Department and ERO prior to construction and demolition. Equipment shall be used during demolition and construction activities	Planning Department and ERO	Following completion of all construction and demolition activities

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<p>Alternative 2 (cont'd)</p> <p>Mitigation Measure M-AQ-2f: Fuels for Off-Road Construction Equipment</p> <p>The project sponsors shall ensure that construction contract specifications include a requirement that all off-road construction equipment used be fueled with propane or biodiesel (B20 blended with California on-road diesel) unless precluded by engine type or warranty.</p> <p>Mitigation Measure M-AQ-4a: Emission Controls for Race-Sponsored Spectator and Support Vessels</p> <p>The project sponsor shall require all contracts for race-sponsored spectator vessels and venue leases for race support vessels to meet U.S. EPA Tier 3 or better engine standards for marine diesel engines, as feasible. Tier 3 and Tier 4 engines would reduce ROG and NOx emissions by approximately 42 percent over Tier 1 engines and PM emissions by 78 percent over Tier 1 engine emissions.</p> <p>Should it be determined by the project sponsor that availability of vessels with Tier 3 or Tier 4 engines for use as race-sponsored spectator vessels renders this mitigation measure infeasible, this lack of availability must be demonstrated; to the satisfaction of the Environmental Review Officer, indicating that the project sponsor has complied with this mitigation measure to the extent feasible and why full compliance with the mitigation measure is infeasible.</p> <p>Mitigation Measure M-AQ-4b: Temporary Shoreside Power for Large Private Yachts at Pier 27</p> <p>The project sponsor shall install shoreside electrical power at Pier 27 to serve large, private spectator vessels during the AC34 2013 events. Shoreside power shall be supplied by a publicly owned utility supplying hydropower, if available at rates and service levels equivalent to a private utility.</p>	<p>ACEA and construction contractor</p> <p>ACEA, ACRM, and spectator vessel contractors</p>	<p>Contract specifications shall be submitted to Planning Department and ERO prior to construction and demolition.</p> <p>Vessel specifications detailing adherence to measure shall be submitted to ERO prior to 2012 AC34 events. Vessels meeting these standards shall be used during spectator vessel activities</p>	<p>Planning Department and ERO; Port and SFRPD for properties within their respective jurisdictions</p> <p>Planning Department and ERO; Port and SFRPD for properties within their respective jurisdictions</p>	<p>Following completion of all construction and demolition activities</p> <p>Following completion of all AC34 events</p>
<p>2. California Air Resources Board, Airborne Toxic Control Measure for Diesel Engines on Commercial Harbortraffic Operated within California Waters and 24 Nautical Miles of the California Baseline, http://www.arb.ca.gov/legact/2007/ctcd07/rev99118.pdf</p>	<p>ACEA</p>	<p>Shoreside power to serve large private yachts at Pier 27 shall be installed prior to the AC34 2013 events. Berthing contracts detailing adherence to measure shall be submitted to ERO prior</p>	<p>Port, Planning Department and ERO</p>	<p>Following completion of all AC34 events</p>

2. California Air Resources Board, Airborne Toxic Control Measure for Diesel Engines on Commercial Harbortraffic Operated within California Waters and 24 Nautical Miles of the California Baseline, <http://www.arb.ca.gov/legact/2007/ctcd07/rev99118.pdf>
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<p>Mitigation Measure M-AQ-4b: Temporary Shoreside Power for Large Private Yachts at Pier 27 (cont.)</p> <p>If shoreside power is available at berths used by large, private spectator vessels, the project sponsor shall impose as a requirement in any berthing contract with large, private spectator vessels a requirement to use shoreside power, if such vessels are so equipped.</p> <p>Mitigation Measure M-AQ-4c: Alternative Low-Emissions Fuels for Large Private Yachts and Race-Sponsored Vessels</p> <p>The project sponsor shall impose as a requirement in any berthing contract with large, private spectator vessels and in any contract with race-sponsored vessels, a requirement to use B20 biodiesel or higher, unless precluded by engine type or warranty, or availability. If biodiesel is precluded, such contracts shall require use of California on-road diesel.</p> <p>Should it be determined by the project sponsor that availability or compatibility of biodiesel with vessel engines or warranties renders this mitigation measure infeasible, this lack of availability or compatibility must be demonstrated, to the satisfaction of the Environmental Review Officer, indicating that the project sponsor has complied with this mitigation measure to the extent feasible and why full compliance with the mitigation measure is infeasible.</p> <p>Mitigation Measure M-AQ-4d: Return Pier 27 to the Port Within One Month after Completion of the Match for Reconnection of Shoreside Power</p> <p>The project sponsor shall reconnect shoreside power and complete Phase 2 construction of the James R. Herman Cruise Terminal and reconnection of shoreside power at Pier 27 not later than April 1, 2014, if feasible. To accommodate construction of Phase 2 improvements to the Cruise Terminal and reconnection of shoreside power, the Event Authority shall return Pier 27 to the Port within one month of the completion of the Match.</p> <p>Subsequently, the Port shall complete Phase 2 construction of the James R. Herman Cruise Terminal in 2013 to 2014 and reconnect shoreside power at Pier 27 no later than April 1, 2014, if feasible.</p>	<p>ACEA</p>	<p>Berthing contracts detailing adherence to measure shall be submitted to ERO prior to 2013 AC34 events.</p>	<p>Port, Planning Department and ERO</p>	<p>Following completion of all AC34 events</p>
<p>Mitigation Measure M-AQ-4e: Temporary Shoreside Power for Large Private Yachts at Pier 27 (cont.)</p> <p>If shoreside power is available at berths used by large, private spectator vessels, the project sponsor shall impose as a requirement in any berthing contract with large, private spectator vessels a requirement to use shoreside power, if such vessels are so equipped.</p> <p>Mitigation Measure M-AQ-4f: Alternative Low-Emissions Fuels for Large Private Yachts and Race-Sponsored Vessels</p> <p>The project sponsor shall impose as a requirement in any berthing contract with large, private spectator vessels and in any contract with race-sponsored vessels, a requirement to use B20 biodiesel or higher, unless precluded by engine type or warranty, or availability. If biodiesel is precluded, such contracts shall require use of California on-road diesel.</p> <p>Should it be determined by the project sponsor that availability or compatibility of biodiesel with vessel engines or warranties renders this mitigation measure infeasible, this lack of availability or compatibility must be demonstrated, to the satisfaction of the Environmental Review Officer, indicating that the project sponsor has complied with this mitigation measure to the extent feasible and why full compliance with the mitigation measure is infeasible.</p> <p>Mitigation Measure M-AQ-4g: Return Pier 27 to the Port Within One Month after Completion of the Match for Reconnection of Shoreside Power</p> <p>The project sponsor shall reconnect shoreside power and complete Phase 2 construction of the James R. Herman Cruise Terminal and reconnection of shoreside power at Pier 27 not later than April 1, 2014, if feasible. To accommodate construction of Phase 2 improvements to the Cruise Terminal and reconnection of shoreside power, the Event Authority shall return Pier 27 to the Port within one month of the completion of the Match.</p> <p>Subsequently, the Port shall complete Phase 2 construction of the James R. Herman Cruise Terminal in 2013 to 2014 and reconnect shoreside power at Pier 27 no later than April 1, 2014, if feasible.</p>	<p>ACEA and Port</p>	<p>Following completion of the America's Cup Events in 2013 and prior to April 1, 2014</p>	<p>Planning Department and ERO</p>	<p>April 1, 2014 or earlier</p>

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<p>Mitigation Measure M-AQ-4d: Return Pier 27 to the Port Within One Month after Completion of the Match for Reconnection of Shoreline Power (cont.)</p> <p>Should it be determined by the project sponsor that Phase 2 construction of the James R. Herman Cruise Terminal and reconnection of shoreline power at Pier 27 by April 1, 2014 is infeasible, the project sponsor shall document, to the satisfaction of the Environmental Review Officer, that the project sponsor has complied with this mitigation measure to the extent feasible and indicate why full compliance with the mitigation measure is infeasible.</p>				
<p>Mitigation Measure M-AQ-4e: Long-term Shoreline Power at Pier 70</p> <p>The project sponsor shall develop shoreline power at an offsite location that would consist of constructing 12 MW of shoreline power at the Port's Drydock #2 at Pier 70 to serve large cruise, military and other vessels while they are in drydock.</p> <p>Should it be determined by the project sponsor that this measure is infeasible, the project sponsor shall document, to the satisfaction of the Environmental Review Officer, that the project sponsor has complied with this mitigation measure to the extent feasible and indicate why full compliance with the mitigation measure is infeasible.</p>	Port and SFPUC	Prior to decommissioning of shoreline power at Piers 27-29 in 2012	Planning Department and ERO	To be in operation during 2012 and 2013; however, this shall be a long-term ongoing measure.
<p>Mitigation Measure M-AQ-5: Clean Diesel Engines for Temporary Power</p> <p>The project sponsor shall ensure that all diesel generators at AC34 event and viewing locations will conform to a level of performance equivalent to a Tier 4 interim, or Tier 2/Tier 3 (as applicable, depending on power rating) engine fitted with a Level 3 Verified Diesel Emissions Control (VDEC), which would reduce diesel particulate emissions by at least 85 percent. Alternatively, natural gas or gasoline-powered generators may be used in lieu of diesel generators, thus eliminating DPM emissions from generators, as feasible.</p> <p>Should it be determined by the project sponsor that "Tiered" diesel engine generators or natural gas or gasoline-powered generators would not provide the necessary power</p>	ACEA and contractors	Generator specifications detailing adherence to measure shall be submitted to ERO prior to 2012 events. Vessels meeting these standards shall be used during spectator vessel activities	Port, Planning Department and ERO	Following completion of all AC34 events

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<p>demands required, this lack of availability must be demonstrated to the satisfaction of the Environmental Review Officer, indicating that the project sponsor has complied with this mitigation measure to the extent feasible and why full compliance with the mitigation measure is infeasible.</p>				
<p>Mitigation Measure M-LT-AQ: Future Long-Term Development Mitigation (NA) WIND AND SHADOW America's Cup Mitigation Measure M-WI-1: Warning Signs and/or Limiting Access on the Eastern Aprons of Piers 27-29 During Hazardous Wind Events The project sponsor shall be required to post warning signs and, if necessary, restrict public access to the eastern aprons of Piers 27-29 during the occurrence of high-speed winds that could result in hazardous wind conditions for spectators, and implement design features that provide wind protection for public access areas. If average wind speed at pedestrian height exceeds 26 mph, or when the National Weather Service issues high wind warnings for the Bay, the project sponsor shall implement this measure. As experience with the local wind conditions is gained, this trigger should be adjusted to suit the wind conditions that are experienced on the pier.</p>	<p>ACEA and Port</p>	<p>Procedure and signage shall be submitted to ERO for approval prior to 2012 AC34 events. If average wind speed at pedestrian height exceeds 26 mph, or when the National Weather Service issues high wind warnings for the Bay, procedure shall be implemented</p>	<p>Port, Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 events</p>

NA

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<p>RECREATION</p> <p>America's Cup</p> <p>Mitigation Measure M-RE-1: Protection of Recreational Resources</p> <p>As described in the Project Description, the <i>Parks Event Operations Plan</i> (applicable to National Park Service [NPS], Presidio Trust, California Department of Parks and Recreation [CDPR], and San Francisco Recreation and Parks Department [SFRPD]) will be prepared and implemented in support of the proposed project. Also as described in the Project Description, the City and Event Authority are coordinating with local agencies and jurisdictions (including BCD, Marin County, Sausalito, Tiburon, and Belvedere). As the plan and agency coordination are still under development, this mitigation measure requires that the plan and ongoing agency coordination to incorporate specific elements to protect recreational resources through protection and restoration requirements. The <i>Parks Event Operations Plan</i> and the agency coordination shall each include, for their respective jurisdictions, the following measures to protect and restore recreational resources:</p> <ul style="list-style-type: none"> • Identification of Recreational Resource Areas of Special Concern. Agency coordination shall include identification of recreational resource areas of special concern to land management agencies (e.g., Crissy Field picnic area near the Warning Hut) that could provide attractive spectator viewing opportunities; determination of the existing condition of resources; identification of requirements for additional service levels at recreational facility restrooms and trash/recycling needs; and identification of any necessary agreements, such as a memorandum of understanding or memorandum of agreement, to document commitments regarding protection and restoration of recreation resource areas of special concern. • Crowd Control: The project sponsor shall ensure that crowd control volunteers and/or enforcement personnel are posted at or near the recreation resources identified to be of special concern in order to manage crowd levels at those locations. The exact number, location, and timing of the crowd control volunteers shall be determined in consultation with the appropriate land authority where the indirect impacts are anticipated. • Post-Event Repair: Following each of the 2012 and 2013 AC34 events, the project sponsor shall ensure that recreational resource areas of special concern are returned to their previously identified pre-project condition to the extent damaged by event activities, which could include trash collection, facility repairs, restroom maintenance, pavement washing, trail repair, revegetation, and resodding. 	<p>ACEA, OEWD, and contractors</p>	<p>Plan shall be completed and approved by NPS, CDPR, Presidio Trust and SFRPD, and submitted to the ERO, prior to 2012 AC34 events; measures shall be implemented during and after events</p>	<p>SFRPD, CDPR, Presidio Trust, National Park Service, Planning Department and ERO</p>	<p>Considered completed upon completion of post-event repair</p>

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<p>BIOLOGICAL RESOURCES (M-EL-1a) - Protecting Sensitive Areas for Mission Blue Butterfly</p> <p>Mitigation Measure M-EL-1a: Protecting Sensitive Areas for Mission Blue Butterfly</p> <p>The AC34 project sponsor shall ensure that areas supporting the habitat for Mission blue butterflies (<i>Lupinus albus</i>) are adequately protected against incidental impacts by spectators for AC34 events. These areas shall be avoided. This shall be accomplished by working with the National Park Service (NPS) to develop a detailed strategy for protecting sensitive butterfly areas, including area closures, fencing, signage, and staffing. Federal and state agencies would likely require these or similar measures pursuant to their mission and obligations under federal and state law. The project sponsor shall work with NPS to implement an appropriate combination of the following conservation measures to ensure that these areas will be avoided:</p> <ul style="list-style-type: none"> • New fence or fence augmentation. Fencing could consist of, as an example, higher fencing with additional cabling or wire mesh backing. If NPS requires fencing in 2012, these fences will be light enough for removal between 2012 and 2013 race events, and will be obvious deterrents to visitors. Fences, if required, will be in place prior to the start of the AC events. Areas fenced will have signs at frequent intervals announcing that these are sensitive wildlife/ botanical areas. Final fencing type and signage will be coordinated with the NPS. • Trail, area, or roads could be closed during race events. For Mission blue butterfly, this could include closure of roads and trails at Fort Baker and the Marin Headlands, including closure of Conzelman Road in the Marin Headlands during race events. • Resource monitors. Resource monitors will be placed at areas of greatest spectator density or as an augmentation of the signage and fencing protection measures. The monitors shall be trained in both the sensitive species of the area and in the proper manner to interact with and inform spectators. In coordination with NPS, NPS law enforcement personnel would provide additional support as needed. 	<p>ACEA and OBWD</p>	<p>Locations and specifications of fences shall be approved by NPS, and approval to 2012 AC34 events. Fences, if required, will be in place prior to the start of events; will be in place during events</p>	<p>NPS; Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 events</p>

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BIOLOGICAL RESOURCES AND BIOLOGICAL MONITORING				
America's Cup (cont.)				
<p>Mitigation Measure M-BI-1b: Protecting Listed and Other Special Status Plant Areas</p> <p>The project sponsor shall ensure that areas supporting special-status plants are adequately protected against incidental impacts by spectators for AC34 events or displaced park visitors. These areas shall be avoided. These plants are largely concentrated in the dunes and serpentine soils of the Presidio at and above Baker Beach and along Lincoln Boulevard, the serpentine areas on Angel Island and at Crissy Marsh and Beach. Federal and state agencies would likely require these or similar measures pursuant to their mission and obligations under federal and state law. The project sponsor will work closely with the NPS and the California Department of Parks and Recreation (CDPR) to develop a detailed strategy for protecting plant populations by implementing an appropriate combination of the same three measures that are identified in Mitigation Measure M-BI-1a (Protecting Sensitive Areas for Mission Blue Butterfly): (1) fencing as necessary; (2) resource monitors; and/or (3) trail/area closures.</p>	ACEA and OEWD	Locations and specifications of fences and closures shall be approved by NPS, and approved provided to the ERO, prior to 2012 AC34 events. If required, these measures will be in place prior to the start of events; will be in place during events	NPS, CDPR, SFRPD, Presidio Trust, Planning Department and ERO	Considered completed upon completion of AC34 events
<p>Mitigation Measure M-BI-1c: Protecting the Crissy Beach Wildlife Protection Area (WPA)</p> <p>The project sponsor shall ensure that areas supporting western snowy plover are adequately protected against incidental impacts by spectators or AC34 events. These areas shall be avoided. The western snowy plovers are concentrated within the Crissy Beach WPA, which is managed by NPS. Similar to the measures identified in Mitigation Measures M-BI-1a (Protecting Sensitive Areas for Mission Blue Butterfly) and M-BI-1b (Protecting Listed and Other Special Status Plant Areas), NPS would likely require these or similar measures pursuant to their mission and obligations under federal law, and the project sponsor will work with NPS to develop a detailed strategy for protecting western snowy plover populations within the project area, which will include an appropriate combination of the following three measures as identified above: (1) signage and fencing as necessary; (2) resource monitors; and/or (3) area closures. In particular, NPS may decide to close temporarily the WPA on race days.</p>	ACEA and OEWD	Locations and specifications of fences and closures shall be approved by NPS, and approved provided to the ERO, prior to 2012 AC34 events. If required, these measures will be in place prior to the start of events; will be in place during events	NPS, Planning Department and ERO	Considered completed upon completion of AC34 events

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AC34 PROJECT – MITIGATION MONITORING AND REPORTING PROGRAM
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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Mitigation Measure M-BI-1d: Protecting Offshore Portion of the Wildlife Protection Area (WPA)</p> <p>The project sponsor shall work with the necessary governmental authorities to create a 100-yard offshore buffer in the form of a marked, marine-protected zone established offshore of the Crissy Beach WPA to mitigate impacts on western snowy plover. For a detailed map of the Crissy Beach, see Appendix PD-3, <i>NPS Management Zone Planning Maps for West Crissy Field</i>. The protected zone will exclude all boat traffic throughout the duration of the AC34 events, which could include the use of trained boat-based resource monitors. Information regarding protection zones will be included within a detailed 'Notice to Mariners' that will be administered by the United States Coast Guard (see also Mitigation Measure M-BI-12, (Visiting Mariners Information)). See also Mitigation Measure M-BI-4b (Offshore Buffers for Breeding Birds and Snowy Plover). A reduced buffer could be provided on a case-by-case basis to the extent approved by necessary governmental authorities based on site-specific conditions.</p>	<p>ACEA, ACRM, and OEWD</p>	<p>Locations and specifications of buffer shall be approved by NPS, and approval provided to the ERO, prior to 2012 AC34 events. If required, these measures will be in place prior to the start of events; will be in place during events</p>	<p>NPS, USCG, and Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 events</p>
<p>Mitigation Measure M-BI-1e: Restrictions on Fireworks and Night Lighting</p> <p>In consultation with the NPS, fireworks or cannon fire will be limited to protect plovers and nesting birds on Alcatraz from harassment. Such restrictions are likely to limit where such activities are staged, or stipulate maximum allowable noise (decibels) at the Crissy Field WPA or at Alcatraz. Where exterior lights are to be left on at night, the AC34 project sponsor shall install fully shielded and downward cast lights to contain and direct light away from habitat, the sky, and Bay waters.</p>	<p>ACEA</p>	<p>Restrictions shall be approved by NPS, and approval provided to ERO, prior to AC34 events and in place for duration of events</p>	<p>NPS and Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 events</p>
<p>Mitigation Measure M-BI-2: Signage at Sensitive Natural Community Areas; "No Spectator" Zone on Yerba Buena Island</p> <p>The project sponsor shall ensure that adequate signage is established in every area that meets the criteria for sensitive natural community. Signage type and placement shall be coordinated with and approved by the appropriate land authority – NPS, Presidio Trust, CDPR, or the Treasure Island Development Authority (for signage on Yerba Buena Island only) – through the preparation and submittal of a formal Fencing and Signage Plan that will exclude visitors from the sensitive natural community areas.</p> <p>No spectators shall be permitted on the western slope of Yerba Buena Island west of Treasure Island Road, to protect sensitive habitats (northern coastal <i>Franciscan</i> scrub vegetation).</p>	<p>ACEA and OEWD</p>	<p>Locations and specifications of fences and closures shall be approved by NPS, CDPR, Presidio Trust, and Treasure Island Development Authority, and approval provided to the ERO, prior to 2012 AC34 events. If required, these measures will be in place prior to the start of events; will be in place during events</p>	<p>Planning Department and ERO, and NPS, Presidio Trust, CDPR, and Treasure Island Development Authority for lands within their respective jurisdictions</p>	<p>Considered completed upon completion of AC34 events</p>

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<p>BIOLOGICAL RESOURCES (PLANNED BIOLOGICAL MONITORING) America's Cup (Cont.)</p> <p>Mitigation Measure M-BI-3: Signage at Wetland Sites</p> <p>The project sponsor shall ensure that adequate "Keep out" signage is established in every area that meets the criteria for federally-protected wetlands (by Clean Water Act or National Park Service authority) in the area of Chissy Field in the Presidio. These include Chissy Marsh itself and those Cowardin wetlands shown in Figure 5.14-2, and the spring on Angel Island shown in Figure 5.14-3. Signage type and placement shall be coordinated with and approved by the appropriate land authority – NPS, CDFR, or Presidio Trust – through the preparation and submittal of a formal Fencing and Signage Plan, designed to exclude visitors from the federally protected wetlands.</p>	<p>ACEA and OEWD</p>	<p>Fencing and Signage plan shall be submitted and approved by applicable agency, and approval submitted to ERO, prior to events; plan shall be implemented during events</p>	<p>NPS, Presidio Trust, CDFR, San Francisco Planning Department ERO</p>	<p>Considered completed upon completion of AC34 events</p>
<p>Mitigation Measure M-BI-4a: Restrictions on Spectator Craft within Race Course Boundaries</p> <p>As part of the proposed project, the AC34 project sponsor will be working with the United States Coast Guard (USCG) to implement a Water and Air Traffic Plan to provide navigational and operational safety guidelines for race team, support, spectator, and large luxury yacht vessel activities associated with the AC34 events that meet USCG regulations. As part of this effort, the plan shall include provisions and restrictions to minimize the movement of spectator boats and thereby minimize disruption of feeding or resting least terns and other birds. Specifically, this may include requiring spectator vessels to be either anchored or as stationary as possible, maneuvering only to maintain safe distances from other vessels within the boundaries of the race course when races are occurring.</p>	<p>ACEA, ACRM, and OEWD</p>	<p>Water and Air Traffic Plan shall be approved by USCG and submitted to the ERO prior to AC34 events; enforcement shall occur during events</p>	<p>USCG and Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 events</p>
<p>Mitigation Measure M-BI-4b: Offshore Buffers for Breeding Birds and Snowy Plover</p> <p>The AC34 project sponsor shall work with the necessary governmental authorities to create a 100-yard offshore buffer in the form of a marked, marine-protected zone established offshore of areas with colonial breeding birds and other sensitive biological resources (such as snowy plovers at Chissy Beach) in order to exclude vessels from the area. For detailed maps of Alcatraz Island and Chissy Beach sensitive natural resource areas, see Appendix PD (NPS Management Zone Planning Maps for Alcatraz Island and West Chissy Field). As a practical matter, this will be defined as a 100-yard buffer between any event or motorized spectator vessel and the undeveloped shoreline of the mainland or any island in the Bay. The protected zones at Alcatraz Island and Chissy Beach will exclude all boat traffic throughout the duration of the AC34 race events, which</p>	<p>ACEA, ACRM, and OEWD</p>	<p>Locations and specifications of buffer shall be approved by NPS, and approval provided to the ERO, prior to 2012 AC34 events. If required, these measures will be in place prior to the start of events; will be in place during events</p>	<p>NPS, Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 events</p>

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<p>BIOLOGICAL RESOURCES, DEPENDENT SPECIES AND HABITAT</p> <p>America's Cup (cont.)</p> <p>Mitigation Measure M-BI-4b: Offshore Buffers for Breeding Birds and Snowy Plover (cont.)</p> <p>could include the use of trained boat-based resource monitors. Information regarding protection zones will be included within a detailed 'Notice to Mariners' that will be administered by the United States Coast Guard under Mitigation Measure M-BI-12, (Visiting Mariners Information). Aircraft overflights shall also be restricted within 1,000 feet of the airspace and marine perimeter of these areas. A reduced buffer could be provided on a case-by-case basis to the extent approved by necessary governmental authorities based on site-specific conditions. See also Mitigation Measure M-BI-1d (Protecting Offshore Portion of the Wildlife Protection Area).</p> <p>Mitigation Measure M-BI-4c: Protection for Breeding Birds on Piers and Associated Structures</p> <p>The project sponsor shall avoid demolition of structures on piers between March 1 and August 1. If demolition must occur during the nesting season, these areas shall be "netted" to prevent gulls from nesting there. Netting materials to be used shall be those developed specifically for bird exclusion. For possible cliff swallow nesting under piers, and in addition to netting, work in these areas shall be preceded by a pre-construction survey if work proceeds during the nesting season. The survey shall take place within two weeks of the start of work, and the nests avoided by at least 50 feet, or other actions developed in coordination with the California Department of Fish and Game (CDFG).</p> <p>Mitigation Measure M-BI-4d: Protection for Bat Roosts on Piers and Associated Structures</p> <p>Within two weeks before demolition, buildings showing evidence of bat activity shall be surveyed by a qualified bat biologist. If active maternity roosts are found they shall be avoided, unless disturbance is authorized by CDFG. If no maternity roosts are found, the bat biologist shall take actions under CDFG guidance to make such roosts unsuitable habitat prior to building demolition, such as sealing access routes used by bats when the bats are absent.</p>	<p>ACEA and Port</p> <p>Port and bat biologist.</p>	<p>Coordination with, and approval of, CDFG shall occur prior to demolition. Approval shall be submitted to ERO prior to demolition.</p> <p>Coordination with, and approval of, CDFG shall occur prior to demolition. Approval shall be submitted to ERO prior to demolition.</p>	<p>CDFG, San Francisco Planning Department and ERO</p> <p>CDFG, San Francisco Planning Department and ERO</p>	<p>Considered completed upon completion of demolition activities</p> <p>Considered completed upon completion of demolition activities</p>

3 Subject to the review and approval of the Federal Aviation Administration

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BIOLOGICAL RESOURCES (ENVIRONMENTAL AND CULTURAL RESOURCES) - (cont.)				
America's Cup (cont.)				
Mitigation Measure M-BI-4e: Protection for Colonial Breeding Birds on Alcatraz The AC34 project sponsor shall allow no event-related public visitation, special events, or construction activities to be carried out near the western cliffs used by breeding seabirds. NPS would likely require these or similar measures pursuant to their mission and obligations under federal law. If required by NPS, the project sponsor shall install durable visual barriers, such as shade cloth fastened to 2-by-4-inch welded mesh, prior to arrival of birds for pre-nesting (February 1). All such areas will be considered "closed areas" with signs, similar to those described in Mitigation Measure M-BI-1a (Protecting Sensitive Areas for Mission Blue Butterfly), explaining the presence of the seabird colony and why it is important to stay behind barricades and view from a distance.	ACEA and OEWD	Specifications and locations of fencing and signage shall be approved by NPS, and approval shall be submitted to the ERO by January 15. Fences shall be in place prior to arrival of birds for pre-nesting (February 1)	NPS, San Francisco Planning Department ERO	Considered completed upon completion of AC34 events
Mitigation Measure M-T-BIa: Long-Term Development Mitigation for Upland Biological Resources (NA)	NA			
BIOLOGICAL RESOURCES (MARINE BIOLOGICAL RESOURCES) - (cont.)				
America's Cup				
Mitigation Measure M-BI-11a: Impact Hammer Pile Driving Noise Reduction for Protection of Fish Prior to the start of construction, the project sponsor shall develop a National Marine Fisheries Service (NMFS)-approved sound attenuation monitoring plan. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile driving activities, and management practices to be taken to reduce impact hammer pile-driving sound in the marine environment to an intensity level of less than 183 dB. The sound monitoring results shall be made available to the NMFS. The plan shall incorporate but not be limited to the following best management practices (BMPs):	ACEA	Sound attenuation monitoring plan shall be approved by NMFS and submitted to the ERO prior to the start of construction; plan shall be implemented during construction	NMFS, CDRG, Port, Planning Department and ERO	Considered completed upon completion of AC34 construction activities
BIOLOGICAL RESOURCES (MARINE BIOLOGICAL RESOURCES) - (cont.)				
America's Cup (cont.)				
Mitigation Measure M-BI-11a: Impact Hammer Pile Driving Noise Reduction for Protection of Fish (cont.)	<ul style="list-style-type: none"> All 18 and 24-inch diameter pilings shall be installed and removed with vibratory pile drivers only. Vibratory pile driving will be conducted following the U.S. Army Corps 			

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<p>of Engineers "Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California".⁴</p> <ul style="list-style-type: none"> All 72-inch steel pilings shall be installed with a vibratory pile driver to the deepest depth practicable. An impact pile driver may be used only where necessary to complete installation of the 72-inch steel pilings in accordance with seismic safety or other engineering criteria. All piling installation using impact hammers shall be conducted between June 1 and November 30, when the likelihood of sensitive fish species being present in the work area is minimal. If pile installation using impact hammers must occur at times other than the approved work window, the AC34 project sponsors shall obtain incidental take authorization from NMFS, and CDFG to address potential impacts on steelhead trout, chinook salmon, and Pacific herring and implement all requested actions to avoid impacts. The project sponsor shall develop a NMFS-approved sound attenuation monitoring plan prior to the start of construction. This plan shall provide detail on the sound attenuation system and the methods used to monitor and verify sound levels during pile driving activities. The sound monitoring results will be made available to NMFS. If exceedance of noise thresholds established and approved by NMFS occur, a contingency plan using bubble curtains or air barrier will be implemented to attenuate sound levels to below thresholds. The hammer will be cushioned using a 12-inch thick wood cushion block during all impact hammer pile driving operations. 	<p>ACEA and biological monitor</p>	<p>Sound attenuation monitoring plan shall be approved by NMFS and submitted to the ERO prior to the start of construction; daily surveys shall be implemented during impact pile driving.</p>	<p>NMFS, CDFG, Port Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 pile-driving activities</p>
<p>BIOLOGICAL RESOURCES-MARINE BIOTIC RESOURCES</p>				
<p>Mitigation Measure M-BI-11b: Pile Driving Noise Reduction for Protection of Marine Mammals</p> <p>As part of the NMFS-approved sound attenuation monitoring plan required in Mitigation Measure M-BI-11a (Impact Hammer Pile Driving Noise Reduction for Protection of Fish), the project sponsor shall take actions in addition to those listed in Mitigation Measure M-BI-11a to reduce the effect of underwater noise transmission on marine mammals. These actions shall include at a minimum:</p> <ul style="list-style-type: none"> Establishment of a 1,600-foot (500-meter) safety zone that shall be maintained around the sound source, for the protection of marine mammals in the event that sound levels 	<p>ACEA and biological monitor</p>	<p>Sound attenuation monitoring plan shall be approved by NMFS and submitted to the ERO prior to the start of construction; daily surveys shall be implemented during impact pile driving.</p>	<p>NMFS, CDFG, Port Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 pile-driving activities</p>

⁴ NMFS, 2007a.

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<p>are unknown or cannot be adequately predicted.</p> <ul style="list-style-type: none"> Work activities shall be halted when a marine mammal enters the 1,500-foot (500-meter) safety zone and resume only after the animal has been gone from the area for a minimum of 15 minutes. A "soft start" technique shall be employed in all pile driving to marine mammals an opportunity to vacate the area. Maintain sound levels below 90 dBA in air when pinupeds (seals and sea lions) are present. <p>A NMFS-approved biological monitor will conduct daily surveys before and during impact hammer pile driving to inspect the work zone and adjacent Bay waters for marine mammals. The monitor will be present as specified by NMFS during the impact pile-driving phases of construction.</p>				
<p>Mitigation Measure M-BI-11c: Floating Dock Night Lighting</p> <p>The project sponsor shall install dock lighting on all temporary floating docks that minimizes artificial lighting of Bay waters by using shielded, low-mounted, and low light-intensity fixtures and bulbs.</p>	ACEA	Lighting specifications shall be provided to ERO prior to construction. Lighting shall be installed during construction	Port, Planning Department and ERO	Considered completed upon completion of lighting installation
<p>BIOLOGICAL RESOURCES: MARINE BIOLOGICAL RESOURCES (CON) <i>America's Cup (cont.)</i></p>				
<p>Mitigation Measure M-BI-12: Visiting Mariners Information</p> <p>The AC34 project sponsor shall prepare as part of their Water and Air Traffic Plan information for visiting mariners as well as procedures for the dissemination of this information to visiting boaters prior to or upon arrival to San Francisco Bay for the AC34 2012 and 2013 races. This information to be made available to visiting boaters shall include, but not be limited to, information educating boat owner/operators about sensitive habitats and species in the Bay and actions they are required to implement to avoid impacts to marine resources. The plan shall include information on how to employ environmentally sound boating practices and where to find environmental services to ensure clean boating habits. The plan shall identify marinas that are available for use by visiting mariners (e.g., marinas in San Francisco and Marin County) and provide information about the locations of environmental services that boaters in these marinas are most likely to need. Educational materials shall clearly address, in multiple languages,</p>	ACEA, ACM, and OEWD	Mariners information prepared as part of the Water and Air Traffic Plan shall be prepared prior to June 2012 and submitted to the ERO. The information shall be disseminated prior to and during all AC34 races	USCG, DBW, Regional Water Quality Control Board, Port, Planning Department and ERO	Considered completed upon completion of AC34 events

5 NMFS (National Marine Fisheries Service), 2007. *op.cit.*

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<p>Mitigation Measures Adopted As Conditions of Approval</p> <p>common sources of pollution from boats and marinas and relevant regulations and clean boating policies, and shall provide a succinct description of best management practices to prevent pollution from common sources including oil and fuel, sanitary waste, detergents, hazardous waste, and marine debris (including the use and proper disposal of oil adsorbents in power boat bilges).</p> <p>The visiting mariners information in the Water and Air Traffic Plan shall include details on how this information will be disseminated to visiting boaters, including but not limited to brochures, or pamphlets, or educational signs; AC34 websites; boating, cruising, and newspaper periodicals; social media; and area yacht clubs and marinas; and all AC34 mooring locations. Educational information shall be made available at waterway entry points such as boat launch ramps, marinas, yacht clubs, and ports, in partnership with appropriate agencies and where cooperation from boater facilities can be achieved. The plan shall be prepared soliciting input from and in cooperation with the National Marine Fisheries Service (NMFS), United States Coast Guard (USCG), California State Lands Commission, California Department of Fish and Game (CDFG), National Park Service (NPS), California Department of Parks and Recreation (CDPR), Bay Conservation and Development Commission (BCDC), State Water Resources Control Board, California</p>				
<p>BIOLOGICAL RESOURCES/MARINE BIOLOGICAL RESOURCES</p>				
<p>Mitigation Measure M-BI-12: Visiting Mariners Information (cont.)</p> <p>Department of Boating and Waterways (DBW), the Port of San Francisco, San Francisco Estuary Partnership, and local organizations active in protecting Bay marine resources, and relevant industry stakeholders, including but not limited to California Harbormasters and Port Captains Association, Marine Recreation Association, Clean Marinas California Program, Recreational Boaters of California, the Pacific Inter-Club Yacht Association, boat yard representatives, and local San Francisco Bay Area Yacht Clubs.</p> <p>Visiting Mariners Information contained within the Water and Air Traffic Plan shall include, but not be limited to the following items:</p> <ul style="list-style-type: none"> Information on the location of eelgrass beds in the Central Bay, especially Richardson Bay and adjacent to Angel, Alcatraz, and Treasure Islands and the importance of protecting and avoiding these sensitive habitats (e.g. by not anchoring in or transiting through them) Information on where boaters may safely dock dinghies and vessel tenders when coming on shore 				

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<ul style="list-style-type: none"> Information on proper and legal waste handling in the Bay and facilities for onshore disposal during the AC34 activities Information on invasive species and their impact on Bay marine ecosystems and boaters as well as best management practices developed by the AC34 Invasive Species Task Force that boaters should implement to prevent the introduction or spread of invasive species into and out of the San Francisco Bay. These provisions will include but not be limited to pending and proposed regulations by state and federal agencies responsible for the control of invasive organisms and will incorporate established effective strategies such as "clean before you go." Information on the Vessel Traffic Service for San Francisco Bay and changes that will be in place during AC34 races Federal and state regulations prohibiting the harassment of marine mammals 				
BIOLOGICAL RESOURCES/MARINE BIOLOGICAL RESOURCES (cont.)				
Visiting Mariners (cont.)				
<p>Mitigation Measure M-BI-12: Visiting Mariners Information (cont.)</p> <ul style="list-style-type: none"> Information on any buffer zones established around Central Bay Islands and other Bay locations to protect sensitive bird nesting sites Materials produced by DBW that include information about onsite and nearby environmental services that support clean boating practices (such as the locations of sewage pumpouts, oil change facilities, used oil recycling centers, bilge pumpouts, absorbent pad distribution and spent pad collection, and boat-to-boat environmental services) Information regarding the importance of keeping plastic out of Bay waters Signage regarding locations of waste collection containers posted at and adjacent to temporary docks, berthing facilities, and areas used by moored spectator vessels (10 vessels or more) developed for the AC34 events <p>Due to the extent of berthing, mooring, and marina facilities within the Bay shoreline, the Event Authority shall coordinate with other jurisdictions with respect to waste management at secondary viewing areas, such as (but not limited to) Treasure Island, Angel Island, Sausalito, Belvedere, and Tiburon. Coordination and outreach efforts with those jurisdictions would further minimize the potential for discards and pollution to enter Bay waters from private vessels. Additionally, the Event Authority could develop, as part of official AC34 event literature, maps of the marinas that show the locations of fuel docks, sewage pumpouts, portable toilets, dump stations, used oil collection services,</p>	ACEA	Documentation of coordination, outreach, and outcomes shall be submitted to ERO prior to 2012 events	Planning Department and ERO	Considered completed upon completion of AC34 events

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<p>Mitigation Measures Adopted As Conditions of Approval</p> <p>bilge pumpouts, oil absorbent pad distribution and collection services, oil change services, solid waste recycling services, and other environmental services for boaters. The sources of information for literature and maps developed under this mitigation measure will include, as appropriate, information available through resources such as the San Francisco Estuary Partnership and California's Boating Clean and Green Campaign (including the San Francisco Bay Area Clean Boating Map) subject to agreement with the resources agencies and organizations providing input to the development of the outreach materials.</p>				
BIOLOGICAL RESOURCES: MARINE BIOTIC RESOURCES (cont.)				
<p>Mitigation Measure M-BI-14: Restrictions on Low-Flying Aircraft</p> <p>As part of the Water and Air Traffic Plan, the project sponsor shall include instructions to AC34 contracted and race-affiliated helicopters that they maintain a minimum altitude of 1,000 feet above the water's surface when humpback whales are present within the race course. Upon takeoff at the auxiliary landing pad located, all helicopters shall be required to climb immediately to altitude and not fly low over the water if any seal or sea lions are present within 1,000 feet of the helipad. When landing, the helicopters shall approach the landing pad from as high an altitude as possible and limit their time at low altitudes over the water if seals or sea lions are present within 1,000 feet of the helipad.</p>	<p>ACEA, ACRM, and OEWD</p>	<p>Plan shall be prepared prior to June 2012 and submitted to the ERO. Restrictions shall be in place for the duration of events</p>	<p>NPS, Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 events</p>
<p>Mitigation Measure M-BI-16: Invasive Marine Species Control.</p> <p>The project sponsor shall develop and implement an Invasive Species Control Plan prior to commencement of any in-water work including piers, wharfs, bulkheads, pile driving, and installation of temporary structures. The plan shall be prepared in consultation with the United States Coast Guard (USCG), RWQCB, and the Port of San Francisco. Provisions of the plan shall include but not be limited to the following:</p> <ul style="list-style-type: none"> • Environmental training of construction personnel involved in the removal of pier pilings, temporary floating docks, piling suspended barges, and wave attenuators, to inform them about invasive marine species in San Francisco Bay that might be attached to removed structures • Actions to be taken to prevent the release and spread of marine invasive species, especially algal species such as Undaria and Sargasso • Procedures for the safe removal and disposal of any invasive taxa observed on the removed structures prior to disposal or reuse of pilings, docks, wave attenuators, and other features. • The onsite presence of qualified marine biologists to assist the contractor in the 	<p>ACEA, ACRM, and OEWD</p>	<p>Plan shall be prepared prior to construction. Plan, including documentation of consultation with relevant agencies, shall be provided to EIR prior to the 2012 events. The Plan shall be in place for duration of construction. Post-construction report shall be submitted to the ERO after construction</p>	<p>Regional Water Quality Control Board, Planning Department and ERO</p>	<p>Considered completed upon completion of AC34 construction</p>

ACEA = America's Cup Event Authority
 ACRM = America's Cup Race Management
 BCDC = SF Bay Conservation and Development Commission
 CARB = California Air Resources Board
 CDRP = California Department of Parks and Recreation
 CSLC = California State Lands Commission

DBW = California Department of Boating and Waterways
 EP = San Francisco, Environmental Planning Department
 ERO = San Francisco Environmental Review Officer
 NMFS = National Marine Fisheries Service
 NPS = National Park Service
 OEWD = SF Office of Economic and Workforce Development

Port = Port of San Francisco
 SFDPH = San Francisco Department of Public Health
 SFMTA = San Francisco Municipal Transportation Agency
 SFMUC = San Francisco Public Utilities Commission
 SFPRD = SF Recreation and Parks Department
 USEPA = United States Environmental Protection Agency
 USCG = United States Coast Guard

AC34 PROJECT – MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures Adopted as Conditions of Approval.)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
Identification and proper handling of any invasive species on removed Port equipment or materials • A post-construction report identifying what, if any, invasive species were found attached to removed equipment and materials and the treatment/handling of identified invasive species				
BIOLOGICAL RESOURCES, MARINE BIOLOGICAL RESOURCES (CONT.)				
America's Cup (cont.)				
Mitigation Measure M-1-T-B1b: Long-Term Development Mitigation for Marine Biological Resources (NA)		NA		
SOILS AND SOILS MITIGATION MEASURES				
America's Cup				
Mitigation Measure M-GE-2: Site-Specific Geotechnical Investigation The project sponsor shall conduct a site-specific geotechnical investigation for piers requiring upgrading under the direction of a geotechnical engineer prior to permitting any new construction or reuse that would increase the load of the structure. The investigation shall be performed to evaluate subsurface conditions and existing structural conditions at the site, and shall evaluate the potential for geological and seismic hazards including settlement, ground shaking, ground rupture, liquefaction, subsidence, slope stability, and lateral spreading. Recommendations shall be made regarding the pile and foundation requirements, seawall stability, seismic design, and mitigation of geologic hazards and these recommendations shall be included in the project design, subject to the review and approval by the Port of San Francisco Chief Harbor Engineer to determine compliance with the Port of San Francisco Building Code.	ACEA and geotechnical engineer	Reports shall be reviewed by Port of San Francisco and submitted to the ERO prior to issuance of Port building permits	Port, Planning Department and ERO	Considered completed upon completion of construction
Mitigation Measure M-GE-6: Signage and Restricted Access at Structurally Unsound Viewing Locations The project sponsor shall ensure that adequate signage at, and shall control or restrict public access to, structurally unsound piers and wharfs including Torpedo Wharf at Cissy Field, the pier at Fort Mason west of the Municipal Pier, Municipal Pier at Aquatic Park, and other piers determined to be structurally unsound after site investigations during the AC34 events. Signage type and placement shall be coordinated with and approved by the appropriate land authority – NPS or San Francisco Recreation and Park Department. To inform the public, a sign shall be posted at each location informing the public of potential risks associated with use of the structures and prohibiting public access during the AC34 events. Gates or other methods of prohibiting access to structurally unsound viewing locations could be installed if existing facilities are not sufficient to block public access to	ACEA, OEWD, and Port	Approval of sign placement and type by NPS and Port shall be provided to ERO prior to 2012 events. Signs shall be in place, and gates installed, prior to AC34 events	NPS, Planning Department and ERO	Considered completed upon completion of AC34 events

ACEA = America's Cup Event Authority
 ACMA = America's Cup Race Management
 BCDC = San Bay Conservation and Development Commission
 CARR = California Air Resources Board
 CDFG = California Department of Fish and Game
 CDPR = California Department of Parks and Recreation
 CSLC = California State Lands Commission

DBW = California Department of Boating and Waterways
 EP = San Francisco Environmental Planning Department
 ERO = San Francisco Environmental Review Officer
 NMES = National Marine Fisheries Service
 NPS = National Park Service
 OEWD = SF Office of Economic and Workforce Development

Port = Port of San Francisco
 SFDDPH = San Francisco Department of Public Health
 SFMTA = San Francisco Municipal Transportation Agency
 SFPUC = San Francisco Public Utilities Commission
 SFRPD = SF Recreation and Parks Department
 USEPA = United States Environmental Protection Agency
 USCG = United States Coast Guard

AC34 PROJECT -- MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures Adopted as Conditions of Approval.)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Mitigation Measures Adopted As Conditions of Approval</p> <p>structurally unobstructed viewing locations. See also Mitigation Measures M-BI-2 and M-BI-3 regarding signage for biological resources.</p> <p>GEOLOGY AND SOILS MITIGATION MEASURES (cont.)</p> <p>MITIGATION MEASURE M-LT-GE: Mitigation of Geology and Soils Impacts from Long-Term Development on Port Properties (NA)</p> <p>HYDROLOGY AND WATER QUALITY MITIGATION MEASURES</p> <p>MITIGATION MEASURE M-HY-1: Water Quality Best Management Practices</p> <p>The project sponsor shall implement water quality best management practices (BMPs) to protect water quality as well as protected species and their habitat(s) from pollution due to fuels, oils, lubricants, and other harmful materials. BMPs for this proposed project shall follow those detailed in the San Francisco Department of Public Health Pollution Prevention Toolkit for Maritime Industries.⁶ Vehicles and equipment that are used during the course of a proposed project shall be fueled and serviced in a manner that will not affect federally protected species in the project area or their habitats;</p> <ul style="list-style-type: none"> • A Spill Prevention Control and Countermeasure (SPCC) Plan shall be prepared to address the emergency cleanup of any hazardous material and will be available on site. The SPCC shall include: <ul style="list-style-type: none"> - Methods to address the emergency cleanup of any hazardous material and what materials will be available on site; - SPCC, hazardous waste, stormwater and other emergency planning requirements; - Measures to prevent spills into the Bay associated with in water fueling, if in water fueling is required on some of the construction barges. Such measures shall include: <ul style="list-style-type: none"> ▪ Secondary booms and/or pads, depending upon where fueling would take place on the vessel; ▪ Secondary containment on the deck of the vessel to contain the petroleum product; 	<p>ACEA, ACRM, or contractor</p>	<p>SPCC and MMDP Plans shall be submitted to the SFDPH, Port of San Francisco, and the ERO prior to construction. Plans and measures shall be in place during construction</p>	<p>ACEA, ACRM, or contractor shall submit a Monitoring Report, detailing survey results and compliance with the specified measure, to SFDPH for approval after construction. Copies of the report shall be sent to the Port, Planning Department and ERO.</p>	<p>Considered complete upon agency receipt of SFDPH-approved Monitoring Report</p>
NA				

6 Virginia St. Dean, San Francisco Department of Public Health, *Pollution Prevention Toolkit for Maritime Industries*, prepared for: California Department of Toxic Substances Control Under Contract #08-T3625-A2, January 2011

DRW = California Department of Boating and Waterways
EP = San Francisco, Environmental Planning Department
ERO = San Francisco Environmental Review Officer
NIMS = National Marine Fisheries Service
NFS = National Park Service
OEWD = SF Office of Economic and Workforce Development

Port = Port of San Francisco
SFDPH = San Francisco Department of Public Health
SFMTA = San Francisco Municipal Transportation Agency
SFFUC = San Francisco Public Utilities Commission
SFRPD = SF Recreation and Parks Department
USEPA = United States Environmental Protection Agency
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CDFG = California Department of Fish and Game
CDPR = California Department of Parks and Recreation
CSLC = California State Lands Commission

AC34 PROJECT – MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval.)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p align="center">ENERGOLOGY AND WATER QUALITY MITIGATION MEASURES (cont.) America's Cup (cont.)</p> <p>Mitigation Measure M-HY-1: Water Quality Best Management Practices (cont.)</p> <ul style="list-style-type: none"> ▪ Specifying volume of petroleum products that will be on the vessel and evaluating the potential for spills. Absorbent and cleanup materials (such as oil sorbent boom, heavy oil pads, Oildry Absorbant Floor, etc) of sufficient quantity to clean up potential spill volume shall be provided; and ▪ The locations of properly permitted offsite locations where vessels will be fueled; • In addition, fueling of equipment shall occur using proper fuel transfer procedures as per U.S. Coast Guard regulations (33 CFR 156.120 and 33 CFR 155.320) and spill containment and the fueling locations shall be inspected after fueling to document that no spills have occurred. Any spills shall be cleaned up immediately using spill response equipment as identified in the SFCC Plan. • In addition, fueling of equipment shall occur using proper fuel transfer procedures as per U.S. Coast Guard regulations (33 CFR 156.120 and 33 CFR 155.320) and spill containment and the fueling location shall be inspected after fueling to document that no spills have occurred. Any spills shall be cleaned up immediately using spill response equipment as identified in the SFCC Plan. • Well-maintained equipment shall be used to perform the construction work, and, except in the case of a failure or breakdown, equipment maintenance shall be performed off site. Equipment shall be inspected daily by the operator for leaks or spills. If leaks or spills are encountered, the source of the leak shall be identified, leaked material will be cleaned up, and the cleaning materials shall be collected and will be properly disposed; • The project sponsor shall exercise every reasonable precaution to protect listed species, their habitats, and Essential Fish Habitat from construction by-products and pollutants such as demolition debris, construction chemicals, fresh cement, saw-water, or other deleterious materials. Construction will be conducted from both land and water, and care shall be used by equipment operators to control debris so that it does not enter the Bay. • A Materials Management Disposal Plan (MMMP) shall be prepared to prevent any debris from falling into the Bay during construction to the maximum extent practicable. The measures identified in the MMMP shall be based on the Best Available Technology, and will include, but not be limited to, the following measures: 				

ACEA - America's Cup Event Authority
 ACRM - America's Cup Race Management
 BCDC - SF Bay Conservation and Development Commission
 CABR - California Air Resources Board
 CDFG - California Department of Fish and Game
 CDFR - California Department of Parks and Recreation
 CSLC - California State Lands Commission

DBW - California Department of Boating and Waterways
 EF - San Francisco, Environmental Planning Department
 ERO - San Francisco Environmental Review Officer
 NMFS - National Marine Fisheries Service
 NPS - National Park Service
 OEW - SF Office of Economic and Workforce Development

Port - Port of San Francisco
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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Mitigation Measure M-HY-4: Water Quality Best Management Practices (cont.)</p> <ul style="list-style-type: none"> - During construction, the barges performing the work shall be moored in a position to capture and contain the debris generated during any sub-structure or in-water work. In the event that debris does reach the Bay, personnel in workboats within the work area shall immediately retrieve the debris for proper handling and disposal. All debris shall be disposed of at an authorized upland disposal site; - Measures to ensure that fresh cement or concrete shall not be allowed to enter San Francisco Bay. Construction waste shall be collected and transported to an authorized upland disposal area, and per federal, state, and local laws and regulations; - All hazardous material shall be stored upland in storage trailers and/or shipping containers designed to provide adequate containment. Short-term laydown of hazardous materials for immediate use shall be permitted with the same anti-spill precautions; - All construction material, wastes, debris, sediment, rubbish, trash, fencing, etc., shall be removed from the site once the proposed project is completed and transported to an authorized disposal area, in compliance with applicable federal, state, and local laws and regulations; - Construction material that could wash or blow away shall be covered every night and during any rainfall event (if there is one); - Construction crews shall reduce the amount of disturbance within the project site to the minimum necessary to accomplish the project; and - Measures to prevent saw water from entering the Bay. 				
<p>Mitigation Measure M-LT-HY: Water Quality Best Management Practices for Long-Term Development (NA)</p>			NA	

HYDROLOGY AND WATER QUALITY MONITORING AND REPORTING PROGRAM
America's Cup (cont.)

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ACEM = America's Cup Race Management
BCDC = SF Bay Conservation and Development Commission
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CSLC = California State Lands Commission

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EP = San Francisco Environmental Planning Department
ERO = San Francisco Environmental Review Officer
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AC34 PROJECT - MITIGATION MONITORING AND REPORTING PROGRAM
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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>America's Cup</p> <p>Mitigation Measure M-17-HZ: Removal of Hazardous Building Materials</p> <p>The project sponsor shall ensure that any building planned for demolition or renovation is surveyed for hazardous building materials including PCB-containing electrical equipment, fluorescent light ballasts containing PCBs or DEHP, and fluorescent light tubes containing mercury vapors. These materials shall be removed and properly disposed of prior to the start of demolition or renovation. Old light ballasts that are removed during renovation shall be evaluated for the presence of PCBs. In the case where the presence of PCBs in the light ballast cannot be verified, the light ballast shall be assumed to contain PCBs and handled and disposed of as such, according to applicable laws and regulations. Any other hazardous building materials identified either before or during demolition or renovation shall be abated according to federal, state, and local laws and regulations.</p> <p>Mitigation Measure M-17-HZ: Mitigation of Hazards and Hazardous Materials Impacts from Long-Term Development on Port Properties (NA)</p>	<p>Port</p>	<p>During construction</p>	<p>Contractor shall submit a Monitoring Report, detailing survey results and compliance with the specified measure, to SRDPH for approval after construction. Copies of the report shall be sent to the Planning Department and ERO</p>	<p>Considered complete upon agency receipt of SRDPH-approved Monitoring Report</p>
NA				

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- ACEM = America's Cup Race Management
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- CDRG = California Department of Fish and Game
- CDRR = California Department of Parks and Recreation
- CSTC = California State Lands Commission

- DBW = California Department of Boating and Waterways
- EP = San Francisco, Environmental Planning Department
- ERO = San Francisco Environmental Review Officer
- NMFS = National Marine Fisheries Service
- NPS = National Park Service
- ORWD = SF Office of Economic and Workforce Development

- Port = Port of San Francisco
- SRDPH = San Francisco Department of Public Health
- SRMTA = San Francisco Municipal Transportation Agency
- SFPUC = San Francisco Public Utilities Commission
- SFRPD = SF Recreation and Parks Department
- USFPA = United States Environmental Protection Agency
- USCG = United States Coast Guard

EXHIBIT B
Workforce Development Plan
(To be attached.)

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EVENT AUTHORITY
AMERICA'S
CUP

34TH AMERICA'S CUP

**WORKFORCE DEVELOPMENT
AND LOCAL SMALL BUSINESS
INCLUSION PLAN**

Table of Contents

INTRODUCTION TO THE AMERICA'S CUP AND OVERVIEW	2
BENEFITS OF HOSTING THE 34 TH AMERICA'S CUP IN SAN FRANCISCO.....	5
34 TH AMERICA'S CUP OBJECTIVES	5
EXECUTIVE SUMMARY	7
Event Authority Commitments – <i>Event Management Activities</i>	8
Local Resident Hiring	8
Local Small Business Inclusion.....	8
Event Authority Commitments – <i>Permanent Infrastructure Improvements</i>	9
Local Resident Hiring	9
Local Small Business Inclusion.....	9
Event Authority Commitments - <i>Event-related Installation Work</i>	10
Plan Implementation	10
DEFINITIONS	11
WORKFORCE DEVELOPMENT AND LOCAL SMALL BUSINESS INCLUSION PLAN:	13
SECTION 1. EVENT MANAGEMENT ACTIVITIES	13
Event Management Hiring	13
Event Authority Direct Hiring of San Francisco Residents	13
Indirect Hiring of San Francisco Residents with Contracted and Service Vendors	13
Resident Outreach	15
Contractual Obligations.....	15
Monitoring	15
Internships and Job Opportunities for Youth.....	15
Event Management and Local Small Business Opportunities.....	16
Contractual Obligations.....	17
Monitoring	18
SECTION 2. PERMANENT INFRASTRUCTURE IMPROVEMENTS	19
Construction-Related Hiring of San Francisco Residents	19
Contractual Obligations.....	19
Monitoring.....	19
Construction-Related Local Small Business Opportunities.....	19
Partnership with Human Rights Commission	20
Contractual Obligations.....	21
Monitoring	21
SECTION 3. EVENT-RELATED TEMPORARY INSTALLATION WORK.....	21
EXEMPTIONS.....	22
CLOSE.....	22

INTRODUCTION TO THE AMERICA'S CUP

The 34th America's Cup (AC34) is transforming the sport of sailing. It heralds a new era in sailing featuring the best sailors in the fastest boats in the world, as well as racing in San Francisco Bay. It is the first time the America's Cup has been held so close to shore. Spectators will have unrivaled access to the event in the natural beauty of the San Francisco Bay amphitheater. Up close views of the action will be available from on-board cameras, which will be streamed live on the Internet and on television channels all over the world. The AC34 (or the Event) will take the sport of sailing to a new and heightened level, while promoting sustainability and responsibility, leaving a lasting and positive legacy.

The 34th America's Cup will provide for a variety of community benefits for residents of San Francisco, as well as visitors to the entire Bay Area. This Workforce Development and Local Small Business Inclusion Plan sets forth the strategies that the Event Authority and the City intend to employ to promote economic development and create job and small business participation opportunities for San Franciscans. The Plan addresses the small business and local workforce inclusionary steps that the Event Authority and City will undertake going forward in connection with the 34th America's Cup Event.

34TH AMERICA'S CUP OVERVIEW

On December 14, 2010, the San Francisco Board of Supervisors approved the 34th America's Cup Host City and Venue Agreement (Host Agreement or HVA) with the America's Cup Event Authority, LLC (Event Authority or ACEA), and the America's Cup Organizing Committee (Committee) as the City's formal bid to host the AC34. The Host Agreement was executed between the City and County of San Francisco (City), the Event Authority, and the Committee. On December 31, 2010, the Golden Gate Yacht Club selected San Francisco as the host city for AC34.

The HVA defines the roles and obligations of the parties to the Host Agreement with respect to the AC34 races and related matters in San Francisco. The Recitals at the beginning of the Host Agreement include several statements that describe the importance of local job creation and economic impact for San Francisco to the success of the event. Recitals pertaining to workforce and small business engagement are contained here as a reference:

K. San Francisco is proud of its diverse and productive workforce and believes that employers benefit from the innovative, skilled, and talented human capital that calls San Francisco home. To support local hiring in the City of San Francisco, the Event Authority will participate in the San Francisco Workforce Development System and comply with mandatory local hiring program regulations pursuant to Chapter 6.22 and Chapter 83 of the San Francisco Administrative Code or successor laws or policies.

L. Small businesses are a critical component of the San Francisco economy. Fostering entrepreneurship and supporting small business growth contributes to the City's tax base and creates local jobs. The Event Authority, the City and the Committee intend that, if San Francisco is selected as host city for AC34, the Event will be

organized in a manner that supports San Francisco's small businesses and incorporates local restaurants, retailers, building suppliers, and local manufacturers.

M. The City is committed to ensuring that San Francisco's young people have the widest opportunities to learn, gain valuable experience, and enjoy their City. The Event Authority, the City, and the Committee intend that, if San Francisco is selected as host city for AC34, the Event will incorporate and support sailing-related programs and activities for the City's children, youth, and families. Preceding and during the Event, the Event Authority will conduct extensive outreach to children, youth and families, conduct youth sailing courses, and provide event passes to San Francisco's children, youth and families at no cost. The Event Authority will commit to hiring young people to work at these events or to provide them with an internship. The Event Authority will create friendly, open spaces in which children and youth will engage in various Event-related activities. The Event Authority will create exciting learning spaces in which children, youth, and families will have access to experiential and project-based learning related to the Event.

The Host Agreement also defines a number of Implementation Plans to provide targeted strategies and actions to address specific functions or elements of the AC34 events. They are the following: 1) People Plan, 2) Workforce Development and Local Small Business Inclusion Plan, 3) Sustainability Plan, 4) Public Safety Plan, 5) Water and Air Traffic Plan, 6) Ambush Marketing Action Plan, 7) Zero Waste Plan, 8) Youth Involvement Plan, and 9) Advertising Plan. The responsibility for developing these Implementation Plans rests with different organizations that have core expertise in the given function. As a result of consultation with agency partners, the City and Event Authority identified the need to prepare a Parks Event Operations Plan to address how publicly owned parklands will be protected and enjoyed while supporting public viewing of the race events. In addition, to ensure each race team understands and employs sound practices in operating and managing their respective team bases, a Team Base Operations Manual is being developed by the Port, which will compile the technical, environmental, and regulatory requirements to ensure clean and safe operations. A description of all of the AC34 Implementation Plans can be found on the website of the San Francisco Office of Economic and Workforce Development at: <http://www.oewd.org/media/docs/AC34/AC34%20Implementation%20Plans.pdf>.

All nine implementation plans described in the Host and Venue Agreement were designed to be complementary and include public comment received over the past year in over 100 related community meetings throughout San Francisco and the region or submitted on-line via email to City and America's Cup Event Authority.

The AC34 consists of three main stages: the America's Cup World Series, the Louis Vuitton Cup, and the America's Cup Finals. The America's Cup World Series is a regular circuit of races, bringing sailing races to top venues around the world, beginning in 2011 until the summer of 2013. San Francisco is scheduled to host one or two America's Cup World Series events in the summer of 2012. The event to take place August 18-26 will be held in San Francisco or New York and there will be an event in San Francisco in October 2012. The Louis Vuitton Cup will be held in the summer of 2013 in San

Francisco, and will see challengers from around the world race for the opportunity to compete in the subsequent America's Cup Finals. The Louis Vuitton Cup begins on July 4, 2013 and will conclude on September 1, 2013. The America's Cup Finals will be held in San Francisco Bay September 7-22, 2013.

Several of the venues proposed for AC34 events consist of areas and facilities managed by the Port of San Francisco (Port), including certain piers (Pier 19, Pier 19½, Pier 23, Pier 27, Pier 29, Pier 29½, Piers 30-32, and Pier 80); and water basins/water areas (Pier 19 South, Piers 19-23, Piers 23-27 [Northeast Wharf Open Water Basin], Piers 29-31, Pier 9 South, Piers 14-22½ [Rincon Point Open Water Basin], Piers 28-30, and Piers 32-36 [Brannan Street Wharf Open Water Basin]).

Various other venues are proposed for spectator- and/or sponsor-related activities, some of which are under the jurisdiction of other city, state or federal agencies, including Crissy Field, Marina Green, Fort Mason, Aquatic Park, Alcatraz Island, Fort Baker Pier at Cavallo Point (near Sausalito), San Francisco Civic Center, Union Square, and Justin Herman Plaza.

Piers 27 and 29 are proposed by the AC34 project sponsors (the City and Event Authority) as the site of one of the primary AC34 venues in 2013 – the America's Cup Village. Pier 27 also is the site proposed by the Port for the development of a new Cruise Terminal project. The Cruise Terminal project would be coordinated with the AC34 project to allow an initial phase of the Cruise Terminal building to be used as part of the America's Cup Village for the 2013 America's Cup events. The proposed improvements to complete the Cruise Terminal would be built out by the Port after the AC34 races are concluded. The proposed new Cruise Terminal would be designed to meet modern ship and operational requirements of the cruise industry, and to meet the City's required Leadership in Energy and Environmental Design (LEED®)-equivalent standards for a maritime facility.

AC34 sailing races and associated activities are proposed to occur on San Francisco Bay. This race area would be confined within an area of the Bay roughly bounded by the San Francisco waterfront to the south; the San Francisco/Oakland Bay Bridge, Treasure Island, and Yerba Buena Island to the east; portions of southern Marin County (including Angel Island) to the north; and just beyond the Golden Gate Bridge to the west. It should be noted the actual race course(s) for the sailing races would occur within only one portion of this race area, with the primary race area concentrated along San Francisco's northern shoreline; the final race area would be determined based on government agency coordination and optimum race conditions in 2012 and 2013. The actual spectator boat area locations within the race area vicinity would also be influenced by those circumstances.

BENEFITS OF HOSTING THE 34TH AMERICA'S CUP IN SAN FRANCISCO

The America's Cup provides an unparalleled opportunity to showcase the City of San Francisco and boost the City's economy by creating a significant number of jobs and generating a substantial direct economic impact to the City and region.¹ Independent studies show that the America's Cup delivers the third largest economic impact in sport to host countries, behind the Olympic Games and soccer's World Cup.

The San Francisco Bay forms a natural arena for exquisite, viewable racing. Viewing platforms range from the public shoreline, including Marina Green, Crissy Field, Alcatraz, and Fisherman's Wharf, to north-facing slopes of hillsides and skyscrapers in the north and northwest parts of San Francisco. This combined with the City's existing hotel, restaurant, and cultural infrastructure makes San Francisco the world-class city it is and an ideal host for AC34.

The City has extensive recent experience in hosting major international sporting events, including the 2008 Beijing Olympic Torch Relay, Major League Baseball's All Star Game and World Series, PGA Tour President's Cup, and the AMGEN Tour of California. In 2003, San Francisco hosted the highly successful Moet Cup – a "friendly" regatta between the then America's Cup defender, Team Alinghi, and BMW ORACLE Racing.

In addition to experience, the Bay Area is a center for innovation and has the resources necessary to support the vision to incorporate new technologies and media into the America's Cup.

34TH AMERICA'S CUP OBJECTIVES

The objectives of AC34, as outlined in the AC34 Environmental Impact Report, are to:

- Establish San Francisco and San Francisco Bay as a world-class venue for the sport of sailing and generate interest in the sport by hosting America's Cup World Series events in 2012, followed by successful America's Cup events in 2013.
- Provide public viewing opportunities of the America's Cup and the America's Cup World Series live racing events at close range to increase the general public's access to the event and expand the appeal of the sport of sailing to the general public.
- Create a center of activity for the America's Cup and the America's Cup World Series by improving the existing resources of The Embarcadero and the San Francisco waterfront to establish a cohesive sense of place and identity for the AC34 participants (i.e., teams, event guests and staff, media personnel), visitors, and spectators of the events that enhance the land-side viewing opportunities and provide adequate facilities for spectator vessels.
- Provide infrastructure upgrades and other installations to improve existing facilities in consolidated areas for team-base activities, spectator viewing, and entertainment venues – including the public piers along San Francisco's waterfront – for use during the America's Cup in 2013 and the America's Cup World Series in 2012, consistent with Port of San Francisco building code

¹ *The America's Cup: Economic Impacts of a Match on San Francisco Bay* prepared by Bay Area Council Economic Institute (BACEI) and Beacon Economics, 2010 (available at: http://beaconecon.com/Misc/Beacon_ACReport.pdf)

requirements and the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary's Standards).

- Facilitate access to and from desired destinations based on smart transportation strategies presented in the America's Cup People Plan for the racing teams, event personnel, event sponsors, members of the media, and spectators, while satisfying the access needs of residents, workers, and visitors not associated with the races.
- Emphasize natural resource stewardship by incorporating sustainability principles in the planning and management of all race events and operations, including zero waste strategies identified in the Zero Waste Plan.
- Implement navigational and operational safety guidelines for race team, support, and spectator boat activities associated with the America's Cup and the America's Cup World Series that meet United States Coast Guard regulations, the America's Cup Protocol, and the safe limits of event boats and equipment; minimize conflicts with existing commercial maritime activities; and establish sustainable environmental practices and standards to help protect the ecological health of San Francisco Bay.

WORKFORCE DEVELOPMENT AND LOCAL SMALL BUSINESS INCLUSION PLAN

EXECUTIVE SUMMARY

This Plan has been jointly prepared by the City and the Event Authority (ACEA), in consultation with others, including the Office of Economic and Workforce Development (OEWD), the Human Rights Commission (HRC), and the Office of Small Business (OSB). The purpose of the Plan is to delineate the intent and the strategies that the Event Authority and City will employ to ensure employment and economic development opportunities are an integral part of the development of AC34.

The main activities leading up to the America's Cup World Series, the Louis Vuitton Cup, and the America's Cup Finals are divided into three segments:

1) **Event Management Activities** that consist of all of the administrative and organizational work required to host such events along with a myriad of event vending, concessionaire, and service opportunities. This portion of the work will generate the majority of the hiring and small local business opportunities. These will be intermittent opportunities leading up to specific events; one or two in 2012 and the two larger ones in 2013.

2) **Permanent Infrastructure Improvements** to Piers 30-32 if they are used for the Team Bases. The Event Authority may conduct improvements and repairs to Piers 30-32 to provide access and accommodate team base operations, as described below. However, the Port may take assignment of the Event Authority's contract to perform this work, if authorized by the Board of Supervisors and the San Francisco Port Commission. The proposed improvements include repairs to the marginal wharf, permanent driveways, a pad for a tower cranes along the southern edge of the Piers 30-32 to launch and retrieve vessels, improvements to the Piers 30-32 deck and supporting structure, pile repair, installation of a new electrical transformer, and repair or cap of existing water and sewer lines under Piers 30-32.

3) **Event-related Temporary Installation work** at various leased venue sites. The Event Authority will be engaging firms to assist with erecting temporary structures including scaffolding, staging, bleachers, and tents and the installation of temporary floating docks.

This Plan sets forth the employment, contracting, and small local business inclusionary goals for AC34, including promoting the employment of San Francisco residents and disadvantaged residents, and generating business contracting opportunities for small local firms. It also outlines the steps that the Event Authority and City will implement to achieve the AC34's inclusionary goals in both segments of the upcoming event related work. The Plan mirrors many of the goals and provisions of the City's First Source Hiring and Local Hiring Policy for Construction and reflects the Event Authority's commitment to the intent of these policies.

This Workforce Development and Local Small Business Inclusion Plan will continue to evolve and become more refined as the implementation of AC34 progresses, however the goals and penalties for failure to meet the goals will remain consistent. The Event Authority and City are satisfied that the primary economic inclusionary elements are included in this Plan. There are clear expectations to guide the Event Authority in conveying the economic benefits to San Francisco's workers and small businesses that will be generated by AC34. There are also clear methods that the City will utilize to

monitor and report on the Event Authority's progress in the delivery of these benefits. This Plan applies to the 34th America's Cup events, as described above and reflects the commitment of the Event Authority and the City of San Francisco to craft a Workforce Plan specifically designed to focus on jobs for San Franciscans as an important aspect of the benefits of the 34th America's Cup events. This Plan is intended only to apply to the 34th America's Cup events. The City acknowledges that the event activities are not public works or improvements subject to the laws and regulations pertaining to City contracts, and that laws such as San Francisco Administrative Code Section 6.22(G) do not apply to the event and the activities associated with it, but because the City has agreed to reimburse the Event Authority for all amounts expended on construction contracts, the parties have agreed to apply the provisions of Section 6.22(G) to Permanent Infrastructure Improvements, as more particularly described below. The parties acknowledge and agree that the event presents a unique circumstance and that the Event Authority's decision to voluntarily craft a Plan that exceeds the requirements of applicable law are intended to apply only to the event-related activities.

Event Authority Commitments

1) For AC34 **Event Management Activities** consisting of all of the administrative and organizational work required to host such events along with a myriad of event vending, concessionaire, and service opportunities. This includes Event Management Purchases, Event Authority Vendor Agreements, and Event Authority Service Contractors (except commodities).

Local Resident Hiring

- The Event Authority, in consultation with OEWD, has set a goal wherein 50% of all new entry-level hires will be San Francisco residents referred by the OEWD workforce system for all Event Authority contracts of \$150,000 and more.
- To achieve this goal, the Event Authority will continue to work closely with OEWD to develop an effective job identification and referral system that will include generating job projections, posting available positions on the OEWD job portal, providing OEWD with job postings in advance of wider publication, interviewing candidates referred by OEWD, and integrating all of these steps into Event Authority vendor and service agreements.
- OEWD will conduct citywide recruitment to ensure extension of AC34 opportunities to residents from all neighborhoods. OEWD will also interface with Event Authority vendors and service contractors to identify specific jobs and timing of employer personnel needs to promote referral of local residents and job matching.
- OEWD will monitor Event Authority progress in local resident hiring.

Local Small Business Inclusion

- The Event Authority, in consultation with HRC and the Office of Small Business (OSB), has set a local small business participation goal of 30% for all contracts of \$150,000 and more.
- In keeping with the diversity of San Francisco, the Event Authority is committed to reaching out to and including minority-owned and women-owned firms in its contracting processes. Specific strategies for implementing this intent will be included in the Event Authority's procurement plan.

- To achieve these goals, the Event Authority will continue to work with HRC and OSB to outreach to small local businesses directly and through merchant and business organizations. The Event Authority will also continue to participate in business forums and events sponsored by HRC, OSB and other local business groups. The Event Authority has established an online business portal, America's Cup Business Connect, which serves as a central place for announcing business and contracting opportunities. Businesses interested in receiving Event Authority RFPs and other information are being encouraged to register at this portal.
- The Event Authority, in consultation with HRC and OSB, is developing a procurement plan. Event Authority procurement will include 30 day advance posting of RFPs on the AC Business Connect website to the extent possible and the City's contracting website, 15-day advance pre-bid meetings, and direct outreach to and solicitation of bids from certified LBEs and local small businesses through City partners.
- HRC and OSB will assist the Event Authority in making connections to local small businesses. HRC will also monitor the Event Authority's progress in local business contracting.

2) For AC34 **Permanent Infrastructure Improvements**, if Piers 30-32 are used for the Team Bases, the Event Authority may conduct improvements and repairs to Piers 30-32 including repairs to the marginal wharf, permanent driveways, a pad for a tower cranes along the southern edge of the Piers 30-32 to launch and retrieve vessels, improvements to the Piers 30-32 deck and supporting structure, pile repair, installation of a new electrical transformer, and repair or cap of existing water and sewer lines under Piers 30-32. All of the AC34 construction work described in this section will be performed by union contractors.

Local Resident Hiring

- For AC34 Permanent Infrastructure Improvements and Construction work, the San Francisco Local Hiring Policy for Construction (Administrative Code 6.22 (G)) will apply. To adhere to the ordinance, the Event Authority will include the San Francisco Local Hiring Policy for Construction (Administrative Code 6.22 (G)) in its construction contracts of \$400,000 and above.

OEWD will monitor and report contractor rates of local hire participation.

Local Small Business Inclusion

- The Event Authority, in consultation with HRC, has established a local subcontracting goal of 25% for LBE participation.
- To achieve this goal, the Event Authority has included in its bid documents a series of LBE outreach steps all bidders are required to take to engage certified LBE subcontractors. In addition, the Event Authority has engaged a consultant to assist general contractors in making connections with LBE subcontractors.
- For AC34 projects that will begin construction in spring 2012 or thereafter, the Event Authority will also be requiring its prime contractors to advertise LBE subcontracting opportunities prior to bid submission, when possible and hold pre-bid meetings in advance to bid submission, when possible, to directly engage LBEs.

- HRC will assist Event Authority general contractors with outreach to LBEs. HRC will also monitor Event Authority progress in LBE participation.
- HRC shall have the right to monitor and enforce this commitment and shall have the further right to assess penalties of up to \$5,000 for failure to complete all of the outreach steps to engage LBE subcontractors.

3) For AC34 **Event-Related Temporary Installation Work** at various leased venue sites, the Event Authority will be engaging firms to assist with erecting temporary structures. When the Event Authority enters into these venue lease agreements, it will follow all of the standard provisions for prevailing wages that are included in the lease agreements and agrees to extend those terms to construction trade work for the installation or erection of temporary structures, including, floating docks, scaffolding, staging, bleachers, and tents.

For all direct Event Authority service agreements with installers of \$350,000 and more, the Event Authority will require the installers to make good faith efforts to meet the following Local Resident Hiring goals:

- 20% of all permanent non-managerial, non-supervisory jobs to be filled by San Francisco residents, with 10% of these jobs to be filled by economically disadvantaged San Francisco residents; and 50% of all new hires to be San Francisco residents.

Plan Implementation

This Workforce Development and Local Small Business Inclusion Plan outlines the Event Authority's approach and strategies presented thus far to connect local workforce and local businesses to opportunities with AC34 in San Francisco. As mentioned previously, this Plan will evolve over time in consultation with delivery organizations and consideration of stakeholder feedback. The Plan is being submitted as an attachment to the Lease Disposition Agreement (LDA) by and between the Event Authority and the City and County of San Francisco. After adoption of the LDA by the the Board of Supervisors and the Port Commission, the Plan will be implemented by the Event Authority in coordination with its City partners, OEWD, HRC, OSB, and other City agencies.

Over the last year, the Event Authority and the City have laid the groundwork for ensuring that AC34's significant and positive impact to the San Francisco economy will be shared by all San Franciscans. The Event Authority is eager to build upon this effort and begin realizing the economic promise of the 34th America's Cup in San Francisco.

DEFINITIONS

Administrative Code: the Administrative Code of the City and County of San Francisco as of the Effective Date. All references to City codes or ordinances in this Program shall mean such codes or ordinances as they exist, of the Effective Date.

City: the City and County of San Francisco.

CityBuild: the employment program known as CityBuild established by the City and administered by OEWD.

Construction Contractor: a construction contractor hired by or on behalf of the Event Authority who performs Construction Work on the Venue Lease property.

Economically Disadvantaged Person or Individual: a San Francisco Resident who is any of the following: (i) homeless or formerly homeless; (ii) has an annual income that is not greater than 50% of AMI, (iii) "Economically disadvantaged individuals" as defined in Administrative Code Chapter 83; or (iv) persons who have been unable to secure employment in his or her trade for more than 20 working days during the preceding six months.

For purposes of the foregoing, a "**homeless person**" means an individual who: (A) lacks a fixed, regular, and adequate nighttime residence but spends days and nights in San Francisco; (B) has a primary nighttime residence that is (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters and transition housing, (b) an institution that provides a temporary residence for individuals who are institutionalized, or (c) a public or private place not designed for, or ordinarily used for, sleeping accommodation for human beings; or (C) meets such other definition of "homeless person" as may be adopted or approved by HUD.

Examples of "economically disadvantaged individuals," for purposes of this subsection, may include, but not be limited to, the following individuals: individuals exiting the criminal justice system; individuals participating in or completing substance abuse treatment; individuals who receive financial aid for the purpose of obtaining an education or other vocational training program; survivors of domestic violence seeking employment; people with disabilities seeking employment; single parents seeking employment; and veterans seeking employment.

Entry Level Position: a position that requires any of the following: (1) no education above a high school diploma or certified equivalency; (2) less than two years of training or specific preparation.

Event Authority: America's Cup Event Authority, LLC.

Event Management Activities: the administrative and organizational work required to host AC34 events including event vending, concessionaire, and service providers. This includes Event Management Purchases, Event Authority Vendor Agreements, and Event Authority Service Contractors (except commodities).

Event-Related Temporary Installation Work: the hiring of firms to erect or install temporary structures such as floating docks, scaffolding, staging, bleachers, and tents.

First Source Hiring Agreement: a first source hiring agreement entered into in accordance with Administrative Code Chapter 83.

First Source Hiring Ordinance: Administrative Code Chapter 83.

FSHA: the City's First Source Hiring Administration.

Local Hiring Policy for Construction: Administrative Code Chapter 6.22(G)

LBE Ordinance: Administrative Code Chapter 14B.3.

OLSE: Office of Labor Standards Enforcement.

Parties: the City and the Event Authority.

Permanent Infrastructure Improvements: construction of permanent Event Authority Infrastructure required or permitted to be carried out by the Event Authority under the LDA on the Venue Lease property.

Qualified: an economically disadvantaged individual who meets the minimum bona fide occupational qualifications provided by the Event Authority to the San Francisco Workforce Development System in the Event Authority's job availability notices.

San Francisco Resident: an individual who has domiciled, as defined by Section 3.49(b) of the California Election Code, within the City at least seven (7) days before commencing work on a project.

San Francisco Workforce Development System: the system established by the City's Office of Economic and Workforce Development (OEWD) for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code.

Small Business Enterprise or SBE: have the meaning set forth in Administrative Code Chapter 14B.

WORKFORCE DEVELOPMENT AND LOCAL SMALL BUSINESS INCLUSION PLAN

SECTION I. EVENT MANAGEMENT ACTIVITIES

Event management and operations activities represent one of two major segments of work that the Event Authority will undertake in development of AC34. The Event Authority anticipates that the majority of the hiring and small local business inclusionary opportunities will stem from these activities, which will consist of a mixture of administrative and organizational work required to host such events along with a myriad of event vending, concessionaire, and service opportunities.

Event-related direct and indirect hiring for the Event Authority will occur progressively, according to the emergent needs of the business as it builds towards the AC34 events in 2013. Temporary or contingent hiring will occur as needed during intervals leading up to scheduled events. Likewise, there will be intermittent service contracting and vending agreements leading up to scheduled events. The largest events, the Louis Vuitton Cup and the America's Cup Finals, will take place during the summer of 2013.

Event Management Hiring

Event Authority Direct Hiring of San Francisco Residents

The Event Authority expects to hire up to seventy-five (75) individuals in a variety of positions to provide the administrative, planning, outreach, procurement, marketing, and logistical support required to implement AC34. For the Event Authority's in-house Operations Staff, the Event Authority will make good faith efforts to fill 50% of its new entry-level hires with San Francisco residents referred by the OEWD workforce system. To achieve this, the Event Authority has and will continue to work closely with OEWD to develop an effective job identification and referral system that will include:

- Posting available positions on the OEWD job portal (www.hiresf.org)
- Releasing job descriptions to OEWD staff 10 days in advance of posting elsewhere, and interviewing candidates referred by OEWD
- Providing a single point of contact to work with OEWD in facilitating employment for referrals

Indirect Hiring of San Francisco Residents with Contracted and Service Vendors

The Event Authority anticipates that it will solicit bids for certain Event-related goods and services leading up to and in advance of a given event. Categories of goods and services the Event Authority may need to procure include:

- Catering Services
- Staging Services
- Branding/Advertising Services
- Hospitality Services
- Food and Beverage: Catering, Concessionaires, and Kitchen Appliances
- Transportation: Golf Carts, Buses, Limos, Bicycles, and Truck Rental

- Temporary Structures: Tents, Bleachers, Staging, Audiovisual, LED and TV screens
- Furniture: Office, Lounge, and Restaurant
- Power: Generators, Cable, and Lighting
- Portable Restrooms
- Janitorial/Cleaning Services: Waste, Recycle, and Compost Bins
- Uniform Cleaning and Laundry
- Florists
- Printers
- Security: Wristbands, Barriers, Fencing, and Lanyards
- IT: Laptops, Phones, Cables, Routers/Servers, Printers, and Office Equipment

For Event Authority purchasing (except commodities), Vendor Agreements, and Service Contracts of \$150,000 or more, the Event Authority has set the goal that 50% of all new entry-level hires be San Francisco residents referred by the OEWD workforce system. As with Event Authority Direct Hiring, the Event Authority and its vendors will work with OEWD to:

- Prepare job projections of anticipated new hires, highlighting entry-level positions, and review these with OEWD/First Source Hiring Administrator (FSHA)
- Provide job descriptions and announcements at least ten (10) days in advance of the hiring phase for any given position before posting the position elsewhere
- Partner with FSHA to post jobs for entry-level positions in an effective manner to include:
 - Posting all job notifications for open positions with ACEA on AC Connect, which can be found online at www.americascup.com/connect
 - Creating a database as part of the America's Cup Website called AC Connect, where San Francisco residents can apply for any available positions, including Entry Level positions
- Provide a single point of contact to work with OEWD in facilitating employment for referrals
- Interview candidates referred through FSHA system that are an appropriate fit for any given position
- Work with the City according to the City's strategy of referring entry-level candidates who have participated in existing job training and/or referral programs appropriate for ACEA's entry-level positions
- Work cooperatively with OEWD staff to identify effective procedures to recruit, pre-screen, and interview qualified applicants for entry-level positions
- Give full good faith consideration to all individuals referred through the resident hiring program and workforce development system
- Assist OEWD in tracking the employment of OEWD referred workers.

Resident Outreach

OEWD will assist the Event Authority in meeting the local resident hiring goals by conducting citywide recruitment to ensure extension of opportunities to residents from all neighborhoods, and interface with vendors and service contractors to identify specific jobs and timing of employer personnel needs so that it can assist with job matching and referral of local residents. For applicants seeking employment, there will be multiple pathways for finding information about available opportunities. The OEWD job portal, www.hiresf.org, will be a central location for finding entry-level position with the America's Cup and affiliated parties. Applicants can post their resumes starting immediately. In addition to posting jobs through OEWD, the Event Authority will also send email blasts out to the local workforce development community with hiring updates and upcoming opportunities. Anyone wishing to receive that information will be able to email workforce@americascup.com. Finally, local community-based organizations will be engaged in each neighborhood to act as "gateways" for learning more information about employment opportunities as they become available, as well as required qualifications and any associated workforce training or preparation programs.

At this time, the Event Authority is unable to accurately project the number of new hires or the number of entry-level positions that any given vendor would require for staffing its team. However, the Event Authority will work with its procurement team and OEWD to create and refine projections over the course of 2012.

Contractual Obligations

To ensure compliance with its resident hiring goals, the Event Authority will include language describing these commitments in all of its bid documents. Further, it will require major contractors, suppliers, and vendors with contracts in excess of \$150,000 to enter into Resident Hiring Agreements to meet the goals mentioned above. This will set the expectation for these firms to actively participate and extend as many hiring opportunities as possible to San Francisco residents.

Monitoring

OEWD will monitor the Event Authority's Direct Hiring and the Indirect Hiring of its Vendors, Suppliers, and Service Contractors for Local Resident and OEWD Referred Disadvantaged Resident Hiring. OEWD shall have the right to monitor and enforce the agreement and shall assess a penalty of \$5,000 per contract for failure to complete the steps to achieve the hiring goals.

Internships and Job Opportunities for Youth

The Event Authority plans to engage student interns to assist with the day-to-day operations of ACEA. In addition to office operations, the Event Authority will be hiring youth for event-related jobs in the areas of retail sales, event production, information technology support, graphic design, concessions, hospitality, waste management, finance, video production, broadcast production, media operations, entertainment management, park stewardship, construction, and other event-related work. These opportunities may be offered starting in 2012 and continuing through 2013. Positions will be full-time and part-time, paid and unpaid, depending on the role. These positions will be offered through the America's Cup website (www.americascup.com/connect) and may involve partnerships with community-based organizations and the City. Various partner organizations may provide job training and skill development workshops for youth in preparation for their positions with the America's Cup. Internships and

opportunities to work for school credit will also be made available, and preference will be given to youth living in San Francisco.

More information on youth intern and job opportunities can be found in the AC Youth Involvement Plan posted at www.oewd.org. For information on youth activities with the America's Cup, please email youth@americascup.com.

Event Management and Local Small Business Opportunities

As described previously, the Event Authority will be procuring a multiplicity of goods and services leading up to each of the AC34 events. The Event Authority has categorized these procurement targets into four categories:

- 1) Construction-related professional services (ex. architecture and engineering),
- 2) Other professional services (ex. consultants, attorneys),
- 3) General services (ex. janitorial, security),
- 4) Event vendors including temporary installation firms, and
- 5) Commodities.

We believe these opportunities present the Event Authority with the greatest potential for doing business with San Francisco's local small businesses. The Event Authority has set a **goal of 30% for small local business (SLBE) inclusion** for contracts of \$150,000 and more for these categories. The Event Authority intends to achieve its 30% local small business goal by both engaging small local business prime providers as well as having prime providers utilize SLBEs for a portion of their work. The Event Authority has been working with the Office of Small Business and the Human Rights Commission to develop strategies for connecting with San Francisco's diverse community of small businesses, keeping them informed of AC34 opportunities, and most effectively engaging them in Event Authority procurements. The Event Authority is creating a small local business procurement plan that will include the following elements, and be accompanied by specific outreach efforts described below.

- An online business portal – **America's Cup Business Connect** – that serves as a central place for announcing business and contracting opportunities (as well as employment opportunities) with the Event Authority. Businesses interested in receiving and responding to RFPs with the Event Authority will be able to visit and register at www.americascup.com/connect. Over 1200 companies have already registered since mid-October 2011.
- Generating projections for procurement opportunities, identifying potential opportunities for small local firms; defining which contracts lend themselves to achieving a 30% small local business goal via subcontracting opportunities and in which others could be direct contracts with small local firms; estimate the potential dollar volume of contracting opportunities according to the type of business, and make available profiles of these to interested SLBEs.
- Posting RFPs and contracting opportunities 30 days in advance in most cases, but at a minimum of 15 days before the bid opening date on the AC Business Connect Portal and the City's Office of Contract Administration and OEWd websites (beginning 2012). Contact information for Event Authority staff responsible for those procurements will be posted and companies interested in submitting proposals will be able to connect with them.

- Highlighting SLBE goals in all bid advertisements and requiring submitters to list SLBE participants in their bids and complete specified good faith steps to achieve SLBE goals. Also, the Event Authority is working closely with organizations dedicated to local business such as SF Made and the City's Office of Small Business and plans to give a special designation to local companies (SF Made, certified LBE's, local/small businesses, green businesses, etc.) on the AC Business Connect to facilitate matching these firms with larger Event Authority vendors and service contractors.
- Convening Pre-Bid or Pre-Solicitation Meetings no less than 15 days prior to opening of bids/proposals, whenever feasible. This will allow small local firms to ask questions about the process, specifications and requirements, and have ample time to prepare competitive bids.
- Completing direct outreach and solicitation of bids from local small businesses through City partners such as HRC and OSB, to include use of HRC's database of certified LBEs. Assist larger vendors/service providers with referrals to potential SLBE for subcontracting opportunities.
- Participating in small business fairs and procurement fairs to inform the small local business communities of upcoming bid opportunities.
- Hosting an AC34 vendor fair to provide maximum opportunity for interested local small businesses to find out about AC34 business opportunities and learn how to do business with AC34.
- Establishing strategic partnerships with local business associations, merchant groups, and small business advocacy groups for ideas and assistance in connecting local firms. The Event Authority will ask business partner organizations to publish AC34-related announcements in their respective newsletters and/or distribute such information directly to the membership. The Event Authority plans to have a key contact person at each group and use that relationship to share information about opportunities with the Event Authority, distribute AC34 information to membership, publish AC34-related announcements in their respective newsletters or other membership communications, and conduct ongoing presentations to business groups to keep them updated on AC34 activities and opportunities.

Contractual Obligations

To ensure compliance with its SLBE goals, the Event Authority will highlight SLBE/LBE goals in its bid advertisements and require vendors and service contractors to complete the above outreach steps, and list any SLBE/LBE subcontractors or suppliers in their bids. Upon award, proposed utilization of SLBE/LBEs will be incorporated into vendor and service agreements and contracts.

Monitoring

- The San Francisco Human Rights Commission will work with the Event Authority to establish reporting, monitoring, and other procedures to monitor Event Authority progress in attaining small local business participation goals. HRC shall have the right to monitor and enforce this commitment and shall have the further

right to assess penalties of up to \$5,000 per contract for failure to complete all of the outreach steps to engage SLBEs or SLBE subcontractors/sub-consultants.

In an effort to market these opportunities to the local business community, the Event Authority will continue to speak and present to local and diverse business associations, chambers, and community groups; and participate in small business outreach events and forums to highlight potential Event Authority SLBE opportunities. A draft procurement plan is being developed and after permits and approvals have been received, the Event Authority will publish its procurement plan on OEWD's website, www.oewd.org, no later than May 1, 2012. Understanding that lines of credit, insurance, and bonding are problems common to local businesses, OEWD and HRC staff will be available to explain the Event Authority's insurance and bonding requirements, answer questions for them, and be prepared to suggest avenues of assistance.

The City's Office of Small Business and HRC will inform small businesses of the support the City intends to provide to prepare to take on a contracting opportunity with the Event Authority. These support services may include assistance with obtaining City permits or licenses, access to operational and technical support resources, extension of SPARTA insurance, and access to financing options (small business and micro loans). The Event Authority will continue its ongoing work with San Francisco's diverse chamber organizations to inform and educate affiliated businesses on ways to take advantage of business opportunities directly or indirectly related to the America's Cup events. The Event Authority and OEWD are jointly committed to working with the Office of Small Business on small business strategy to involve and connect opportunities to local small businesses.

SECTION 2. PERMANENT INFRASTRUCTURE IMPROVEMENTS

If Piers 30-32 are used for the Team Bases, the Event Authority may conduct improvements and repairs to Piers 30-32 to provide access and accommodate team base operations, as described below. However, the Port may take assignment of the Event Authority's contract to perform this work, if authorized by the Board of Supervisors and the San Francisco Port Commission. The proposed improvements include repairs to the marginal wharf, permanent driveways, a pad for a tower cranes along the southern edge of the Piers 30-32 to launch and retrieve vessels, improvements to the Piers 30-32 deck and supporting structure, pile repair, installation of a new electrical transformer, and repair or cap of existing water and sewer lines under Piers 30-32.

In moving forward, the Event Authority must finalize selection of its contractors and undertake the actual work. This plan sets forth the Event Authority's plan, worked out in conjunction with its City partners, OEWD and HRC, for resident hiring and small local business inclusion for the AC34-related construction work.

Construction-Related Hiring of San Francisco Residents

For the permanent construction work, the Event Authority will require its contractors to follow the City of San Francisco's Local Hiring Policy for Construction.

Contractual Obligations

The Event Authority will include the City's Local Hiring Policy for Construction in its construction contracts of \$400,000 and above.

Monitoring

OEWD will monitor and report on AC34 contractor achievement of local hiring goals in accordance with the Local Hiring Policy for Construction.

Construction-Related Local Small Business Opportunities

For permanent infrastructure improvements and construction-related local small business participation, the Event Authority and the San Francisco Human Rights Commission (HRC) have established a local subcontracting goal of 25% for LBE contractors.

- The Event Authority inserted this goal into its bid documents and the contractors pursuing this work understand the expectation that they are to direct a minimum of 25% of their contract dollars to LBEs (as defined by Administration Code Section 14B and certified by HRC).
- The Event Authority has provided LBE outreach assistance to the contractors pursuing these projects. It has also included a checklist of steps each contractor was expected to take in order to achieve the 25% LBE goal.

For the project on Piers 30 and 32, the construction work will take place during spring 2012. Therefore, there is additional time to assist the selected general contractor in meeting and hopefully exceeding the 25% LBE subcontracting goal. Toward this end, the Event Authority has agreed to work closely with the HRC and take the following LBE outreach steps:

- Work with its selected general contractor to identify specific remaining bid items that will be advertised to local LBEs.
- Advertise the contractor's solicitation of LBE bids for these bid items and the pre-bid meeting in one or more of the daily or weekly newspapers, trades association publications, minority of trade-oriented publications, trade journals listed below, or other media targeted for certified SBE/LBEs interested in participating in the project.

Small Business Assistance Center
 City Hall, Room 110
 1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94102
 415-554-6134

Asian, Inc.
 1167 Mission Street, 4th Floor,
 San Francisco, CA 94103

Daily Pacific Builder
 Advertisement Department
 160 Spear Street, 7th Floor
 San Francisco, CA 94105

Small Business Exchange, Inc.
 703 Market Street, Suite 1000
 San Francisco, CA 94103
 Phone: 415-778-6250
 Toll Free: 800-800-8534
 Fax: 415-778-6255
 Email: sbe@sbeinc.com

- Post the contracting opportunities on the City's OCA website and the contractor's website before the bid opening.
- Host a pre-bid meeting that will allow LBE to receive information and ask questions about the bidding opportunities.
- Follow up initial solicitation of interest by certified LBEs to determine with certainty whether enterprises were interested in performing specific items of the project.
- Provide interested certified LBEs with information about the plans, specifications, and requirements for the selected subcontracting scope items.
- Work in conjunction with its General Contractor to advise LBEs in obtaining bonds, lines of credit, or insurance required for the project.

Partnership with Human Rights Commission

The Event Authority and its project management team are working cooperatively with the San Francisco HRC to keep them informed of contracting activities. The HRC has advised the Event Authority on process and has agreed to assist the Event Authority and

its General Contractor in reaching out to potential LBE subcontractors and engaging them in the subcontracting processes.

Contractual Obligations

To ensure LBE utilization on AC34 projects, the Event Authority will insert language into its construction contracts of \$350,000 and more that the contractor must work in good faith with its LBE subcontractors to utilize them at the levels and financial amounts listed in bid or other pricing documents. The contracts shall also provide that the HRC may monitor and enforce the obligations of the contract as a third party beneficiary and may assess a penalty of no more than \$5,000 per contract for failure to take the steps spelled out in the contract to achieve the goals.

Monitoring

The Event Authority and its prime contractors will track overall LBE utilization for prime contractor, subcontractor, and supplier participation for all Event Authority projects. HRC will work with the Event Authority to monitor contractor achievement with LBE utilization.

SECTION 3. EVENT-RELATED TEMPORARY INSTALLATION WORK

At various leased venue sites, the Event Authority will also be engaging installation firms to assist with erecting temporary structures. When the Event Authority enters into these venue lease agreements, it will follow all of the standard provisions for prevailing wages that are included in the lease agreements and agrees to extend those terms to construction trade work at any stage of erection, construction, renovation, alteration, improvement demolition excavation or installation (including the installation or erection of temporary structures, including, but not limited to scaffolding, staging or the installation of bleachers or tents) or repair.

Event Authority contracts shall require the contractor and any subcontractors to pay prevailing wages, set by the City and County of San Francisco under San Francisco Administrative Code Section 6.22(E)(3), for each of the aforementioned job classifications. Compliance with prevailing wage requirements (including certified payroll records) shall be determined and enforced pursuant to California Labor Code Section 1720 *et seq.* Each contractor or subcontractor shall employ apprentices for each appropriate craft in the ratios specified in California Labor Code Section 1777.5 from a State-approved Joint Apprenticeship Program.

For all direct Event Authority service agreements with installers of \$350,000 and more, the Event Authority will require the installers to make good faith efforts to meet the following Local Resident Hiring goals:

- 20% of all permanent non-managerial, non-supervisory jobs to be filled by San Francisco residents, with 10% of these jobs to be filled by economically disadvantaged San Francisco residents; and 50% of all new hires to be San Francisco residents.
- To achieve these goals, the Event Authority will contractually require the installers to implement a series of steps to work with OEWD to identify positions for SF residents, and track and report SF resident hires and work hours.

The San Francisco Office of Labor Standards Enforcement will monitor and report on contractor and vendor compliance with prevailing wages standards.

Exemptions

Workforce hiring goals will not apply to any sponsors who may be supplying goods and services to ACEA under a sponsorship agreement, or to the individual race teams that will participate in the Event. However, the Event Authority will work with OEWD, its sponsors and teams to actively promote the use of the Workforce Development system and associated community-based organizations, and the training and staffing resources that exist for the purpose of hiring San Francisco residents.

CLOSE

Over the last year, the Event Authority and the City have laid the groundwork for ensuring that AC34's significant and positive impact to the San Francisco economy will be shared by all San Franciscans. The Event Authority is eager to build upon this effort and begin realizing the economic promise of the 34th America's Cup in San Francisco. As we move forward, the Event Authority will publish a quarterly report highlighting the implementation of the steps outlined in the Plan and the ensuing results.

EXHIBIT C
Form of Assignment
(To be attached.)

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**FORM OF
ASSIGNMENT OF RIGHTS**

This **ASSIGNMENT OF RIGHTS** (this "Assignment"), dated for reference purposes only and entered into as of the last date set forth below, is made by AMERICA'S CUP EVENT AUTHORITY LLC, a California limited liability company, as assignor ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), operating by and through the SAN FRANCISCO PORT COMMISSION (the "Port"), as assignee, in reference to certain plans, studies, reports, and other tangible work product, together with all attached intellectual property rights, warranties, and underlying data, produced by AECOM Technical Services, Inc. ("AECOM") under its Services Agreement effective as of January 12, 2011, between Assignor and AECOM, described on *Schedule 1* (the "Intellectual Property").

AGREEMENT

1. Assignment. For the sum of One Million United States Dollars (\$1,000,000) to be paid by the Port within 30 days after full execution of this Assignment, Assignor unconditionally and irrevocably assigns to the Port, and the Port accepts from Assignor, all of Assignor's right, title, and interest in and to the Intellectual Property on the terms and conditions of this Assignment. This Assignment will be effective on the date that it is fully executed by the parties.
2. Assignor's Representations. Assignor represents and warrants to the Port that:
 - (a) Assignor owns unconditionally and irrevocably all right, title, and interest in and to the Intellectual Property.
 - (b) AECOM has assigned unconditionally and irrevocably all claims of right, title, and interest in and to the Intellectual Property, and has waived all rights under the Copyright Design and Patents Act of 1988 or any equivalent laws with respect to the Intellectual Property.
 - (c) Assignor is not aware of any claims of right, title, or interest in or to the Intellectual Property by any other person.
3. Indemnities. Assignor will indemnify and hold the Port harmless from and against any actual loss, subject to proof reasonably acceptable to Assignor, including attorneys' fees, arising from any claim of right, title, or interest in or to the Intellectual Property from any person other than the Port of any other department, division, or office of the City, or any claim that any use or transfer by the Port of the Intellectual Property would violate Copyright Design and Patents Act of 1988 or any successor law.
4. Successors and Assigns. This Assignment will bind and inure to the benefit of the Assignor, the Port (and to the extent of its interest, if any, the City), and their successors and assigns.
5. Release. Specifically excepting matters addressed in Sections 2 and 3 of this Assignment and all obligations, rights, or claims created by or arising out of this Assignment, by accepting this Assignment, the Port, on behalf of self and its successors and assigns all other persons, firms, and corporations claiming through the Port, and each of them (collectively, the "Releasing Parties"):

(a) forever releases, relinquishes and waives any and all claims and causes of action of any and every nature whatsoever that the Releasing Parties have or may have against Assignor and its subsidiaries, affiliates, officers, directors, employees, representatives, agents, contractors, and attorneys arising out of, relating to, or connected in any way with this Assignment, the Intellectual Property and the transactions contemplated hereunder, whether known or unknown as of the date hereof;

(b) releases Assignor and its predecessors, successors, affiliates and assigns, and its respective partners, officers, shareholders, agents, contractors, representatives, employees and attorneys (collectively the "Released Parties"), of and from any and all claims, demands, disputes, damages, liabilities, obligations, controversies, debts, costs, expenses, lawsuits, actions, causes of action and other rights to relief, both legal and equitable, of every kind and nature, whether now known or unknown, suspected or unsuspected, past or present, contingent or fixed, which the Releasing Parties, or any of them, now have, had, or at any time hereafter may have, against the Released Parties, or any of them, arising out of or in connection with this Assignment or the Intellectual Property;

(c) acknowledges and understands that a general release may not, in some jurisdictions, extend to claims that the party granting the release does not know or suspect to exist at the time of executing the release and which, if known by such party, may have materially affected its determination to give a release;

(d) waives the provisions of any law that purports to limit the foregoing release;

(e) forever discharges Assignor and its respective stockholders, members, predecessors, successors, assigns, heirs, agents, directors, officers, managers, employees, representatives, and all persons acting by, through, under, or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs, or expenses, of any nature whatsoever, known or unknown, fixed, or contingent (hereinafter collectively "claims"), based upon, or relating to this Assignment and or the Intellectual Property;

(f) knowingly and voluntarily forever release and discharges Assignor (and its direct and indirect owners and affiliates, of any tier, and the directors, officers, managers, trustees, trust beneficiaries, contractors, agents, and employees of Assignor and such owners and affiliates; and the successors and assigns of Assignor and such owners and affiliates) from any and all legal and equitable claims, causes of action, debts, accounts, damages and rights to payment or performance of any nature whatsoever, known or unknown, vested or contingent;

(g) waives all rights it has or may hereafter have that any claim, demand, obligation or cause of action has, through ignorance, oversight, or error, been omitted from the terms of this Section 5 of this Assignment, and expressly waives all rights it may have, or claim to have, under the provisions of California Civil Code section 1542, or equivalent law of any jurisdiction, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CITY AND COUNTY OF SAN FRANCISCO

Initials

It is the intention of the Port that the foregoing general release shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of whatsoever nature, character or kind, known or unknown, suspected or unsuspected against Assignor under this Assignment, but for the exception specified above.

6. Governing Law. This Assignment is governed by and subject to the provisions of the City's Charter, and must be construed and interpreted in accordance with applicable copyright laws, the laws of the State of California, and the City's Charter. The Port and Assignor each irrevocably consents to the jurisdiction and proper venue of the State and the City and County of San Francisco.

7. Attorneys' Fees. If either party brings an action or proceeding (including any cross-complaint or counterclaim) against the other party to enforce any provision of this Assignment, to protect or establish any right or remedy under this Assignment, or any other issue arising from this Assignment, the prevailing party in the action or proceeding will be entitled to recover from the other party its costs of suit, which will be payable whether or not the action is prosecuted to judgment. If the prevailing party obtains a judgment, the costs of suit will be included as a part of the judgment or awarded on appeal. In this Assignment, "costs of suit" means court costs and all other litigation, administrative, or other judicial or quasi-judicial proceeding costs, and includes attorneys' fees. "Attorneys' fees" means reasonable fees of attorneys, paralegals, experts, and other consultants providing services relating to the matter and all other related costs actually incurred. Attorneys' fees for the City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to the year admitted to practice law in any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

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EXECUTED as of the last date written below.

ASSIGNOR:

AMERICA'S CUP EVENT AUTHORITY,
LLC, a California limited liability company

By:

Stephen Barclay
Chief Executive Officer

Date: _____

ASSIGNMENT ACCEPTED BY
ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO
operating by and through
The Port Commission of San Francisco

By:

Monique Moyer
Executive Director

Date: _____

Approved as to form:

DENNIS J. HERRERA
City Attorney

By:

Deputy City Attorney

SCHEDULE 1:

Description of Intellectual Property

Master Planning - Infrastructure Analysis, Pier Substructure
Above and Below Conditions Survey Report
Survey and Mapping
Geotechnical Investigation and Testing
Piers 30-32 60% Design Documents and Geotechnical
Piers 30-32 100% Construction Documents
Pier 29 Substructure Repairs
Piers 30-32 Storm Water Study
Coastal Engineering Analysis
Flood Risk Analysis
Concrete Strength Tests
Concrete Strength Tests
Pier 29 Dive Inspection
BAT Survey
Existing Conditions Report on Piers 26 & 28
Additional Scope - Existing Conditions Report on Piers 26 & 28



SCHEDULE 1
Venue Schedule
(To be attached.)

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Schedule 1
Venue Schedule

VENUE	LDA CONTRACTS	RELEVANT DATES & ASSUMPTIONS
Piers 30-32	<ul style="list-style-type: none"> Venue Lease 	<p>34TH AMERICA'S CUP EVENTS IN SAN FERRANCO America's Cup World Series August 21, 26 & October 2, 7, 2012 Louis Vuitton Cup July 21, September 1, 2013 Red Bull Youth America's Cup Sept 1 - 7, 2013 America's Cup Match September 7, September 22, 2013</p> <ul style="list-style-type: none"> August 14, 2012 - Delivery October 22, 2012 - March 1, 2013 - Will be returned to Port March 1, 2013 - Delivery December 31, 2013 - Venue Lease ends Construction: <ul style="list-style-type: none"> - Phase 1 of repair work completed - Phase 2 repairs complete by March 1, 2013
Pier 29 1/2	<ul style="list-style-type: none"> Venue Lease 	<ul style="list-style-type: none"> Area A¹ - Delivery - August 14, 2012, subject to a determination by the Chief Harbor Engineer - 25 parking spaces and 3 - 40ft containers Area F¹ - Delivery - February 1, 2013 Authority may return to Port for 2 months to conduct repairs agreed by parties December 31, 2013 - Venue Lease ends Cruise terminal contractor will continue to occupy the office space and 10 parking areas within the shed until Venue Lease ends
Pier 29	<ul style="list-style-type: none"> Venue Lease 	<ul style="list-style-type: none"> Area D¹ - Delivery - December 1, 2012, or sooner if Port code and fire repairs conclude earlier; Port access to Pier 29 shed through March 1, 2013 to conduct any code-required sprinkler upgrades Area H¹ - Delivery - March 1, 2013, with co-access for punch list and window installation through April 30, 2013; Certificate of Occupancy for Pier 29 Bulkhead, subject to compliance with applicable building permits on May 1, 2013. December 31, 2013 - Venue Lease ends
Pier 27	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> Area G¹ - Delivery - March 1, 2013 October 31, 2013 - Exclusive use ends December 15, 2013 - Venue License ends Construction: Certificate of Occupancy issued for core and shell Cruise Terminal Building by March 1, 2013

¹ As identified on Exhibit B-1 within the noted Pier Area

Schedule 1

Venue Schedule

34. AMERICA'S CUP EVENTS IN SAN FRANCISCO America's Cup World Series: August 21, 26-8, October 2-7, 2012 Louis Vuitton Cup: July 4, September 1, 2013 Red Bull Youth America's Cup: Sept 1-7, 2013 America's Cup Match: September 7, September 22, 2013		
VENUE	LDA CONTRACTS	RELEVANT DATES & ASSUMPTIONS
Pier 27 Valley	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> Area A' and B' - Delivery - August 14, 2012 Area C' - Delivery - January 1, 2013, with branding rights August 14, 2012 Area E' - Delivery - December 1, 2012 Area F' - Delivery² - February 1, 2013 October 31, 2013 - Exclusive use ends December 15, 2013 - Venue Lease ends Construction: Laydown, access, north park improvements
Pier 23	<ul style="list-style-type: none"> Venue Lease 	<ul style="list-style-type: none"> August 14, 2012 - Delivery - Lessee to cooperate with Port Repairs. March 31, 2014 - Venue Lease ends for ACEA Office and Parking; December 31, 2013 Venue Lease ends for all other space, including pier shed
Pier 19½	<ul style="list-style-type: none"> Venue Lease 	<ul style="list-style-type: none"> August 14, 2012 - Delivery December 31, 2013 - Venue Lease ends
Pier 19	<ul style="list-style-type: none"> Venue Lease 	<ul style="list-style-type: none"> August 14, 2012 - Delivery - Southern 250 ft of shed February 15, 2012 (or sooner if apron reconstruction completed) - Complete phased delivery of entire shed December 31, 2013 - Venue Lease ends Construction: South Apron rebuild to be completed by February 15, 2013
Pier 80	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> August 14, 2012 - Delivery March 1, 2014 or as soon as practicable when no longer needed for the Event - Venue License ends
Brannan Street Wharf	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> June 1, 2013 - Delivery Intermittent exclusive use November 1, 2013: Venue License ends
Pier 45 roof space (200 sf)	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> August 14, 2012 - Delivery December 31, 2013: Venue License ends

² Subject to cruise terminal contractors right to store and have access to 6 construction containers up to March 2013.

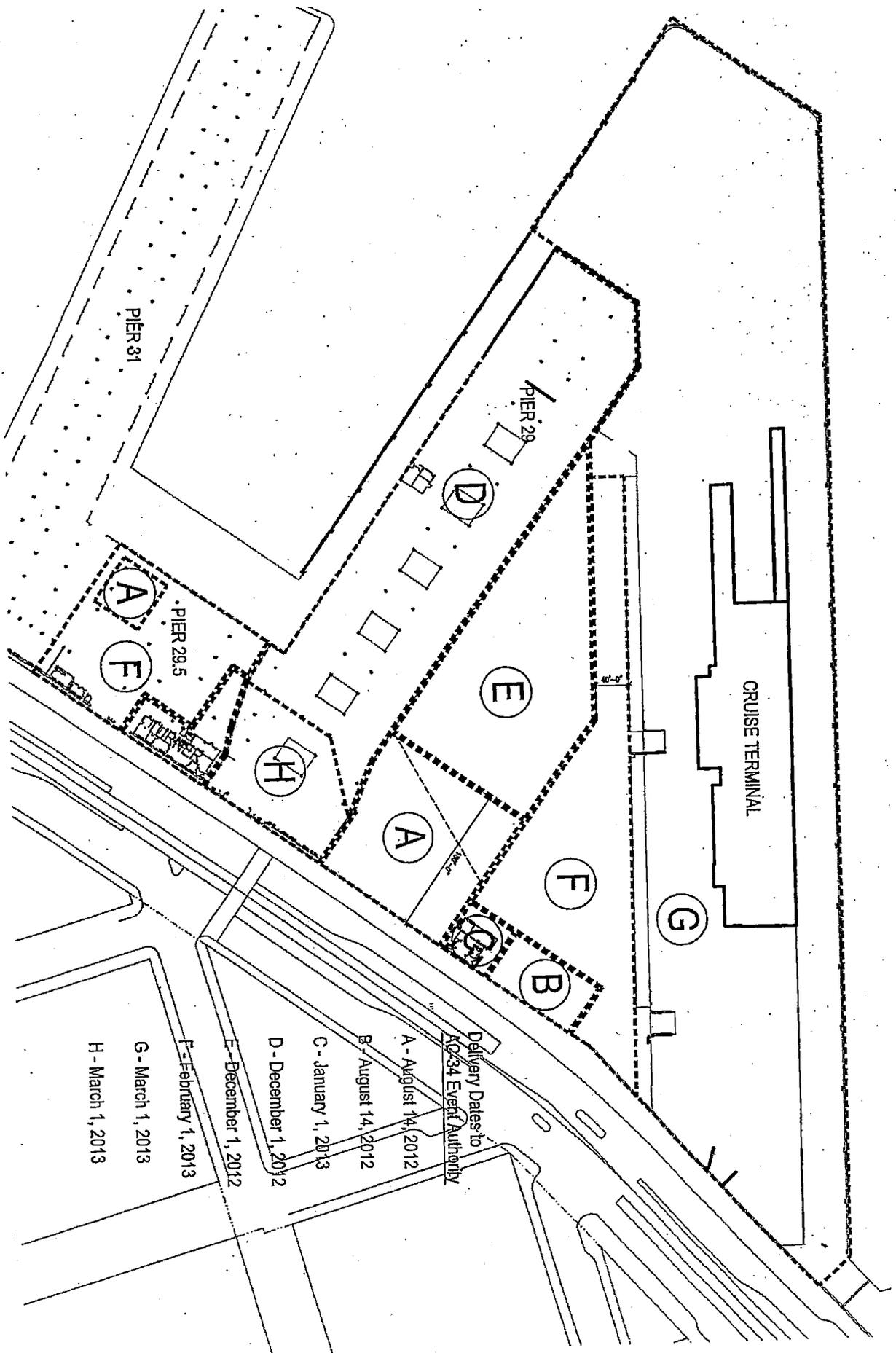
Schedule 1
Venue Schedule

<small>34th AMERICAS CUP EVENTS IN SAN FRANCISCO America's Cup World Series August 21, 26 & October 2-7, 2012 Louis Vuitton Cup July 4 - September 1, 2013 Red Bull Youth America's Cup Sept 11 - 17, 2013 America's Cup March - September 7 - September 22, 2013</small>		
VENUE	LDA CONTRACTS	RELEVANT DATES & ASSUMPTIONS
Pier 45 Apron	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> August 14, 2012 - Oct 15, 2012 then May 1, 2013 - Oct 15, 2013 Delivery - space for a container with a 40 ft mast antenna for UHF signal for ACTV
Pier 26	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> May 1, 2013 - Oct 15, 2013 Delivery - space for sail lofts subject to space available December 31, 2013: Venue License ends

Water Venues		
VENUE	DDA CONTRACTS	RELEVANT DATES & ASSUMPTIONS
Pier 32S - N edge of Pier 36 water basin	<ul style="list-style-type: none"> Part of Piers 30-32 Venue Lease 	<ul style="list-style-type: none"> August 14, 2012 - Oct 22, 2012 - Delivery October 22, 2012 - March 1, 2013 - Will be returned to Port March 1, 2013 - Delivery December 31, 2013 - Venue Lease ends Construction: <ul style="list-style-type: none"> dock/gangway/mooring Installation must be coordinated in 2012 with Brannan Street Wharf construction pile driving barge removed for two 8 day periods during 2012 race events dredging to be completed by Mar 1, 2013
Pier 9 South apron + water area ³	<ul style="list-style-type: none"> Venue License if needed 	<ul style="list-style-type: none"> August 14, 2013 - Delivery, subject to renegotiation of existing tenants as needed March 20, 2014 - Venue License ends Construction: Dredging and dock installation coordinated in 2013 if demonstrated necessary.
Pier 14N water basin ⁴	<ul style="list-style-type: none"> Venue License 	<ul style="list-style-type: none"> May 1, 2013 - Delivery March 20, 2014 - Venue License ends Construction: Dredging and dock/gangway installation coordinated in 2013

³ Subject to Authority's delivery of notice to Port by 3/1/13 and Port's renegotiation or termination of existing tenancies.
⁴ Subject to Authority's delivery of notice to Port by 3/1/13.





CRUISE TERMINAL

PIER 29

PIER 31

PIER 29.5

Delivery Dates to
KC/34 Event Authority

- A - August 14, 2012
- B - August 14, 2012
- C - January 1, 2013
- D - December 1, 2012
- E - December 1, 2012
- F - February 1, 2013
- G - March 1, 2013
- H - March 1, 2013

SCHEDULE 2

Pre-Existing Tenancies

1. Sprint Nextel Lease No. L-15008 for operation of a rooftop wireless communications site on Pier 23 roof
2. Pier 23 Cafe Lease No. L-14799 for premises located in northwestern corner of the Pier 23 shed building

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SCHEDULE 3
Port Installations

Planned installations include closed circuit television, access control, and intrusion detection systems at the following locations:

Pier 1
Pier 9
Pier 19
Pier 22½
Pier 27
Pier 29
Piers 30-32
Pier 45
Piers 50-52
Pier 80
Pier 90
Ferry docks
World Trade Club (BART ventilator, Ferry Plaza)
China Basin
South Beach Harbor

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SCHEDULE 4

Schedule for Completion of Port Infrastructure Work

(To be attached.)

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Schedule 4: Scope of Work

This Scope of Work applies to work that is contemplated in the Final Environmental Impact Report for the 34th America's Cup and the James R. Herman Cruise Terminal and Northeast Wharf Plaza projects, and is in the process of being reviewed and permitted by the U.S. Army Corps of Engineers (Army Corps), NOAA Fisheries Service (NOAA Fisheries), the California Department of Fish & Game, the San Francisco Bay Regional Water Quality Control Board (RWQCB), U.S. Fish and Wildlife Service and the San Francisco Bay Conservation and Development Commission (BCDC) (collectively, the "Agencies").

This Scope of Work describes work that the Port will undertake to prepare Port venues for the Event, consistent with the regulatory permit requirements imposed by the Agencies and the Lease Disposition Agreement (LDA).

2013 Pier 80 Work

If the work needed to prepare Piers 30-32 for the Authority's use for the 2013 World Series Events is not complete by January 14, 2013 or a later date approved by the Authority, the Port will complete by March 15, 2013 work at Pier 80 to provide a level surface for each team base and improve existing utility and stormwater infrastructure as necessary to serve team bases and as required by the RWQCB.

Pier 36 Demolition and Removal

Work is complete.

Brannan Street Wharf

The Port will complete the Brannan Street Wharf by no later than June 30, 2013.

Shoreside Power

The Port will cause the shoreside power installation for Pier 27 to be reinstalled and available to accommodate the use of the Pier 27 cruise terminal in satisfaction of MMRP mitigation measure M-AQ-4d.

Piers 27 Cruise Terminal

The Port will complete Phase 1 of its Pier 27 Cruise Terminal Project and deliver the new cruise terminal building to the Authority by March 1, 2013 with an approved temporary certificate of occupancy (TCO) for core and shell construction, subject to customary uncompleted Punch List Items.

Pier 27-29 Improvements

The Port will make the following improvements to Piers 27-29 by January 14, 2013(except as noted):

1. Demolish Pier 27 shed.
2. Demolish the Pier 27 Annex Building.
3. Install shallow stormwater catch basins¹ in the ground transportation area, the north park area and the Pier 27 eastern apron according to an approved Stormwater Control Plan for the Piers 27-29 facility.
4. Repair up to 26 reinforced concrete piles under the Pier 29 substructure.
5. Demolish a portion of Pier 29 shed and construct new Pier 29 shed east/corner wall consistent with Secretary of the Interior's Standards for Treatment of Historic Properties².
6. Substantially complete the fire-damaged portion of the Pier 29 bulkhead by March 1, 2013 in order to allow initiation of ACEA Tenant Improvement (TI) work, with the completion of punchlist items and window installation by April 30, 2013 followed by issuance of certificate of occupancy by May 1, 2013 (subject to ACEA meeting all Port of San Francisco Building Code requirements).

Pier 19 Apron Repair

If necessary to fulfill BCDC public access requirements for the Event permit, the Port will repair the Pier 19 south apron. This work consists of replacing up to 80 new bearing piles. The work also includes demolishing and disposing of and replacing approximately 5,000 square feet (sf) of rotted decking and stringers and replacing with new. Approximately 1,200 linear feet (lf) of cap beams will also be replaced.

Pier 23 Electrical Upgrade

The Port will install an electrical transformer to serve the International Broadcast Center.

Pier 64 Pile Removal and Caspian Tern Replacement Nesting Platform and Pier ½ Pile and Deck Removal

As required in the Event permit as a public benefit associated with the proposed use of areas designated by BCDC or to mitigate for fill and habitat impacts associated with the RWQCB and the NOAA Fisheries permitting, by dates set forth by relevant permitting agencies, the Port will remove a portion of Pier 64 near Mission Rock. This pier consists

¹ Kristar Model FB24 Stormwater Catch Basins.

² The Port may install a temporary Pier 29 end wall. If this occurs, the Port will install a permanent Pier 29 end wall consistent with Secretary of the Interior's Standards for Treatment of Historic Properties after the Match.

of a collection of remnant piles adjacent to the Mission Bay Bayfront Park encompassing approximately 234,250 square feet of water area.

It is possible the proposed fill removal at Pier 64 could result in the loss of an approximately 1,500 square feet platform used by Caspian terns. As part of the proposed fill removal project, the Port (or its agent) will create a 1,500 square feet bird platform that can withstand 100-year base flood conditions and sea level rise to 2050. The platform would require approximately 10 - 16" concrete or wood or steel piles (approximately 15 square feet of replaced permanent fill). It is possible, the Port may utilize some of existing piles for the support of this platform if they are found in sound condition. This platform will be a net legacy improvement for Caspian terns since the existing platform is dilapidated and likely would not hold up much longer.

By March 31, 2013, the Port will also remove Pier ½ (25,200 square feet), including piles, caissons and decking. A guardrail will be installed along the edges of the wharf after removal of the Pier 0.5 deck and piles.

Consistent with discussions with the RWQCB and other Agencies, the Port will implement a comprehensive approach for removing piles at Pier 64 and Pier ½. Specifically, the preferred method of removal will be removal of piles through vibratory extraction, followed by direct pull, clamshell removal and cutting, as necessary based on site-specific investigations, consistent with the approaches identified in the Subtidal Habitat Goals Report to remove piles and conditions in applicable Agency permits.

Piers 32-36 Brannan Street Wharf Open Water Basin

The Port will undertake dredging and pile removal within the Piers 32-36 Open Water Basin to provide sufficient water depth for catamaran access to a crane on Pier 32. Approximately 10,000 to 20,000 cubic yards (cy) of sediment will be dredged from this area. This total consists of a portion of dredging at a depth of approximately -10 feet Mean Lower Low Water (MLLW). Dredging and pile removal to be complete by March 1, 2013.

The sediment was characterized and tested for multiple disposal options through the Dredged Material Management Office (Army Corps, US Environmental Protection Agency, BCDL, RWQCB, State Lands Commission, state and federal wildlife agencies), which make sediment suitability determinations through the sediment sampling and testing process. If necessary, piles will be removed, including the portion of piles beneath the mudline to the extent feasible.

Pier 9

If the Authority demonstrates to the Port's satisfaction by March 1, 2013 demand to berth more large spectator vessels (i.e., by showing that the Authority has executed berthing agreements) than can be accommodated at Pier 27 and other existing Port berths jointly identified by the Port and the Authority, the Port will dredge the area south

of Pier 9 in the Broadway Open Water Basin to a depth of – 12 feet MLLW before July 1, 2013. Approximately 10,000 cy will need to be dredged and disposed of through the DMMO regulatory process.

North of Pier 14

If the Authority demonstrates to the Port's satisfaction by March 1, 2013 demand to berth more large spectator vessels (i.e., by showing that it has executed agreements) than can be accommodated at Pier 27, at other existing Port berths jointly identified by the Port and the Authority, and Pier 9, the Port will dredge the area north of Pier 14 to a depth of – 12 feet MLLW in 2012. Approximately 24,000 cy will need to be dredged and disposed of through the DMMO regulatory process.

Pier 30-32 Work

Phase 1 of improvements required for 2012 events are complete.

The Phase 2 of improvements include the following:

- Repair of marginal wharf deck and piles to support 250 pounds per square feet of live load and light vehicles (CALTRANS H10 loading with maximum wheel load of 8,000 pounds);
- Improvements and repairs to approximately 90,000 square feet of the Pier 32 deck and supporting structure as required to support 250 pounds per square feet of live load and light vehicles (CALTRANS H10 loading with maximum wheel load of 8,000 pounds), loads associated with moving racing vessels around on wheeled cradles and pads for tower cranes along the southern edge of Pier 32 to launch and retrieve vessels, including strengthening certain crane access areas to support crane loads;
- Supply and install structural support of steel containers used in the building team bases on the Pier 30/32 deck;
- Utilities: (a) Upgrade electrical service from 800A to 1200A subject to negotiations with PG&E or provide alternative power sources (e.g. using generators); (b) install conduit and conductor to supply new 400A power to middle of north side of pit wall unless alternative power source provided (i.e. generators)
- Construction of stormwater management infrastructure to protect Bay water in accordance with the RWQCP Best Management Practices ("BMP") requirements and consistent with the San Francisco Stormwater Management Guidelines.

SCHEDULE 5

Venue Repairs

AC34 Port Venue Repair Project List		
Project Name	Status	Estimated Cost
Pier 80 Shed A Egress Doors and Lighting & Lighting Repairs	In Progress	\$44,150
Pier 23 Lead Abatement	Complete 7/13/12	\$83,500
Pier 23 Egress Doors and Lighting	In Progress	\$53,950
Pier 23 North Apron Security Fence *	Complete 7/13/12	\$17,000
Pier 23 Sprinkler Repairs	In Progress	\$21,000
Pier 19 ½ Parking Ventilation	In Progress	\$2,000
Pier 19 ½ Egress Doors and Lighting	In Progress	\$49,500
Pier 19 ½ Sprinkler Repairs & Fire Safety	In Progress	\$4,600
Pier 29 ½ Parking Ventilation	In Progress	\$2,000
Pier 29 ½ Demising Fence, Egress and Lighting	In Progress	\$13,200
Pier 29 ½ Sprinkler Repairs	In Progress	\$20,361
Pier 19 Lead Abatement	In Progress	\$80,500
Pier 19 Demolition of Existing Fences, Trailers and Utilities	In Progress	\$109,000
Pier 19 Egress Doors and Lighting	In Progress	\$54,000
Pier 19 Restroom Repairs	In Progress	\$44,500
Pier 19 Sprinkler Repairs & Fire Safety	In Progress	\$32,000
Pier 29 Lead Abatement	In Progress	\$85,000
Pier 29 Roof Repairs	In Progress	\$100,000
Pier 29 Water Service	In Progress	\$100,000
Pier 29 Egress Doors and Lighting	In Progress	\$59,800
Pier 29 Fire Safety – Service Extinguishers	In Progress	\$10,000
Total		\$986,061.00

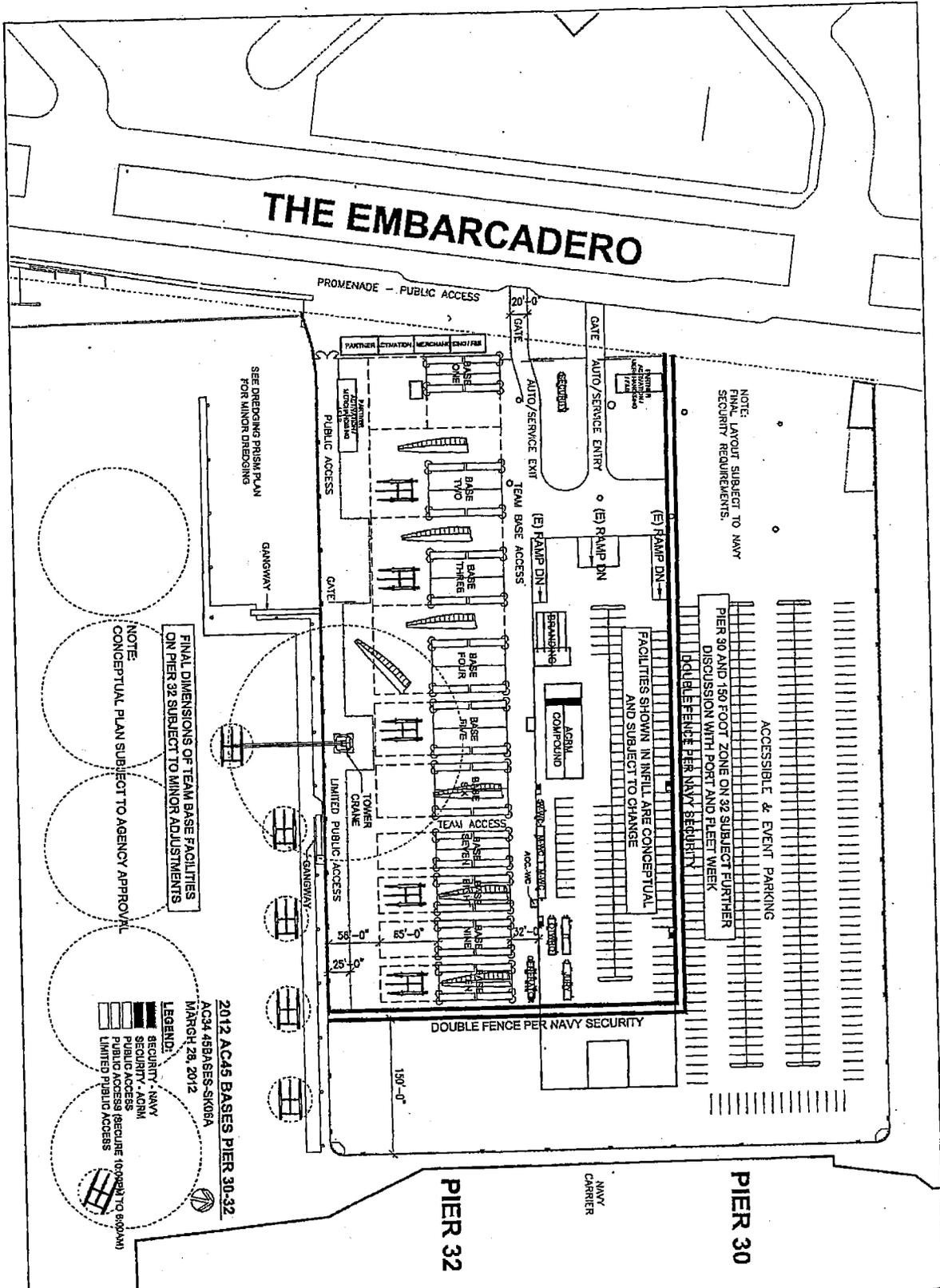
SCHEDULE 6

Preliminary site plan for 2012 Fleet Week

(To be attached.)

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THE EMBARCADERO



NOTE: FINAL LAYOUT SUBJECT TO NAVY SECURITY REQUIREMENTS.

ACCESSIBLE & EVENT PARKING
PIER 30 AND 150 FOOT ZONE ON 32 SUBJECT FURTHER DISCUSSION WITH PORT AND FLEET WEEK
DOUBLE FENCE PER NAVY SECURITY

FACILITIES SHOWN IN INFILL ARE CONCEPTUAL AND SUBJECT TO CHANGE

NOTE: FINAL DIMENSIONS OF TEAM BASE FACILITIES ON PIER 32 SUBJECT TO MINOR ADJUSTMENTS

NOTE: CONCEPTUAL PLAN SUBJECT TO AGENCY APPROVAL

2012 ACAS BASES PIER 30-32
AC3445BASES-SK08A
MARCH 29, 2012

LEGEND:

	SECURITY - NAVY
	SECURITY - AONM
	PUBLIC ACCESS (REQUIRE 10000 TO 80000)
	LIMITED PUBLIC ACCESS

PIER 32

PIER 30

NAVY CARRIER

2012 AMERICA'S CUP
TEAM BASES
PIER 30 & 32
SAN FRANCISCO - CALIFORNIA

NILSEN
ARCHITECTURE - PLANNING
5500 VENUE DRIVE FAIRFAX, CALIFORNIA 94534
(415) 860-0958

CONCEPTUAL
SITE PLAN

Project No.	501-113	Sheet No.	A1-1
Date	03-27-12	Scale	
Author		Drawn	
Checked		Reviewed	

SCHEDULE 7

Closing Conditions & Conditions Subsequent

CLOSING COND'NS TO BE PROVIDED BY CITY	RESPONSIBILITY	COMMENTS
Agreement to purchase AECOM work product	Port	Executed
SECURITY & CLOSING COND'NS TO BE PROVIDED BY ACEA	RESPONSIBILITY	COMMENTS
Environmental Oversight Deposit	ACEA	Delivered
Closing certificate + attachments: Certificate of Good Standing Amended & Restated Operating Agmt Authorizing resolution	ACEA	
City Regulatory Approvals final except any CEQA lawsuit	NA	Port building permit may be provided after closing.
Workforce Development Plan submittals approved	OEWD	Final
Signed Operations Plan	ACEA + ACRM	Delivered
Site layout plans for each Venue	ACEA	Delivered
CONDITIONS SUBSEQUENT	RESPONSIBILITY	COMMENTS
§ 2.8(k)(ii): Request to include ACRM as add'l insured	ACEA	ACRM authorize release of info 8/14/12 for due diligence review by Risk Mgr
CGL and other insurance endorsements, includes certificates from Lease § 1.2(c) for Competitors; ACRM and other vessels and LDA § 2.8 for ACEA; ACRM; contractors; and Authority Occupants including special risk categories.	ACEA, ACRM, et al.	Condition subsequent – to be resolved immediately after closing
Notice of insurer approval and NTP for Pier 29 design and reconstruction contracts	Port	Requires insurer approval; Port to confirm terms
Port to pay for IP	Port	\$1M by 9/12/12
City to pay ACEA's CEQA costs	City	\$482,295.95 by 8/13/12
Port Commission, Board Approvals for § 3.15	City, Port	10/17/12
Guaranty to be delivered, Guarantor to demonstrate net worth	ACEA, Oracle	10/18/12
ACEA to return Piers 30-32 to Port for 2013 Piers 30-32 Work	ACEA, Port	10/22/12-2/28/13
ACEA deadline to provide notice of termination if Board does not Approve § 3.15	ACEA	11/16/12

SCHEDULE 7

Closing Conditions & Conditions Subsequent

Cruise terminal alternative planning	Port, ACEA	1/1/13
ACEA right to direct acceleration of Cruise Terminal Project or Pier 80 Work if CTP not on schedule	ACEA	1/14/13
City must deposit Cash Collateral subject to Approved control agreement	City	\$2.4M by 1/15/13
Alt. date for Guaranty delivery if Board does not approve § 3.15 and ACEA chooses not to terminate	ACEA, Oracle	1/15/13
Pier 27 Venue, Pier 29 Venue, Piers 30-32 delivery date	Port	3/1/13
Deadline to demonstrate demand for super yacht berthing at Pier 9 or Pier 14	ACEA	3/1/13
Piers 80 delivery alternative	Port	3/15/13
Complete removal of Pier ½	Port	3/31/13
Pier 29 punch list, long lead items completed	Port	4/30/13
ACEA CGL claims report due	ACEA	6/1/13, possible requirement to increase coverage to \$25M
Last day of City priority for claims against Cash Collateral	City	6/30/13
Complete Brannan Street Wharf	Port	6/30/13
ACEA priority period for claims against Cash Collateral begins	ACEA	7/1/13
Complete dredging for additional super yacht berthing if need demonstrated	Port	7/1/13
City to replenish Cash Collateral for any draws made before 7/1/13	City, ACOC	7/15/13
All security released	City, Port, ACEA	9/21/13
City to identify possible AC35 venues if ACEA defends AC34	City	12/21/13
6-month AC35 Host Agreement negotiating period ends	City, Port, ACEA	3/31/14

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: America's Cup Event Authority LLC	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.	
<ol style="list-style-type: none"> 1. Board of Directors: Richard Worth, Stephen Barclay, Russell Coutts and Jay Cross 2. CEO: Richard Worth; CFO: Scott Smith; COO: N/A 3. Oracle Racing, Inc. 4. N/A 5. N/A 	
Contractor address: 160 Pacific Ave Suite 201, San Francisco, CA 94111	
Date that contract was approved: <i>(By the SF Board of Supervisors):</i>	Amount of contract: Over \$55 million in pre-Match improvements
Describe the nature of the contract that was approved: Development and Disposition Agreement for certain infrastructure improvements relating to the 34 th America's Cup events; also further long-term development rights as described therein.	
Comments: Total value of contract depends on actual cost/value of improvements, as further described in the agreement.	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

