

1 [Approving the 34<sup>th</sup> America's Cup Project and Related Transactions]

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3 **Resolution adopting California Environmental Quality Act Findings, a Statement of**  
4 **Overriding Considerations, and a Mitigation Monitoring and Reporting Program**  
5 **(MMRP0 for the 34<sup>th</sup> America's Cup events and approving the America's Cup project;**  
6 **waiving certain termination rights by the City under the 34<sup>th</sup> America's Cup Host and**  
7 **Venue Agreement (Host Agreement); approving the Development and Disposition**  
8 **Agreement between the City, through its Port Commission, and the America's Cup**  
9 **Event Authority, LLC (Event Authority), which also amends the Host Agreement;**  
10 **approving a Memorandum of Agreement regarding the City's and the Event Authority's**  
11 **respective obligations for certain mitigation measures in the MMRP and other project-**  
12 **related activities; and authorizing further actions and ratifying prior actions consistent**  
13 **with the terms of this Resolution.**

14

15 WHEREAS, The Board of Supervisors of the City and County of San Francisco finds as  
16 follows:

17 (a) In February 2010, BMW Oracle Racing, sailing for the Golden Gate Yacht Club  
18 (together, the "Team"), won the 33rd America's Cup in Valencia, Spain; and,

19 (b) The Team, as Defenders of the America's Cup, has the right and duty to organize  
20 and hold the 34th America's Cup sailing regatta, and has created the America's Cup Event  
21 Authority LLC (the "Event Authority") for such purpose; and,

22 (c) Over the course of 2010 the Team, the Event Authority and the City negotiated the  
23 terms of a bid for the City and County of San Francisco (the "City") to be the host city for the  
24 34<sup>th</sup> America's Cup (the "Match"), the Louis Vuitton Cup Challenger Series, and certain related  
25 regattas in 2012 and 2013 (together, the "Event"); and,

1 (d) In furtherance of those negotiations, supporters of bringing the Event to  
2 San Francisco established the America's Cup Organizing Committee (the "ACOC"), a  
3 nonprofit public benefit corporation which includes civic and corporate leaders from  
4 throughout the Bay Area, California and the nation, as well as a bipartisan honorary  
5 committee including elected and appointed representatives from our local, state and federal  
6 governments; and,

7 (e) On December 14, 2010, by its Resolution No. 585-10, the Board of Supervisors  
8 approved the terms of a 34th America's Cup Host and Venue Agreement (subject to further  
9 addition, amendment or modification under certain conditions) and other aspects of the City's  
10 bid to host the Event (the "Host Agreement"); and,

11 (f) As approved under Resolution No. 585-10, the Host Agreement contemplated:

12 (i) The Event Authority, the City and the ACOC as signatories to the agreement;

13 (ii) A number of commitments by ACOC in support of the host city bid, including  
14 but not limited to a fundraising program of \$32 million over three years, the proceeds of  
15 which are to be provided to the City to defray a portion of the City costs of hosting the  
16 Event;

17 (iii) sole source negotiations between the City (acting through the Port  
18 Commission (the "Port") and other relevant City agencies) and the Event Authority for  
19 venue leases and other agreements to use City property needed for the Event;

20 (iv) an investment before the 34<sup>th</sup> America's Cup Match of at least \$55 million by  
21 the Event Authority in substructure and infrastructure improvements to Port facilities for  
22 the Event, subject to City approval of the improvements and verification of the Event  
23 Authority's costs;

24 (v) undertaking and completing environmental review of the proposed project  
25 under the California Environmental Quality Act ("CEQA") before the City's

1 consideration of any approvals for the Project;

2 (vi) in exchange for a \$55 million pre-Match investment, an agreement by the  
3 City to grant the long-term development rights to Piers 30-32 and Seawall Lot 330 on a  
4 sole source basis to the Event Authority; and,

5 (vii) in exchange for substructure and infrastructure improvements above  
6 \$55 million, an agreement to reimburse the Event Authority through long-term  
7 development rights to Port venues on a sole source basis, together with proceeds of  
8 property tax increment from infrastructure financing districts associated with the future  
9 development of Piers 30-32 and Seawall Lot 330, all subject to the terms and  
10 conditions of the Host Agreement, including future development project-specific  
11 environmental review under CEQA and future approvals by the Port Commission and  
12 Board of Supervisors, among other agencies; and,

13 (g) In addition to approving the terms of a Host Agreement, in adopting Resolution 585-  
14 10 the Board of Supervisors made the following findings:

15 (i) In response to identified negative financial impacts to the Port that could  
16 result from hosting the Event, Resolution No. 585-10 referenced a range of potential  
17 solutions, including using Charter Section B7.320 to offset race-related, net short-term  
18 rent reductions to the Port, financing certain City costs to prepare venues for the Event  
19 with City certificates of participation, and City financing for waterfront improvements to  
20 offset reductions in the Port's revenue bond capacity, subject to the review and  
21 approval of the City's Capital Planning Committee, the Mayor and the San Francisco  
22 Board of Supervisors, as applicable;

23 (ii) In Resolution No. 585-10 the Board of Supervisors found that hosting the  
24 34th America's Cup in San Francisco would generate significant public benefits for the  
25 City including: (1) the repair, improvement and productive reuse of certain City piers

1 along the City's waterfront that are currently in a state of disrepair; (2) the generation of  
2 significant new jobs and economic development in a very short period of time; and  
3 (3) new opportunities for people to access, view and enjoy the San Francisco Bay as  
4 part of an extraordinary showcase for the Bay to the world; and,

5 (iii) In Resolution No. 585-10 the Board of Supervisors found that the plan to  
6 undertake and implement the Event is fiscally feasible and responsible under San  
7 Francisco Administrative Code Chapter 29; and,

8 (h) On December 31, 2010 the Team selected San Francisco as the host city for the  
9 Event, subject to execution of the Host Agreement by the City, the Event Authority and ACOC,  
10 reflecting the terms negotiated by the parties within the authorization provided by  
11 Resolution No. 585-10; and,

12 (i) The executed Host Agreement is on file with the Clerk of the Board in File No.  
13 101259; and,

14 (j) As contemplated by the Host Agreement, the Event Authority and the City, acting  
15 through the Planning Department, the Port of San Francisco and the Office of Economic and  
16 Workforce Development, and with the cooperation of numerous other City agencies, have  
17 together undertaken a planning and environmental review process for the Event and provided  
18 for appropriate public hearings before the Planning Commission, the Port Commission and  
19 other City commissions with an Event implementation role; and,

20 (k) In conjunction with the planning and environmental review process Port and City  
21 staff have negotiated more detailed terms for delivery of Port venues to the Authority for the  
22 Event, approval and acceptance of Event Authority improvements to City property, procedures  
23 for implementing the long-term real estate transactions contemplated under the Host  
24 Agreement, and indemnification obligations, as set forth in a Development and Disposition  
25 Agreement between the City, through its Port, and the Event Authority (the "DDA"), with which

1 the Event Authority and the City intend to replace and supersede Sections 5, 6, and 7 (relating  
2 to Venues, Event Authority improvements to City property, and long-term development rights)  
3 and Section 15 (relating to indemnification obligations) of the Host Agreement; and,

4 (k) On July 11, 2011, the Planning Department published a Draft Environmental Impact  
5 Report (the "Draft EIR") for the contemplated Event activities, including a conceptual analysis  
6 of potential long-term development on Port lands contemplated under the Host Agreement  
7 (the "Project"), for public review and accepted public comments for a 45-day comment period;  
8 and,

9 (l) On August 11, 2011, the Planning Commission held a public hearing on the Draft  
10 EIR; and,

11 (m) On December 1, 2011, the Planning Department issued a document that set forth  
12 public comments to the Draft EIR and official responses (the "Comments and Responses  
13 document") which, together with the Draft EIR comprises the Final Environmental Impact  
14 Report ("Final EIR"); and,

15 (n) The Comments and Responses document included analysis of a "Project Variant"  
16 for the America's Cup project, based on project changes and improvements developed in  
17 response to public comments and further event planning which reduced environmental  
18 impacts as well as new, additional mitigation measures which reduced or avoided  
19 environmental impacts that were described in the Draft EIR, as well as analysis of a "Reduced  
20 Intensity AC34 and Long Term Development Sub-Alternative" that provided more specific  
21 information about long-term development; and,

22 (o) On December 15, 2011, the Planning Commission held a public hearing and, by  
23 Motion No. 18514 adopted by a unanimous vote of those Commissioners present, certified the  
24 Final EIR as accurate, adequate, and complete; and,

25 (p) A copy of Planning Commission Motion 18514 is on file with the Clerk of the Board

1 of Supervisors in File No. 120127 and is incorporated herein by reference as though fully set  
2 forth; and,

3 (q) On December 16, 2011, the Port Commission by unanimous vote approved its  
4 Resolution Nos. 11-79 and 11-80 (the "Port Resolutions"), which adopted CEQA findings—  
5 including a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting  
6 Program (the "MMRP")—(the "CEQA Findings") and approved certain aspects of the AC34  
7 event plans, including the DDA, subject to Board of Supervisors approval of the DDA as an  
8 amendment to the Host Agreement; and,

9 (r) As set forth in detail in the CEQA Findings, the proposed AC34 events, as well as  
10 the Event Authority's long-term development rights, were analyzed in the Final EIR "Reduced  
11 Intensity AC34 and Long Term Development Sub-Alternative" described in Chapter 11 of the  
12 Final EIR. The Project includes elements of the Project Variant, the Sub-Alternative and  
13 Alternative 4, as discussed in the Final EIR and as set forth in the CEQA Findings, and was  
14 identified as one of the environmentally superior alternatives in the Final EIR; and,

15 (s) Copies of the Port Resolutions, including the CEQA Findings and the MMRP, as  
16 well as the conditionally-approved DDA, are on file with the Clerk of the Board in File No  
17 120127 and are incorporated herein by reference as though fully set forth; and,

18 (t) Two appeals were filed timely challenging the Planning Commission's certification  
19 action. At its hearing on January 24, 2012, the Board of Supervisors denied the appeals by its  
20 Motion M12-011, which is on file with the Clerk of the Board in File No 120127 and  
21 incorporated herein by reference as though fully set forth.

22 (u) By its terms the DDA replaces Articles 5, 6, 7, and 15 of the Host Agreement in their  
23 entirety and adds Section 2.4, giving the Event Authority the right to terminate the Host  
24 Agreement if it terminates the DDA, and Section 2.5, incorporating into the Host Agreement a  
25 Memorandum of Agreement regarding the City's and the Event Authority's respective

1 obligations for “Project Sponsor” mitigation measures in the MMRP; and,

2 (v) The DDA generally reflects the Host Agreement’s financial structure, whereby the  
3 Event Authority in return for its investments in improvements required for the Event would be  
4 repaid through development rights, rent credits at Port sites, and payments from the proceeds  
5 of property tax increment from infrastructure financing districts derived from Piers 26, 28,  
6 30-32 and Seawall Lot 330, in total amounts sufficient to compensate the Event Authority for  
7 its investment; and,

8 (w) Under Section 9.4 of the Host Agreement, the ACOC agreed to endeavor to raise  
9 up to \$32 million over a three year period from private sources to reimburse the City for a  
10 portion of the City’s costs in meeting its obligations under the Host Agreement, such as the  
11 costs of environmental review and the provision of adequate operational resources as set  
12 forth in the Implementation Plans (as such term is defined below). Section 9.4 established  
13 fundraising targets for the ACOC of \$12 million in year one ending seven working days after  
14 completion of environmental review under CEQA, and \$10 million each in years two and  
15 three; and,

16 (x) The Controller’s Office has issued a Memorandum to the President of the Board of  
17 Supervisors dated February 6, 2012, which is on file with the Clerk of the Board in File No  
18 120127 and is incorporated herein by reference as though fully set forth, reporting on the  
19 Controller’s independent evaluation of ACOC’s progress towards its year one fundraising goal  
20 of \$12 million, in which the Controller concludes that the ACOC has obtained written pledges,  
21 letters, and agreements totaling \$12 million payable to the ACOC over the coming three  
22 years, and that ACOC will be in financial position to make a payment to the City of  
23 approximately \$8 million net of ACOC expenses, absent additional fundraising; and,

24 (y) Under Section 9.3 of the Host Agreement, the ACOC agreed to provide to the Event  
25 Authority an irrevocable letter of credit, or other financial guarantee issued by a surety, in form

1 and by an issuer acceptable to the Authority in the amount of \$32 million to provide  
2 compensation to the Authority if either the City or the ACOC fails to perform its obligations  
3 under the Host Agreement. The ACOC and the Event Authority are in discussions on the  
4 form this security will take to satisfy this obligation; such form may include an insurance  
5 product and/or an escrow account; and,

6 (z) Article 2 of the Host Agreement includes a number of termination rights for the  
7 parties, including but not limited to the City's right to determine not to proceed with the Event  
8 based on the information generated by the environmental review process, the City's right to  
9 terminate if the ACOC fails to meet its year one fundraising target of \$12 million by the date  
10 that is seven working days after the completion of the CEQA process, and the Event  
11 Authority's right to terminate if the ACOC fails to provide security in the amount of \$32 million  
12 to the Authority to compensate the Authority for any failure by either the City or the ACOC to  
13 perform its obligations under the Host Agreement; and,

14 (aa) The DDA includes as a condition precedent that all termination rights under  
15 Article 2 of the Host Agreement, except under Section 2.4, expired or have been waived; and,

16 (bb) The Host Agreement called for the submission of the following implementation  
17 plans on or before the seventh day after completion of the CEQA process: People Plan,  
18 Security Plan, Waste Management Plan (now known as the Zero Waste Plan), Youth  
19 Involvement Plan, Workforce Development Plan, Ambush Marketing Plan, Advertising Plan,  
20 Water and Air Traffic Plan, and LEED Plan (now known as the Sustainability Plan), copies of  
21 which are on file in File No. 120127 (together, the "Implementation Plans") and will be  
22 attached to and made a part of the HVA; and,

23 (cc) Section 2.1(i) of the Host Agreement provides the City with the authority as lead  
24 agency under CEQA to "require modifications to the Event, including agreements pertaining to  
25



1 the Event, as are deemed necessary to mitigate significant environmental impacts if said  
2 impacts are identified through the environmental review process”; now, therefore, be it

3 RESOLVED, That this Board has reviewed the Final EIR and finds that the actions  
4 contemplated by this Resolution are within the scope of the Final EIR and were fully analyzed  
5 in the Final EIR, and that no changes have occurred in the Project or in the circumstances  
6 surrounding the Project, nor has any new information regarding the project or its  
7 circumstances come to light, that would require changes or additions to the Final EIR.  
8 Accordingly, this Board hereby adopts as its own the CEQA Findings, including the Statement  
9 of Overriding Considerations and the MMRP adopted by the Port Commission in its  
10 Resolution No. 11-79; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors finds that the ACOC has made  
12 significant progress toward meeting its year one fundraising target of \$12 million through  
13 contributions and pledges and waives the City’s right to terminate under Section 2.2(h) of the  
14 Host Agreement; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors hereby approves the DDA as  
16 an amendment to the Host Agreement that supersedes Articles 5, 6, 7 and 15 in their entirety  
17 and adds Sections 2.4 and 2.5 as described above, conditioned on the agreement of the  
18 ACOC and the Event Authority as to the satisfaction of the security requirement under section  
19 9.3 of the Host Agreement, and directs the Port Executive Director to revise the DDA to reflect  
20 the form and manner by which the ACOC’s obligation has been satisfied should that occur  
21 before executing the DDA; and, be it

22 FURTHER RESOLVED, In so doing, the Board of Supervisors hereby reaffirms and  
23 approves the Host Agreement, as amended by (a) the DDA, including the allocation of  
24 responsibilities under the Memorandum of Agreement incorporated in the Host Agreement by  
25 Section 2.5, and (b) the responsibilities set forth in the MMRP under Section 2.1(i) of the Host

1 Agreement and the Implementation Plans (as so amended, the “Amended Host Agreement”);  
2 and, be it

3 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Project as  
4 described under the Final EIR, the Amended Host Agreement and the Implementation Plans;  
5 and be it

6 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the  
7 Executive Director of the Port (the "Executive Director") to execute the DDA in such final form  
8 as is approved by the Executive Director in consultation with the City Attorney and is  
9 consistent with the approvals granted under this resolution; and be it

10 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
11 Director to enter into any additions, amendments or other modifications to the DDA (including,  
12 without limitation, preparation and attachment of, or changes to, any or all of the exhibits or  
13 related documents) that the Executive Director, in consultation with the City Attorney,  
14 determine are in the best interests of the City, and otherwise do not materially increase the  
15 obligations or liabilities of the Port or the City or materially decrease the public benefits  
16 accruing to the Port or the City, and are necessary or advisable to complete the transactions  
17 which the DDA contemplates and to effectuate the purpose and intent of this resolution, such  
18 determination to be conclusively evidenced by the execution and delivery by the Executive  
19 Director of the DDA and any amendments to such document; and be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the  
21 City’s Office of Economic and Workforce Development (the “OEWD Director”) to enter into  
22 any additions, amendments or other modifications to the Implementation Plans that the  
23 OEWD Director, in consultation with the City Attorney, determine are in the best interests of  
24 the City, and otherwise do not materially increase the obligations or liabilities of the City or  
25 materially decrease the public benefits accruing to the City, and are necessary or advisable to

1 complete the transactions which this resolution contemplates and to effectuate the purpose  
2 and intent of this resolution, such determination to be conclusively evidenced by the execution  
3 and delivery by the OEWD Director of the Implementation Plans and any amendments to such  
4 document(s); and be it

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

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

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