

1 [Authorization to Execute Contracts for Certain Improvements to Port Property for 34th
2 America's Cup Event and Waiver of Competitive Bidding, Solicitation and Certain Other
3 Contracting Requirements]

4 **Ordinance waiving competitive bidding and solicitation requirements of the**
5 **Administrative Code and authorizing the Director of the Port to execute an amendment**
6 **to the Port's contract with Turner Construction Company to perform certain**
7 **improvements to Piers 27-29, Piers 19 and 23, and to Piers 30-32; or alternatively, to**
8 **enter into an agreement with second highest-ranked proposer for the Pier 27 Cruise**
9 **Ship Terminal and Northeast Wharf Plaza Project for the improvements or enter into an**
10 **agreement with the America's Cup Event Authority for assignment of its contract with**
11 **Power Engineering Construction Company to the Port for improvements to Piers 30-32**
12 **related to the 34th America's Cup Event and exempting the assigned agreement from**
13 **contracting requirements of the Administrative Code and Environment Code; and**
14 **further, authorizing the Director of the Port to enter into a contract with AECOM for**
15 **engineering services for improvements to Piers 30-32 related to the 34th America's Cup**
16 **Event.**

17 NOTE: Additions are *single-underline italics Times New Roman*;
18 deletions are ~~*strike-through italics Times New Roman*~~.
19 Board amendment additions are double-underlined;
20 Board amendment deletions are ~~strike-through normal~~.

21 Be it ordained by the People of the City and County of San Francisco:

22 Section 1. Findings.

23 (a) On December 14, 2010, the Board of Supervisors adopted Resolution No. 585-10
24 approving a 34th America's Cup Host City and Venue Agreement (the "HVA") among the City,
25 the America's Cup Event Authority (the "Event Authority") and the San Francisco America's

1 Cup Organizing Committee to host the 34th America's Cup in San Francisco (the "AC34
2 Project") subject to review required by the California Environmental Quality Act (CEQA).

3 (b) On December 31, 2010, the Golden Gate Yacht Club announced the selection of
4 San Francisco as the venue for the 34th America's Cup.

5 (c) On December 15, 2011, the City Planning Commission certified the final
6 environmental impact report for the AC34 Project following analysis and review under CEQA
7 by Motion No. 18514 in Case No. 2010.0493E; and thereafter on December 16, 2011, the
8 Port Commission, by Port Resolution Nos. 11-79 and 11-80, adopted CEQA findings and a
9 Mitigation Monitoring and Reporting Program ("MMRP"), and approved the AC34 Project.
10 The Board of Supervisors upheld the Planning Commission's certification of the final
11 environmental impact report on January 25, 2012, by its Motion No. M12-011.

12 (d) The Board of Supervisors adopted CEQA Findings, including a Statement of
13 Overriding Considerations, and the MMRP, approved a Lease Disposition Agreement ("LDA")
14 between the Port and the Event Authority as an amendment to the HVA, affirmed the HVA as
15 amended, and approved an agreement between the City and the Event Authority regarding
16 the allocation of certain mitigation measures described in the MMRP by resolution adopted on
17 March 27, 2012. This Ordinance is part of the Project approved in Board of Supervisors
18 Resolution No. _____, and the CEQA Findings adopted therein are applicable to the
19 Ordinance. The Board has reviewed and considered the Final EIR and record as a whole,
20 finds that the Final EIR is adequate for its use as the decision-making body for adoption of this
21 Ordinance and incorporates the CEQA Findings contained in Board Resolution No. _____,
22 including the Statement of Overriding Conditions, by this reference thereto as though fully set
23 forth in this Ordinance.

24 (e) The LDA, which amends the HVA, obligates the Port to perform at no cost to the
25 Authority, or to pay the Event Authority, for certain improvements to Port property for the

1 AC34 Project as follows: (i) Improvements at Piers 27-29, including demolition work at Piers
2 27-29, site grading, substructure repairs and storm water drainage improvements; (ii) public
3 access improvements at Piers 19 and 23, to satisfy regulatory permit requirements; (iii)
4 removal of Pier ½ and the remnants of Pier 64, including construction of a new Caspian Tern
5 nesting platform, to satisfy regulatory requirements, and either (a) conduct site improvements
6 to Piers 30-32, including repairs to the marginal wharf, improvements to the Pier 32 deck, pile
7 repairs, and utilities or (b) reimbursing the Event Authority for costs it incurs to conduct this
8 work. The foregoing improvements are collectively referred to as the "Site Improvements."

9 (f) Pursuant to the City's competitive bidding procedures under Section 6.68 of the
10 Administrative Code, the Department of Public Works and the Port Commission previously
11 selected Turner Construction Company ("Turner") as the highest-ranked qualified proposer to
12 provide Construction Manager/General Contractor ("CM/CG") services to construct the San
13 Francisco Pier 27 Cruise Ship Terminal and Northeast Wharf Plaza Project (the "Pier 27 CST
14 Project"); and on June 14, 2011, the Port Commission authorized the award of the CM/CG
15 contract to Turner Construction for the Pier 27 CST Project. The scope of work of Turner's
16 contract consists of constructability review, cost estimating, and organizing the complex
17 sequence of construction activities, including hazardous material abatement, demolition,
18 relocation of the shoreside power equipment, and construction of the "core and shell" of the
19 cruise terminal building for delivery to the Event Authority in 2013 as required by the HVA.
20 Under Administrative Code section 6.68, Turner prequalifies subcontractors, bids out trade
21 packages, and awards the trade packages to the lowest responsive bid from a responsible
22 subcontractor bidder. The costs of the trade package is added to the Turner contract under
23 section 6.68. Under Administrative Code section 6.68, Turner prequalifies subcontractors,
24 bids out trade packages, and awards the trade packages to the lowest responsive bid from a
25 responsible subcontractor bidder. The costs of the trade package is added to the Turner

1 contract under section 6.68. To accomplish Phase I of the CST Project, including adding the
2 cost of trade packages, the Port has amended the CM/CG contract with Turner and increased
3 the amount to \$41,480,748.

4 (g) The Pier 27 CST Project and the America's Cup Event are interrelated and require
5 Turner to construct the cruise terminal in coordination with the Event Authority's uses for the
6 cruise terminal facility and schedule for the AC34 Project; therefore, it would be more efficient
7 and cost-effective to permit the Port to amend its CM/CG contract with Turner to perform all of
8 the Site Improvements which must be completed under an accelerated schedule pursuant to
9 the LDA, rather than to competitively bid a separate contract for these Site Improvements.

10 (h) The America's Cup Event Authority previously entered into a Guaranteed Maximum
11 Price Contract ("GMP Contract") with Power Engineering Construction Company ("Power
12 Engineering") to construct improvements to Piers 30-32 necessary for the AC34 Project.
13 Under the LDA, the Port has discretion to accept an assignment of the Event Authority's GMP
14 Contract with Power Engineering to perform the improvements to Piers 30-32 for which the
15 Port is obligated under the LDA, subject to authorization from the Mayor and the Board of
16 Supervisors, thereby allowing the Port this alternate means to perform improvements to Piers
17 30-32, as required under the HVA and LDA.

18 (i) The Port wishes to expeditiously commence and complete all of the Site
19 Improvements needed for the AC34 Project and satisfy its obligations under the HVA and LDA
20 to meet the accelerated schedule of the HVA.

21 (j) To meet the accelerated schedule required in the LDA and HVA and provide the
22 Port with flexibility to complete the Site Improvements required by the LDA in the most
23 efficient manner, the Port, therefore, recommends the City waive its competitive bidding and
24 solicitation requirements of Chapter 6 of the Administrative Code and authorize the Port to
25 amend its CM/CG Contract with Turner to perform the Site Improvements required by the LDA

1 and, further with respect to all Site Improvements except those to Piers 27-29, to waive the
2 requirement of Administrative Code Section 6.68(H)(1) for Turner to receive bids from at least
3 three of pre-qualified trade subcontractors for the work. If so authorized, the Port intends to
4 work with its contractor to solicit informal bidding for qualified trade contractors for the work.

5 (k) To enable the Port to meet the accelerated schedule required in the LDA and HVA,
6 the Port recommends the City also waive its competitive bidding and solicitation requirements
7 and authorize the Port, in the alternative, to negotiate and execute a contract with the second
8 highest-ranked proposer for the AC34 CST Project, to perform all or a portion of the Site
9 Improvements required by the LDA.

10 (l) To provide the Port with additional flexibility to achieve the greatest efficiency and
11 cost-effectiveness in performing the Site Improvements, the Port recommends the City
12 authorize the Port, in the alternative, to accept an assignment of the Event Authority's GMP
13 Contract with Power Engineering, for purposes of performing the Site Improvements to Piers
14 30-32, should the Port Director find that such contract assignment would be more efficient
15 than amending the Port's contract with Turner Construction to perform Site Improvements to
16 Piers 30-32, in which case, the Port recommends exempting the contract assignment from the
17 contracting requirements of the Administrative Code except as stated in Section 4 below.

18 (m) To perform the Site Improvements to Piers 30-32 as required by the LDA, the Port
19 requires the services of an engineering consulting firm to design the marginal wharf and storm
20 water drainage improvements. To enable the Port to meet the accelerated schedule for these
21 improvements as required by the LDA, it would be most efficient for the Port to contract
22 directly with AECOM, an engineering consulting firm which had contracted with the Event
23 Authority to provide design services for Piers 30-32 and is familiar with the engineering needs
24 of the AC34 Project. The Port believes that AECOM is responsible and qualified to perform
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1 the engineering services needed for the Piers 30-32 improvements, especially in light of
2 AECOM's prior experience with the AC34 Project over the course of the past year.

3 (n) To meet the accelerated schedule required in the LDA and HVA to complete the
4 improvements to Piers 30-32 in the most efficient manner, the Port recommends the City
5 waive its competitive bidding and solicitation requirements and authorize the Port to enter into
6 a contract with AECOM to design the Site Improvements to Piers 30-32 as required of the
7 Port under the LDA.

8 Section 2. Notwithstanding the competitive bidding and solicitation requirements of
9 Chapter 6 and Chapter 21 of the Administrative Code, the Board of Supervisors hereby
10 authorizes the Port of San Francisco to amend its contract with Turner Construction Company
11 for CM/CG services for the Pier 27 CST Project to perform some or all of the Site
12 Improvements to Piers 27-29, Piers 19 and 23, to Piers 30-32 without competitive bidding or
13 solicitation, and removal of Pier ½ and the remnants of Pier 64 and, further, with respect to all
14 Site Improvements except those to Piers 27-29, the Board of Supervisors waives the
15 requirement of Administrative Code Section 6.68(H)(1) for Turner to receive bids from at least
16 three pre-qualified trade subcontractors for the work. To facilitate this contract and fulfill the
17 purposes of Administrative Code Section 14.19(C)(3), the Executive Director of the Human
18 Rights Commission ("HRC") shall establish a goal for work to be performed by qualified Local
19 Business Enterprises as a percentage of total work to deliver the Site Improvements based on
20 similar Port capital projects for which HRC has recently established goals within five (5) days
21 of the effective date of this ordinance and such goal shall apply to any amendment to the
22 contract with Turner Construction Company for work on the Site Improvements.

23 Section 3. Notwithstanding the competitive bidding and solicitation requirements of
24 Chapter 6 and Chapter 21 of the Administrative Code, the Board of Supervisors hereby
25 authorizes the Port, as an alternative to amending its contract with Turner Construction

1 Company for CM/CG services, to negotiate and execute a contract with the second highest
2 lowest qualified proposer for the Pier 27 CST Project to perform the Site Improvements
3 required by the LDA without competitive bidding or solicitation. To facilitate this contract and
4 fulfill the purposes of Administrative Code Section 14.19(C)(3), the Executive Director of the
5 Human Rights Commission (“HRC”) shall establish a goal for work to be performed by
6 qualified Local Business Enterprises as a percentage of total work to deliver the Site
7 Improvements based on similar Port capital projects for which HRC has recently established
8 goals within five (5) days of the effective date of this ordinance and such goal shall apply to
9 the contract with the second highest-ranked proposer for the Pier 27 CST Project for work on
10 the Site Improvements.

11 Section 4. As a further alternative to the Port's amendment of its contract with Turner
12 contract to perform the Site Improvements to Piers 30-32, the Board of Supervisors hereby
13 further authorize the Port of San Francisco to enter into an agreement with the Event Authority
14 for assignment of the Event Authority's GMP Contract with Power Engineering to the Port for
15 purposes of performing the Site Improvements solely to Piers 30-32, should the Port Director
16 find that such a contract assignment would be more efficient than amending the Port's
17 contract with Turner Construction to perform Site Improvements to Piers 30-32 and more
18 efficient than entering into a contract with the second highest-ranked proposer for the Pier 27
19 CST project; in which case, the Board of Supervisors hereby exempts the assignment of the
20 Power Engineering contract to the Port from the contracting requirements of the
21 Administrative Code and Environment Code Chapters 2, 5, and 8, except as to Administrative
22 Code Sections 6.22(E) and 6.22(G) and Administrative Code Chapter 14B, or to the extent
23 that the Port's agreement to accept the contract assignment obligates Power Engineering, as
24 contractor, to satisfy any other requirements.

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1 Section 5. Notwithstanding the competitive bidding and solicitation requirements of
2 Chapter 6 and Chapter 21 of the Administrative Code, the Board of Supervisors hereby
3 authorizes the Port to enter into a contract with AECOM to design the Site Improvements to
4 Piers 30-32 as required of the Port under the LDA.

5 Section 6. Effective Date. This ordinance shall become effective 30 days from the
6 date of passage.

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8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 Timothy L. Yoshida
12 Deputy City Attorney
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