

1 ~~[Authorization to Execute Contracts For Approval - Certain Improvements to Port Property for~~  
2 ~~34<sup>th</sup> America's Cup Event; and Authorizing Waiver of Certain Competitive Bidding, Solicitation~~  
3 ~~and Certain Other Contracting Requirements]~~

4 **Ordinance 1) authorizing the Port to amend a contract between the Port and Turner**  
5 **Construction Company to perform certain improvements to Piers 27-29, Piers 19 and**  
6 **23, and Piers 30-32, and to remove portions of Pier 1/2 and 64; 2) alternatively,**  
7 **authorizing the Port to execute an agreement between the Port and one of the next**  
8 **highest-ranked proposers, in order of rank, for the Pier 27 Cruise Ship Terminal and**  
9 **Northeast Wharf Plaza Project, to perform certain improvements to Piers 27-29, Piers**  
10 **19 and 23, and Piers 30-32, and to remove portions of Pier 1/2 and 64; 3) authorizing the**  
11 **Port to contract with the America's Cup Event Authority for assignment to the Port of**  
12 **its contract with Power Engineering Construction Company for improvements to Piers**  
13 **30-32 only; 4) authorizing the Port to enter into a contract with AECOM for**  
14 **construction-design engineering services for improvements to Piers 30-32 related to**  
15 **the 34<sup>th</sup> America's Cup Event; and 5) waiving competitive bidding and solicitation**  
16 **requirements of Administrative Code Sections 6.20, 6.21, 6.68(A)-(F), 6.40, and 6.41, and**  
17 **requirements of Administrative Code Sections 14B.19(C)(1)-(5) waiving competitive**  
18 **bidding and solicitation requirements of the Administrative Code and authorizing the**  
19 **Director of the Port to execute an amendment to the Port's contract with Turner**  
20 **Construction Company to perform certain improvements to Piers 27-29, Piers 19 and**  
21 **23, and to Piers 30-32; or alternatively, to enter into an agreement with second highest-**  
22 **ranked proposer for the Pier 27 Cruise Ship Terminal and Northeast Wharf Plaza**  
23 **Project for the improvements or enter into an agreement with the America's Cup Event**  
24 **Authority for assignment of its contract with Power Engineering Construction**  
25 **Company to the Port for improvements to Piers 30-32 related to the 34<sup>th</sup> America's Cup**

1 ~~Event and exempting the assigned agreement from contracting requirements of the~~  
2 ~~Administrative Code; and further, authorizing the Director of the Port to enter into a~~  
3 ~~contract with AECOM for construction design engineering services for improvements~~  
4 ~~to Piers 30-32 related to the 34<sup>th</sup> America's Cup Event.~~

5 NOTE: Additions are single-underline italics Times New Roman;  
6 deletions are ~~strike-through italics Times New Roman~~.  
7 Board amendment additions are double-underlined;  
8 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. Findings.

11 (a) On December 14, 2010, the Board of Supervisors adopted Resolution No. 585-10  
12 approving a 34<sup>th</sup> America's Cup Host City and Venue Agreement (the "HVA") among the City,  
13 the America's Cup Event Authority (the "Event Authority") and the San Francisco America's  
14 Cup Organizing Committee to host the 34<sup>th</sup> America's Cup in San Francisco (the "AC34  
15 Project") subject to review required by the California Environmental Quality Act (CEQA).

16 (b) On December 31, 2010, the Golden Gate Yacht Club announced the selection of  
17 San Francisco as the venue for the 34<sup>th</sup> America's Cup.

18 (c) On December 15, 2011, the City Planning Commission certified the final  
19 environmental impact report for the AC34 Project following analysis and review under CEQA  
20 by Motion No. 18514 in Case No. 2010.0493E; and thereafter on December 16, 2011, the  
21 Port Commission, by Port Resolution Nos. 11-79 and 11-80, adopted CEQA findings and a  
22 Mitigation Monitoring and Reporting Program ("MMRP"), and approved the AC34 Project.  
23 The Board of Supervisors upheld the Planning Commission's certification of the final  
24 environmental impact report on January 25, 2012, by its Motion No. M12-0011.

1 (d) The Board of Supervisors adopted CEQA Findings, including a Statement of  
2 Overriding Considerations, and the MMRP, approved a Lease Disposition Agreement ("LDA")  
3 between the Port and the Event Authority as an amendment to the HVA, affirmed the HVA as  
4 amended, and approved an agreement between the City and the Event Authority regarding  
5 the allocation of certain mitigation measures described in the MMRP by resolution adopted on  
6 March 27, 2012. This Ordinance is part of the Project approved in Board of Supervisors  
7 Resolution No. \_\_\_\_\_, and the CEQA Findings adopted therein are applicable to the  
8 Ordinance. The Board has reviewed and considered the Final EIR and record as a whole,  
9 finds that the Final EIR is adequate for its use as the decision-making body for adoption of this  
10 Ordinance and incorporates the CEQA Findings contained in Board Resolution No. \_\_\_\_\_,  
11 including the Statement of Overriding Conditions, by this reference thereto as though fully set  
12 forth in this Ordinance.

13 (e) The LDA, which amends the HVA, obligates the Port to perform at no cost to the  
14 Authority, or to pay the Event Authority, for certain improvements to Port property for the  
15 AC34 Project as follows: (i) Improvements at Piers 27-29, including ~~demolition work at Piers~~  
16 ~~27-29~~, site grading, substructure repairs and storm water drainage improvements; (ii) public  
17 access improvements at Piers 19 and 23, to satisfy regulatory permit requirements; (iii)  
18 removal of Pier ½ and the remnants of Pier 64, including construction of a new Caspian Tern  
19 nesting platform, to satisfy regulatory requirements, and (iv) either (a) conduct site  
20 improvements to Piers 30-32, including repairs to the marginal wharf, improvements to the  
21 Pier 32 deck, pile repairs, and utilities or (b) reimbursing the Event Authority for costs it incurs  
22 to conduct this work. The foregoing improvements are collectively referred to as the "Site  
23 Improvements."

24 (f) Pursuant to the City's competitive bidding procedures under Section 6.68 of the  
25 Administrative Code, the Department of Public Works and the Port Commission previously

1 selected Turner Construction Company ("Turner") as the highest-ranked qualified proposer to  
2 provide Construction Manager/General Contractor ("CM/CG") services to construct the San  
3 Francisco Pier 27 Cruise Ship Terminal and Northeast Wharf Plaza Project (the "Pier 27 CST  
4 Project"); and on June 14, 2011, the Port Commission authorized the award of the CM/CG  
5 contract to Turner Construction for the Pier 27 CST Project. The scope of work of Turner's  
6 contract consists of constructability review, cost estimating, and organizing the complex  
7 sequence of construction activities, including hazardous material abatement, demolition,  
8 relocation of the shoreside power equipment, and construction of the "core and shell" of the  
9 cruise terminal building for delivery to the Event Authority in 2013 as required by the HVA.  
10 ~~Under Administrative Code section 6.68, Turner prequalifies subcontractors, bids out trade~~  
11 ~~packages, and awards the trade packages to the lowest responsive bid from a responsible~~  
12 ~~subcontractor bidder. The costs of the trade package is added to the Turner contract under~~  
13 ~~section 6.68.~~ Under Administrative Code section 6.68, Turner prequalifies subcontractors,  
14 bids out trade packages, and awards the trade packages to the lowest responsive bid from a  
15 responsible subcontractor bidder. The costs of the trade package is added to the Turner  
16 contract under section 6.68. To accomplish Phase I of the CST Project, including adding the  
17 cost of trade packages, the Port has amended the CM/CG contract with Turner and increased  
18 the authorized amount to \$41,480,748.

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

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1 (h) The America's Cup Event Authority previously entered into a Guaranteed Maximum  
2 Price Contract ("GMP Contract") with Power Engineering Construction Company ("Power  
3 Engineering") to construct improvements to Piers 30-32 necessary for the AC34 Project.  
4 Under the LDA, the Port has discretion to accept an assignment of the Event Authority's GMP  
5 Contract with Power Engineering to perform the improvements to Piers 30-32 for which the  
6 Port is obligated under the LDA, subject to authorization from the Mayor and the Board of  
7 Supervisors, thereby allowing the Port this alternate means to perform improvements to Piers  
8 30-32, as required under the HVA and LDA.

9 (i) The Port wishes to expeditiously commence and complete all of the Site  
10 Improvements needed for the AC34 Project and satisfy its obligations under the HVA and LDA  
11 to meet the accelerated schedule of the HVA. The Port does not have sufficient time to  
12 complete the normal competitive bidding and solicitation process for the completion of the  
13 engineering design work for Piers 30-32, and the construction of all of the Site Improvements  
14 while still meeting the obligations under the HVA and LDA, including the accelerated schedule  
15 of the HVA. Accordingly, it is necessary to waive certain competitive bidding and solicitation  
16 requirements under Chapter 6 of the Administrative Code, as specified below.

17 (j) To secure the construction services for the Site Improvements meet the accelerated  
18 schedule required in the LDA and HVA and provide the Port with flexibility to complete the  
19 Site Improvements required by the LDA in the most efficient manner, the Port, therefore,  
20 recommends the City waive the competitive bidding and solicitation requirements found in  
21 Administrative Code sections 6.20, 6.21 and 6.68, subsections (A)-(F). In addition to an  
22 authorization for a waiver of the above competitive bidding and solicitation requirements, the  
23 Port seeks authorization to award a contract for the Site Improvements in one or more of the  
24 following three manners. Authorizing the alternative approaches increases the Port's ability to  
25

1 ensure both a timely completion of the Site Improvements and fair and reasonable price for  
2 the Site Improvements.

3 (k) As the first approach, the Port recommends that it be authorized to its competitive  
4 bidding and solicitation requirements of Chapter 6 of the Administrative Code and authorize  
5 the Port to amend the CM/CG Contract with Turner to ~~add~~perform the Site Improvements  
6 required by the LDA to the CM/CG Contract. The resulting contract amendment for the Site  
7 Improvements would comply with Administrative Code Section 6.22. and, further, In order to  
8 expeditiously complete the Site Improvements, the following additional waivers would be  
9 necessary. ~~With respect to all Site Improvements except those to Piers 27-29, to waive the~~  
10 requirement of Administrative Code Section 6.68(H)(1) for Turner to receive bids from at least  
11 three of the pre-qualified trade subcontractors for the work would be waived. If ~~such a~~  
12 waiver is authorized, the Port intends to work with its contractor to solicit informal bidding ~~for~~  
13 from qualified trade subcontractors for the work by amending its contract with Turner to  
14 require (a) bidding of trade packages from previously pre-qualified bidders for trade work  
15 associated with the Pier 27 CST Project, (b) bidding of trade packages from no fewer than two  
16 bidders previously pre-qualified by the Event Authority for Piers 30-32 site improvements, or  
17 (c) amending previously-bid subcontracts for the Pier 27 CST Project. Administrative Code  
18 Section 6.68(H)(3) allows the Port Director, as Department Head, to authorize the contractor  
19 to negotiate up to 7 ½% of the trade packages; in order to efficiently complete the Site  
20 Improvements work, the Port requests authority to negotiate with the contractor to self-  
21 perform some or all of that 7 ½% of the work. Finally, with respect to all Site Improvements  
22 work, to facilitate this contract and fulfill the purposes of Administrative Code Section  
23 14B.19(A), the Executive Director of the Human Rights Commission ("HRC") shall, within five  
24 (5) days of the effective date of this ordinance, establish a goal for work to be performed by  
25 qualified Local Business Enterprises ("LBE Participation") as a percentage of total work to

1 deliver the Site Improvements based on similar Port capital projects for which HRC has  
2 recently established goals and such goal shall apply to the CM/CG Contract amendment for  
3 the Site Improvements work. Administrative Code Sections 14B.19(C)(1)-(5) shall not apply  
4 but Turner, as CM/CG Contractor, shall be responsible to meet the LBE Participation goal for  
5 all Site Improvements on a project-wide basis.

6 (l) As the second approach, if the Port fails to reach agreement with Turner to perform  
7 the work described in Subsection (k) above, the Port recommends that~~To enable the Port to~~  
8 meet the accelerated schedule required in the LDA and HVA, the Port recommends the City  
9 also waive its~~City~~ authorize a waiver of the above competitive bidding and solicitation  
10 requirements, and authorize the Port,~~in the alternative,~~ to negotiate and execute a contract  
11 with the ~~one of the next~~ second highest-ranked proposers ~~for the AC34 CST Project,~~ in order  
12 of ranking, to perform all or a portion of the Site Improvements required by the LDA. The  
13 resulting contract for the Site Improvements would comply with Administrative Code Section  
14 6.22. In order to expeditiously complete the Site Improvements, the following additional  
15 waivers would be necessary. With respect to all Site Improvements, the Port recommends  
16 waiver of the requirement of Administrative Code Section 6.68(H)(1) for the contractor to  
17 receive bids from at least three pre-qualified trade subcontractors for the work. If such a  
18 waiver is authorized, the Port intends to work with the contractor to solicit informal bidding  
19 from qualified trade subcontractors to require (a) bidding of trade packages from previously  
20 pre-qualified bidders for trade work associated with the Pier 27 CST Project, or (b) bidding of  
21 trade packages from no fewer than two bidders previously pre-qualified by the Event Authority  
22 for Piers 30-32 site improvements. Administrative Code Section 6.68(H)(3) allows the Port  
23 Director, as Department Head, to authorize the contractor to negotiate up to 7 ½% of the trade  
24 packages; in order to efficiently complete the Site Improvements work, the Port requests  
25 authority to negotiate with the contractor to self-perform some or all of that 7 ½% of the work.

1 Finally, with respect to all Site Improvements work, to facilitate this contract and fulfill the  
2 purposes of Administrative Code Section 14B.19(A), the Executive Director of the HRC shall,  
3 within five (5) days of the effective date of this ordinance, establish a goal for work to be  
4 performed by qualified Local Business Enterprises ("LBE Participation") as a percentage of  
5 total work to deliver the Site Improvements based on similar Port capital projects for which  
6 HRC has recently established goals and such goal shall apply to the contract for the Site  
7 Improvements work. Administrative Code Sections 14B.19(C)(1)-(5) shall not apply. The  
8 contractor shall be responsible to meet the LBE Participation goal for all Site Improvements  
9 on a project-wide basis.

10 ~~(m)~~ As the third approach ~~To provide the Port with additional flexibility to achieve the~~  
11 ~~greatest efficiency and cost-effectiveness in performing the Site Improvements to Piers 30-32,~~  
12 ~~the Port recommends that the City waive the above competitive bidding and solicitation~~  
13 ~~requirements and authorize the Port, in the alternative, to negotiate a reduced scope and~~  
14 ~~subsequently accept an assignment of the Event Authority's GMP Contract with Power~~  
15 ~~Engineering, for purposes of performing the Site Improvements to Piers 30-32 only.~~ ~~s~~ Should  
16 the Port Director find that such contract assignment would be more efficient than amending  
17 the Port's contract with Turner Construction using the first or second approach to perform Site  
18 Improvements to Piers 30-32, in which case, the Port recommends exempting the resulting  
19 contract assignment from the contracting requirements of the Administrative Code except as  
20 stated in Section 4 below.

21 ~~(n)~~ To perform the Site Improvements to Piers 30-32 as required by the LDA, the Port  
22 requires the services of an engineering consulting firm to design the marginal wharf and storm  
23 water drainage improvements. To enable the Port to meet the accelerated schedule for these  
24 improvements as required by the LDA, it would be most efficient for the Port to contract  
25 directly with AECOM, an engineering consulting firm which had contracted with the Event



1 Authority to provide design services for Piers 30-32 and is familiar with the engineering needs  
2 of the AC34 Project. The Port believes that AECOM is responsible and qualified to perform  
3 the construction-design engineering services needed for the Piers 30-32 improvements,  
4 especially in light of AECOM's prior experience with the AC34 Project over the course of the  
5 past year.

6 (QA) To meet the accelerated schedule required in the LDA and HVA to complete the  
7 improvements to Piers 30-32 in the most efficient manner, the Port recommends the City  
8 waive its competitive bidding and solicitation requirements of Administrative Code Sections  
9 6.40 and 6.41 and authorize the Port to enter into a contract with AECOM to design the Site  
10 Improvements to Piers 30-32 as required of the Port under the LDA. The resulting contract  
11 will comply with the contracting requirements of Administrative Code Section 6.42.

12 Section 2. Notwithstanding the competitive bidding and solicitation requirements of  
13 Chapter 6 and ~~Chapter 21~~ of the Administrative Code, the Board of Supervisors hereby  
14 authorizes the Port of San Francisco to amend its contract with Turner Construction Company  
15 for CM/CG services for the Pier 27 CST Project to perform some or all of the Site  
16 Improvements to Piers 27-29, Piers 19 and 23, to Piers 30-32 ~~without competitive bidding or~~  
17 ~~solicitation~~, and removal of Pier ½ and the remnants of Pier 64 without the competitive  
18 bidding and solicitation requirements referenced in Section 1(j) of this Ordinance, provided  
19 that the resulting contract amendment shall comply with Administrative Code Section 6.22.  
20 and, ~~f~~Further, with respect to all Site Improvements ~~except those to Piers 27-29~~, the Board of  
21 Supervisors hereby waives the requirement of Administrative Code Section 6.68(H)(1) for  
22 Turner to receive bids from at least three pre-qualified trade subcontractors for the work  
23 provided that the contract amendment shall require of Turner: (a) bidding of trade packages  
24 from previously pre-qualified bidders for trade work associated with the Pier 27 CST Project,  
25 (b) bidding of trade packages from no fewer than two bidders previously pre-qualified by the

1 Event Authority for Piers 30-32 site improvements, or (c) amending previously-bid  
2 subcontracts for the Pier 27 CST Project. Administrative Code Section 6.68(H)(3) allows the  
3 Port Director, as Department Head, to authorize the contractor to negotiate up to 7 ½% of the  
4 trade packages; in order to efficiently complete the Site Improvements work, the Board of  
5 Supervisors hereby authorizes the Port Director to negotiate with Turner to self-perform some  
6 or all of that 7 ½% of the work. To facilitate this contract and fulfill the purposes of  
7 Administrative Code Section 14B.19(~~AG~~)(3), the Executive Director of the Human Rights  
8 Commission ("HRC") shall, within five (5) days of the effective date of this Ordinance,  
9 establish a goal for work to be performed by qualified Local Business Enterprises ("LBE  
10 Participation") as a percentage of total work to deliver the Site Improvements based on similar  
11 Port capital projects for which HRC has recently established goals ~~within five (5) days of the~~  
12 ~~effective date of this ordinance~~ and such goal shall apply to any amendment to the contract  
13 with Turner Construction Company for work on the Site Improvements. Administrative Code  
14 Sections 14B.19(C)(1)-(5) shall not apply to the contract amendment, but Turner, as CM/CG  
15 Contractor, shall be responsible to meet the LBE Participation goal for all Site Improvements  
16 on a project-wide basis.

17 Section 3. Notwithstanding the competitive bidding and solicitation requirements of  
18 Chapter 6 ~~and Chapter 21~~ of the Administrative Code, the Board of Supervisors hereby  
19 authorizes the Port, as an alternative, should it fail to reach agreement with Turner to perform  
20 the work authorized in Section 2 above to amend its contract with Turner Construction  
21 Company for CM/CG services, to negotiate and execute a contract with one of the nextsecond  
22 highest-ranked lowest qualified proposers for the Pier 27 CST Project, in order of ranking, to  
23 perform some or all of the Site Improvements required by the LDA without the competitive  
24 bidding or solicitation requirements referenced in Section 1(j) of this Ordinance, provided that  
25 the resulting contract shall comply with Administrative Code Section 6.22. Further, with

1 respect to all Site Improvements, the Board of Supervisors hereby waives the requirement of  
2 Administrative Code Section 6.68(H)(1) for the contractor to receive bids from at least three  
3 pre-qualified trade subcontractors for the work provided that the contractor shall obtain: (a)  
4 bidding of trade packages from previously pre-qualified bidders for trade work associated with  
5 the Pier 27 CST Project, or (b) bidding of trade packages from no fewer than two bidders  
6 previously pre-qualified by the Event Authority for Piers 30-32 site improvements.

7 Administrative Code Section 6.68(H)(3) allows the Port Director, as Department Head, to  
8 authorize the contractor to negotiate up to 7 ½% of the trade packages; in order to efficiently  
9 complete the Site Improvements work, the Board of Supervisors hereby authorizes the Port  
10 Director to negotiate with the contractor to self-perform some or all of that 7 ½% of the work.

11 To facilitate this contract and fulfill the purposes of Administrative Code Section  
12 14B.19(A)(3), the Executive Director of the Human Rights Commission ("HRC") shall, within  
13 five (5) days of the effective date of this ordinance, establish a goal for work to be performed  
14 by qualified Local Business Enterprises ("LBE Participation") as a percentage of total work to  
15 deliver the Site Improvements based on similar Port capital projects for which HRC has  
16 recently established goals ~~within five (5) days of the effective date of this ordinance~~ and such  
17 goal shall apply to the contract authorized by this Section 3 ~~with the second highest-ranked~~  
18 ~~proposer for the Pier 27 CST Project~~ for work on the Site Improvements. Administrative Code  
19 Sections 14B.19(C)(1)-(5) shall not apply to the contract, but the contractor shall be  
20 responsible to meet the LBE Participation goal for all Site Improvements on a project-wide  
21 basis.

22 Section 4. As a further alternative to ~~the Port's amendment of its contract with Turner~~  
23 ~~contract to performing~~ the Site Improvements to Piers 30-32, the Board of Supervisors hereby  
24 waives the competitive bidding and solicitation requirements referenced in Section 1(j) of this  
25 Ordinance, and further authorizes the Port of San Francisco to negotiate a reduced scope

1 ~~and subsequently accept an~~ enter into an agreement with the Event Authority for assignment  
2 of the Event Authority's GMP Contract with Power Engineering to the Port for purposes of  
3 performing the Site Improvements solely to Piers 30-32; ~~s~~Should the Port Director find that  
4 such a contract assignment would be more efficient than ~~amending the Port's contract with~~  
5 ~~Turner Construction~~ using the approaches authorized in Sections 2 and 3 of this Ordinance, to  
6 perform Site Improvements to Piers 30-32 ~~and more efficient than entering into a contract with~~  
7 ~~the second highest ranked proposer for the Pier 27 CST project; in which case, the Board of~~  
8 Supervisors hereby exempts the assignment of the Power Engineering contract to the Port  
9 from the contracting requirements of the Administrative Code ~~and Environment Code~~  
10 ~~Chapters 2, 5, and 8~~, except as to Administrative Code Sections 6.22(E) and 6.22(G) and  
11 Administrative Code Chapter 124B, or to the extent that the Port's agreement to accept the  
12 contract assignment obligates Power Engineering, as contractor, to satisfy any other  
13 requirements.

14 Section 5. Notwithstanding the competitive bidding and solicitation requirements of  
15 ~~Chapter 6 and Chapter 21 of the Administrative Code~~ Sections 6.40 and 6.41, the Board of  
16 Supervisors hereby authorizes the Port to enter into a contract with AECOM to design the Site  
17 Improvements to Piers 30-32 as required of the Port under the LDA and for construction-  
18 design services, provided that the contract shall comply with the contracting requirements of  
19 Administrative Code Section 6.42.

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

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1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: \_\_\_\_\_  
4 Timothy L. Yoshida  
5 Deputy City Attorney

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