

FILE NO. 120127

RESOLUTION NO.

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

2

3 **Resolution adopting California Environmental Quality Act Findings, a Statement of**  
4 **Overriding Considerations, and a Mitigation Monitoring and Reporting Program**  
5 **(MMRP) 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

1 regattas in 2012 and 2013 (together, the “Event”); and,

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

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

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

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

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

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

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

25 (v) undertaking and completing environmental review of the proposed project

1 under the California Environmental Quality Act (“CEQA”) before the City's  
2 consideration of any approvals for the Project;

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

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

14 (g) In addition to approving the terms of a Host Agreement, in adopting Resolution  
15 No. 585-10 the Board of Supervisors made the following findings:

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

24 (ii) In Resolution No. 585-10 the Board of Supervisors found that hosting the  
25 34th America's Cup in San Francisco would generate significant public benefits for the

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

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

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

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

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

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

1 Agreement between the City, through its Port, and the Event Authority (the “DDA”), with which  
2 the Event Authority and the City intend to replace and supersede Sections 5, 6, and 7 (relating  
3 to Venues, Event Authority improvements to City property, and long-term development rights)  
4 and Section 15 (relating to indemnification obligations) of the Host Agreement; and,

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

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

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

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

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

1 (p) A copy of Planning Commission Motion 18514 is on file with the Clerk of the Board  
2 of Supervisors in File No. 120127 and is incorporated herein by reference as though fully set  
3 forth; and,

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

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

16 (s) Copies of the Port Resolutions, including the CEQA Findings and the MMRP, as  
17 well as the conditionally-approved DDA, are on file with the Clerk of the Board in File No.  
18 120127 and are incorporated herein by reference as though fully set forth; and,

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

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

1 Memorandum of Agreement regarding the City's and the Event Authority's respective  
2 obligations for "Project Sponsor" mitigation measures in the MMRP; and,

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

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

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

1 (y) The ACOC has made a commitment to have \$9 million in hand and available to  
2 reimburse the City for City costs by June 30, 2012; and,

3 (z) Under Section 9.3 of the Host Agreement, the ACOC agreed to provide to the Event  
4 Authority an irrevocable letter of credit, or other financial guarantee issued by a surety, in form  
5 and by an issuer acceptable to the Authority in the amount of \$32 million to provide  
6 compensation to the Authority if either the City or the ACOC fails to perform its obligations  
7 under the Host Agreement. The ACOC and the Event Authority are in discussions on the  
8 form this security will take to satisfy this obligation; such form may include an insurance  
9 product and an escrow account; and,

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

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

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

1 attached to and made a part of the HVA; and,

2 (dd) Section 2.1(i) of the Host Agreement provides the City with the authority as lead  
3 agency under CEQA to “require modifications to the Event, including agreements pertaining to  
4 the Event, as are deemed necessary to mitigate significant environmental impacts if said  
5 impacts are identified through the environmental review process”; now, therefore, be it

6 RESOLVED, That this Board has reviewed the Final EIR and finds that the actions  
7 contemplated by this resolution are within the scope of the Final EIR and were fully analyzed  
8 in the Final EIR, and that no changes have occurred in the Project or in the circumstances  
9 surrounding the Project, nor has any new information regarding the project or its  
10 circumstances come to light, that would require changes or additions to the Final EIR.

11 Accordingly, this Board hereby adopts as its own the CEQA Findings, including the Statement  
12 of Overriding Considerations and the MMRP adopted by the Port Commission in its  
13 Resolution No. 11-79; and, be it

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

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

1 FURTHER RESOLVED, In so doing, the Board of Supervisors hereby reaffirms and  
2 approves the Host Agreement, as amended by (a) the DDA as revised as specified in this  
3 resolution, including the allocation of responsibilities under the Memorandum of Agreement  
4 incorporated in the Host Agreement by Section 2.5, (b) the responsibilities set forth in the  
5 MMRP under Section 2.1(i) of the Host Agreement and the Implementation Plans (as so  
6 amended, the "Amended Host Agreement"), and (c) as specified in this resolution below; and,  
7 be it

8 FURTHER RESOLVED, That the approval of DDA by the Board of Supervisors is given  
9 on condition that the Event Authority agrees that the second sentence in DDA  
10 Section 1.5(c)(iii)(E) will be revised as follows: "*The Port will reimburse the Authority for the*  
11 *amount of its "Investment Value" above the Pre-Match Threshold (calculated according to*  
12 *Section 12.3 (Formula to Determine Investment Value)) through the application of Rent*  
13 *Credits used to balance Investment Value ("Balancing Rent Credits") to the extent the*  
14 *Authority has not been previously reimbursed by other sources. The Port's obligation to*  
15 *reimburse the Authority under this clause shall be limited exclusively to revenues derived from*  
16 *the following sources in the following order of priority:"*; and, be it

17 FURTHER RESOLVED, That the approval of DDA by the Board of Supervisors is given  
18 on condition that the DDA provide that the proceeds of transfer fees payable to the Port as  
19 provided in DDA Section 13.2(b)(v) be dedicated to assist in providing affordable housing built  
20 on land under Port jurisdiction, subject to the agreement of the California State Lands  
21 Commission; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Project as  
23 described under the Final EIR, the Amended Host Agreement and the Implementation Plans,  
24 and directs that the DDA as revised consistent with this resolution be returned to the Port  
25 Commission for its consideration; and be it

1 FURTHER RESOLVED, That, upon Port Commission approval of the DDA as revised  
2 consistent with this resolution, the Board of Supervisors authorizes and directs the Executive  
3 Director of the Port (the "Executive Director") to execute the DDA in such final form as is  
4 approved by the Executive Director in consultation with the City Attorney and is consistent  
5 with the approvals granted under this resolution; and be it

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

16 FURTHER RESOLVED, That the Board of Supervisors directs the Executive Director  
17 to provide a progress report to the City Controller and the Budget & Finance Committee of the  
18 Board of Supervisors prior to the Event Authority's commencement of any Deferred Authority  
19 Infrastructure Work, which report shall include the financial status of the real estate  
20 transaction and the seismic upgrade of Piers 30-32; and be it FURTHER RESOLVED, That  
21 the Board of Supervisors authorizes the Director of the City's Office of Economic and  
22 Workforce Development (the "OEWD Director") to enter into any additions, amendments or  
23 other modifications to the Implementation Plans that the OEWD Director, in consultation with  
24 the City Attorney, determine are in the best interests of the City, and otherwise do not  
25 materially increase the obligations or liabilities of the City or materially decrease the public

1 benefits accruing to the City, and are necessary or advisable to complete the transactions  
2 which this resolution contemplates and to effectuate the purpose and intent of this resolution,  
3 such determination to be conclusively evidenced by the execution and delivery by the OEWD  
4 Director of the Implementation Plans and any amendments to such 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.