

FILE NO. 120127

RESOLUTION NO.

1 [Approving the 34th 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 34th America's Cup events and approving the America's Cup project;**
6 **waiving certain termination rights by the City under the 34th America's Cup Host and**
7 **Venue Agreement (Host Agreement); approving the Lease Disposition Agreement**
8 **between the City, through its Port Commission, and the America's Cup Event**
9 **Authority, LLC (Event Authority), which also amends the Host Agreement; approving a**
10 **Memorandum of Agreement regarding the City's and the Event Authority's respective**
11 **obligations for certain mitigation measures in the MMRP and other project-related**
12 **activities; and authorizing further actions and ratifying prior actions consistent with the**
13 **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 Event Authority on behalf of the Team and the City
23 negotiated the terms of a bid for the City and County of San Francisco (the "City") to be the
24 host city for the 34th America's Cup (the "Match"), the Louis Vuitton Cup Challenger Series,

25

1 and certain related 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 34th 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 a more detailed and consolidated plan for the Authority's use of Port
23 venues for the Event, including construction of Event-related improvements to City property
24 without a City obligation to provide long-term development rights to the Event Authority, and
25 have proposed to the Event Authority indemnification and insurance obligations and

1 limitations of liability under the new plan, all as set forth in a Lease Disposition Agreement
2 between the City, through its Port, and the Event Authority (the "LDA"), with which the Event
3 Authority and the City intend, upon consent of ACOC, to replace and supersede Sections 5, 6,
4 15, 17.4 and 17.5 (relating to Venues, Event Authority improvements to City property,
5 indemnification obligations and limitations on liability), delete Section 7 (relating to long-term
6 development rights) and amend certain other provisions of the Host Agreement; and,

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

12 (m) On August 11, 2011, the Planning Commission held a public hearing on the Draft
13 EIR; and,

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

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

25 (p) On December 15, 2011, the Planning Commission held a public hearing and, by

1 Motion No. 18514 adopted by a unanimous vote of those Commissioners present, certified the
2 Final EIR as accurate, adequate, and complete; and,

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

6 (r) On December 16, 2011, the Port Commission by unanimous vote approved its
7 Resolution Nos. 11-79 and 11-80 (the "Port Resolutions"), which adopted CEQA findings—
8 including a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting
9 Program (the "MMRP")—(the "CEQA Findings") and approved certain aspects of the AC34
10 event plans, including the initially proposed Disposition and Development Agreement

11 (s) Copies of the Port Resolutions, including the Port CEQA Findings and the MMRP,
12 are on file with the Clerk of the Board in File No. 120127; and,

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

17 (u) The Project has evolved throughout the environmental review process and public
18 review process, and has led to a revised project that reduces the number of Event venue
19 sites, and eliminates all long-term development sites as described in this Resolution, and,
20 after review of these modifications, the Environmental Planning Division of the San Francisco
21 Planning Department issued a Note to File regarding Changes to the Final EIR ("Note to
22 File"), dated March 20, 2012. The Note to File describes the potential environmental effects
23 of the proposed modifications compared to the impacts identified in the EIR, and
24 demonstrates that the proposed modifications would not result in any new significant
25 environmental impacts or a substantial increase in the severity of previously identified

1 environmental effects and would not require any new mitigation measures; and,

2 (v) The more detailed event plan referenced above includes an increase in event stage
3 seating at Piers 27-29. The City and the Event Authority will continue to collaborate with each
4 other and the community to determine appropriate conditions regarding the use of such
5 space, including the number of events, time and noise restrictions, and opportunities for
6 neighborhood arts groups to use the facilities; and,

7 (w) The Board has reviewed and considered the information contained in the Final
8 EIR, the Note to File, all written and oral information provided by the Planning Department, the
9 public, relevant public agencies and the administrative files for the Project and the Final EIR;
10 and,

11 (x) The Project and EIR files have been made available for review by the Board and the
12 public, those files are part of the record before the Board, and the Planning Department, Linda
13 Avery, is the custodian of records, located in Case Number 2010.0493E, and those files are
14 part of the record before this Board; and,

15 (y) City staff has prepared proposed findings, as required by CEQA ("CEQA Findings"),
16 which are attached to this resolution as Attachment A, and a Mitigation Measure and
17 Reporting Program ("MMRP"), which is attached to this resolution as Attachments B-1 and B-
18 2 and these Board CEQA Findings and the MMRP were made available to the public and the
19 Board for the Board's review, consideration and action; and,

20 (z) By its terms the LDA, if accepted by the Event Authority and ACOC, replaces
21 Sections 5, 6, 15, 17.4 and 17.5 of the Host Agreement in their entirety, deletes Section 7,
22 and adds Section 2.4, giving the Event Authority the right to terminate the Host Agreement if it
23 terminates the LDA, and Section 2.5, incorporating into the Host Agreement a Memorandum
24 of Agreement regarding the City's and the Event Authority's respective obligations for "Project
25 Sponsor" mitigation measures in the MMRP (the "Mitigation Measure MOA"); and,

1 (aa) The proposed LDA amends the Host Agreement's financial structure, creating a
2 new structure where the Port finances and, where possible, performs Event-related
3 infrastructure improvements to its property; and,

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

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

20 (dd) The ACOC has negotiated and will enter a Memorandum of Understanding with
21 the City regarding the transfer of fundraising proceeds to the City, which documents ACOC's
22 commitments to reimburse the City for all Fiscal Year 2011-2012 Event-related operational
23 costs and demonstrate receipts of \$12 million by June 30, 2012; and,

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

1 in form 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; and,

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

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

16 (hh) 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 Host Agreement; and,

23 (ii) On March 20, 2012, a revised Workforce Development Plan and a revised
24 Mitigation Measure MOA reflective of the revised Event strategy were submitted to File No.
25 120127, which documents will replace the original Workforce Development Plan and

1 Mitigation Measure MOA, respectively, and will be attached to and made a part of the Host
2 Agreement if the proposed LDA is approved and executed; and,

3 (jj) Such revised Workforce Development Plan adopts the City's Local Hiring Policy for
4 Construction under Section 6.22(G) of the Administrative Code for all Event-related
5 permanent construction projects; and,

6 (kk) Such revised Mitigation Measure MOA reallocates certain responsibilities reflective
7 of the parties' revised approach to hosting the Event, including a clearer delineation of
8 responsibility as to mitigation measures and protection strategies for the Bay and waterfront
9 park lands; and,

10 (ll) Section 2.1(i) of the Host Agreement provides the City with the authority as lead
11 agency under CEQA to "require modifications to the Event, including agreements pertaining to
12 the Event, as are deemed necessary to mitigate significant environmental impacts if said
13 impacts are identified through the environmental review process"; now, therefore, be it

14 RESOLVED, That this Board has reviewed the Final EIR and finds that the actions
15 contemplated by this Resolution are within the scope of the Final EIR and were fully analyzed
16 in the Final EIR for the reasons set forth in the Note to File and the Board CEQA Findings
17 attached to this Resolution as Attachment A, and that no changes have occurred in the
18 Project or in the circumstances surrounding the Project, nor has any new information
19 regarding the Project or its circumstances come to light, that would require changes or
20 additions to the Final EIR. Accordingly, this Board, in exercising its independent judgment,
21 has relied upon and reviewed the information contained in the Board CEQA Findings, which
22 describe the Project and the Final EIR, and rejects alternatives to the Project for the reasons
23 set forth in the Board CEQA Findings, and hereby adopts the Board CEQA Findings, including
24 the Statement of Overriding Considerations and the MMRP, attached to this Resolution as
25 Attachments A, B-1 and B-2; and, be it

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

5 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Proposed
6 LDA as an amendment to the Host Agreement that would upon due approval and execution
7 supersede Articles 5, 6, 15, 17.4 and 17.5 in their entirety, delete Section 7, and add
8 Sections 2.4 and 2.5 as described above, subject to the conditions set forth in this Resolution;
9 and, be it

10 FURTHER RESOLVED, In so doing, the Board of Supervisors hereby reaffirms and
11 approves the Host Agreement, as amended by (a) the LDA as revised as specified in this
12 Resolution, including the allocation of responsibilities under the Mitigation Measure MOA
13 incorporated in the Host Agreement by Section 2.5, and (b) the responsibilities set forth in the
14 MMRP under Section 2.1(i) of the Host Agreement and the Implementation Plans (as so
15 amended, the "Amended Host Agreement"); and, be it

16 FURTHER RESOLVED, That the approval of LDA by the Board of Supervisors is given
17 on the following conditions:

18 (a) The Event Authority must accept the form and manner by which the ACOC
19 proposes to satisfy its obligation to provide security to the Event Authority under Section 9.3 of
20 the Host Agreement and agree to revise or waive the ACOC security requirement under such
21 Section, including any right to terminate the Host Agreement or claim a Breach under Section
22 9.3 of the Host Agreement;

23 (b) The City and the Event Authority must agree to final cross-indemnity and insurance
24 provisions relating to all Event-related activities in the City, all as approved by the City's Risk
25 Manager, that are no less protective than the following standards: (i) commercial general

1 liability coverage for Event-related risks in an amount deemed sufficient by the City's Risk
2 Manager, but not less than those reflected in the LDA on file in File No. 120127, and (ii)
3 insurance coverages for the Event Authority's specialized activities and third-party users of
4 City property in amounts deemed sufficient by the City's Risk Manager;

5 (c) The Event Authority and the City must agree on reciprocal limitations on liability and
6 grant releases to each other that protect the General Fund and the Port Harbor Fund from
7 exposure under the Host Agreement, the LDA, the Venue Leases and Venue Licenses, and
8 any other permit or contract under which the Event Authority will occupy and use City
9 property, by limiting each party's liability to the other party to the amount of available proceeds
10 of insurance plus the available proceeds under security given by either party for its obligations
11 under the Host Agreement, including any security for Event Authority obligations and the
12 ACOC security; and

13 (d) The Event Authority must provide a guaranty or other security for its obligations
14 under the Host Agreement in form and substance approved by the City's Risk Manager and
15 the City Attorney; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Project as
17 described under the Final EIR, the Amended Host Agreement and the Implementation Plans,
18 and directs that the LDA as revised consistent with this Resolution be returned to the Port
19 Commission for its consideration; and be it

20 FURTHER RESOLVED, That, upon Port Commission approval of the LDA as revised
21 consistent with this Resolution, the Board of Supervisors authorizes and directs the Executive
22 Director of the Port (the "Executive Director") to execute the LDA in such final form (including,
23 without limitation, preparation and attachment of, or changes to, any or all of the exhibits or
24 related documents) as is approved by the Executive Director and which changes taken as a
25 whole the Executive Director determines are in the best interests of the City, and otherwise do

1 not materially increase the obligations or liabilities of the Port or the City or materially
2 decrease the public benefits accruing to the Port or the City, and are necessary or advisable
3 to complete the transactions which the LDA contemplates and to effectuate the purpose and
4 intent of this resolution, such determination to be made in consultation with the City Attorney,
5 the Controller, the Director of the City's Office of Economic and Workforce Development (the
6 "OEWD Director") and the City's Risk Manager, consistent with the approvals granted under
7 this resolution and to be conclusively evidenced by the execution and delivery of the LDA by
8 the Executive Director; and be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
10 Director to enter into any subsequent amendments or other modifications to the LDA
11 (including, without limitation, any or all of the exhibits or related documents) that the Executive
12 Director, taking such changes as a whole and in consultation with the City Attorney and, as
13 appropriate for the risk and subject matter for the changes, the OEWD Director, the Controller,
14 and the City's Risk Manager, determines are in the best interests of the City, reflect the terms
15 by which the Port Commission approved the LDA, and otherwise do not materially increase
16 the obligations or liabilities of the Port or the City or materially decrease the public benefits
17 accruing to the Port or the City, and are necessary or advisable to complete the transactions
18 which the LDA contemplates and to effectuate the purpose and intent of this resolution, such
19 determination to be conclusively evidenced by the execution and delivery by the Executive
20 Director of any amendments to such document; and be it

21 FURTHER RESOLVED, That the Board of Supervisors directs the America's Cup
22 Project Director and the Executive Director, as applicable, to provide the following progress
23 reports:

24 (a) to the Board of Supervisors on or before April 30, 2012, an update on whether and
25 in what form the ACOC security instrument called for under Section 9.3 of the Host

1 Agreement has been delivered and accepted by the Event Authority in full satisfaction of
2 Section 9.3 of the Host Agreement;

3 (b) to the City Controller and the Budget & Finance Committee of the Board of
4 Supervisors on a quarterly basis, a report on (i) ACOC fundraising and transfers of such
5 revenues to the City, (ii) Port infrastructure expenditures in preparation for the Event and (iii)
6 City operating expenditures for the Event; and

7 (c) if the ACOC does not contribute \$32 million to offset the City's Event costs, a
8 proposal for cost saving measures for the City to offset any shortfall from Event-related tax
9 and fundraising revenues; and be it

10 FURTHER RESOLVED, That the Board of Supervisors authorizes the OEWD Director
11 to enter into any additions, amendments or other modifications to the Implementation Plans
12 and the Mitigation Measure MOA that the OEWD Director, in consultation with the City
13 Attorney, determine are in the best interests of the City, and otherwise do not materially
14 increase the obligations or liabilities of the City or materially decrease the public benefits
15 accruing to the City, and are necessary or advisable to complete the transactions which this
16 resolution contemplates and to effectuate the purpose and intent of this resolution, such
17 determination to be conclusively evidenced by the execution and delivery by the OEWD
18 Director of the Implementation Plans, the Mitigation Measure MOA and any amendments to
19 such document(s); and be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes and urges the
21 Executive Director, the OEWD Director and any other appropriate officers, agents or
22 employees of the City to take any and all steps (including, but not limited to, the execution and
23 delivery of any and all certificates, agreements, permits, notices, consents and other
24 instruments or documents), as they or any of them deems necessary or appropriate, in
25 consultation with the City Attorney, in order to consummate the transactions in accordance

1 with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such
2 determination to be conclusively evidenced by the execution and delivery by any such person
3 or persons of any such documents; and be it

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

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