

[Approving Updated Security Provisions for America's Cup Lease Disposition Agreement]

Resolution approving revisions to the America's Cup Lease Disposition Agreement with respect to the security for certain obligations of the City; authorizing and directing the procurement of insurance coverage for the City's satisfaction of certain of such obligations; reaffirming the direction for ongoing staff progress reports as to the implementation of the America's Cup events; and authorizing related actions.

WHEREAS, In December 2010 San Francisco was selected as the host city for the 34th America's Cup and related activities (the "Event"); and

WHEREAS, At the time of such selection the City and County of San Francisco (the "City"), the America's Cup Event Authority, LLC (the "Authority") and the San Francisco America's Cup Organizing Committee ("ACOC") entered into the America's Cup Host and Venue Agreement (the "Host Agreement") which set out the applicable rights and responsibilities for each party in relation to preparation for and hosting the Events; and

WHEREAS, The Host Agreement included a number of responsibilities for the City and ACOC, both in terms of ACOC's fundraising program over three years intended to defray up to \$32 million of the public costs of hosting the events as well as the City responsibility to deliver the venues and support services called for under the Host Agreement and the associated implementation plans; and

WHEREAS, In July and August 2012 ACOC delivered a total of \$6,115,979.43 to the City in reimbursement for the full amount of costs charged to the City's America's Cup budget in fiscal year 2011-2012; and

1 WHEREAS, The Host Agreement also called for ACOC to deliver a security instrument
2 of up to a value of \$32 million to secure the performance by the City and ACOC of their
3 respective obligations under the Host Agreement (the "ACOC Security"); and

4 WHEREAS, City project and risk management staff worked with ACOC over the course
5 of late 2011 and early 2012 to investigate the availability of security instruments that would
6 provide the coverage called for under the Host Agreement; and

7 WHEREAS, On March 27, 2012, by its Resolution No. 109-12, this Board of
8 Supervisors (the "Board") approved a number of matters relating to the Events and provided
9 parameters for its delegation of authority to City officials to complete negotiations for and
10 execute a Lease Disposition Agreement (the "LDA") relating to the City's delivery of venues to
11 the Authority and other Event-related activities and responsibilities and the Authority's delivery
12 of security for its Event-related obligations; and

13 WHEREAS, At the time the LDA was approved by the Board the City's and the
14 Authority's respective responsibilities for improvements to prepare the various Port venues for
15 the Event had recently been revised, most notably the transfer of responsibility for Piers 30-32
16 Event upgrades from the Authority to the Port, together with the elimination of the Authority's
17 long-term development rights in consideration of improvements as contemplated under the
18 Host Agreement; and

19 WHEREAS, The staff presentation to the Board in conjunction with Resolution No. 109-
20 12 noted that further underwriting analysis would be needed to procure security for the parties'
21 respective Event-related obligations, including the revised construction responsibilities; and

22 WHEREAS, As negotiations continued the parties agreed that the security instruments
23 customarily available in the insurance markets were not sufficient to provide all coverage
24 sought under the terms of the Host Agreement, and that events and experience along the
25 waterfront (including impact of the recent Pier 29 fire on the City's ability to timely deliver key

1 Event venues) created certain priorities for the ACOC Security coverage in terms of providing
2 assurance as to the successful delivery of venues and municipal services in support of the
3 Events; and

4 WHEREAS, In acknowledgement of such discussions, and with an interest in
5 establishing other reciprocal rights, obligations, and indemnities contemplated by Resolution
6 No. 109-12 in time for the first San Francisco America's Cup World Series regatta in August
7 2012, the parties executed the LDA, a copy of which is on file with the Clerk of the Board in
8 File No. 120127 and incorporated herein by reference as though fully set forth, under the
9 authority delegated by the Board in such Resolution, subject to a condition under LDA Section
10 3.15 that City staff obtain Board and Port Commission approval for certain LDA terms relating
11 to the City's construction-related venue delivery obligations and the ACOC Security
12 arrangements that the parties negotiated after the Board's action in March 2012; and

13 WHEREAS, The LDA reflects the parties' agreement as to a composite approach to
14 each party's obligation to provide security for its performance to the other, which is intended to
15 provide a comprehensive security arrangement that accounts for the issues that could not be
16 addressed through the available insurance markets; and

17 WHEREAS, Under the LDA the City proposed to satisfy its obligation to provide the
18 ACOC Security through a combination of sources (taken together, the "LDA Security"),
19 including: (1) the City's use of liquidated damages and bond proceeds payable under the
20 Port's construction contracts and insurance for improvements at Piers 30-32 and Pier 27 and
21 for repairing the fire damage to Pier 29; (2) the City's payment of liquidated damages to the
22 Authority up to a maximum aggregate amount of \$5 million (the "LDA Damages") should the
23 City fail to deliver Pier 27 or Piers 30-32 to the Authority by March 1, 2013; and (3) a cash
24 collateral deposit held under an escrow agreement (the "Cash Collateral") to secure other City
25 obligations; and

1 WHEREAS, As security for its reciprocal obligations under the LDA the Authority
2 agreed to provide a third-party guaranty and an environmental security deposit to secure its
3 LDA obligations, including any required restoration of City venues after the Event; and

4 WHEREAS, The LDA requires the City to make an initial \$2.4 million deposit to fund
5 the Cash Collateral by January 15, 2013; the priority use of such funds would be to secure the
6 City's obligations to deliver construction projects for waterfront Event venues, including any
7 obligation to accelerate construction or prepare replacement space should its delivery of
8 Pier 27, or Piers 30-32, or fire-damaged Pier 29 be delayed beyond the LDA deadlines; and

9 WHEREAS, The LDA further calls for the Cash Collateral account to be replenished to
10 the full \$2.4 million amount by July 15, 2013 if necessary; and

11 WHEREAS, Beginning in July 2013, the priority for the use of such Cash Collateral
12 would be to secure the City's Event-related operational obligations over the course of July,
13 August, and September 2013; and

14 WHEREAS, In addition to the Port's contractual remedies, construction bonds, and
15 builder's risk insurance coverage available to mitigate the City's costs for construction delays
16 at Pier 27 and Piers 30-32, the City's Director of Risk Management has identified an
17 insurance product commonly known as owner's delay insurance (the "Insurance Policy") that
18 would provide coverage for liquidated damages on the two primary Port construction projects
19 needed for the events: the core and shell of the Pier 27 Cruise Terminal and the strengthening
20 of the Piers 30-32 deck to accommodate sailing team bases; and

21 WHEREAS, The Insurance Policy: (a) can be secured for a premium of \$1,015,000;
22 (b) has a self-insured retention of \$2.4 million (reflecting the amount of the Cash Collateral);
23 and (c) explicitly provides coverage for the LDA Damages for delays caused by covered
24 perils; and
25

1 WHEREAS, A summary of the proposed terms and conditions of the Insurance Policy
2 is on file with the Clerk of the Board in File No. 120127 and incorporated herein by reference
3 as though fully set forth; and

4 WHEREAS, In conjunction with the reduction in security to be provided for the City's
5 and ACOC's obligations from the \$32 million contemplated under the Host Agreement to the
6 City's obligation to provide LDA Security in the maximum amount of \$9.8 million (assuming
7 City payment of the full amount of LDA Damages for delayed venue delivery and the full
8 exhaustion of both the January and June 2013 \$2.4 million deposits to the Cash Collateral),
9 the Authority sought to incorporate changes to the force majeure provisions of the LDA under
10 which certain events will excuse the Port's obligation to deliver Pier 27 and Piers 30-32 by
11 March 1, 2013; and

12 WHEREAS, Subject to good faith efforts to obtain subsequent Board approval, the City
13 agreed to revise the force majeure provision to remove the following events: (a) fire;
14 (b) unusually severe weather; and (c) labor disputes or strikes directed at the City's
15 construction or other Event-related site preparation activities at Pier 27 or Piers 30-32; and

16 WHEREAS, The effect of this revision is that the City would be obligated under the
17 LDA to pay the Authority up to \$5 million in LDA Damages if the City is unable to deliver
18 Pier 27 or Piers 30-32 by March 1, 2013, even if the delay is caused by fire, unusually severe
19 weather, or a venue-directed strike; and

20 WHEREAS, The Insurance Policy would fund entirely the City's obligation to pay the
21 Authority up to \$5 million in LDA Damages if the City is unable to deliver Pier 27 or Piers 30-
22 32 by March 1, 2013 for the events listed in the draft declaration, which include fire or
23 unusually severe weather; and

24 WHEREAS, As an underwriting matter, however, insurers will not insure against delays
25 due to labor disputes as they are considered to be under the insured party's control; and

1 WHEREAS, Based on a review of City construction project experience over the past
2 several years, staff believes that a strike against the project is a remote risk and one that the
3 City can manage more directly than the other force majeure events that are outside of the
4 City's control; and

5 WHEREAS, Based on the factors above, the City's Director of Risk Management
6 recommends procurement of the Insurance Policy upon approval of this Resolution by the
7 Board; and

8 WHEREAS, The projected expenditures for the Events as reflected in the City's current
9 two-year budget included amounts sufficient to pay the premium for the Insurance Policy and
10 the deposits to the Cash Collateral referenced above, subject to reimbursement by ACOC;
11 now, therefore, be it

12 RESOLVED, That the changes to the definition of force majeure as specified in
13 Section 3.15 of the LDA and the provisions relating to the LDA Security in Section 4.2 of the
14 LDA are hereby approved; and, be it

15 FURTHER RESOLVED, That this Board hereby authorizes and directs the America's
16 Cup Project Director and the Director of Risk Management to take all steps to procure the
17 Insurance Policy described in this Resolution; and, be it

18 FURTHER RESOLVED, That this Board reaffirms its direction under Resolution
19 No. 109-12 to the America's Cup Project Director and the Executive Director of the Port, as
20 applicable, to provide the following progress reports: (i) to the City Controller and the Budget
21 & Finance Committee of the Board of Supervisors on a quarterly basis, a report on (A) ACOC
22 fundraising and transfers of such revenues to the City, (B) Port infrastructure expenditures in
23 preparation for the Event and (C) City operating expenditures for the Event, including any
24 draws upon the Cash Collateral; and (ii) if ACOC fundraising does not appear to be on track to
25 enable ACOC to contribute to the City amounts sufficient to pay for City operating

1 expenditures and other amounts to be reimbursed by ACOC fundraising, a proposal for cost
2 saving measures to offset any shortfall from Event-related tax and fundraising revenues; and,
3 be it

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

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



City and County of San Francisco

**Tails
Resolution**

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120903

Date Passed: October 02, 2012

Resolution approving revisions to the America's Cup Lease Disposition Agreement with respect to the security for certain obligations of the City; authorizing and directing the procurement of insurance coverage for the City's satisfaction of certain of such obligations; reaffirming the direction for ongoing staff progress reports as to the implementation of the America's Cup events; and authorizing related actions.

September 26, 2012 Budget and Finance Committee - AMENDED

September 26, 2012 Budget and Finance Committee - RECOMMENDED AS AMENDED

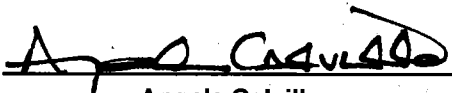
October 02, 2012 Board of Supervisors - ADOPTED

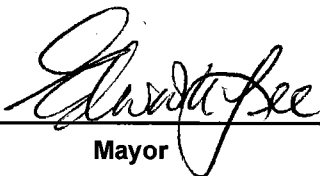
Ayes: 10 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Kim, Mar, Olague and Wiener

Excused: 1 - Farrell

File No. 120903

I hereby certify that the foregoing
Resolution was ADOPTED on 10/2/2012 by
the Board of Supervisors of the City and
County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved