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

Ordinance 1) authorizing the Port to amend a contract between the Port and Turner Construction Company to perform certain improvements to Piers 27-29, Piers 19 and 23, and Piers 30-32, and to remove portions of Pier ½ and 64; 2) alternatively, authorizing the Port to execute an agreement between the Port and one of the next highest-ranked proposers, in order of rank, for the Pier 27 Cruise Ship Terminal and Northeast Wharf Plaza Project, to perform certain improvements to Piers 27-29, Piers 19 and 23, and Piers 30-32, and to remove portions of Pier ½ and 64; 3) authorizing the Port to contract with the America’s Cup Event Authority for assignment to the Port of its contract with Power Engineering Construction Company for improvements to Piers 30-32 only; 4) authorizing the Port to enter into a contract with AECOM for construction-design engineering services for improvements to Piers 30-32 related to the 34th America's Cup Event; and 5) waiving competitive bidding and solicitation requirements of Administrative Code Sections 6.20, 6.21, 6.68(A)-(F), 6.40, and 6.41, and requirements of Administrative Code Sections 14B.19(C)(1)-(5) waiving competitive bidding and solicitation requirements of the Administrative Code and authorizing the Director of the Port to execute an amendment to the Port’s contract with Turner Construction Company to perform certain improvements to Piers 27-29, Piers 19 and 23, and to Piers 30-32; or alternatively, to enter into an agreement with second highest-ranked proposer for the Pier 27 Cruise Ship Terminal and Northeast Wharf Plaza Project for the improvements or enter into an agreement with the America's Cup Event Authority for assignment of its contract with Power Engineering Construction Company to the Port for improvements to Piers 30-32 related to the 34th America's Cup Event.

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

NOTE: Additions are *single-underline italics* Times New Roman; deletions are *strike-through italics* Times New Roman. Board amendment additions are double-underlined; Board amendment deletions are strikethrough normal.

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

Section 1. Findings.

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

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

(c) On December 15, 2011, the City Planning Commission certified the final environmental impact report for the AC34 Project following analysis and review under CEQA by Motion No. 18514 in Case No. 2010.0493E; and thereafter on December 16, 2011, the Port Commission, by Port Resolution Nos. 11-79 and 11-80, adopted CEQA findings and a Mitigation Monitoring and Reporting Program ("MMRP"), and approved the AC34 Project.


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(d) The Board of Supervisors adopted CEQA Findings, including a Statement of Overriding Considerations, and the MMRP, approved a Lease Disposition Agreement ("LDA") between the Port and the Event Authority as an amendment to the HVA, affirmed the HVA as amended, and approved an agreement between the City and the Event Authority regarding the allocation of certain mitigation measures described in the MMRP by resolution adopted on March 27, 2012. This Ordinance is part of the Project approved in Board of Supervisors Resolution No. 109-12, and the CEQA Findings adopted therein are applicable to the Ordinance. The Board has reviewed and considered the Final EIR and record as a whole, finds that the Final EIR is adequate for its use as the decision-making body for adoption of this Ordinance and incorporates the CEQA Findings contained in Board Resolution No. 109-12, including the Statement of Overriding Conditions, by this reference thereto as though fully set forth in this Ordinance.

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

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

(g) The Pier 27 CST Project and the America's Cup Event are interrelated and require Turner to construct the cruise terminal in coordination with the Event Authority's uses for the cruise terminal facility and schedule for the AC34 Project; therefore, it would be more efficient and cost-effective to permit the Port to amend its CM/CG contract with Turner to perform all of the Site Improvements which must be completed under an accelerated schedule pursuant to the LDA, rather than to competitively bid a separate contract for these Site Improvements.
(h) The America's Cup Event Authority previously entered into a Guaranteed Maximum Price Contract ("GMP Contract") with Power Engineering Construction Company ("Power Engineering") to construct improvements to Piers 30-32 necessary for the AC34 Project. Under the LOA, the Port has discretion to accept an assignment of the Event Authority's GMP Contract with Power Engineering to perform the improvements to Piers 30-32 for which the Port is obligated under the LDA, subject to authorization from the Mayor and the Board of Supervisors, thereby allowing the Port this alternate means to perform improvements to Piers 30-32, as required under the HVA and LDA.

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

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

(k) As the first approach, the Port recommends that it be authorized to its competitive bidding and solicitation requirements of Chapter 6 of the Administrative Code and authorize the Port to amend the CM/CG Contract with Turner to perform the Site Improvements required by the LDA to the CM/CG Contract. The resulting contract amendment for the Site Improvements would comply with Administrative Code Section 6.22, and, further, in order to expeditiously complete the Site Improvements, the following additional waivers would be necessary. With respect to all Site Improvements except those to Piers 27-29, to waive the requirement of Administrative Code Section 6.68(H)(1) for Turner to receive bids from at least three of the pre-qualified trade subcontractors for the work would be waived. If such a waiver is authorized, the Port intends to work with its contractor to solicit informal bidding for from qualified trade subcontractors for the work by amending its contract with Turner to require (a) bidding of trade packages from previously pre-qualified bidders for trade work associated with the Pier 27 CST Project, (b) bidding of trade packages from no fewer than two bidders previously pre-qualified by the Event Authority for Piers 30-32 site improvements, or (c) amending previously-bid subcontracts for the Pier 27 CST Project. Administrative Code Section 6.68(H)(3) allows the Port Director, as Department Head, to authorize the contractor to negotiate up to 7 1/2% of the trade packages; in order to efficiently complete the Site Improvements work, the Port requests authority to negotiate with the contractor to self-perform some or all of that 7 1/2% of the work. Finally, with respect to all Site Improvements work, to facilitate this contract and fulfill the purposes of Administrative Code Section 14B.19(A), the Executive Director of the Human Rights Commission ("HRC") shall, within five (5) days of the effective date of this ordinance, establish a goal for work to be performed by qualified Local Business Enterprises ("LBE Participation") as a percentage of total work to
deliver the Site Improvements based on similar Port capital projects for which HRC has
recently established goals and such goal shall apply to the CM/CG Contract amendment for
the Site Improvements work. Administrative Code Sections 14B.19(C)(1)-(5) shall not apply
but Turner, as CM/CG Contractor, shall be responsible to meet the LBE Participation goal for
all Site Improvements on a project-wide basis.

(lk) As the second approach, if the Port fails to reach agreement with Turner to perform
the work described in Subsection (k) above, the Port recommends that to enable the Port to
meet the accelerated schedule required in the LDA and HVA, the Port recommends the City
also waive its City authorize a waiver of the above competitive bidding and solicitation
requirements, and authorize the Port, in the alternative, to negotiate and execute a contract
with the one of the next second highest-ranked proposers for the AC34 CST Project, in order
of ranking, to perform all or a portion of the Site Improvements required by the LDA. The
resulting contract for the Site Improvements would comply with Administrative Code Section
6.22. In order to expeditiously complete the Site Improvements, the following additional
waivers would be necessary. With respect to all Site Improvements, the Port recommends
waiver of the requirement of Administrative Code Section 6.68(H)(1) for the contractor to
receive bids from at least three pre-qualified trade subcontractors for the work. If such a
waiver is authorized, the Port intends to work with the contractor to solicit informal bidding
from qualified trade subcontractors to require (a) bidding of trade packages from previously
pre-qualified bidders for trade work associated with the Pier 27 CST Project, or (b) bidding of
trade packages from no fewer than two bidders previously pre-qualified by the Event Authority
for Piers 30-32 site improvements. Administrative Code Section 6.68(H)(3) allows the Port
Director, as Department Head, to authorize the contractor to negotiate up to 7½% of the trade
packages; in order to efficiently complete the Site Improvements work, the Port requests
authority to negotiate with the contractor to self-perform some or all of that 7½% of the work.
Finally, with respect to all Site Improvements work, to facilitate this contract and fulfill the purposes of Administrative Code Section 14B.19(A), the Executive Director of the HRC shall, within five (5) days of the effective date of this ordinance, establish a goal for work to be performed by qualified Local Business Enterprises ("LBE Participation") as a percentage of total work to deliver the Site Improvements based on similar Port capital projects for which HRC has recently established goals and such goal shall apply to the contract for the Site Improvements work. Administrative Code Sections 14B.19(C)(1)-(5) shall not apply. The contractor shall be responsible to meet the LBE Participation goal for all Site Improvements on a project-wide basis.

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

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

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

Section 2. Notwithstanding the competitive bidding and solicitation requirements of Chapter 6 and Chapter 21 of the Administrative Code, the Board of Supervisors hereby authorizes the Port of San Francisco to amend its contract with Turner Construction Company for CM/CG services for the Pier 27 CST Project to perform some or all of the Site Improvements to Piers 27-29, Piers 19 and 23, to Piers 30-32 without competitive bidding or solicitation, and removal of Pier ½ and the remnants of Pier 64 without the competitive bidding and solicitation requirements referenced in Section 1(j) of this Ordinance, provided that the resulting contract amendment shall comply with Administrative Code Section 6.22.

Further, with respect to all Site Improvements except those to Piers 27-29, the Board of Supervisors hereby waives the requirement of Administrative Code Section 6.68(H)(1) for Turner to receive bids from at least three pre-qualified trade subcontractors for the work provided that the contract amendment shall require of Turner: (a) bidding of trade packages from previously pre-qualified bidders for trade work associated with the Pier 27 CST Project, (b) bidding of trade packages from no fewer than two bidders previously pre-qualified by the
Event Authority for Piers 30-32 site improvements, or (c) amending previously-bid
subcontracts for the Pier 27 CST Project. Administrative Code Section 6.68(H)(3) allows the
Port Director, as Department Head, to authorize the contractor to negotiate up to 7 1/2% of the
trade packages; in order to efficiently complete the Site Improvements work, the Board of
Supervisors hereby authorizes the Port Director to negotiate with Turner to self-perform some
or all of that 7 1/2% of the work. To facilitate this contract and fulfill the purposes of
Administrative Code Section 14B.19(AC)(3), the Executive Director of the Human Rights
Commission ("HRC") shall, within five (5) days of the effective date of this Ordinance,
establish a goal for work to be performed by qualified Local Business Enterprises ("LBE
Participation") as a percentage of total work to deliver the Site Improvements based on similar
Port capital projects for which HRC has recently established goals within five (5) days of the
effective date of this ordinance and such goal shall apply to any amendment to the contract
with Turner Construction Company for work on the Site Improvements. Administrative Code
Sections 14B.19(C)(1)-(5) shall not apply to the contract amendment, but Turner, as CM/CG
Contractor, shall be responsible to meet the LBE Participation goal for all Site Improvements
on a project-wide basis.

Section 3. Notwithstanding the competitive bidding and solicitation requirements of
Chapter 6 and Chapter 21 of the Administrative Code, the Board of Supervisors hereby
authorizes the Port, as an alternative, should it fail to reach agreement with Turner to perform
the work authorized in Section 2 above to amending its contract with Turner Construction
Company for CM/CG services, to negotiate and execute a contract with one of the next second
highest-ranked lowest qualified proposers for the Pier 27 CST Project, in order of ranking, to
perform some or all of the Site Improvements required by the LDA without the competitive
bidding or solicitation requirements referenced in Section 1(j) of this Ordinance, provided that
the resulting contract shall comply with Administrative Code Section 6.22. Further, with
respect to all Site Improvements, the Board of Supervisors hereby waives the requirement of Administrative Code Section 6.68(H)(1) for the contractor to receive bids from at least three pre-qualified trade subcontractors for the work provided that the contractor shall obtain: (a) bidding of trade packages from previously pre-qualified bidders for trade work associated with the Pier 27 CST Project, or (b) bidding of trade packages from no fewer than two bidders previously pre-qualified by the Event Authority for Piers 30-32 site improvements.

Administrative Code Section 6.68(H)(3) allows the Port Director, as Department Head, to authorize the contractor to negotiate up to 7 1/2% of the trade packages; in order to efficiently complete the Site Improvements work, the Board of Supervisors hereby authorizes the Port Director to negotiate with the contractor to self-perform some or all of that 7 1/2% of the work.

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

Section 4. As a further alternative to the Port’s amendment of its contract with Turner contract-to-performing the Site Improvements to Piers 30-32, the Board of Supervisors hereby waives the competitive bidding and solicitation requirements referenced in Section 1(i) of this Ordinance, and further authorizes the Port of San Francisco to negotiate a reduced scope
and subsequently accept an enter into an agreement with the Event Authority for assignment of the Event Authority's GMP Contract with Power Engineering to the Port for purposes of performing the Site Improvements solely to Piers 30-32. Should the Port Director find that such a contract assignment would be more efficient than amending the Port's contract with Turner Construction using the approaches authorized in Sections 2 and 3 of this Ordinance, to perform Site Improvements to Piers 30-32 and more efficient than entering into a contract with the second-highest-ranked-proposer for the Pier 27-CST project; in which case, the Board of Supervisors hereby exempts the assignment of the Power Engineering contract to the Port from the contracting requirements of the Administrative Code and Environment Code Chapters 2, 6, and 8, except as to Administrative Code Sections 6.22(E) and 6.22(G) and Administrative Code Chapter 124B, or to the extent that the Port's agreement to accept the contract assignment obligates Power Engineering, as contractor, to satisfy any other requirements.

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

Section 6. Effective Date. This ordinance shall become effective 30 days from the date of passage.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Timothy L. Yoshida
   Deputy City Attorney

Mayor Lee
BOARD OF SUPERVISORS
City and County of San Francisco

Tails

Ordinance

File Number: 120282  Date Passed: April 10, 2012

Ordinance 1) authorizing the Port to amend a contract between the Port and Turner Construction Company to perform certain improvements to Piers 27-29, Piers 19 and 23, and Piers 30-32, and to remove portions of Pier ½ and 64; 2) alternatively, authorizing the Port to execute an agreement between the Port and one of the next highest-ranked proposers, in order of rank, for the Pier 27 Cruise Ship Terminal and Northeast Wharf Plaza Project, to perform certain improvements to Piers 27-29, Piers 19 and 23, and Piers 30-32, and to remove portions of Pier ½ and 64; 3) authorizing the Port to contract with the America's Cup Event Authority for assignment to the Port of its contract with Power Engineering Construction Company for improvements to Piers 30-32 only; 4) authorizing the Port to enter into a contract with AECOM for construction-design engineering services for improvements to Piers 30-32 related to the 34th America's Cup Event; and 5) waiving competitive bidding and solicitation requirements of Administrative Code Sections 6.20, 6.21, 6.68(A)-(F), 6.40, and 6.41, and requirements of Administrative Code Sections 14B.19(C)(1)-(5).

March 28, 2012 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

March 28, 2012 Budget and Finance Sub-Committee - REFERRED WITHOUT RECOMMENDATION AS AMENDED

April 03, 2012 Board of Supervisors - AMENDED

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

Absent: 1 - Olague

April 03, 2012 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

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

Absent: 1 - Olague

April 10, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olegate and Wiener
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/10/2012 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved

4/12/12