

1 [Lease Amendment - St. Francis Yacht Club for the West Harbor Marina Seawall Repair]
2

3 **Resolution authorizing an amendment to the St. Francis Yacht Club lease allowing the**
4 **Recreation and Parks Department to offer rent credits for the West Harbor Marina**
5 **seawall repair.**
6

7
8 WHEREAS, The City and County of San Francisco ("City"), acting through the
9 Recreation and Park Department ("RPD") as landlord, and the St. Francis Yacht Club as
10 tenant, are parties to a lease dated June 1, 2006 (the "Lease"), and

11 WHEREAS, The Lease requires the St. Francis Yacht Club to pay the City a cash
12 payment of \$1,200,000 (the "Lump Sum Funds"), to be used for improvements to the San
13 Francisco Marina (the "Marina"), sets forth the process for identifying the improvements to be
14 funded from the Lump Sum Funds, and further provides that City has approval rights over the
15 Lump Sum Funds for improvements that may not have been proposed as Lump Sum
16 Improvements, as determined by RPD's General Manager, and

17
18 WHEREAS, In 2007, the St. Francis Yacht Club and RPD staff reached a tentative
19 agreement about certain improvement projects to be funded from the Lump Sum Funds,
20 prioritizing surgical dredging, an ADA ramp and the seawall repair, and

21 WHEREAS, The Club transmitted the final Lump Sum installment to City on
22 September 14, 2007, and

23 WHEREAS, The City is currently undergoing a \$24.8M improvement project in the
24 West Harbor ("Harbor Renovation Project") which consists of the demolition of existing berths
25 and construction of reconfigured berths, upgrading electrical and water dock utilities,

1 installation of new barrier-free gangways, construction of new breakwaters, replacement of
2 revetment, mole removal, dredging, and improvement of buildings, and

3 WHEREAS, The Harbor Renovation Project is funded by a loan from the California
4 Department of Boating and Waterways ("DBW"), and

5 WHEREAS, Following the granting of the loan, the City desired to prioritize a project
6 alternative, namely to replace wooden berths with concrete berths, which is preferred by
7 DBW as they are more durable, and as such will significantly extend the life expectancy of the
8 docks, reduce maintenance time and expenditures, perform better in storm conditions, and

9 WHEREAS, The capital investment in concrete berths is anticipated to achieve a cost
10 savings to the city in an amount between \$1.5 and \$2 million,

11 WHEREAS, The decision to use concrete docks needed to be made at the outset of
12 the project, and

13 WHEREAS, RPD approached the St. Francis Yacht Club regarding the use of the
14 Lump Sum Funds for the construction of concrete berths and the Club agreed to such usage,
15 and

16
17 WHEREAS, A Letter of Understanding was created which confirms that the St. Francis
18 Yacht Club will agree to the City's using a portion of the remaining balance of the Lump Sum
19 Funds to pay for the concrete change order instead of the originally contemplated purposes,
20 and

21 WHEREAS, The Letter of Understanding also states that the St. Francis Yacht Club
22 and the City are very interested in having the seawall repair project discussed by the parties
23 in 2007 performed as quickly as possible, and

24 WHEREAS, The City has confirmed that the proposed seawall repair falls within the
25 scope of the City's general responsibility with respect to Marina renovations and its ongoing

1 repair and maintenance, and the City would like to include this repair as part of scope of the
2 Harbor Renovation Project, and

3 WHEREAS, The maximum estimate for the seawall repair project is \$550,000
4 including construction, design, engineering and permitting costs, and

5 WHEREAS, DBW cannot approve a change order incorporating the seawall repair to
6 the Harbor Renovation Project unless the City demonstrates that it has a source of funds
7 available for funding the Seawall Repair Change Order, and

8 WHEREAS, The first and preferred source of funding for the seawall repair project is
9 the project's \$1.9M construction contingency reserves, which if available, can be accessed
10 following completion of the project, and

11 WHEREAS, The secondary source of funding, following the depletion of the foregoing
12 fund sources, will be the St. Francis Yacht Club, who agrees, also in the Letter of
13 Understanding, to provide the funds necessary for the seawall repair at the time they are
14 due, in exchange for monthly rent credits ("Proposed Rent Credit Work"), and

15 WHEREAS, The amortization schedule to repay the DBW loan has been recalculated
16 to reflect the temporary reduction in expected rental income, and DBW has concluded that
17 rent credits will not impair RPD's ability to meet the state requirements for loan repayment,
18 and

19 WHEREAS, The Letter of Understanding also stipulates that RPD and the St. Francis
20 Yacht Club are only willing to fund the cost of the seawall repair project if both parties
21 approve the plans and specifications, the work plan and the budget for the Proposed Rent
22 Credit Work, and

1 WHEREAS, The final estimate for the seawall repair project will be submitted to DBW
2 for its approval of a Seawall Repair Change Order, and if approved, the Proposed Rent
3 Credit Work shall be performed as a change order to City's contract for the Harbor
4 Renovation Project, and

5 WHEREAS, The Letter of Understanding is pending the approval of an amendment to
6 the Lease by Board of Supervisors, and

7 WHEREAS, The Lease currently stipulates that if the Tenant wishes to perform
8 improvements to the Marina that would otherwise be City's responsibility, on the approval of
9 the RPD's General Manager, such work can be performed by Tenant, and the Tenant can
10 receive an offset against the rent payable under the Lease; and

11 WHEREAS, This process anticipates that the Tenant will contract for and be
12 responsible for the work but does not describe a process for work that is paid for by the
13 Tenant, subject to future offsets of rent, but is performed by City or by a City contractor, and

14 WHEREAS, The City, as landlord under the Lease, has only limited responsibilities for
15 maintenance and repair, such as the obligation to perform dredging, however, as owner of
16 the Marina, the City performs a variety of other maintenance, repair and improvement
17 projects at the Marina; and

18 WHEREAS, The provisions of Section 5.7 of the Lease neither clearly allow the parties
19 to include those activities of the City that are not City's responsibility under the Lease in the
20 Rent Credit Work nor clearly prohibit such inclusion, and

21 WHEREAS, City and Tenant presently desire to amend the Lease to (i) provide that
22 the work that is eligible for consideration by the Tenant and RPD General Manager as Rent
23 Credit Work includes work performed by or on behalf of City to repair, maintain or improve
24
25

1 the Marina (other than work which is otherwise Tenant's responsibility under the Lease), and
2 (ii) modify the provisions of Section 5.7 to allow City or City's contractors, rather than Tenant,
3 to perform Rent Credit Work to be paid for by Tenant, subject to future offsets of rent, in
4 accordance with a process and subject to the terms and conditions set forth in amended
5 Section 5.7, and

6 WHEREAS, RPD and the Tenant presently desire to amend the Lease to make the
7 revisions described above, now, therefore, be it

8 RESOLVED, That the Board of Supervisors approves the amendment to the Lease
9 allowing the Department to offer rent credits for the West Harbor seawall repair; and, be it

10 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
11 with respect to the amendment are hereby approved, confirmed and ratified; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors authorizes the RPD General
13 Manager to enter into any modifications to the Lease that the RPD General Manager
14 determines, in consultation with the City Attorney, are in the best interests of the City, are
15 necessary or advisable to effectuate the purposes of this Resolution, and are in compliance
16 with all applicable laws, including the City's Charter.