

File No. 111090

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: October 26, 2011

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget & Legislative Analyst Report          |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |

#### OTHER

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Completed by: Victor Young

Date: October 21, 2011

Completed by: Victor Young

Date: \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

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  
23  
24  
25

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

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

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

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

<b>Item 2</b> <b>File 11-1090</b>	<b>Departments:</b> Recreation and Park Department (RPD)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objective</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would amend the existing lease between the City, as lessor, and the St. Francis Yacht Club, as lessee, authorizing the Recreation and Park Department (RPD) to grant rent credits to the St. Francis Yacht Club for any work performed by the City or the City's contractors, to repair, maintain, or improve the Marina. Under the proposed lease amendment, the RPD's General Manager must approve any rent credits to the St. Francis Yacht Club up to \$50,000, and the Recreation and Park Commission must approve rent credits that exceed \$50,000.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• Ms. Katharine Petrucione of the Recreation and Park Department (RPD) requests that the proposed resolution be continued to the Call of the Chair.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Based on the request by the Recreation and Park Department, continue the proposed resolution to the Call of the Chair.</li> </ul>	

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("Amendment"), dated for reference purposes as of \_\_\_\_\_, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its recreation and Park Commission, as Landlord, and ST. FRANCIS YACHT CLUB, a California nonprofit corporation, as Tenant ("Tenant").

### RECITALS

A. Landlord and Tenant have entered into that certain Recreation and Park Department Lease dated June 1, 2006 (the "Lease"), pursuant to which the Club leases from the City certain premises that are more particularly described in the Lease (the "Premises").

B. Section 5.7 of the Lease provides that if Tenant wishes to perform work, repairs or improvement to the S.F. Marina that would otherwise be City's responsibility, on the approval of the General Manager of the San Francisco Recreation and Park Department, such work (the "Rent Credit Work") can be performed by Tenant, and Tenant can receive an offset against the rent payable under the Lease in an amount and at a rate determined in accordance with the process described in Section 5.7. The process described in Section 5.7 anticipates that Tenant would contract for and be responsible for the work; it does not describe a process for work to be paid for by Tenant, subject to future offsets of rent, but performed by City or by a City contractor.

C. The City, as landlord under the Lease, has only limited responsibilities for maintenance and repair, such as the obligation to perform dredging required to bring the channel entrance to the S.F. West Harbor Marina to the depth specified in Section 9.2 of the Lease, however, as owner of the S.F. Marina, the City performs a variety of other maintenance, repair and improvement projects at the S.F. Marina. The provisions of Section 5.7 of the Lease neither clearly allow the parties to include those activities of the City that are not the City's responsibility under the Lease in the Rent Credit Work nor clearly prohibit such inclusion of those activities that are the City's responsibility.

D. City and Tenant presently desire to amend the Lease to (i) provide that the work that is eligible for consideration by Tenant and General Manager as Rent Credit Work includes work performed by or on behalf of City to repair, maintain or improve the S.F. Marina (other than work which is otherwise Tenant's responsibility under the Lease), and (ii) modify the provisions of Section 5.7 to allow City or City's contractors, rather than Tenant, to perform Rent Credit Work to be paid for by Tenant, subject to future offsets of rent, in accordance with a process and subject to the terms and conditions set forth in amended Section 5.7.

E. The City is planning a major improvement project in the West Harbor (the "Harbor Renovation Project"), and applied for a loan for the project (the "WHRF Loan") from the California Department of Boating and Waterways ("DBW"). The City is interested in



including certain seawall repair work in the Harbor Renovation Project, but the WHRF funds will not be sufficient for the performance of the additional work. No DBW funds are available for the purposes of this additional work. Tenant may be willing to pay for the additional seawall work, provided that Tenant can receive credit against the rent payable under the Lease for such payments, in the manner described in this Amendment.

F. City and Tenant presently desire to amend the Lease to make the revisions described in Recital D above and to confirm the manner in which the parties will determine whether Tenant will pay for the seawall repair work as Rent Credit Work and the terms and conditions that will apply to the rent credit for such work.

### AGREEMENT

NOW, THEREFORE, City and Tenant hereby agree as follows:

1. **Defined Terms.** Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Lease.

2. **Rent Credit Work Definition.** Effective as of the date hereof, the provisions of the first sentence of Section 5.7(a) of the Lease are deleted, and the following is substituted therefor:

"In the event that Tenant wishes to perform or pay the cost of some work performed by or on behalf of City to repair, maintain or improvement the S.F. Marina that is not Tenant's responsibility under this Lease, Tenant shall notify the General Manager and the City's Harbor Master of the proposed work, repair or improvement (the "Rent Credit Work") together with a detailed estimate of the cost of such Rent Credit Work, if Tenant proposes that such work will be performed by Tenant or a request for City's estimate of the cost of such Rent Credit Work, if Tenant proposes to pay the cost of work performed by or on behalf of City."

3. **Certain Rent Credit Work Performed By or on Behalf of City.** Effective as of the date hereof, the following is added to the Lease as Section 5.7(i):

"(i) If the Rent Credit Work will be performed by or on behalf of City, the provisions of Sections 5.7(a), 5.7(e) and 5.7(g) of this Lease and the following provisions of this Section 5.7(i) shall apply.

1. City shall require an architect or contractor selected by City and reasonably approved by Tenant to submit plans and specifications for the desired work (the "Proposed Rent Credit Work") to Tenant and the General Manager for review and approval.
2. If Tenant and General Manager approve the plans and specifications for the Proposed Rent Credit Work, the City will obtain a written estimate from a contractor or City department selected by City and reasonably approved by Tenant for the performance of the work, including permitting costs, together

with a work plan, and shall submit such estimate and work plan to the General Manager and Tenant for their review and approval.

3. If the General Manager and Tenant agree on the plans and specification, the work plan, and the budget for Proposed Rent Credit Work (including hard and soft costs), then at the election of the General Manager, the Proposed Rent Credit Work shall be performed by City or City's contractor. Tenant shall pay all sums due under the contract(s) for the Proposed Rent Credit Work, by, at the election of the General Manager, either paying the contractor for the cost of the work directly, or reimbursing City on demand for sums paid by City.
4. City shall keep accurate books and records of all costs incurred in accordance with accounting principles generally accepted in the construction industry, and not later than sixty (60) days after completion of the Proposed Rent Credit Work, City shall deliver to the Club an itemized statement of the actual costs expended by the City on the Proposed Rent Credit Work, accompanied by documentation substantiating such expenditures and the applicable dates such expenditures were made."
5. Any rent credit exceeding \$50,000 will require Recreation and Park Commission Approval.

4. Seawall Repair Work to Be Performed as Part of Harbor Renovation Project. City and Tenant would like to have a seawall repair project that was discussed by the parties in 2007 and is more particularly described in the attached Exhibit A (the "Proposed Seawall Repair Work") performed in connection with the performance of the Harbor Renovation Project. City and Tenant agree that the Proposed Seawall Repair work may be considered Proposed Rent Credit Work, as provided in Section 5.7(i) of the Lease (as amended by Section 3 of this Amendment), and that Section 5.7(i) and the following terms and conditions shall apply with respect to such Proposed Rent Credit Work:

- (1) Coast+Harbor will submit plans and specifications for the Proposed Seawall Repair Work to Tenant and the General Manager for review and approval.
- (2) If Tenant and General Manager approve the plans and specifications for the Proposed Seawall Repair Work, the City will obtain a written estimate from The Dutra Group for the performance of the work, including permitting costs, together with a work plan which coordinates the Proposed Seawall Repair Work with the work required for the Harbor Renovation Project, and shall submit such estimate and work plan to the General Manager and Tenant for their review and approval.
- (3) If the General Manager and Tenant agree on the work plan and the budget for the Proposed Seawall Repair Work (including hard and soft costs) (the "Approved Budget Amount"), they shall submit the estimate to DBW for DBW's approval of a change order for the Proposed Seawall Repair Work.
- (4) Provided that the General Manager, Tenant and DBW approves the plans, specifications and the Approved Budget Amount, then at the election of the

General Manager, the Proposed Seawall Repair Work shall be performed as a change order to City's contract for the Harbor Renovation Project. Subject to the provisions of Subparagraph (5) below, Tenant shall pay all sums due under the contract(s) for the Proposed Seawall Repair Work (up to the Approved Budget Amount), by, at the election of the General Manager, either paying the contractor for the cost of the work directly, or reimbursing City on demand for sums paid by City.

- (5) To the extent available, City shall pay for (or, if payments have previously been made by Tenant, reimburse Tenant for) the Proposed Seawall Repair Work in the following manner:
  - (i) First through any Harbor Renovation Project contingency reserves, which have been funded by the city, remaining following completion of the Harbor Renovation Project; and
  - (ii) Second, from the available fund balance in the City's Marina Yacht Harbor Fund, as maintained by the Controller as the repository for all revenue generated at the Marina, as of the date the Harbor Renovation Project is complete ~~[RPD confirm that this is the "available" date]~~ to the extent permitted under the WHRF Loan agreement with DBW.

Following the depletion of the foregoing fund sources, Tenant will provide the funds necessary for the Proposed Seawall Repair Work (up to the Approved Budget Amount), in exchange for monthly rent credits (reductions in the scheduled rental under the Lease) for the period described below, in an amount equal to the difference between the \$16,678.00 monthly Base Rent amount payable as of the date of this Amendment and the adjusted Base Rent amounts payable in accordance with Section 5.3 of the Lease, provided in no event shall the total rent credits exceed the sum actually paid by Tenant for the Proposed Seawall Repair Work. Such rent credits shall be made for the period commencing upon the first month following the transfer of the funds to the City or the commitment to the contractor, estimated to be July 1, 2012, at which point the remaining contingency funds and the available balance of the City's Marina Yacht Harbor Fund will be known, and ending on the earlier of (1) the date Tenant has been fully reimbursed for the cost of the Proposed Seawall Repair Work paid by Tenant (up to the Approved Budget Amount), or (2) November 30, 2026. In no event will City be obligated to provide any reimbursement in excess of the amounts described in this Subparagraph 5. A sample schedule of rent credit is attached to this Amendment as Exhibit B."

- (6) City shall also apprise Tenant of the status of the Harbor Renovation Contingency Reserve Fund as it pertains to the ability to first fund all or a part of the Work before the actual payment by Tenant and ensuing extent of Rent Credits for reimbursement to Tenant of the cost of the Work.

5. **Conditions Precedent.** The effectiveness of this Amendment is subject to the following conditions precedent (such date on which all of the following conditions precedent are satisfied or waived in writing by the parties is referred to herein as the "Effective Date"):

(a) The Board of Supervisors of the City and County of San Francisco shall have adopted a resolution approving the terms and conditions hereof

If the Effective Date has not occurred by January 1, 2012, or by such later date as may be agreed to by the parties in writing, then either party may terminate this Amendment by written notice to the other party and upon delivery of such notice this Amendment shall be null and void and of no force or effect.

6. **Counterparts.** This Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.

7. **Entire Agreement.** This Amendment sets forth the entire understanding of the parties on the subject matter of this Agreement. There are no agreements between Landlord and Tenant relating to the Lease other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Agreement.

8. **Lease in Full Force and Effect; Amendment Prevails.** Except as amended hereby, the Lease remains unmodified and in full force and effect. To the extent the provisions of this Amendment conflict with the provisions of the Lease, this Amendment shall prevail.

*[SIGNATURE PAGE FOLLOWS]*

City and Tenant have full executed this Amendment as of the date first written above.

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
PHILIP GINSBURG, General Manager  
Recreation and Park Department

**TENANT:** ST. FRANCIS YACHT CLUB

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED BY  
RECREATION AND PARK COMMISSION  
PURSUANT TO RESOLUTION NO. \_\_\_\_\_ DATED: \_\_\_\_\_**

\_\_\_\_\_  
Margaret McArthur, Commission Liaison

**Approved: Board of Supervisors Resolution No. \_\_\_\_\_  
Adopted on \_\_\_\_\_**

**APPROVED AS TO FORM:**

DENNIS HERRERA,  
City Attorney

By: \_\_\_\_\_  
Anita L. Wood  
Deputy City Attorney

**EXHIBIT A**  
**Description of Proposed Seawall Repair Work**

**EXHIBIT B**  
**Sample Rent Credit Calculation**

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>
St. Francis Yacht Club

<p><b>Executive Staff</b>  Patrick M. Nolan, Commodore; Peter B. Stoneberg, Vice Commodore; James M. Cascino, Rear Commodore</p> <p><b>Board of Directors</b>  John A. Siegel, Chairman  Robert L. Hanelt, Director  Peter E. Gilmore, Director  Bruce C. Smith, Director  James F. Simpson, Director  Heather G. Flick, Director  Edward Igoe, Director  Theresa Brandner-Allen, Director  Molly Spector, Secretary  Scott Triou, Treasurer  Maurice Fitzgerald, Jr., General Counsel  Erica Whitaker, Assistant Secretary  Christine Casey, Assistant Treasurer</p>
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<b>Contractor address:</b> On the Marina. San Francisco, CA 94123
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<b>Date that contract was approved:</b> <i>(By the SF Board of Supervisors)</i>	<b>Amount of contract:</b> Not to exceed \$550,000
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<p><b>Describe the nature of the contract that was approved:</b>  <i>Letter of Understanding</i></p> <p>The City and County of San Francisco ("City"), acting through the Recreation and Park Department ("RPD") as landlord, and the St. Francis Yacht Club as tenant, are parties to a lease dated June 1, 2006 (the "Lease").</p> <p>The Lease requires the St. Francis Yacht Club to pay the City a cash payment of \$1,200,000 (the "Lump Sum Funds"), to be used for improvements to the San Francisco Marina (the "Marina"), and sets forth the process for identifying the improvements to be funded from the Lump Sum Funds. This process identified the seawall repair as the top priority. The Club transmitted the final Lump Sum installment to City on September 14, 2007.</p> <p>The City is currently undergoing a \$24.8M improvement project in the West Harbor ("Harbor Renovation Project") which consists of the demolition of existing berths and construction of reconfigured berths, upgrading electrical and water dock utilities, installation of new barrier-free gangways, construction of new breakwaters, replacement of revetment, mole removal, dredging, and improvement of buildings.</p> <p>The Harbor Renovation Project is funded by a loan from the California Department of Boating and Waterways ("DBW"). Following the granting of the loan, the City desired to prioritize an unfunded project alternative, namely to replace wooden berths with concrete berths, which are preferred by DBW.</p> <p>The cost savings to the Department over the lifespan of the docks far exceeds the capital investment in concrete. Collectively, we anticipate cost savings to the city in an amount between \$1.5 and \$2 million.</p> <p>The decision to use concrete docks needed to be made at the outset of the project, thus RPD approached the St. Francis Yacht Club regarding the use of the Lump Sum Funds for the construction of concrete berths and the Club agreed to such usage.</p> <p>A Letter of Understanding was created which confirms that the St. Francis Yacht Club will agree to the City's using a portion of the remaining balance of the Lump Sum Funds to pay for the concrete change order instead of the originally contemplated purposes. The Letter of Understanding also states that the St. Francis Yacht Club and the City are very interested in having the</p>
--



seawall repair project discussed by the parties in 2007 performed as quickly as possible.

The City has confirmed that the proposed seawall repair falls within the scope of the City's general responsibility with respect to Marina renovations and its ongoing repair and maintenance, and the City would like to include this repair as part of scope of the Harbor Renovation Project.

The cost of the seawall repair project is not to exceed \$550,000 including construction, design, engineering and permitting costs. The final estimate for the seawall repair project will be submitted to DBW for its approval of a Seawall Repair Change Order, and if approved, the work shall be performed as a change order to City's contract for the Harbor Renovation Project.

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

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

*Lease Amendment*

These parties desire to amend this lease for the following reasons:

The Lease currently stipulates that if the Tenant wishes to perform improvements to the Marina that would otherwise be City's responsibility, on the approval of the RPD's General Manager, such work can be performed by Tenant, and the Tenant can receive an offset against the rent payable under the Lease. This process anticipates that the Tenant will contract for and be responsible for the work but does not describe a process for work that is paid for by the Tenant, subject to future offsets of rent, but is performed by City or by a City contractor.

In addition, the City, as landlord under the Lease, has only limited responsibilities for maintenance and repair, such as the obligation to perform dredging, however, as owner of the Marina, the City performs a variety of other maintenance, repair and improvement projects at the Marina. The provisions of Section 5.7 of the Lease neither clearly allow the parties to include those activities of the City that are not City's responsibility under the Lease in the Rent Credit Work nor clearly prohibit such inclusion.

City and Tenant presently desire to amend the Lease to (i) provide that the work that is eligible for consideration by the Tenant and RPD General Manager as Rent Credit Work includes work performed by or on behalf of City to repair, maintain or improve the Marina (other than work which is otherwise Tenant's responsibility under the Lease), and (ii) modify the provisions of Section 5.7 to allow City or City's contractors, rather than Tenant, to perform Rent Credit Work to be paid for by Tenant, subject to future offsets of rent, in accordance with a process and subject to the terms and conditions set forth in amended Section 5.7.

Comments:

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

**Filer Information** (Please print clearly.)

Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

