

**34<sup>TH</sup> AMERICA'S CUP HOST CITY AND VENUE AGREEMENT**  
**As Amended for Northern Waterfront Alternative**

This 34th America's Cup Host City and Venue Agreement ("Agreement"), dated November 9, 2010, is entered into by and among the City and County of San Francisco, a municipal corporation (the "City"), the San Francisco America's Cup Organizing Committee, a corporation organized under the California Public Benefit Non-Profit Corporation Law (the "Committee"), and the America's Cup Event Authority, LLC, a limited liability company organized under the laws of California (the "Authority"). The City, the Committee and the Authority are collectively referred to as the "Parties" and individually as a "Party."

**RECITALS**

A. The competition for the America's Cup, first held in 1851 at Cowes, England, is one of the oldest international sporting competitions and the world's premier yacht racing event. The Golden Gate Yacht Club of San Francisco ("GGYC") won the 33rd America's Cup match in Valencia, Spain on February 14, 2010 and is now trustee under the Deed of Gift dated October 24, 1887, between George L. Schuyler and the New York Yacht Club, as amended by final decisions of the Supreme Court of the State of New York (the "Deed of Gift"), governing the silver cup won by the yacht *America* in the first America's Cup competition. Under the Deed of Gift, GGYC is entrusted with the organization of the 34<sup>th</sup> America's Cup ("AC34" or the "Event").

B. GGYC has received and accepted the challenge of Club Nautico di Roma of Rome, Italy ("CNR"), and GGYC and CNR entered into The Protocol Governing AC34, dated September 9, 2010 and executed September 13, 2010 (together with all attachments, schedules and appendices thereto, and any amendment or any replacement protocol that governs AC34, the "Protocol").

C. GGYC and CNR have appointed the Authority, per Article 4 of the Protocol, to organize and manage AC34, in association with America's Cup Race Management ("ACRM"). GGYC intends to select a venue for AC34 on or before December 31, 2010 and has authorized the Authority and ACRM to assist it to receive proposals and negotiate terms with prospective interested venues as part of the selection process.

D. The City wishes to host AC34, including certain of the America's Cup World Series Pre-regattas, the America's Cup Challenger Series, the America's Cup Defender Series (if held) and the Match. The Committee has been organized and exists for public and charitable purposes to foster national and international amateur sports competition in accordance with Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and particularly to assist in securing and conducting AC34 in San Francisco, California and intends to qualify as such a tax-exempt organization. The Committee wishes to support and facilitate the City's hosting of AC34, including through assisting in

the procurement of sponsorship funding, posting of the Bond (as defined below) and performance of the Committee's other obligations under this Agreement.

E. The Authority, the City and the Committee intend that, if San Francisco is selected as host city for AC34, the Event will be organized in a manner, and take place under conditions, that maximize the sporting, social and economic benefits to all concerned, using technology and facilities of an appropriately high standard to ensure the fullest coverage by different media and the widest possible audience for the Event, and emphasizing resource sustainability and environmental stewardship in the staging of the Event.

F. The Authority will receive proposals from other cities to host AC34. The choice of the host city will be made by GGYC, in its sole discretion.

G. The Parties acknowledge that the City's approval of the Event is subject to environmental review required by the California Environmental Quality Act ("CEQA"), and the reservation of discretion that is required in connection with that review, as further described in Section 2.1. This Agreement establishes the framework for a transaction structure under which the City will act as the host city for the Event (if selected) and commitments of the Parties both before and after such selection, and (should it occur) commitments of the Parties after certification of the environmental analysis under CEQA.

H. The transaction framework may be summarized as follows: (1) subject to CEQA review and the reservation of discretion as provided in Section 2.1, the City, through its Port, will enter into Venue Leases (or licenses in certain instances) with the Authority for those facilities the Authority requires to stage the Event in the City (the "Venues"), as identified in the final Event Plan, and the term of each Venue Leases will continue for a specified period after the end of the Event, provided that the Authority may extend that term if the GGYC is successful in its defense of the America's Cup; (2) after expiration of the Venue Leases, in consideration of the Authority's investment in infrastructure required for the Event, the Authority will have commensurate long term development rights as to two of the Venues, pursuant to Disposition and Development Agreements (the "DDAs"), which will provide for the execution and delivery Legacy Leases and a Transfer Agreement on the satisfaction of certain conditions; (3) the execution of the Venue Leases (and licenses), delivery of possession of the sites subject to those leases and licenses, and the execution of the DDAs, would all occur simultaneously, promptly following the completion of environmental review for the Event under CEQA; and (4) the Authority does not have plans for development of any of the Venues that will be subject to the DDAs, and particular plans for development of those Venues after AC34 will be subject to such further environmental review as CEQA may require.

I. Because plans for AC34 have not been finalized, the Parties anticipate certain changes may be made by mutual agreement between the date of this Agreement and the execution of the Venue Leases, the DDAs for the Legacy Leases and/or the

Transfer Agreement. Accordingly, this Agreement provides flexibility to allow such changes without compromising the essential benefits of their bargain.

J. San Francisco leads the way on environmental policies and sustainability initiatives that grow the City's economy and protect the health of the City's communities. The Parties are committed to minimizing the environmental impact of hosting the America's Cup, with the goal of offering residents and visitors a truly sustainable event while raising the bar for future America's Cup host cities to implement environmental plans that will manage impacts associated with preparing for and presenting the regatta. The Authority, the City and the Committee intend that, if San Francisco is selected as host city for AC34, the Event will be a carbon neutral and zero waste operation and will emphasize resource sustainability and environmental stewardship. As appropriate, the Authority will endeavor to meet or exceed LEED or LEED-equivalent ratings pursuant to Chapter 13C of the San Francisco Building Code for permanent Event buildings.

K. San Francisco is proud of its diverse and productive workforce and believes that employers benefit from the innovative, skilled and talented human capital that calls San Francisco home. To support local hiring in the City of San Francisco, the Authority will participate in the San Francisco Workforce Development System and comply with mandatory local hiring program regulations pursuant to Chapter 6.22 and Chapter 83 of the San Francisco Administrative Code or successor laws or policies.

L. Small businesses are a critical component of the San Francisco economy. Fostering entrepreneurship and supporting small business growth contributes to the City's tax base and creates local jobs. The Authority, the City and the Committee intend that, if San Francisco is selected as host city for AC34, the Event will be organized in a manner that supports San Francisco's small businesses and incorporates local restaurants, retailers, building suppliers and local manufacturers.

M. The City is committed to ensuring that San Francisco's young people have the widest opportunities to learn, gain valuable experience and enjoy their City. The Authority, the City and the Committee intend that, if San Francisco is selected as host city for AC34, the Event will incorporate and support sailing related programs and activities for the City's children, youth and families. Preceding and during the Event, the Authority will conduct extensive outreach to children, youth, and families, conduct youth sailing courses, and provide event passes to San Francisco's children, youth and families at no cost. The Authority will commit to hiring young people to work at these events or to provide them with an internship. The Authority will create friendly open spaces in which children and youth will engage in various Event related activities. The Authority will create exciting learning spaces in which children, youth and families will have access to experiential and project-based learning related to the Event.

## AGREEMENT

### 1. Selection of Host City.

1.1 The selection of the host city for AC34 will be made by GGYC, acting in its sole discretion, by December 31, 2010. Unless written notice confirming that the City has been selected as the host city for the Event is delivered to the City and the Committee on or before December 31, 2010, this Agreement shall terminate and no Party shall be obliged to perform further hereunder, except that City will indemnify, defend and hold harmless the Authority and the Authority Affiliates from any claims asserted by existing Port tenants against the Authority or the Authority Affiliates for economic loss or damage to the extent such claimed loss or damage arises from the City's entering into this Agreement or its submission of a bid to the Authority to host AC34. The indemnity obligation under this Section 1.1 shall survive the termination of this Agreement.

1.2 If the City is selected as the host city for AC34, the City shall secure all of the rights, services, approvals and legislative or regulatory entitlements or exemptions required to successfully host the Event by or from the United States of America, the State of California, the City and County of San Francisco (where exercising its police powers or regulatory authority, but not as to the City's proprietary role as a Party to this Agreement), and all lawfully constituted agencies, authorities, boards, commissions and other instrumentalities of the foregoing having jurisdiction with respect to the Event (individually, a "Governmental Authority" and collectively, the "Governmental Authorities"). The Parties acknowledge that, where approvals and legislative or regulatory entitlements or exemptions lie within the exclusive jurisdiction or control of entities, public or private, other than the City, the City will exercise its best efforts to secure the full commitment of such concerned entity(ies) for the Event. The City shall use best efforts to enter into, as expeditiously as possible, Memoranda of Understanding ("MOU") with all relevant Governmental Authorities securing, on terms and conditions acceptable to the Authority and the relevant Governmental Authority, all such rights, services, approvals and legislative or regulatory entitlements or exemptions. These include:

(a) Authorizations from the United States Coast Guard, the Federal Aviation Administration and other relevant Governmental Authorities for periods of exclusive control of the Event Waterspace and the Event Airspace as contemplated by Sections 4.1 and 4.2.

(b) Approvals from the United States Park Service, the GGNRA and other relevant Governmental Authorities for use of the on-shore spectator areas identified in Section 4.3 that are not under the City's control.

(c) Authorizations from the Federal Communications Commission and other relevant Governmental Authorities for exclusive use of one hundred fifty UHF frequencies by the Authority, the Authority Affiliates, Competitors, Officials and media

for radio, voice and telemetry communication, as well as high definition television and internet broadcasting.

(d) All necessary federal legislative or regulatory actions as are necessary to authorize foreign built and/or flagged racing, support and spectator vessels to lawfully undertake race related activities (including the transportation of spectators) for the Event.

(e) Establishment and implementation of protocols and procedures to allow the temporary importation, without payment of any duties, taxes, fees or bonds, of goods and services related to the Event, including all vessels, equipment, personal effects for use during the Event by the Authority, ACRM, Competitors, the media, and any of their respective employees, contractors and agents, but to be re-exported within twelve months after the Event, save for goods and services consumed or otherwise disposed of, subject to the relevant importer complying with reasonable procedures and inspections.

(f) All necessary federal, state and local legislative or regulatory actions as are necessary for nonresident aliens involved in the Event (whether as employees or contractors of the Authority, the Authority Affiliate, Competitors, Officials or the media) and their dependents to be taxed on terms no less favorable than the income tax regime created for the 32nd America's Cup in Valencia, Spain, subject to the Authority providing the "general commitments in connection with taxes" referenced in Section 19 of the Valencia Host City Agreement; or, if such tax treatment cannot be achieved, completion of all necessary federal, state and local legislative or regulatory actions as are necessary so that the period of time nonresident aliens involved in the Event and their dependents are present in the United States for AC34 are excluded for purposes of the Internal Revenue Code "substantial presence" test for taxation of nonresident aliens.

(g) All necessary federal, state and local legislative or regulatory actions as are necessary for full recognition of foreign registration of vessels, and foreign licensing of vessel and vehicle operators, for nonresident aliens involved in the Event and their dependents.

(h) All necessary federal legislative or regulatory actions as are necessary to establish and implement protocols for simplifying the immigration process for nonresident aliens involved in the Event, and their spouses and dependents, to ensure such persons shall be entitled to enter the United States and lawfully remain in the United States, and to obtain necessary permits to work in the United States, until a reasonable time after the conclusion of the Event irrespective of their country of origin.

(i) All necessary federal, state and local legislative or regulatory actions as are necessary for the National Weather Service to provide real time data to Competitors and Officials free of charge, for the installation of land stations within 25 miles of the City, and for the installation of meteorological and oceanographic buoys in and near the Court Area.

1.3 To facilitate the City's performance under Section 1.2, promptly following its selection as host city, the City shall form a task force (the "Intergovernmental Task Force"), consisting of representatives with decision-making authority from Governmental Authorities with expertise and/or regulatory responsibilities for all matters relevant to the Event and its success, and shall maintain such Intergovernmental Task Force in effect until thirty days after the Match or the earlier termination of this Agreement. The Authority will, upon request, provide such information as may be reasonably required for the City to secure the rights, services, approvals and legislative or regulatory entitlements or exemptions required under Section 1.2.

2. **Review Under CEQA and Other Contingencies.**

2.1 The Parties acknowledge that the City cannot take discretionary actions related to the Event (including entering into the Venue Leases and the DDAs for the Legacy Leases and the Transfer Agreement) until the City has completed its environmental review of the Event as required by CEQA. For those actions that may be authorized only after environmental review under CEQA, the City, as lead agency under CEQA, shall retain the authority, in the exercise of all such discretion as the City possesses as lead agency under CEQA, to: (i) require modifications to the Event, including agreements pertaining to the Event, as are deemed necessary to mitigate significant environmental impacts if said impacts are identified through the environmental review process; (ii) require other feasible alternatives to avoid such impacts providing the project objectives on balance are met; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the Event based upon the information generated by the environmental review process.

(a) If selected as host city, the City as lead agency under CEQA will use its best efforts to complete the environmental review of the Event required under CEQA and, if such environmental review leads to a determination to proceed with the Event, to complete all actions necessary to obtain authorizations for the Event (including for the Infrastructure Work, as defined below) under both CEQA and applicable federal, state and local statutes, codes, ordinances and regulations, by no later than twelve months after the Authority has provided the City with sufficient information to prepare the "project" description required for CEQA review. The project description will take into consideration the possible need for substitution of Venues if the City is unable to deliver any of the Venues identified in the Space Plan.

(b) To the maximum extent permitted by law, the City shall be responsible for all costs of environmental review of the Event under CEQA. The City shall pay when due (or reimburse the Authority for) all governmental fees and charges payable in connection with the work to be performed (including, for plan checks, permits, variances and inspections associated with such work, regardless of the Governmental Authority imposing such fees or charges) and all fees of consultants retained as part of the CEQA process for the Event.

(c) In case of a determination under clause (iv) of Section 2.1, this Agreement shall terminate without liability to the City or the Committee, and without need for further action by any Party, except that the City shall give written notice confirming such termination to the Authority and the Committee within five days after such determination.

(d) In case of any other determination under Section 2.1 that would require material modification(s) of the Event, or to any agreement(s) of the City and the Authority contemplated by this Agreement that are subject to CEQA, the Authority may elect to terminate this Agreement without liability to the City or the Committee upon written notice to the City and the Committee, to be given within thirty days after the City notifies the Authority of its final, discretionary determination under CEQA. For this purpose, modification(s) will be “material” where GGYC determines, in its sole but good faith judgment, that such modification(s) is or are likely to impair the organization or staging of AC34, or deprive the Authority of the benefits anticipated under this Agreement.

2.2 If the City is selected as host city for AC34, this Agreement also is subject to the following contingencies that are to be satisfied prior to execution of the Venue Leases and the DDAs for the Legacy Leases and Transfer Agreement or such earlier date as set forth below:

(a) The Authority may terminate this Agreement if all the MOUs required under Section 1.2 are not provided to the Authority within 90 days, or, with respect to the federal agencies, 180 days, after the later of (i) the City’s receipt of notice that it has been selected as host city for AC34, or (ii) the City’s receipt of data beyond that included in the Event Plan and the Space Plan needed to complete an MOU with each relevant Governmental Authority (however, the City shall be deemed to have all such data except to the extent specified by written notice to the Authority delivered within ten days after receiving notice from a Governmental Authority of the need for such supplemental data from the Authority).

(b) The City or the Authority may terminate this Agreement without liability to the other Parties if they fail to reach agreement on the terms and conditions of the Venue Leases, the DDAs for the Legacy Leases and the Legacy Leases themselves, the Transfer Agreement, the People Plan, the Security Plan, the Advertising Plan, the Ambush Marketing Action Plan and the Waste Management Plan by the deadlines identified in this Agreement.

(c) The Authority may terminate this Agreement if the Authority determines that it is not economically feasible to hold the Event in the City, by delivering written notice to the City, upon the latter of either: (i) 180 days of the Effective Date of this Agreement; or (ii) ten business days after the City and the Authority agree upon the Infrastructure Value.

(d) The Authority or the Committee may terminate this Agreement if they are unable to agree on the Sponsorship Program by the deadline provided in Section 9.1.

(e) The Authority may terminate this Agreement if the Committee fails to meet any of the milestones for funding by Event Sponsors under the Sponsorship Program agreed to by the Committee and the Authority.

(f) The City may terminate this Agreement if the Authority does not provide satisfactory evidence of its financial ability to perform the Authority Infrastructure Work under Section 6.2 by the deadline provided under the applicable Venue Leases.

(g) The Authority may terminate this Agreement if the Authority determines, in the exercise of its good faith discretion, that the City or the Committee will be unable to timely and fully perform its respective obligations under this Agreement.

2.3 Except as otherwise provided in Section 1.1, the Parties shall have no liability for any termination under this Section 2 and each Party will assume the risk of any costs or expenses incurred by them, including those incurred prior to the date of any termination under this Section 2.

### 3. **The Event.**

3.1 If the City is selected as host city and this Agreement is not terminated by the City or the Authority under Section 2, those stages of the Event to be held in the City will consist of: (i) possibly one America's Cup World Series Pre-regatta in 2011; (ii) one or two America's Cup World Series Pre-regattas in 2012, each having an approximate duration of nine racing days (or, if there is no Pre-regatta in 2011 and only one Pre-regatta in 2012, having an approximate duration of eighteen racing days); (iii) the America's Cup Challenger Series having a minimum of 20 race days; (iv) the America's Cup Defender Series, if GGYC elects to hold one; and (v) the Match having a minimum of five racing days.

3.2 The Authority currently plans to stage the Event generally in accordance with the Event Plan, utilizing the Venues described in the Space Plan. The Parties acknowledge that the Event Plan and the Space Plan are preliminary and subject to change by mutual agreement of the Parties as provided in Section 3.4, and are dependent on numerous factors including, without limitation, due diligence review of the Venues, sponsorship support and other economic considerations, the scope and outcome of CEQA review and the timing, availability and conditions of required authorizations, approvals and exemptions from Governmental Authorities. References in this Agreement to the "Event Plan" and the "Space Plan" mean Exhibit A and Exhibit B, respectively, as the same may be modified from time to time by the Authority in accordance with this Agreement. The Authority acknowledges that: (i) the information in the Event Plan and the Space Plan will serve as the basis for the "project" description for environmental review of the Event under CEQA; (ii) the degree of specificity that the Authority is able



to provide in the Event Plan and the Space Plan will affect the City's ability to complete environmental review under CEQA by the date specified in Section 2.3; and (iii) subsequent changes in the Event Plan and the Space Plan affecting the environmental impacts of the Event may affect the date by which environmental review will be completed.

3.3 The Parties acknowledge the need for flexibility in the planning, organizing and conducting the Event and they agree to work cooperatively to assure such flexibility. The Authority shall give the City, the Committee and relevant Governmental Authorities sufficient advance notice of any material change to the Event Plan to permit the implementation of applicable commitments included in Section 1.2, insofar as the same are affected by changes to the Event Plan. The Authority acknowledges that support of various Governmental Authorities is essential to host the Event, and that any unilateral, material changes to the Event Plan by the Authority could materially impair the ability of the City, the Committee and/or Governmental Authorities to satisfactorily provide the Event support contemplated in Section 1.2. Accordingly, any material changes to Event Plan by the Authority are subject to the ability of the City, the Committee and applicable Governmental Authorities to meet their respective obligations as set forth in this Agreement, as such respective entities may reasonably determine. The City and the Committee nevertheless shall use their best efforts to accommodate such changes to the Event Plan as the Authority determines to be necessary or desirable. Furthermore, the Parties agree that, subject to City's and Governmental Authority's approval (if applicable), the Authority may relocate amongst the Venues shown on the Space Plan some or all of the activities or functions contemplated in the Event Plan.

3.4 Except with the City's prior written consent (and the Committee's prior consent with respect to costs or obligations of the Committee), the Authority may not amend the Event Plan to: (i) eliminate any stage of the Event to be held in San Francisco under Section 3.1; or (ii) reduce the duration of any stage of the Event to be held in San Francisco below the minimum number of days specified for such stage in the Event Plan. Such consent (or consents) also shall be required for any change the Authority desires to make to the Space Plan that would materially enlarge the Venues beyond those described in the Space Plan, materially increase the cost to the City, or materially accelerate the date the City is to deliver any of the Venues. As a condition to its or their consents under this Section 3.4, the City and/or the Committee may require appropriate modifications to other elements of the Space Plan or extensions of the delivery date of affected Venues under the applicable Venue Lease.

#### 4. **Securing Course Area, Airspace, and Official Visitors Sites.**

4.1 For all stages of the Event held in San Francisco, the City shall coordinate with the appropriate Governmental Authorities to secure exclusive water space on San Francisco Bay within the perimeter of the designated Course Area (the "Event Waterspace") from approximately 10:00 a.m. to 6:00 p.m. on race days. The Event Waterspace shall be made available to the Authority in accordance with a plan regulating vessel traffic on San Francisco Bay to secure the Race Areas as well as air traffic within and around the Race Areas (the "Water and Air Traffic Plan"). The Water and Air

Traffic Plan shall be developed in consultation with the Authority and ACRM by the City in cooperation with members of the Intergovernmental Task Force and/or other Governmental Authorities having relevant jurisdiction. The Water and Air Traffic Plan shall be agreed mutually by the Parties and relevant Governmental Authorities, and any material modification to the Water and Air Traffic Plan also requires the mutual consent of the Parties and applicable Governmental Authorities. The Water and Air Traffic Plan shall provide: (a) adequate and safe access to the Course Area for the boats of Competitors, the Officials, the media and others accredited by the Authority; (b) exclusive use of the Course Area for the boats of Competitors, the media, and Officials and others accredited by the Authority at all relevant times provided under the Event Plan; and (c) for the establishment and effective enforcement of traffic controls in the Event Airspace and the Event Waterspace. Under the Water and Air Traffic Plan, the City and/or other Governmental Authorities shall at no cost to the Authority adequately patrol and police the areas of Event Waterspace. Public and commercial vessels used for transportation or shipping will operate in designated navigation channels, which will remain outside of the Event Waterspace to the maximum extent permitted by Governmental Authorities with jurisdiction. The City and the Authority shall cooperate to ensure the least possible disruption of race activity, while reasonably accommodating scheduled ferry service and commercial shipping traffic in a manner consistent with such goal. Unauthorized vessels shall not be permitted within the Course Area during hours of exclusive use. The Water and Air Traffic Plan shall identify the waterway controls within the Water and Air Traffic Plan for the America's Cup World Series Pre-regatta(s), the America's Cup Challenger Series, the America's Cup Defender Series (if held) and the Match.

4.2 For all stages of the Event held in San Francisco, the City and the Authority shall, at no cost to the Authority and pursuant to the Water and Air Traffic Plan, coordinate with appropriate Governmental Authorities to secure, to the extent permitted under applicable law, limited periods of exclusive control of the air space located above an area extending laterally from the Course Area one-half mile in every direction, and also the air space above the America's Cup Village, in each case up to an altitude of 6,000 feet (together, the "Event Airspace"), within which only aircraft accredited by the Authority shall be permitted to operate from 10:00 a.m. to 6:00 p.m. on race days to allow filming and broadcasting of the Event and operation of other aircraft accredited by the Authority. The City also shall coordinate with appropriate Governmental Authorities to secure exemption from low-altitude flight restrictions within the Event Airspace (including along the waterfront). The Water and Air Traffic Plan shall identify the aircraft control requirements, restrictions and exemptions in the Event Airspace for the America's Cup World Series Pre-regatta(s), the America's Cup Challenger Series, the America's Cup Defender Series (if held) and the Match. The Water and Air Traffic Plan shall ensure the Event Airspace is adequately controlled by the Federal Aviation Administration and/or other appropriate Governmental Authorities necessary to preserve such exclusive control at no cost to the Authority.

4.3 The City and the Committee, working with the appropriate Governmental Authorities, shall use best efforts to make available during the Event the public on-shore

spectator areas and on-the-water spectator areas identified in the People Plan, and the City and the Committee shall use their best efforts to include in the on-shore spectator areas portions of Treasure Island/Yerba Buena Island, Angel Island, Alcatraz Island, Crissy Field, the Marina Green and the Marin headlands. The City and the Committee shall use their best efforts to procure for all on-shore spectator areas necessary permits for food and beverage sales (including sales or service of alcohol in secured or private areas), permission for stages and live entertainment at various locations, spectator grandstands, giant video screens, sponsor branding throughout the spectator areas, approvals for commercial partners to do product or promotional giveaways or other marketing activities, and protections against ambush marketing in accordance with the Ambush Marketing Action Plan.

4.4 As a further element of the People Plan, the City shall work with the Authority to develop and implement a plan to secure certain of the on-shore spectator areas and the on-the-water spectator areas which during portions of the Event will be under the Authority's exclusive control, subject to the approval of relevant Governmental Authorities exercising jurisdiction over such on-shore and on-the-water spectator areas.

4.5 The City shall ensure that all piers and seawall lots located in San Francisco from the Golden Gate Bridge south to Mission Creek and not included among the on-shore Event Venues are used during the Event in a manner that does not unreasonably interfere or compete with the Event and its related activities, or unreasonably limit the Authority's right to freely use the on-shore Event Venues or enter into commercial agreements relating thereto during preparation for the Event and the Event itself. However, the "clean venue" requirements of the Ambush Marketing Action Plan shall apply only to those areas from the Ferry Building south to Mission Creek. Fleet Week activities, regular or post-season games by the SF Giants and regular Port maintenance activities shall not be considered a violation of this covenant, except that Fleet Week activities and regular Port maintenance activities, to the extent they overlap with the Event, shall be scheduled so as not to interfere with the Event. To this end, the City and the Committee shall notify the Authority of any scheduled Port maintenance activities during months when Event races are scheduled to occur, and of Fleet Week and its constituent activities.

## 5. **Event Facilities.**

5.1 As set forth in the Space Plan, the City shall make available to the Authority the following Venues for the Event (each, an "Event Venue"):

(a) The City (acting through the Port) shall provide the Authority with exclusive possession and control of Pier 28, Piers 30-32, and Seawall Lot 330 as the long-term Venues for the Event (the "Long Term Venues"), subject to the following:

(i) The Authority's right to exclusive use of the Long Term Venues may, at the option of the Authority, continue until six months after the Match. Furthermore, as is reasonably necessary, the use of these Long Term Venues may be extended for future America's Cup events at the option of the Authority if the GGYC

succeeds in defending the America's Cup, is not then in Breach and, after the Parties negotiate a new host city agreement, elects to hold subsequent, successive America's Cup regattas in San Francisco (the "Successive Defense Option").

(ii) The City (acting through the Port): (i) will not use the east berth of Piers 30-32 for cruise calls, passenger embarkation and disembarkation, and vessel provisioning while Piers 30-32 are in use for any stage of the Event; and (ii) will use best efforts to explore alternative locations for cruise operations when Piers 30-32 are not needed for stages of the Event. If, however, no reasonable alternative is then available, with prior notice to the Authority, the City may the use of the east berth of Piers 30-32 for cruise operations when the berths at Pier 35 and Pier 27 are not available for that use.

(iii) The City shall deliver the Long Term Venues to the Authority with all of the Infrastructure Work for which the City is responsible under Section 6.1 below completed by the dates specified in Section 6.1.

(b) The City shall make available for the Authority's use, as further set forth in the Space Plan or the People Plan, the following Event Venues for shorter or intermittent periods of exclusive or nonexclusive use, as needed in the Authority's judgment to accommodate the Event: (i) exclusive use of Pier 19, Pier 23, Pier 27, and Pier 29; (ii) use of the Brannan Street Wharf (which may include limited periods of exclusive use during the Event to the extent permitted under the bond financing covenants for the Brannan Street Wharf and/or requirements of public use for projects subject to tax exempt financing); (iii) those portions of the on-shore and on-the-water spectator areas as are subject to the Authority's exclusive control (but only during such periods of exclusive control); and (iv) the water area between Pier 14 and Pier 22½ (collectively, the "Short Term Venues"), subject to the following:

(i) Except for Pier 27 and the Brannan Street Wharf, the Short Term Venues shall be provided under Venue Leases under which the Authority will have exclusive use and control, and shall be provided under licenses or permits issued to the Authority under which the Authority either will not have exclusive use and control or will have exclusive use and control for intermittent periods (and references in this Agreement to "Venue Leases" shall include such licenses or permits, except where otherwise expressly provided or required in context). The City shall deliver these Short Term Venues to the Authority by the dates and during the periods specified in Exhibit C to this Agreement.

(ii) Except for Pier 27, the Authority's right to use of the Short Term Venues subject to Venue Leases will continue for up to six months after the Match, as reasonably necessary. The Authority's use of these Short Term Venues also may be extended at the option of the Authority in connection with exercise of the Successive Defense Option.

(iii) If the physical condition of a Short Term Venue materially changes between the execution of this Agreement and the delivery of that Venue to the

Authority, the City shall offer functionally-equivalent space subject to the approval of the Authority.

(iv) The City shall provide a license for use of Pier 27 which shall: (A) permit the City, at its option, to construct a new Pier 27 cruise terminal building or to rehabilitate the existing Pier 27 shed during the period from 2011 to January 1 2013; (B) permit the Authority to make any required Event-related tenant improvements to Pier 27 during the period from September 30, 2012 to December 31, 2012, provided that the construction of these improvements shall be coordinated with ongoing City construction activities at the site and any scheduled cruise calls at Pier 27; (C) grant the Authority exclusive use of Pier 27 from January 1, 2013 through October 1, 2013 for use as a race-viewing facility and for team hospitality berths along the northern apron of Pier 27; and (D) at the Port's option, require the Authority, at its expense, to return the premises to the City free of all tenant improvements, including team hospitality berths, not later than 60 days after the Match. The Authority's right to use of the Pier 27 subject to the license will continue for up to 30 days after the Match, as reasonably necessary.

(c) The City shall provide to the Authority sufficient land, pier and water space at and around Pier 80: (i) to hold the America's Cup World Series Pre-regatta(s) in 2011 and/or 2012; (ii) at any time after the City is selected as host city and until six months after the Match, to store, maintain, launch and berth USA 17, the yacht that won the 33rd America's Cup in Valencia, Spain in February 2010; (iii) for the operation of a temporary heliport during the Event (the use of which shall be restricted to emergency services, media and regatta operations directly related to the Event); (iv) for race operations, staging and storage for the Event; and (v) for temporary facilities for Competitors and Officials during construction and development of facilities in other locations. These uses may require the Authority to occupy all or a portion of one of the existing sheds on Pier 80. The use of these facilities on Pier 80 shall be provided under a non-exclusive license and also may be extended, as reasonably necessary, in connection with exercise of the Successive Defense Option. The Parties will negotiate which portions of Pier 80 and its surrounding waters will be available for the Authority's use. The Authority acknowledges that Pier 80 is a Port maritime industrial complex designated as a port priority use area, and the Authority and the City shall, to the extent not inconsistent with the above, cooperate to avoid conflicts between the above uses and maritime uses of Pier 80 (or, where unavoidable, to minimize such conflicts). The Authority shall use best efforts to return to the Port possession of Pier 80 as soon as Pier 80 no longer is needed for the Event.

(d) The Port has provided the Authority with facility condition reports for each of the Event facilities that may become subject to Venue Leases. The Authority acknowledges receipt of these reports and agrees that, should the Venue Leases be entered into, the Authority will accept possession of all Event facilities under this Agreement in their "as-is" physical condition, with allowance for ordinary wear and tear and except as otherwise provided in this Agreement.



(e) If the Authority's use of the Event Venues is extended by exercise of the Successive Defense Option, then: (i) as to all Venues other than Piers 30-32, and Seawall Lot 330, possession shall be returned to the Port during the periods such facilities are not reasonably required by the Authority for more than one hundred eighty consecutive days and the Port shall be entitled to all rental and other consideration during such periods as possession is with the Port, and (ii) as to Piers 30-32, and Seawall Lot 330, possession shall be retained by the Authority (or its nominee) during the periods such Venues are not reasonably required by the Authority for the Successive Defense Option, and the Authority shall be entitled to all rental or other consideration attributable to use thereof during such periods

5.2 Provided the Authority is not in Breach of this Agreement, the City (acting through the Port) shall grant to the Authority or its nominee(s) the use of the Long Term Venues, the Short Term Venues, and the Pier 80 facilities described in Section 5.1(d), under separate leases and licenses in form satisfactory to the Authority (the "Venue Leases") as follows:

(a) The City shall deliver all facilities subject to Venue Leases free of tenants or other occupants. The City shall deliver the Venues strictly in their "as is" condition, provided the City shall not take any action from the date of this Agreement that would materially increase the cost to the Authority of using such Venue as intended by this Agreement. The City shall provide policies of CLTA title insurance from an issuer acceptable to the Authority covering the property to be leased under the Venue Leases.

(b) The Venue Leases shall convey exclusive possession and control of the premises (other than as set forth in Section 5.1), the demised premises shall include, to the maximum extent permitted by law and by other existing Port leases, the surrounding waters extending in all directions from the outermost edge of the pier deck or apron to the maximum distance the Port owns.

(c) The Venue Leases shall require that the Venues be used for purposes reasonably related to the Event, including: (i) Competitors' bases (including an adjacent mooring area and mooring facilities and on-shore working facilities); (ii) Officials' base(s); (iii) Event Sponsor, Commercial Affiliate and other hospitality areas; (iv) berthing and associated services and facilities for spectator vessels; (v) media center; (vi) America's Cup Village (public information recreation and commercial area/facilities); (vii) ACRM offices; (viii) the Authority's offices; (ix) accreditation center; (x) volunteers' center; (xi) a temporary helipad on Pier 80 to be used solely for emergency, media and regatta operations; (xii) storage facilities; (xiii) appropriate parking facilities for the Authority, Authority Affiliates, Competitors, Event Sponsors, Commercial Affiliates, and the media; and (xiv) other incidental uses reasonably related to staging the Event.

(d) No rent, additional rent or other like charges shall be payable to the City, including its Port, under the Venue Leases. The Committee shall pay: (i) to the City, all possessory interest taxes, utility taxes and other taxes, fees or charges imposed

by the City or any Governmental Authorities for or with respect to the possession and/or use of the Event Venues and all improvements, fixtures and personal property located thereon, excluding any personal property taxes levied on the race, tender, spectator, or other vessels; and (ii) to the applicable utility provider, the costs of all electricity, natural gas, water, sewage and refuse removal (the "Utility Costs") under the Venue Leases, but only to the extent of customary for the Event use, including vessel mooring utility services, but specifically excluding Utility Costs associated with large scale removal or demolition of vessels or equipment, and construction work relating to the Infrastructure Improvements under Section 6, and (iii) to the applicable service provider, the costs to connect fiber-optic cable for telephone and data communication services to the Venues as reasonably necessary for the Event. The Authority shall take appropriate actions to moderate and limit the consumption of water, electricity and gas to the extent feasible consistent with the operation of the Event and otherwise in accordance with commercially reasonable and environmentally responsible practices.

(e) So long as the Authority is not in Breach, the Venue Leases shall impose no restrictions on the assignment thereof to any of the Authority Affiliates or any sublease to any Authority Affiliate or Event Sponsor for uses consistent with the Event Plan. The Port shall have no right to receive any of the consideration payable in connection with any assignment of or sublease under a Venue Lease during the Event.

(f) The Venue Leases shall obligate: (i) the City to protect, defend, indemnify and hold harmless the Authority, its nominee(s), Authority Affiliates, and others regularly occupying the premises with the Authority's permission or agreement (collectively, "Authority Users") from all Losses that are attributable to the presence of Hazardous Materials on the premises at the commencement of the applicable Venue Lease, and any Hazardous Materials subsequently brought upon or otherwise impacting such premises by the act(s) or omission(s) of the City, its employees, agents and contractors (collectively, "City Agents"), except to the extent that Authority Users exacerbate any such Hazardous Materials contamination; and (ii) the Authority to protect, defend, indemnify and hold harmless the City and the City Agents from all Losses that are attributable to the presence or alleged presence of any Hazardous Materials on the premises where caused by the Authority or Authority Users or, where any Hazardous Materials condition is exacerbated by the Authority or Authority Users, the obligation of the City and the Authority to protect, defend, indemnify and hold harmless one another (as well as, respectively, the City Agents and the Authority Users), shall be apportioned in accordance with the degree of fault.

(g) The remaining terms and conditions of the Venue Leases shall be no less favorable to the Authority than what the Port has agreed to with other highly sought after, "credit" tenants making significant improvements to the premises and/or whose presence significantly enhances maritime and visitor-serving uses in or about Port properties.

(h) The Parties acknowledge that certain of the facilities proposed for Event use are subject to existing leases and other contracts that may conflict with this Agreement. To the extent permitted by law, the City at its sole expense shall modify,

suspend or terminate such leases and other contracts insofar as necessary to eliminate such conflict. If the City is not able to eliminate such conflicts, the City shall provide functionally-equivalent space subject to the approval of the Authority. Nothing in this Agreement shall require the City to exercise its powers of eminent domain.

5.3 The Authority shall be entitled to conduct further due diligence on the proposed Event Venues to determine their suitability for the Event and the timing and cost of repairs, alterations and improvements to be performed by the Authority to utilize the Event Venues for AC34 (including the Infrastructure Work under Sections 6.2). The City shall cooperate fully with the Authority in making available all data in the City's possession (or under the City's control) regarding the condition of the Venues for the Event (including any alternate venues considered as part of the CEQA review), and providing reasonable access to the Authority and its consultants to inspect and investigate such Venues.

6. **Infrastructure Works.**

6.1 If the Venue Leases and the DDAs for the Legacy Leases and Transfer Agreement are entered into by the City and the Authority, the City shall perform or cause to be performed the following:

(a) The City shall cause the US Army Corps of Engineers to demolish and remove Pier 36 by no later than January 1, 2013.

(b) The City shall complete the Brannan Street Wharf by no later than June 30, 2013.

(c) The City shall ensure under the People Plan, whether by temporary traffic controls or temporary or permanent pedestrian crossing improvements, that the movement of people across The Embarcadero roadway near Piers 30-32 can be accommodated safely and efficiently.

6.2 Under the applicable Venue Lease, the Authority shall perform or cause to be performed, or, if the City elects, pay the City to perform, the following:

(a) All pile replacements, substructure strengthening and deck repairs on Piers 30-32 as may be required by applicable laws and other work required for the staging of the Event or as the Authority otherwise deems necessary or appropriate;

(b) Consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties, demolition of the any portions of Pier 29 and Pier 27 that are required to permit race viewing, relocation and/or storage of the Pier 27 shoreside power installation, and demolition of any further portion of Pier 27 that the City elects, all as directed by the City in its sole discretion, subject to applicable governmental permits;

(c) If required for Event purposes, as determined by the Authority in its discretion, and subject to applicable governmental permits, dredging and pile removal



in the water area between Pier 14 and 22½, or, in the alternative, removal of the substructure, pilings, and footings at, or adjacent to, Pier 36, and dredging the water area between Piers 30-32 and Pier 38, if agreed by the City and the Authority; and

(d) All repairs and improvements to the other Event facilities as the Authority deems necessary or appropriate. The Authority may refrain from making any repairs or improvements (except as required by Sections 6.2(a), 6.2(b), and 6.2(c)) so long as the Authority's use of the particular Event facility lawfully can be accommodated without such repairs or improvements. The City shall cooperate with the Authority in regard to mitigating repair and improvements costs for the Event facilities that will not be subject to the Legacy Leases, it being understood that the City is not expecting the Authority to undertake significant repairs or permanent improvements for the Event other than as required under 6.2(a), 6.2(b), and 6.2(c). In addition, the Authority has the right to defer portions of the infrastructure work under Sections 6.2(a), 6.2(b), and 6.2(c) to the start of the applicable Legacy Lease, but in no event later than five years following the expiration of the applicable Venue Lease, so long as the Event facilities can be used for the Event in accordance with applicable codes.

6.3 The City expects that the Authority or the Authority Affiliates will expend \$55 million or more in both hard and soft costs of performing the Infrastructure Work for which the Authority is responsible under Sections 6.2(a) and 6.2(b). In negotiating the Venue Leases, the City and the Authority shall identify a minimum scope of work under Section 6.2 (the "Authority Infrastructure Work") that satisfies the pile and strengthening requirements, including seismic upgrades, shed demolition, and shoreside power relocation to meet the City's expectation.

6.4 The work in Sections 6.1 and 6.2 is collectively referred to as the "Infrastructure Work." Before the commencement of any Infrastructure Work, the Party responsible for such work shall obtain from its contractors' sureties, customary payment and performance bonds for the completion of such Infrastructure Work. Any proceeds from the performance or payment bonds will be used to complete the Infrastructure Work.

## **7. Long Term Development Rights.**

7.1 In consideration for the Authority undertaking the Infrastructure Work under Sections 6.2(a) and 6.2(b) above, and subject to the conditions precedent set forth in this Agreement, the City shall enter into the DDAs with the Authority or its nominee(s) under which the City, acting by and through the Port, shall ground lease to the Authority or its nominee(s) all of Piers 30-32, and Seawall Lot 330 under long-term leases (the "Legacy Leases") and, if the conditions for conveyance are satisfied, fee title to Seawall Lot 330 under the applicable DDA or a separate purchase and sale agreement (the "Transfer Agreement") as follows:

(a) The Legacy Lease of Piers 30-32 shall be for a term expiring 66 years after the expiration of the applicable Venue Lease, and the Legacy Lease of Seawall Lot 330 shall be for a term of 75 years expiring after expiration of the Venue

Lease, consistent with California Senate Bill 815 [enacted in 2007] (subject to earlier termination upon transfer of fee title under Section 7.1(h)). The Legacy Leases shall commence only after expiration of the Venue Leases of Piers 30-32 and Seawall Lot 330, respectively, and the satisfaction of customary contingencies, including the Authority's receipt of all necessary approvals for, and evidence of adequate financing for, the proposed development and clearance for such development following environmental review under CEQA. The Legacy Leases shall require a determination of consistency with the Public Trust by the State Lands Commission or the California Legislature.

(b) Following the expiration of the Venue Leases, the Authority or its nominee shall have the right to use Piers 30-32 and Seawall Lot 330 subject to the conditions set forth in the DDAs for the Legacy Leases and the Transfer Agreement. The Parties will develop plans for the long-term use of Piers 30-32 and Seawall Lot 330. Under the DDAs, the Authority shall have the right to exclusive use of the Long Term Development Sites for interim uses until all conditions to the closing of the applicable Legacy Lease are satisfied, but not longer than ten years. Allowed interim uses shall include any existing use, prior use (such as parking), and any other use that is consistent with applicable law, including CEQA and the Public Trust.

(c) The leasehold title conveyed under the Legacy Leases shall be subject to the effect of the Public Trust, any exceptions caused by the Authority or Authority Affiliates, and such other matters as the Authority may approve in writing in the exercise of its sole discretion.

(d) The financial terms of the DDAs and the Legacy Leases shall be comparable to terms to which the Port has agreed in long-term ground leases with other highly sought-after, "credit" tenants that: (i) perform significant capital improvements to the leased Port property; (ii) enhance maritime and visitor-serving uses on Port property and (iii) receive rent credits based on the amortized value of the tenant's capital improvements, which the Port will apply toward rent obligations under the Legacy Leases, which will be set at the Port's parameter rental rates for comparable space. The City shall provide a rent credit based on the amortized cost of the Authority Infrastructure Work against base and/or participation rent negotiated by the City and the Authority.

(e) The Legacy Leases may be assigned or subleased by the Authority to any of the Authority Affiliates upon prior written notice to, but without the requiring the consent of, the Port. Any other assignment of a Legacy Lease shall require the Port's prior written consent and provide that the Port shall have a right to participate in assignment consideration and sublease rents consistent with terms of the Port's recent long-term development agreements. The Legacy Leases shall obligate the Port to grant non-disturbance protection to subtenants on commercially reasonable terms and conditions.

(f) The Legacy Leases shall include reasonable and customary provisions for the protection of institutional lenders providing construction or permanent financing secured by one or more deeds of trust on the leasehold estates, including a requirement to engage in good faith negotiations regarding modifications to such lender

protection provisions customarily required by institutional lenders to obtain leasehold secured financing.

(g) The Legacy Leases shall obligate the City with the cooperation of the Authority, to create an infrastructure financing district (“IFD”) comprising the properties subject to the Legacy Leases (including Seawall Lot 330). The IFD will issue bonds secured by property tax increment generated in the IFD, the proceeds of which will be made available to reimburse the Authority and/or the City for Infrastructure Work, in amounts to be negotiated by the Parties. The Authority acknowledges that the City will be required to meet specific debt service coverage requirements to issue the IFD bonds and agrees that: (i) the City may reserve the tax increment funds required to meet IFD bond debt service coverage requirements for its own use; and (ii) if the Authority receives any IFD bond proceeds, the City may require appropriate financial assurances from the Authority to protect against the risk that any voluntary downward reassessment of the property within an IFD causes a shortfall in tax revenues pledged to service the bonds or satisfy the debt service coverage requirements.

(h) Beginning in 2011, the City and the Authority will jointly explore the removal of the common law public trust for commerce, navigation, and fisheries as interpreted by the State of California and the statutory trust imposed by the Burton Act, Chapter 1333 of the Statutes of 1968, as amended, by which the State of California conveyed to the City, in trust and subject to certain terms, conditions and reservations, the State’s interest in certain tidelands (collectively, the “Public Trust”) from Seawall Lot 330, either through an exchange under California Public Resources Code Section 6307 by which the Public Trust will be transferred to other City-owned property or removed by agreement with the State Lands Commission or State legislative action. In so doing, the Parties will devise a clear benefit to the Public Trust that would warrant such removal.

7.2 Upon execution of this Agreement and before the completion of environmental review under CEQA consistent with Section 2.1, the Authority and the City shall promptly commence and diligently continue good faith negotiations to establish the remaining terms and conditions to be included in the DDAs for the Legacy Leases and Transfer Agreement, consistent with this Agreement. The City shall offer remaining lease terms that are commercially reasonable compared to other long-term leases entered into by the Port within the previous ten years.

7.3 The Authority acknowledges that it will be responsible for undertaking and completing environmental review as required under CEQA for any future developments plans and uses to be allowed under the Legacy Leases. To the maximum extent permitted by law: (a) the City as the lead agency under CEQA will use best efforts to complete environmental review in order to assure prompt review of projects for long term development of Piers 30-32 and Seawall Lot 330; and (b) once environmental review is complete, the City shall cooperate fully with each lessee under the Legacy Leases in obtaining necessary permits and approvals for uses permitted by law and established policy required for long term development of Piers 30-32 and Seawall Lot 330 from other Governmental Authorities, including the Bay Conservation and

Development Commission, the State Lands Commission and the United States Army Corps of Engineers. The Authority (or its nominee as lessee under any Legacy Lease) shall be responsible for all costs of CEQA compliance and shall pay all governmental fees and charges payable in connection with the approvals needed for the work to be performed (including, for plan checks, permits, variances and inspections associated with such work, regardless of the governmental agency or authority imposing such fees or charges) and all fees of consultants retained as part of the CEQA process pertaining to the long term development of Piers 30-32 and Seawall Lot 330.

7.4 This Agreement is predicated on the concept of ensuring that the Authority will receive commercially reasonable long-term development opportunities in consideration of the Infrastructure Work that it performs for the America's Cup Village facilities on San Francisco's public waterfront.

(a) The Parties have estimated that the projected costs for the Authority's Infrastructure Work (the "Infrastructure Value") is \$55 million, and the City has offered long-term development rights on Piers 30-32 and Seawall Lot 330, rent credits based on the Authority's amortized costs of Infrastructure Work, and, potentially, property tax increment financing for some of the Authority's Infrastructure Work (collectively, the "Legacy Value"). To maintain the benefit of the bargain for both the Authority and the City, they have agreed to the following procedure should the Infrastructure Value be reduced or increased: (i) by a decision of the Authority in its sole discretion; (ii) as a consequence of revisions that mitigate environmental impacts of the Event; or (iii) by the determination under Section 7.4(b).

(b) No later than October 1, 2011, the Authority will provide the City with engineer's cost estimates for the Infrastructure Value, based on 60% construction drawings prepared by a California-licensed structural or civil engineer. The Port's engineer will verify the Authority's cost estimates, subject to "baseball" arbitration, if necessary, by a third-party engineer, to establish the agreed Infrastructure Value. Once determined, the Infrastructure Value will not be altered so long as the Authority satisfactorily completes the Authority's Infrastructure Work; Infrastructure Value will be reduced only by the costs that the Port must incur to correct or complete any portions of the Authority's Infrastructure Work that do not comply with the approved specifications or do not meet code requirements. If the Infrastructure Value is less than \$55 million, the Authority will have the option of either: (i) constructing additional infrastructure on Port property reasonably approved by the City to bring the Infrastructure Value back to \$55 million; or (ii) with the Port's consent, reducing the Legacy Value or changing the financial terms of the Legacy Leases in an amount equal to the reduction in the Infrastructure Value. If the Infrastructure Value is more than \$55 million, the Authority will have the option of either: (y) reducing the scope of the Authority Infrastructure Work to bring the Infrastructure Value back to \$55 million; or (ii) with the Port's concurrence, changing the financial terms of the Legacy Leases in an amount equal to the increase in the Infrastructure Value.

(c) No later than three months after any change in the Infrastructure Value under Section 7.4(a) or (b), but in no event later than the date the Parties enter into the Venue Leases, the Authority will provide to the City a proposal to rebalance the adjusted Infrastructure Value and the Legacy Value, and the City will accept the Authority's proposal or provide a counterproposal within 30 days. If the Parties do not resolve any differences after good-faith negotiations, the proposals will be submitted to a member of the Appraisal Institute with at least ten years' experience valuing industrial commercial properties in San Francisco, acceptable to both Parties, who will decide which proposal more accurately reflects the reduction in Infrastructure Value, based on the highest and best use of the parcels included in each Parties' proposal, and the financial terms of the Legacy Leases. The decision of the appraiser will be binding on the City and the Authority.

8. **Traffic and Transportation.**

8.1 Consistent with the Event Plan and in consultation with the Authority, the City shall coordinate with members of the Intergovernmental Task Force and/or other Governmental Authorities having relevant jurisdiction to prepare a plan describing a safe, reliable and efficient traffic and transportation scheme to facilitate the movement of up to an estimated 200,000 visitors on any one day to and from the Event (the "People Plan"). The People Plan shall be submitted for approval by the Authority no later than March 31, 2011. Once so approved, no change shall be made to the approved People Plan except with the Authority's and the City's consent. The City shall implement the People Plan at no cost to the Authority, except with respect to those Venue areas that are under the Authority's exclusive control and not accessible to members of the public.

8.2 The People Plan shall provide:

(a) Guaranteed access to the Venues in accordance with the Space Plan before, during and after the Event for the Authority, the Authority Affiliates, Competitors, Event Sponsors, the media and others together with their equipment. In the event the People Plan includes traffic restrictions, driving permits permitting access to the restricted areas shall be issued as necessary upon the Authority's request;

(b) An effective public transportation service to the public areas including the on-shore Venue and the on-the-water Spectator Areas during the Event, such service to be commensurate with the expected numbers of visitors;

(c) Parking spaces in and around the Venue as provided in the Space Plan for the Authority, the Authority Affiliates, Competitors, the media, the Event Sponsors and hospitality guests;

(d) Public parking lots and facilities as provided in the Space Plan which may also include, if public transportation alternatives are deemed inadequate to transport spectators from the parking facilities to the on shore spectator areas, the additional operation of a shuttle service; and

(e) An appropriate information and sign-posting system in and around the City and, in particular, on main accesses from highways, main entrance roads, airports and public transit stations, which shall be part of the mutually agreed upon Advertising Program under Section 10.2.

9. **Event Sponsorship, Bond and General Liability of the Committee.**

9.1 With the assistance of the City and the Authority, the Committee shall procure Event Sponsors who, pursuant to sponsorship agreements between the Authority and the Event Sponsors, will provide sponsorship revenue of not less than \$270 million to support the Event, all as provided below:

(a) The Authority owns all of the sponsorship rights associated with the Event and shall enter into all sponsorship agreements with Event Sponsors. The City and the Committee agree to use best efforts to introduce the Authority to potential Event Sponsors, to take any reasonable actions necessary to procure such persons as Event Sponsors for the Event and to otherwise assist the Authority as reasonably required by the Authority to procure Event Sponsors.

(b) The identity of all Event Sponsors, and the terms and conditions of the sponsorship arrangement, must be approved by the Authority in its sole discretion prior to the finalization of any sponsorship agreement(s) and all such agreements shall provide for the Authority to receive the full proceeds thereof after deduction of any broker, finder and any other costs reasonably incurred by the Authority in securing such sponsorship packages.

(c) The Authority shall create sponsorship packages with Event Sponsors in an aggregate amount of not less than \$270 million in accordance with a sponsorship program ("Sponsorship Program") developed by the Authority and approved by the Committee no later than January 31, 2011. The Committee shall be given credit for procuring an Event Sponsor where the Committee is primarily responsible for introducing such Event Sponsor to the Authority, provided such Event Sponsor and the Authority thereafter conclude a sponsorship agreement in accordance with the Sponsorship Program. The Authority may, in its sole discretion, reject as an Event Sponsor any person the Authority believes would violate exclusive sponsorship arrangements with other Event Sponsors or whose association with the Event could be harmful to the image or prestige of the Event.

(d) The Sponsorship Program shall establish specific milestones for measuring the Committee's sponsorship funding efforts to gauge the Committee's success in attracting Event Sponsors. To the extent the Sponsorship Program produces less than \$270 million the Authority may scale back the Event and/or call upon the Bond to compensate for increased costs or reduced economic benefits resulting therefrom.

(e) For the purpose of determining the amount of sponsorship revenue for which the Committee is credited under this Section 9 in transactions where the Event Sponsor provides value-in-kind, any goods and services provided by such Event Sponsor



must be acceptable to the Authority and shall be valued at the lowest price that the Authority would pay to purchase the good or service in an arm's length, cash transaction. The number and aggregate amount of value-in-kind sponsorships shall be governed by the Sponsorship Program.

9.2 The Authority shall enter into sponsorship agreements procured by the Committee for sponsorship revenue over and above that required under Section 9.1. The proceeds of such sponsorship agreements shall be shared between the Authority and the Committee under the Sponsorship Program. The Committee shall solicit local and regional event sponsors and donors acceptable to the Authority in its sole discretion and shall permit such sponsors and donors to promote and market themselves as official sponsors or supporters of the Committee on terms and conditions in the Sponsorship Program.

9.3 Within seven working days of completion of the environmental review pursuant to CEQA, the Committee shall provide the Authority with an irrevocable letter of credit in such form and by such issuer as may be acceptable to the Authority in its discretion (the "Bond"), which Bond shall be in the amount of \$32 million to provide compensation to the Authority in the event the City or Committee fails to perform its respective obligations owed to the Authority under this Agreement. The costs of procuring and delivering the Bond, and maintaining the Bond in effect, shall be borne by the Committee.

## 10. **Other Undertakings.**

10.1 By no later than March 31, 2011, the City shall develop in consultation with the Authority and subject to the Authority's approval, a comprehensive and efficient program (the "Advertising Plan") to promote the Event (including decoration in the theme of the America's Cup, flags, America's Cup logo, billboards and other promotional marketing and merchandise) within San Francisco in the key advertising areas, including the City's main squares, landmarks and significant public buildings and use its reasonable efforts to gain access to other access points, such as main roads and bridges leading to the Venue, particularly (i) along Highways 101 and 280 between the San Francisco International Airport and San Francisco, (ii) along Highways 580, 880 and 980 between the Oakland International Airport and San Francisco, (iii) on that portion of Highway 80 commonly referred to as the East Shore freeway; (iv) within a five kilometer radius of the America's Cup Village, and (v) within a two kilometer radius of any on shore spectator area or other venue for live Event activities. The Advertising Plan shall conform in all material respects to requirements imposed by the Brand Manual.

(a) The City shall ensure that Event Sponsors and, when appropriate, other Commercial Affiliates are associated (at no cost to them) with the Advertising Plan in an appropriate manner (in particular by the inclusion of Event Sponsors' logos and branding) as determined by the Authority.

(b) The Advertising Plan shall include an Event promotion element, as appropriate and in consultation with and subject to the approval of the Authority, in the City's generic promotional activities.

(c) The Advertising Plan shall require the Committee to install at the San Francisco International Airport, and will make best efforts to install at the Oakland International Airport, and staff for a minimum of twelve hours per day during each stage of the Event, a hospitality desk to welcome visitors, Event Competitors, Officials, employees of the Authority, the Authority Affiliates, Event Sponsors, and Commercial Affiliates.

(d) The City shall carry out the Advertising Plan and use its best efforts to facilitate all advertising and promotion of the Event as well as the organization of any promotional events by the Authority and/or official Event Sponsors and any commercial activities by other Commercial Affiliates, in particular by ensuring that any necessary authorizations and permits are granted easily and speedily.

(e) Subject to existing laws and contractual obligations, the City will maximize publically controlled advertising space in San Francisco and at San Francisco International Airport available to the Authority to promote the Event. The City also will use its reasonable efforts to gain access to other outdoor advertising sites, including in or near Oakland International Airport and San Jose International Airport for use by the Authority to promote the Event.

10.2 The City shall provide free of charge berthage on the City's waterfront for up to two special purpose America's Cup ships to transport Competitors' and Officials' equipment between Pre-regattas and the Event, and the City will work with the Committee to raise funds to offset all of the stevedoring costs (excluding Authority personnel) associated with the loading and unloading of such ships.

10.3 The City and the Committee will work with the Authority to develop by March 31, 2011, and thereafter implement a mutually agreed upon anti-ambush program (the "Ambush Marketing Action Plan"), to the full extent permitted by law, to protect the Event from ambush marketing, to protect from the sale of counterfeit products and to prevent ambush activities both proximate to the Event and elsewhere in the City and the San Francisco Bay Area.

(a) The City acknowledges the importance of protecting the rights (including the Intellectual Property Rights) owned by the Authority and those which are licensed or otherwise granted to the Event Sponsors and other Commercial Affiliates by the Authority and, to the full extent permitted by law, shall take all appropriate measures to prevent ambush marketing activities and to preserve the rights of Event Sponsors and other Commercial Affiliates to be associated with the 34th America's Cup.

(b) The Ambush Marketing Action Plan shall in particular include:  
(i) the identification of the existing legal basis to prevent ambush marketing; (ii) if deemed necessary or desirable by the City and the Authority, passing further specific



legislation in order to prevent any improper association with the Event; (iii) the prohibition during the Event and for period of one month before and one week thereafter of any unauthorized public display or advertising (other than those expressly authorized by the Authority) around or near Venue (as described in clause (v) of Section 10.1) areas in the City (and for those Venue areas outside the geographical boundaries of the City, the City will endeavor to include in the applicable Governmental Authority MOU similar ambush marketing prohibitions as allowed by the Governmental Authority exercising authority over that Venue area), as well as along main access roads or in key advertising areas; (iv) the prohibition of use of Event Airspace during the Event, and in respect of appropriately large perimeters around the airspace of the Venue to prevent any unauthorized aircraft or any other floating or flying device (in particular hot air/helium/other gas balloons or blimps) from being used to advertise or carry out ambush marketing activities; (v) the prohibition of the use of the Racing Area during the Event for advertising or hospitality uses except as authorized by the Authority; (vi) the prohibition of street vendors (other than the ones expressly authorized by the Authority) near the Venue or along the main access roads and the linking of concessions granted elsewhere in the City to the express condition that no product unduly seeking to capitalize on the Event shall be sold or promoted whatsoever unless authorized by the Authority; (vii) ensuring that effective legal action is taken against the vendors of pirate or counterfeit products; and (viii) generally, the efficient and effective enforcement of any relevant applicable law to prevent ambush marketing activities.

10.4 The City will use all lawful means to restrict noise and debris generating activities on public works and large private construction projects (if any) in areas reasonably proximate to the Event during the America's Cup World Series Pre-regattas and the Regatta to ensure the environment in and around the Event facilities will reflect well on San Francisco, provided that this obligation shall not extend to activities (if any) associated with the Bay Bridge Replacement or the Doyle Drive Replacement.

10.5 The City shall (a) assure that, for the duration of the Event no major public or private event which could be seen to compete with or have a negative impact on the successful organization, resourcing and staging of AC34, or its public and media exposure, shall take place in the City (it being understood, however, that regular or post-season play by the SF Giants and Fleet Week activities are excluded from this restriction, but such activities shall be coordinated so as not to unreasonably interfere with the Event), and (b) use reasonable efforts to coordinate with other Governmental Authorities regarding other significant events in the Bay Area to minimize negative impact on the Event.

10.6 In consultation with, and subject to the approval of the Authority, the City shall develop by no later than March 31, 2011, and thereafter implement a plan (the "Security Plan") to address all reasonable safety and security measures (including emergency and rescue services) to protect the Event, Competitors, Officials, Event Sponsors, the media, guests, and spectator vessels, and the public taking into consideration the Authority's wish for an efficient, inviting and open Event. The Security Plan shall include specific measures to ensure a high level of security within and

around all elements of the Venue and within and around sensitive locations such as airports, rail, BART, metro and bus stations and shall also include appropriate specific security measures for high profile visitors to the Event. Modifications to the Security Plan shall be subject to prior approval by the Authority, except that the City's Police command staff and other senior law enforcement officers providing security for the Event may, without the Authority's approval, make such emergency modifications to the Security Plan as they determine are necessary or appropriate under the circumstances. The Authority shall be responsible for security (other than emergency and rescue services) within areas requiring special authorization, ticketing or other non-public access. Except for areas restricted to authorized persons only (if any), the City shall be responsible for safety and security on and about City streets and sidewalks temporarily closed under the Event Plan and in all City public entry areas, and also shall supply emergency and rescue services throughout the Venue areas in the City.

10.7 The City and the Committee will coordinate and facilitate the services for non-US personnel relocating to the San Francisco Bay area with assistance in locating suitable housing and schooling and procuring other government or social services. The City will assist partners of Event related personnel, to the extent legally possible, with applications for work permits, the qualification for which is a matter solely of federal law.

10.8 The Authority, in consultation with the City and the Committee, will develop a volunteer program to recruit persons from the Bay Area sailing community and other civic minded individuals able and willing to provide volunteer assistance in regard to the Event.

10.9 The City and the Committee will coordinate with the City's not for profit convention and visitors bureau and use best efforts to secure sufficient hotel room nights, consistent with the Event Plan, for AC34 and all America's Cup World Series pre-regattas, at best discounted room rates in San Francisco hotels. The allocation of hotels or other types of accommodation among Competitors, Event Sponsors and other is subject to the prior written approval of the Authority. To this end, the City shall use its best efforts to provide hotels within San Francisco to sign option agreements at best discounted room rates, which shall cover: (a) 800 rooms in 4 or 5 star hotels during the period from three weeks before until three weeks after any America's Cup World Series Pre-regattas to be held in the City; (b) 2,650 rooms in 4 or 5 star hotels during the period from two days before until two days after any America's Cup World Series Pre-regattas to be held in the City; (c) 500 rooms in 4 or 5 star hotels during the period from eight weeks before the America's Cup Challenger Series until three weeks after the last race of the Match; and (d) 5,000 rooms in 4 or 5 star hotels during the period from two days before the America's Cup Challenger Series until two days after the last race of the Match. The option agreements shall be exercised by the Authority no later than three months prior to the commencement of the respective regatta forming part of the Event.

10.10 The City shall in consultation with the Authority prepare a waste management plan for the Venue by no later than March 31, 2011, which shall be consistent with best environmental practices and approved by the Authority and the

City's Department of the Environment (the "Waste Management Plan"). The City shall ensure that the Waste Management Plan is implemented and carried out until six months after the Match. The City shall provide the necessary equipment for carrying out the Waste Management Plan.

**11. Benefits to Host City.**

11.1 It is anticipated that the Event will generate broad media coverage (press, radio, television, new media) and, as a consequence thereof, that the City will benefit from such coverage and in particular television coverage either in the content of the programs, or in the use of the City's name on screen or in comments or through coverage of the City as part of the Event. The Authority will use its best efforts to optimize the association of the City and/or its name with the Event.

11.2 The Authority has developed and will throughout the Event maintain in operation an official and exclusive internet site for AC34 ([www.americascup.com](http://www.americascup.com)) for the purposes of presenting all the relevant information in connection therewith (the "Official Website"). The Authority shall ensure that the Official Website prominently displays a link to the City's own internet site, and the City shall ensure that a link to the Official Website is prominently displayed on the City's own internet site. The City shall be entitled to include on the Official Website a page welcoming Event visitors to San Francisco and a separate page providing up-to-date data on street closures, alterations to public transportation routes or schedules and like information relating to the Event. The City website shall not in any way duplicate the Official Website, which alone shall contain specific and detailed information about the Event such as detailed programs, Competitors information, rankings, live scoring, etc.

11.3 The Authority will prepare and publish or procure the preparation and publication of an official program relating to the Event (the "Event Program"). The City shall have the right to include one full color advertising page in the Event Program to promote the City. The Event Program will include a minimum of two pages of content featuring aspects related to the City, and the Bay Area. Such pages will be developed in cooperation with the City.

11.4 The City and the Committee jointly shall have the right to use at cost an exhibition/information stand/display in the America's Cup Park to promote the City and the Bay Area. The City shall not operate commercial activities in such stand/display. The cost of the stand/display as well as any cost for its maintenance and operation shall be borne by the City or the Committee.

11.5 The City and the Committee jointly shall have the right to receive, at no additional charge (save catering costs), the following single day Event passes giving access to the Foredeck Club (or to other hospitality facilities during Pre-Regatta races in the City) and to spectators' boats on race days:

<b>REGATTAS</b>	<b>Event single day passes</b>
<b>AC World Series regattas in SF</b>	(1) 20 per day
<b>AC Challenger/Defender Selection Series</b>	30 per day
<b>AC Challenger Selection Series Final</b>	10 per day
<b>AC Match</b>	10 per day

Catering costs in connection with the above Event passes are to be borne by the City and/or the Committee. The above Event passes will be made upon request subject to adequate advance notice given to the Authority within the deadlines set by the Authority to this effect and availability for the concerned dates. In the event, the requests for certain dates are in excess of the available capacity, the Authority reserves the right to apportion the available capacity between the various potential users as it will, in its sole reasonable discretion, deem fit.

11.6 Subject to availability and upon reasonable advance request, the following additional Event passes/Event hospitality access can be purchased on preferential terms and conditions, by the City and/or the Committee: (i) single day accesses to the Foredeck Club without boat access; (ii) Hospitality Table within the Foredeck Club without boat access; (iii) right to book the Foredeck Club or part thereof for private functions (outside normal operation days or times). Costs in connection with the above are in any event to be borne by the City and/or the Committee.

11.7 Each of the City and the Committee shall receive one flag that will give access to one spectator boat to be arranged by and at the cost of the City and/or the Committee within the on-water spectator area. Such boat shall not exceed 45 meters in length and may carry on each side up to a maximum total surface of 6 square meters of branding (on each side). Such branding shall be solely branding of the City and the Committee and shall contain no commercial branding whatsoever. The City and the Committee shall only give access to the boat to its representatives or guests, and shall not use such in association with any commercial activities.

11.8 Apart from personnel accredited as part of the City's operational functions, the City and the Committee each shall be entitled to ten general accreditations providing permanent access on race days to the Foredeck Club for the personal use of representatives of the City, subject to one week's notice to the Authority. The City may allocate some of these accreditations to the Committee.

11.9 Event passes are for the exclusive use of the City's representatives and guests and are not for resale. However, the City may allocate any of the Event passes available to the City for use by the Committee.

**12. Postponement and Termination.**

12.1 The Authority reserves the right to postpone any Pre-regatta(s) and the Regatta (or elements thereof) for a period of up to twelve months from the dates specified in the Event Plan. The Authority shall consult with the City in advance on any planned or anticipated postponements and the Event Plan shall be revised in accordance with Sections 3.3 and 3.4, provided further that the Parties shall mutually agree on the re-scheduling of their obligations as a result of the postponement.

12.2 Without prejudice to any other rights or remedies it may have, the Authority shall be entitled to terminate this Agreement if at any time before or during the Event:

(a) The United States is in a state of war, civil disorder, boycott, embargo decreed by the international community or in a situation officially recognized as one of belligerence (excluding, however, the current US military engagements in Iraq and Afghanistan) that in the Authority's sole but good faith judgment are reasonably likely to have a material adverse affect on the organization or staging of the Event; or

(b) The City or the Bay Area is affected by fire, flood, earthquake or act of God, strikes, labor disputes or contagious diseases which are reasonably likely to materially, adversely impact upon the organization or staging of any part of the Event; or

(c) The Authority has reasonable grounds to believe that the safety of the Competitors, the Event personnel or the public may be threatened or at risk; or

(d) The City or the Committee commits a Breach of any of its obligations under this Agreement.

12.3 Without prejudice to any other rights or remedies it may have, the City and the Committee each shall be entitled to terminate this Agreement if:

(a) The Authority shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or

(b) A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Authority and shall not be dismissed within thirty days after the filing thereof; or

(c) The Authority commits a Breach of any of its obligations under this Agreement.

**13. Intellectual Property.**

13.1 The City and the Committee acknowledge that the 34<sup>th</sup> America's Cup and all media rights and other intellectual property rights (the "Intellectual Property Rights") related to the Event are the exclusive property of the Authority, and in the case of America's Cup trademarks are the exclusive property of America's Cup Properties, Inc. ("ACPI").

13.2 The City and the Committee acknowledge that they shall not obtain any ownership of any media rights and other Intellectual Property Rights and confirm that, if any Intellectual Property Rights are held by the City or the Committee or any other entity under the control of the City or the Committee, the City or the Committee (as applicable) shall assign such rights or procure that they are assigned to the Authority upon the Authority's request. The provisions of this Section 13.2 shall not apply to any intellectual property rights belonging to the City or the Committee which are in existence prior to the date of this Agreement, which shall remain vested in the City, the Committee in accordance with the terms of those rights.

13.3 The Authority shall design and develop a logo or logos for the Event (the "Event Logo"). The Authority shall ensure that each Event Logo is registered as a trademark within the City. After February 15, 2011, the Authority shall grant to the City and the Committee the non-exclusive right to use each Event Logo as specified in the Brand Manual in the communication and promotion of the City, the State of California and the United States, provided that such promotion shall be generic and not in any way associated with commercial entities, products, services or any third party's activities unless otherwise expressly approved in writing by the Authority, in its sole discretion, for each unique use.

**14. Insurance.**

14.1 Prior to the commencement of the Venue Leases, the Parties shall agree upon insurance coverage that each shall carry, and that other persons including Competitors shall be required to carry, throughout the Event. Insurance coverage shall include such insurance products or an equivalent product or mechanism as are appropriate for a major international sporting event, as agreed by the Parties.

14.2 The Venue Leases shall impose other reasonable and customary insurance requirements on the City and the Authority.

14.3 Each of the City, the Committee and the Authority hereby waives as to the other Parties and releases such other Parties and persons of and from, any and all claims for Losses to the extent covered under any insurance maintained by the Party granting such waiver. Each of the City, the Committee and the Authority shall cause its respective insurers to waive rights of subrogation consistent with the foregoing waiver and release.



15. **Indemnity.**

15.1 The City and the Authority shall agree on their respective indemnity obligations in the Venue Leases. The Venue Leases will allocate liability for risks arising from the Event in an appropriate and commercially reasonable manner, generally assigning the indemnity obligations of each of the Parties for their respective Event related activities.

15.2 Prior to their entry into the Venue Leases, each Party shall defend, indemnify and hold harmless the other Parties (and their respective agents, employees and affiliates) to the extent of Losses attributable to the negligence or intentional acts of the indemnifying Party.

16. **Representations and Warranties.**

16.1 The City represents and warrants that: (i) it has full capacity and authority to enter into and perform under this Agreement; and (ii) this Agreement is executed by duly authorized representatives of the City.

16.2 The Committee represents and warrants that: (i) it has full capacity and authority to enter into and perform under this Agreement; and (ii) this Agreement is executed by duly authorized representatives of the Committee.

16.3 The Authority represents and warrants that: (i) it has full capacity and authority to enter into and perform under this Agreement on behalf of GGYC as trustee of the America's Cup pursuant to the Deed of Gift; and (ii) this Agreement is executed by a duly authorized representative of the Authority.

17. **Limitations on Liability.**

17.1 Except as provided below, nothing in this Agreement shall limit the liability of either Party for: (i) any act or omission for which liability may not be limited by law; or (ii) death or personal injury caused by its negligence or that of its agents, employees or contractors; or (iii) fraud.

17.2 Subject to Section 17.1, no Party to this Agreement shall be liable to any other Party for any indirect or consequential loss or damage, loss of profit, loss of business opportunity or damage to goodwill.

17.3 The Authority and the City acknowledge and agree that the Committee is a newly formed not-for-profit corporation with no assets or staff, no current sources of income or commitments of contributions, and no current fundraising capacity, that the Committee accordingly does not currently have the ability to comply with all of its commitments herein, and that:

(a) The City acknowledges and agrees that it is relying exclusively on the Committee's agreement to conduct its activities in accordance with the standard of

conduct agreed to in this Agreement as the inducement by the Committee for the City to enter into this Agreement.

(b) The Authority acknowledges and agrees that it is relying exclusively on the Committee's agreement to conduct its activities in accordance with the standard of conduct agreed to in this Agreement as the inducement by the Committee for the Authority to enter into this Agreement; and that, up to completion of environmental review under CEQA, the Authority's right to terminate the Agreement in Section 2.2(e) is the sole remedy for failure by the Committee to meet its obligations under this Agreement.

(c) The Authority and the City acknowledge and agree that the Bond to be provided by the Committee in accordance with this Agreement constitutes the only asset to secure the performance by the Committee of its obligations under this Agreement, and that the recourse under this Agreement of the Authority against the Committee shall be limited to a claim against the Bond.

(d) The Authority and the City acknowledge and agree that they are not relying in any manner on any current or future commitment, duty, liability or obligation of, or any statements, representation, or actions of, any director, officer, employee, representative, donor, potential donor, volunteer, honorary member or agent of the Committee or any of their respective affiliates (collectively, the "Committee Persons"). The Authority and the City acknowledge and agree that no Committee Person shall be liable to the Authority, the City or any other person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Committee Person in his, her or its capacity as such, and that such Committee Person shall not be personally liable in any manner for (and the Authority and City agree not to sue any Committee Person for) any liabilities or obligations of the Committee, including, without limitation, any liabilities or obligations of the Committee under this Agreement, and the Authority and the City agree to look solely to the Committee pursuant to Section 17.3(b) with regard to any remedy under this Agreement.

17.4 In order to satisfy the City's Charter as to the City's financial liability under this Agreement, the City's total financial liability in the event of a default by the City under this Agreement will not exceed funds available under the Bond. Notwithstanding any other provisions of this Agreement, the Authority's and the Committee's sole and exclusive financial remedy against the City for the City's failure to perform any and all of its obligations under this Agreement shall be limited to the Bond, but such limitation of the City's financial liability shall not apply to any recovery under the City's insurance policies nor prohibit the Authority from exercising its rights of termination.

17.5 The Authority's financial liability in the event of a default under this Agreement will not exceed \$32 million. Notwithstanding any other provisions of this Agreement, the City's and the Committee's sole and exclusive financial remedy against the Authority for the Authority's failure to perform any and all of its obligations under this Agreement shall be limited to \$32 million but such limitation of the Authority's



financial liability shall not apply to any recovery under the Authority's insurance policies nor prohibit the City from exercising its rights of termination.

17.6 Notwithstanding the provisions of Sections 17.4 and 17.5, the foregoing limitations of liability will not apply to the Venue Leases, the DDAs, the Legacy Leases, the Transfer Agreement, or the proceeds of the performance bonds covering Infrastructure Work, once the City or the Authority has commenced the construction of such Infrastructure Work.

17.7 The Authority and the City agree that the Infrastructure Work shall be included in the applicable Venue Lease, which terms will include all rights and remedies under the law and in equity, including specific performance. The Venue Leases will acknowledge that the remedy of specific performance has been bargained for in exchange for the limitations of liability set forth in this Agreement.

18. **Governing Law, Mediation and Arbitration.**

18.1 This Agreement and/or any issue in connection with its validity, execution, performance and interpretation shall be subject to the laws of the State of California.

18.2 The Parties hereby appoint JAMS, or such other mediator the Parties mutually agree where the Parties are unable to reach consensus on any of the Plans, agreements or other matters that are to be negotiated and agreed upon by the Parties after the date of this Agreement. Any such mediation shall be non-binding, held in San Francisco, California (or such other place as may be agreed by all Parties) and shall be initiated within five business days after a Party serves notice on the other Parties requesting mediation, which notice shall specify with reasonable particularity both the matter(s) of disagreement between or among the Parties and the resolution of such disagreement proposed by the Party initiating mediation. If a Party fails to participate in any mediation requested by one or more other Parties, the Party or Parties failing to participate in mediation shall not be entitled to recover its or their attorneys' fees and costs in any arbitration concerning the issues the Party seeking mediation asks to address in the mediation or any matters reasonably related thereto.

18.3 Any dispute or difference arising out of or in relation to this Agreement that cannot be amicably settled shall be finally adjudicated by arbitration under the auspices of, and in accordance with the rules of, the ICC International Court of Arbitration ("ICC") as presently in force or hereafter modified. The place of arbitration shall be mutually agreed by the Parties or, failing such agreement, determined by the ICC. The panel shall be composed of three arbitrators selected in accordance with the ICC rules.

18.4 The City irrevocably and unconditionally waives the application of any legal provision under which it may claim immunity from any lawsuit, arbitration or other legal action. Such waiver shall apply not only to the jurisdiction but also to the

recognition and enforcement of any judgment, decision or arbitral award or any other possible legal proceedings.

18.5 Immunity (whether claimed by the City or by a Governmental Authority the performance of which the City has agreed to procure) shall in no event constitute a valid defense of the City under this Agreement, whether procedurally or substantively.

18.6 In consideration of the limitations of liability included in Section 17, the City and the Authority agree that specific performance will be an available remedy to enforce the respective obligations assumed by them under this Agreement.

19. **Miscellaneous.**

19.1 Except as expressly provided otherwise in this Agreement or agreed in writing by the Parties, each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

19.2 No delay or forbearance by any Party to exercise or enforce any of its rights or remedies shall operate as a waiver by that Party of any such rights or remedies.

19.3 No Party may assign, transfer, charge, encumber, subcontract or sub-license any of its rights or obligations hereunder without the prior written consent of the other Parties. However, the Authority may assign any or all of its rights and obligations under this Agreement without consent to GGYC or any of the Authority Affiliates. No assignment or delegation shall relieve the Parties' of their obligations under this Agreement.

19.4 Nothing in this Agreement is intended to, or shall be deemed to, create constitute a joint venture or partnership between the Parties or authorize any Party to act as agent any other Party. No Party shall act in the name of, on behalf of or otherwise bind, or purport to bind, the other Party.

19.5 This Agreement (including the Exhibits and Schedules hereto, which are by this reference incorporated herein) constitutes the whole agreement between the Parties and supersedes any previous agreement, understanding or arrangement between them relating to the subject matter of this Agreement.

19.6 Each Party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

19.7 If any provision, or any part of any provision, of this Agreement shall be held to be invalid, illegal or unenforceable: (i) such provision, or such part, shall be severed without effect to the remainder of the provisions, and the remainder of such provision, which shall continue in full force and effect; and (ii) the Parties shall immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability through the substitution of a valid, legal and enforceable provision, or

part of a provision, which achieves, to the greatest extent possible, the economic, legal and commercial objectives of the invalid or unenforceable provision, or part thereof.

19.8 This Agreement may not be varied, amended or modified except by an agreement in writing expressed to be a variation, amendment or modification of this Agreement signed by a duly authorized representative of each Party.

19.9 All notices required or permitted under this Agreement shall be in writing and shall be sent by facsimile (to the facsimile number specified below), hand delivery, certified mail or overnight courier, to the attention of the Party specified below. The date of transmittal if transmitted by facsimile (provided an appropriate confirmation is obtained) or the date of receipt if by hand delivery, certified mail or overnight courier shall be deemed the date the notice or statement is given. If transmitted by facsimile, a copy of any such notice shall also be sent by certified mail, return receipt. Notices shall be sent to the following addresses:

<u>The City:</u>	<u>The Committee:</u>	<u>The Authority:</u>
Jennifer Matz	Mark Buell	Craig Thompson
Mayor's Office, Room 448	P.O. Box 29921	
City Hall	San Francisco, CA 94129-	
1 Dr. Carlton B. Goodlett Pl	9921	
San Francisco, CA 94102		
415-554-6511	415-248-7830	
Jennifer.matz@sfgov.org	mbuell@aol.com	craig.thompson@americascup.com

20. **Definitions and Interpretation.**

20.1 As used in this Agreement, the following words and phrases are defined terms and shall have the meanings as described below:

"America's Cup World Series" shall mean the regattas described in Section 1(l) of the Protocol.

"America's Cup Challenger Series" shall mean the series of races described in Article 25 of the Protocol.

"America's Cup Defender Series" shall mean the series of races described in Article 26 of the Protocol.

"ACPI" has the meaning given it in Section 13.1.

"ACRM" has the meaning given it in Recital C.

"America's Cup Village" has the meaning given it in Section 1(k) of the Protocol.

"AC34" has the meaning given it in Recital A.

“Advertising Plan” has the meaning given it in Section 10.1.

“Agreement” means this Agreement and any amendments hereto signed by the Parties in accordance with the provisions of this Agreement.

“Ambush Marketing Action Plan” has the meaning given it in Section 10.4.

“Authority” means the entity so identified in the Preamble to this Agreement.

“Authority Affiliates” shall mean ACRM and any entities from time to time controlled by, or under common control of the Event Authority or ACRM, where control means ownership, directly or indirectly, of at least 51% of the outstanding voting securities or capital stock of such entity, or any other comparable equity or ownership.

“Authority Infrastructure Work” has the meaning given it in Section 6.3.

“Authority Users” has the meaning given it in Section 5.2(g).

“Bay Bridge Replacement” shall mean the current project by the State of California to replace the eastern span of the San Francisco – Oakland Bay Bridge.

“Bond” has the meaning given it in Section 9.3.

“Brand Manual” means the manual to be issued by the Authority setting out, among other things, the rules and specifications for the reproduction and use of marks, designations and logos in connection with AC34 (including the rules and specifications applicable to the use of the Event name and of any Event Logo by the City and/or the Committee).

“Breach” means the failure of any Party to perform its material and mandatory obligations under this Agreement, where such failure continues for more than thirty days after written notice of default from any other Party, which notice shall specify both the default and the acts necessary to cure such default; provided, that where more than thirty days reasonably is required to cure such default, no Breach shall occur so long as the Party in default promptly commences and diligently and continuously pursues to completion all actions necessary to cure such default.

“CEQA” has the meaning given it in Recital G.

“City” means the entity so identified in the Preamble to this Agreement.

“City’s Agents” has the meaning given it in Section 5.2(g).

“CNR” has the meaning given it in Recital B.

“Commercial Affiliates” means any entity to which the Authority grants any marketing or commercial rights in relation to AC34, including an Event Sponsor.

“Committee Persons” has the meaning given it in Section 17.3(a).

“Competitor” has the meaning given in Section 1(p) of the Protocol.

“Course Area” has the meaning given in Section 1(r) of the Protocol.

“DDAs” has the meaning given it in Recital H.

“Deed of Gift” has the meaning given it in Recital H.

“Doyle Drive Replacement” shall mean the current project by the State of California to replace the southern approach to the Golden Gate Bridge.

“Effective Date” means the date upon which all of the following have occurred: (i) the execution of this Agreement by all Parties; and (ii) the approval of this Agreement by the City’s Board of Supervisors; and (iii) the approval of this Agreement by the City’s Port Commission.

“Event” has the meaning given it in Recital H.

“Event Airspace” has the meaning given it in Section 4.2.

“Event Logo” has the meaning given it in Section 13.3.

“Event Plan” has the meaning given it in Section 2.1(a).

“Event Program” has the meaning given it in Section 11.3.

“Event Sponsors” means persons or entities who have entered into sponsorship agreements in relation to the Event with the Authority, and who are recognized as such by the Authority.

“Event Venue” has the meaning given it in Section 5.1.

“Event Waterspace” has the meaning given it in Section 4.1.

“Fleet Week” shall mean the week of activities traditionally held in October to celebrate the United States Navy and its historic connections to San Francisco.

“GGYC” has the meaning given it in Recital A.

“Governmental Authorities” (and “Governmental Authority”) have the meanings given them in Section 1.2.

“ICC” has the meaning given it in Section 18.3.

“IFD” has the meaning given it in Section 7.1(g).

“Infrastructure Value” has the meaning given it in Section 7.4(a).

“Infrastructure Work” has the meaning given it in Section 6.4.

“Intellectual Property Rights” has the meaning given it in Section 13.1.

“Intergovernmental Task Force” has the meaning given it in Section 1.3.

“LEED” shall mean the Leadership in Energy and Environmental Design certification of the United States Green Building Council.

“Legacy Leases” has the meaning given it in Section 7.1.

“Legacy Value” has the meaning given it in Section 7.4(a).

“Long Term Venues” has the meaning given it in Section 5.1(a).

“Losses” means losses, damages, claims, settlements, costs, expenses (including legal and professional costs) and liabilities of whatsoever nature and howsoever arising.

“Match” has the meaning given in Section 1(ii) of the Protocol.

“MOU” has the meaning given it in Section 1.2.

“Official” has the meaning given in Section 1(mm) of the Protocol.

“Official Website” has the meaning given it in Section 11.2.

“Protocol” has the meaning given it in Recital B.

“Public Trust” has the meaning given it in Section 7.1(h).

“Racing Area” has the meaning given in Section 1(mm) of the Protocol.

“Regatta” has the meaning given in Section 1(rr) of the Protocol.

“Security Plan” has the meaning given it in Section 10.7.

“Short Term Venues” has the meaning given it in Section 5.1(b).

“Space Plan” has the meaning given it in Section 2.1(a).

“Sponsorship Program” has the meaning given it in Section 9.1(c).

“Successive Defense Option” has the meaning given it in Section 5.1(a).

“Transfer Agreement” has the meaning given it in Section 7.1.

“Venue Leases” has the meaning given it in Section 5.2.

“Venues” has the meaning given it in Recital H.

“Waste Management Plan” has the meaning given it in Section 10.11.

“Water and Air Traffic Plan” has the meaning given it in Section 4.1.

20.2 This Agreement is to be interpreted according to the following:

(a) Headings and subheadings are included for convenience only and shall not be taken into account in interpreting this Agreement;

(b) Unless otherwise noted, references to Sections, Schedules or Exhibits are references to Sections of or Schedules or Exhibits to this Agreement;

(c) The Schedules and Exhibits form an integral part of this Agreement and have the same legal effect as if their provisions were set out in the body of this Agreement;

(d) All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as varied, substituted, novated or assigned from time to time;

(e) References to any legislation shall include references to any legislation that amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice (save in respect of tax), instruments or other subordinate legislation made under such legislation;

(f) Any reference to a time of day shall be a reference to time in San Francisco;

(g) Words importing the singular include the plural and vice versa;

(h) Words importing a particular gender include the other genders;

(i) A reference to a “person” shall include a reference to any natural person, corporation limited liability company, partnership, trust, unincorporated association, and any other entity or association of any nature;

(j) An obligation under this Agreement to grant any document shall include an obligation to execute and deliver the same to the intended recipient, together (where appropriate) with full particulars of execution;

(k) Except as may be expressly provided in this Agreement: (i) whenever consent or approval of a Party is required, such Party shall not unreasonably withhold, condition or delay such consent or approval; (ii) whenever a Party is permitted to make a judgment, form an opinion or exercise discretion in taking (or refraining from taking) any action or making any determination, the Party shall employ commercially reasonable standards in so doing; and (iii) where performance is to be made to a Party's satisfaction, an objective and reasonable standard shall be employed in regard to such performance;

(l) Wherever this Agreement calls for a Party's "approval", such approval shall be obtain in advance and in writing signed by the Party granting such approval;

(m) Wherever the words "include" or "including" appear in this Agreement, they shall be construed as though the words "without limitation" appear immediately thereafter; and

(n) This Agreement, being the product of negotiations between and among the Parties acting with the advice and participation of legal counsel, shall be given a fair and neutral interpretation, and shall not be interpreted more strictly for or against either Party and, to the maximum extent permitted by law, each Party waives the benefit of any legislative action or judicial or regulatory decision which would require a contrary interpretation of this Agreement.

**The City and County of San  
Francisco**

**The America's Cup Event  
Authority**

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

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

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

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

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

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



**Approved as to Form:**

**The San Francisco America's  
Cup Organizing Committee**

**Dennis J. Herrera**  
**City Attorney**

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

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

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

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

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

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

**AFFIRMATION OF AGREEMENT BY GOLDEN GATE YACHT CLUB**

The Golden Gate Yacht Club affirms that it: (i) is the present trustee under the terms of the Deed of Gift governing the America's Cup; (ii) is authorized to select the venue for the 34th America's Cup under the terms of a Protocol Governing the 34th America's Cup agreed between the Golden Gate Yacht Club and Club Nautico di Roma; (iii) has authorized, on its behalf, the America's Cup Event Authority to enter into the foregoing Host City and Venue Agreement with the City and County of San Francisco and the San Francisco America's Cup Organizing Committee; (iv) in connection with any dissolution or liquidation of the America's Cup Event Authority it will cause the America's Cup Event Authority to assign its rights and delegate its duties under the Host City and Venue Agreement to the Golden Gate Yacht Club or its nominee, which shall accept such rights and assume such obligations pursuant to Section 19.3 of the Host City and Venue Agreement; and (v) will exercise sole discretion in selecting the venue for the 34th America's Cup contemplated by said Agreement and by the Protocol.

**The Golden Gate Yacht Club**

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

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

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

**Exhibit A – Event Plan**

## America's Cup World Series events: Schedule

**AC World Series Events.  
Racing from: Saturday to the  
following Sunday**

The number and the exact dates for  
World Series events in 2012  
in San Francisco: tbd.

Tuesday	Training
Wednesday	Training
Thursday	Training
<b>Friday</b>	Training and Opening Ceremony
<b>Saturday</b>	(Fleet) Racing
<b>Sunday</b>	(Fleet) Racing
<b>Monday</b>	off
<b>Tuesday</b>	Racing
<b>Wednesday</b>	Racing
<b>Thursday</b>	Racing
<b>Friday</b>	(Fleet) Racing
<b>Saturday</b>	(Fleet) Racing
<b>Sunday</b>	(Fleet) Racing

## Formats and race schedule 34th America's Cup: CSS

<b>Challenger Selection Series</b>				
10 Teams				
	Round Robin	Quarter finals	Semi Finals	Challenger Finals
<b>Format assumption</b>		Best of Three	Best of Five	Best of Seven
<b>No of races (from - to)</b>	45	(8 - 12)	(6 - 10)	(4 - 7)
<b>No of races per day</b>	3	3	3	1
<b>Duration of one race</b>	45min	45min	45min	60min
<b>Time of racing each race day</b>	from 1pm to 5pm			
<b>No of race days (min - max)</b>	15	(3 - 4)	(2 - 4)	(4 - 7)
<b>No of lay days in between</b>	8	0	0	3
<b>Event schedule</b>	July 13, Sat	Aug 8, Thu	Aug 16, Fri	Aug 23, Fri
	July 14, Sun	Aug 9, Fri	Aug 17, Sat	Aug 24, Sat
	July 15, Mon	Aug 10, Sat	Aug 18, Sun	Aug 25, Sun
	July 19, Fri	Aug 11, Sun	Aug 19, Mon	Aug 29, Thu
	July 20, Sat			Aug 30, Fri
	July 21, Sun			Aug 31, Sat
	July 24, Wed			Sep 1, Sun
	July 25, Thu			
	July 26, Fri			
	July 27, Sat			
	July 28, Sun			
	Aug 1, Thu			
	Aug 2, Fri			
	Aug 3, Sat			
	Aug 4, Sun			

The races for the **Defender Selection Series** will be programmed around the dates for the CSS (same time period, same course).

## Formats and race schedule 34th America's Cup: The Match

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### **The America's Cup Match (best of nine)**

Racing: one race per race day;  
Length of race 1:00h

### **Potential race days in 2013:**

- Sep 7
- Sep 8
- Sep 12
- Sep 14
- Sep 15
- Sep 18
- Sep 20
- Sep 21
- Sep 22

## A typical day during 34th America's Cup: CSS, DSS and Match.

9:30	<b>AC Village opens</b>
10:00 – 11:00	<b>Live Entertainment on stage; boat activities/animations</b>
11:00 – 12:00	<b>„The AC Dock-out Show“</b> <ul style="list-style-type: none"><li>- introduction of all teams via presenter and giant screens</li><li>- crews getting the catamarans ready</li><li>- boat parade to the race course</li><li>- interviews, games, interaction (e.g. lucky winners of sweep stakes will board chase boat to go out to race course)</li></ul>
12:00	<b>Event Live Sites open</b>
13:00 – 17:00	<b>Racing</b> <ul style="list-style-type: none"><li>- Live commentary, interviews and animations to the broadcast of racing on the giant screens in Village and at Event Live sites.</li><li>- Visitors on grand stands following the racing at AC Village and at Live Sites</li></ul>
17:00 – 20:00	<b>After Race Show</b> <ul style="list-style-type: none"><li>- AC72 return to Event Village</li><li>- Press Conferences, TV Interviews,</li><li>- Music, demonstrations</li></ul>
20:00 - 24:00	<b>Event Action and Entertainment</b>
24:00	<b>AC Village closes</b>

## Visitors projection for 34th America's Cup CSS, DSS and Match

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	Weekend days	Week days	Days of Finals
AC (Public) Park*	50.000 - 100.000	30.000 - 100.000	50.000 - 100.000
Event Live Sites**	250.000 - 500.000	100.000 - 250.000	250.000 - 500.000

\* number of people per day from opening (9:30am) to closing (at 24:00)

\*\* number of spectators on Crissy Field and other locations near Golden Gate Bridge and Embarcadero



**Exhibit B – Space Plan**  
(To be attached)

**Exhibit C –Delivery Dates for Event Facilities and Pier 80 Premises**  
(To be attached)