

CITY AND COUNTY OF SAN FRANCISCO

EDWIN LEE, MAYOR

MEMORANDUM OF UNDERSTANDING

MOU M14962

BY AND BETWEEN

THE CONTROLLER OF THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE SAN FRANCISCO PORT COMMISSION

Ben Rosenfield, Controller

Monique Moyer, Port Executive Director

SAN FRANCISCO PORT COMMISSION

Kimberly Brandon, President
Ann Lazarus, Vice President
Francis X. Crowley, Commissioner

MEMORANDUM OF UNDERSTANDING
(MOU M- 14962)

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is dated and effective as of the last date set forth below, by and between the San Francisco Controller (the "Controller") and the San Francisco Port Commission (the "Port"), each of which is agency of the City and County of San Francisco (the "City").

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 34th 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 AC 34, 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 America's Cup Event Authority (the "Authority"), under Article 4 of the Protocol, to organize and manage AC34, in association with America's Cup Race Management ("ACRM"). GGYC selected San Francisco as the host city for AC34 on December 31, 2010. Under the Host City and Venue Agreement (the "HVA") between the Authority and the City, 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 America's Cup Match will be held in San Francisco Bay. The HVA is on file with the Clerk of the Board of Supervisors in File No. 10-1259. Capitalized terms used but not defined in this MOU have the meanings given to them in the HVA.

D. Under the HVA, the City offers the use of Port property rent-free for staging the Event and commits to perform certain Infrastructure Work and incur other Event-related costs ("Port AC34 Costs"). The City expects to incur these costs commencing in 2011 and ending 2014. If GGYC succeeds in defending the America's Cup, it may elect to hold subsequent America's Cup events in San Francisco, which would require new host and venue agreements and memoranda of understanding between the Controller and the Port.

E. Port staff, the Board of Supervisors' Budget Analyst, and the Controller have estimated lost rent and the costs of City Infrastructure Work on Port property. Reports of these estimates are on file with the Clerk of the Board of Supervisors in File No. 10-1259. Port staff and the Controller agree that these costs are greater than the Port's ability to pay with the Port's Harbor Fund. Since the benefits of the AC34 are expected to accrue to the City's General Fund and to the broader regional economy beyond the jurisdiction of the Port Commission, the Port, the Controller, and the Office of Economic and Workforce Development recommend that the City's General Fund and the nonprofit San Francisco America's Cup Organizing Committee fund the majority of the Port AC34 Costs.

F. The Port has issued outstanding, publicly-held debt in the form of Series 2010 A and B Revenue Bonds subject to a bond indenture (the "Port Indenture"). To provide the

greatest assurance to Port bondholders, the Port and the Controller recommend a binding agreement that protects the Port's Harbor Fund against certain of the Port AC34 Costs. Charter Section B7.320 permits the Mayor to submit to the Board of Supervisors for its approval a memorandum of understanding between the Port Commission and another department requiring the transfer of funds between the Port and another department.

G. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended) and San Francisco Charter Section 4.114, the Port administers and controls the real property transferred to the City by the State of California, including the area encompassing the real property that is the subject of the HVA and this MOU.

H. Under Charter Section 3.105, the Controller is responsible for the timely accounting, disbursement, or other disposition of monies of the City in accordance with sound financial practices applicable to municipalities and counties.

AGREEMENT

1. **Definitions.** The following words and phrases have the following meanings in this MOU:

“CPI” means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics.

“Payments In-Lieu of Rent” means payments from the City to the Harbor Fund, as calculated by the Controller under Section 4.c of this MOU.

“Race” means the America's Cup World Series Pre-regattas, the America's Cup Challenger Series, the America's Cup Defender Series (if held), and the America's Cup Match.

“Rent Index” means the annual increase specified in the subject Port lease, for each Port lease at a Venue Site in effect as of January 1, 2011 for base rents, and the CPI for percentage or participation rents, wharfage, dockage, landing fees, and crane rental revenues.

“Tenant Relocation Cost” means any costs the Port incurs to relocate a tenant from a Venue Site to another facility, including all related legal costs.

“Venue Site” or “Venue Sites” means one or more Port facilities that will be used for staging or in preparation for staging AC34 in 2011-2014.

2. **Term.**

a. **Term:** The term of this MOU will begin on the date the resolution approving it becomes effective and end on the last day of fiscal year 2013-14.

3. **AC34 Budget; Records.**

a. The Port and the Controller will make available to each other such records and accounts as are necessary to track Port AC34 Costs and revenues associated with Port property on a timely basis, whether incurred by the Port or by the City. This information will include a list of all Port leases and licenses that are terminated or are permitted to expire in anticipation of occupancy by the Authority for Event-related purposes. The list will include a summary of Port lease and license terms, and all rents, including base and percentage rent, and other use fees and maritime related revenues.

4. Payments In-Lieu of Rent.

- a. Establishing Venue Site Baseline Rents: In the third quarter of FY 2010-2011, the Controller will determine the Venue Site Baseline Rents for Port facilities that will be used as Venue Sites for the AC34, equal to: (i) rents due to the Port in the month of January 2011 from all tenants; plus (ii) the monthly average wharfage, dockage, landing fees, and crane rental for the period between January 2010 and December 2010.
- b. Tracking Port Percentage Rents: Commencing in 2011, the Port will provide to the Controller quarterly reports of its percentage rent revenues from Port property.
- c. Calculation and Payment of In-Lieu of Rent: The Controller will calculate the Payment In-Lieu of Rent due to the Port in each fiscal quarter during the term of this MOU. Subject to the terms and limitations of Charter Section B7.320, the Controller will remit to the Port Payments In-Lieu of Rent until (and including a payment for) the fiscal quarter after the last fiscal quarter in which the Authority has occupied a Venue Site.

i. Step 1 - Calculation of Net Lost Rent from Venue Sites:

- Determine the “Lost Gross Rent From Venue Sites,” which is a projection of the rent that the Port would have received from Venue Sites if the City did not host AC34, based on the Venue Site Baseline Rents as adjusted by the Rent Index.
- Determine the “Residual Rent from Venue Sites,” which means any rent that continues to be due from Port tenants from Venue Sites in any fiscal quarter between 2011 and 2014.
- Determine “Rent from Venue Site Relocated Tenants,” which means any rent the Port is due during a fiscal quarter from 2011 to 2014 from a Port tenant relocated from a Venue Site to another Port facility, less Tenant Relocation Costs.
- Calculate “Net Lost Rent from Venue Sites” according to the following formula:

$$\begin{aligned} & \text{(Lost Gross Rent from Venue Sites)} \\ & \quad - \text{(Residual Rent from Venue Sites)} \\ & - \text{(Rent from Venue Site Relocated Tenants)} \\ & = \text{(Net Lost Rent from Venue Sites)} \end{aligned}$$

ii. Step 2 - Calculation of Percentage Rents from Non-Venue Sites:

- Determine the “Race-Induced Percentage Rent Increase From Non-Venue Sites,” which means the participation or percentage rent that the Port is due, excluding rent from Venue Sites, during any fiscal quarter from 2011 to 2014.
- Determine the “Inflation Adjusted Prior Year’s Quarterly Percentage Rent From Non-Venue Sites” by multiplying the participation or percentage rent that the Port is due, excluding rent for Venue Sites, in the fiscal quarter one year before any fiscal quarter for which a Payment In-Lieu of Rent is calculated, by 1.03.

- Calculate “Percentage Rents from Non-Venue Sites” according to the following formula:
$$\frac{(\text{Race-Induced Percentage Rent Increase From Non-Venue Sites}) - (\text{Inflation Adjusted Prior Year's Quarterly Percentage Rent From Non-Venue Sites})}{(\text{Percentage Rents from Non-Venue Sites})}$$
- Negative values for Percentage Rents from Non-Venue Sites will be disregarded in any calculation of Payment In-Lieu of Rent in Step 3.
- iii. Step 3 - Calculation of Payment In-Lieu of Rent:
 - Calculate “Payment In-Lieu of Rent” according to the following formula:
$$\frac{(\text{Net Lost Rent From Venue Sites}) - (\text{Percentage Rents From Non-Venue Sites})}{(\text{Payment In-Lieu of Rent})}$$

5. Notices. Any notice given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier return receipt requested, with postage prepaid, at the following addresses, or at such other addresses as either the Port or the Controller may designate by notice as its new address:

Address for Port: Port of San Francisco
Pier One
San Francisco, CA 94111
Attn: Monique Moyer, Executive Director
Email: monique.moyer@sfport.com
Telephone No.: (415) 274-0401
Fax No.: (415) 274-0578

Address for Controller: Office of the Controller
City Hall Room 316
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Ben Rosenfield, Controller
Email: ben.rosenfield@sfgov.org
Telephone No.: (415) 554-7500
Fax No.: (415) 554-7466

Any notice under this MOU shall be deemed to have been given two business days after the date when it is mailed if sent by first-class or certified mail, one business day after the date it is mailed, if sent by overnight courier, or on the date personal delivery is made. For convenience of the parties, courtesy notices may also be given by email, facsimile, or telephone to the address or numbers set forth above or such other address or number as may be provided from time to time; however, neither the Port nor the Controller may give official or binding notice by email, telephone, or facsimile.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through its Controller

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the San Francisco Port Commission

By: _____
BEN ROSENFELD
Controller

By: _____
MONIQUE MOYER
Executive Director

Date: _____

Date:

REVIEWED:
DENNIS J. HERRERA, City Attorney

REVIEWED:
DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Deputy City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

Authorized by Port Resolution No. _____ and
Board of Supervisors Resolution No. _____