

PORT – MEMORIAL Memorandum of Understanding

The Port Authority of New York and New Jersey (“Port”) and the National September 11 Memorial & Museum (“Memorial”) seek to clarify certain aspects of their financial and operating relationship as follows:

The Port Authority and the Memorial both desire to complete a planned Museum as an important tribute and an ongoing educational and informational center on 9/11. Both parties are working together diligently in an effort to open the Museum as soon as practicable and feasible. The parties also agree that they must meet that goal in manner that is financially prudent and sustainable including the Port’s construction budget for the Museum and the financial capacity of the Memorial to satisfy its construction obligations and ongoing operation costs.

The Port Authority and Memorial agree that prior to proceeding with construction at the Museum the finances for said construction and Museum operation must be verified. Therefore the parties agree as follows:

- i. the PA will have access to all financial information and analysis to confirm that:
 - a. Memorial’s source of funds for the obligations it is undertaking in the Financial Settlement set forth on Exhibit A (the “Financial Settlement”) and to fulfill Memorial’s funding obligation to complete construction; and
 - b. Memorial has sufficient resources and/or a viable, realistic fundraising plan to fund the future operating costs for a sustainable period.
- ii. The Port Authority shall be entitled to information and due diligence review or prescribed herein to be assured of such financial capacity

The Port will seek to complete its review of the financial information furnished pursuant to this MOU by September 20 and present the findings of its financial review and this MOU to the Port Board of Commissioners to seek approval on that date. The Port agrees to accelerate construction of the Memorial and Museum to full pace promptly ten business days after approval is received. Once construction has resumed full pace, it will be continued unless the Museum fails to pay on a timely basis any amount required to be paid.

Notwithstanding any previous agreements, statements or representations, it is specifically agreed by all parties that the Port will not have any obligation or responsibility, beyond the scope of this agreement, of any kind for any Memorial capital or operating deficiency or shortfall.

To determine and protect the Memorial’s financial capacity for construction and long-term sustainability, the parties agree as follows:

1. Financial Transparency, Visibility and Settlement

The Port and its advisors shall have access to comprehensive Memorial financial information and analysis regarding:

With respect to the Memorial’s financial capacity for construction and operation, the parties agree as follows:

- a. The designees of the NY and NJ Governors (NJ Governor will be offered a designee on the Memorial board) will serve on the Memorial Board's Finance & Investment Committee, which is responsible for oversight of the annual budget, periodic financial statements, and general organizational policies.
- b. The Memorial CEO and CFO and the Port CEO and CFO (plus relevant staff) agree to meet as follows:
 - i. Quarterly meetings to review financial status
 - ii. Annual planning/budget meetings at which the Memorial will outline the annual budget and business plan for the next 1-3 years, including fundraising plan and forecasts with detailed assumptions behind revenue projections, specifically noting any change in admission policies or other fee adjustments, which issues, among others, shall remain the sole decision of the Memorial.
- c. The Memorial agrees to share the results of its annual external financial audit with the Port once it is accepted by the Memorial Board of Directors.
- d. The Memorial agrees to provide the Port with: its Conflict of Interest Policy, 501c3 letter, and 1023: Application for Recognition of Exemption.
- e. On an annual basis, the Memorial agrees to provide the Port with its IRS Form 990 when it is filed with the IRS.
- f. Memorial agrees to the following financial terms:
 - i. Net working capital shall be equal to no less than six months total operating expenses
 - ii. it shall maintain plaza in a state of good repair consistent with that of other world class memorials
 - iii. it shall expend resources only in connection with the Memorial and Museum
 - iv. it shall provide annual operating forecasts certified by the President and Chairman of the Finance and Investment Committee that the Memorial Board's Finance & Investment Committee has approved the budget and it is based on reasonable revenue and expense assumptions that provide for sufficient funds to operate the Memorial and Museum
- g. Memorial to provide Port with a security deposit equal to six months of estimated utility expenses.
- h. Memorial and the Port agree to work together to obtain federal funding to subsidize the Memorial and Museum's costs of operations and help ensure long-term financial sustainability.
- i. If Memorial is not compliant with its financial terms: (x) if the Memorial is not compliant with the financial terms in (f) above but is current on its debt, trade payables and utility expenses owed to the Port, then the Memorial must provide

immediate written notice to the Advisory Committee as described in Section 4 (“Advisory Committee”) and upon written request of the Advisory Committee, the Memorial shall hold a meeting of the Finance & Investment Committee within 15 business days to address such non-compliance; and (y) if Memorial is in an uncured material default on its bank debt, if any, or on a material amount of trade payables or utility expenses owed to the Port, the Memorial must provide immediate written notice to the Advisory Committee and shall present a plan within 15 business days to remedy such non-compliance within 90 business days and (z) any material dispute between the Port and the Memorial related to the financial issues set forth in this Section 1 will be within the scope of the Advisory Committee.

2. Site-wide Coordination

- a. A Site-wide Coordination Task Force will be established to ensure all activities that impact (or have the potential to impact) World Trade Center stakeholders are appropriately coordinated.
- b. The Task Force will be comprised of one representative each from: the Port designated by the Governor of NY and one designated by the Governor of NJ, the Memorial, and the City of New York, plus relevant staff of each.
- c. The Task Force will address any issues arising from the planning or implementation of activities that may affect other World Trade Center stakeholders and ensure appropriate processes are followed to optimize and streamline the logistics of events and ensure they cause the least disruption to other stakeholders possible.
- d. The Task Force will develop rules and regulations to ensure equitable use and appropriateness of site activities.
- e. The Memorial and Port agree to notify one another in advance of any planned visits by dignitaries as such visits are scheduled. The Task Force will establish a formal process to ensure coordination between WTC properties for such visits.
- f. The Advisory Committee will resolve any disputes under this Section 2.

3. Major Event Planning

The Port and Memorial recognize the need to coordinate large scale events and agree as follows:

- a. Events subject to the planning requirements of this section include the annual 9/11 Anniversary Commemoration, Recovery Workers Event and other events of similar scope (“Major Event(s)”).
- b. The Port, the New York Governor, the New Jersey Governor, and the New York City Mayor will each name a representative to participate in Major Event planning with staff of the Memorial (the “Working Group”).

- c. The Working Group will draft general guidelines for major events on the Memorial to help ensure planning is in keeping with the mission of the Memorial.
- d. No later than four months prior to any Major Event, the Working Group will meet on a bi-weekly basis to determine a preliminary program, logistics plan and budget for the upcoming event.
- e. No later than three months prior to the upcoming event, the CEO of the Memorial will present the Working Group's plans for the upcoming event to the Executive Committee of the Memorial Board for its approval. It will be the goal that the plans presented will be reflective of the input of and be satisfactory to the Governors', Port's, and New York City Mayor's representatives. However, if no agreement is reached, the CEO of the Memorial commits to bringing the differing views to the attention of the Memorial Board and to seek their direct guidance on any major differences. If no agreement is reached after presentation to the Memorial Board, the parties will seek resolution from the Advisory Committee established in this MOU.
- f. In the event of an unforeseen Major Event, the Memorial will notify the Port, the Governors' offices, and the Mayor's office as soon as practicable and, if timing allows, seek to follow a compressed process consistent with the process outlined in (e) above.

4. Master Operating Agreement and Advisory Committee

- a. The parties shall make best efforts to negotiate and execute (x) a Master Operating Agreement ("MOA"); and including a land swap contemplated in the February 2006 MOU (the "Land Swap") within six months of the date of this MoU subject to receipt of any required governmental approval; provided, that, in any case, the MOA and the Land Swap shall be executed contemporaneously.
- b. The parties agree they will establish the Advisory Committee to address any disputes that arise between the Memorial and the Port under this agreement and facilitate the documentation of the MOA.
- c. The Advisory Committee will be comprised of eight members (two appointed by the Governor of NJ, two appointed by the Governor of NY, four appointed by the Memorial [one appointment will shift to the New York City Mayor as long as that Mayor is not also Chairman of the Memorial]). The MOA will further define the Advisory Committee's dispute resolution process and scope. The Advisory Committee will be created within the next 30 days.

5. Public Statements

Parties agree to consult before making public statements concerning these matters

National September 11 Memorial & Museum at the World Trade Center Foundation, Inc.

By: _____ Date: _____
Chairman

The Port Authority of New York and New Jersey

By: _____ Date: _____
Chairman

By: _____ Date: _____
Vice Chairman

EXHIBIT A: MEMORIAL – PORT PROPOSED SETTLEMENT TERMS

The Port estimates that it had a possible exposure of over \$300 million related to this matter and believes that the terms of this MOU reduces such exposure by over \$150 million through the agreed upon reduction of anticipated overtime costs, a moratorium on change orders and contributions the Memorial will make to the project.

In exchange for release of all claims, the Memorial and the Port agree to the following:

I. Completion Date / Delivery of Memorial and Museum

- The Port Authority recognizes that the Memorial would like to open the Museum as soon as practicable. The Port Authority and the Memorial will work together in an effort to meet that goal in a manner that is consistent with the Port’s construction budget for the Museum. The Memorial and the Port will regularly review the status of the construction schedule to determine when the Port can deliver interim access to portions of the Museum as they are completed.

The Port will deliver to the Museum portions of the Museum core and shell substantially completed at a level that allows for application for a TCO for that portion within 14 days of delivery.

The Port and the Museum will work together to obtain such TCOs in accordance with industry practice.

- The parties further agree they will coordinate on an ongoing basis to achieve construction efficiencies and mitigate schedule risks where possible

II. \$17M to Port

- \$10M design fee reimbursement release
- \$7M of Port contingency waived
- PA contingency moved to last-in-line behind LMDC \$45M commitment

III. Subordinated Proceeds Commitment

- \$30M over 30 years beginning in 2018 (i.e., \$1M per annum amortization)
- Non-compounding subordinated 'IOU' payable out cash available after operating expenses, senior debt service (excluding any private or government operating grants/contributions), and reserve.

IV. Memorial Additional Funding Commitment

- Subject to section V, and other than the payments set forth in II and III, Memorial's sole funding obligation is to contribute only up to an additional \$5M, which shall be used for project funding if needed.

V. Design Changes

- For any directly initiated by the Memorial after the date of this MOU, the Memorial to pay increased, documented hard costs incurred directly as a result of such change.
- For any directly initiated by the Port after the date of this MOU, Memorial to approve in writing prior to implementation, and Port to pay increased documented hard costs incurred directly as a result of such change.