

This agreement, dated and made effective as of 4/28/18 2018 (the "Effective Date") is entered into by and between the City of South San Francisco, a municipal corporation (the "City"), and the San Mateo County Harbor District, a special district and political subdivision of the State of California (the "District") and is hereinafter referred to as the "Agreement." The City and the District are hereinafter collectively referred to as the "Parties" and sometimes individually referred to as "Party."

RECITALS

1. The City is the owner real property located in the City, east of Highway 101 and east of the intersection of Oyster Point Boulevard and Marina Boulevard, comprising a portion of an area commonly known as the Oyster Point Marina (the "**Marina Property**"), and as shown on **Exhibit A** attached hereto and incorporated herein. For purposes of this Agreement, the Marina Property consists of the **Marina Area and Landside Area**.

2. Marina Area: The Marina Area is that area generally located between the northern mean high water mark and extending to the northerly edge of the breakwater, as shown on **Exhibit A**. The Marina Area comprises:

- A. An approximately 428-berth recreational boat marina spread over:
 - i. 6 public dock strings (Docks 1 through 6) and one reserved Dock 7 in the west basin;
 - ii. 4 dock strings (Docks 11, 12, 13 and 14) and a guest dock (Dock 8) in the east basin;
 - iii. A Ferry Terminal operated by the San Francisco Bay Area Water Emergency Transportation Authority (WETA) under a long term lease agreement with the District (WETA Lease);
 - iv. Ramps leading to the above referenced Docks.
- B. Fuel utility lines, fueling docks and fueling station;
- C. Boat launch ramp;
- D. Fishing pier.

3. Landside Area: The Landside Area includes those components of the Marina Property generally located east of Oyster Point Boulevard and inland of the high water mark of the perimeter of the peninsula, as shown on **Exhibit A** and comprises:

- A. East Landside: The East Landside Area includes:
 - i. Approximately 40 parking spaces, a publicly-accessible overlook, seating and bike lockers in support of the Ferry Terminal described above;
 - ii. The strip of land by which the harbormaster office, the guest dock and the fuel dock are accessed (the "spit");

iii. Harbormaster office, maintenance building, the Oyster Point Yacht Club, public and Marina comfort stations;

iv. Parking lots in support of the general public, the Marina and the boat launch ramp;

v. Open space and trails,

vi. Underground fuel lines and two underground fuel tanks

B. West Landside: The West Landside Area includes:

i. Parking lot, with 16 spaces reserved for Marina uses;

ii. Marina Serving Facilities, which currently include two public comfort stations and two marina comfort stations;

iii. Approximately 260 linear feet of underground fuel line from tank to dispensers

iv. Trails and beach area;

v. A future public sports/recreation area;

vi. A future hotel site.

4. Fueling Infrastructure: The Fueling Infrastructure is described in both Marina Area and East Landside Area above, and collectively consists of:

A. Marina Area:

i. Dock gate, gangway and fuel dock;

ii. Two fuel dispensers;

iii. Marine pump out;

iv. Approximately 300 linear feet of fuel lines from dispensers to shoreline.

B. East Landside Area:

i. Approximately 520 linear feet of underground fuel lines;

ii. Two (2) 10,000 gallon underground fuel storage tanks.

5. The Parties entered into a Joint Powers Agreement effective November 11, 1977 and recorded on October 15, 1984 as Document No. 84111706 in the Official Records of San Mateo County, as amended by Agreement Amending the Joint Power Agreement dated October 11, 1979 and adopted by resolution Dated October 3, 1979 and by Second Agreement

Amending Joint Powers Agreement dated November 27, 1985, (the "JPA"), pursuant to which the District is authorized to manage, maintain and operate the Marina Property, and to construct, manage, maintain and operate marina development.

6. The Parties and the former Redevelopment Agency entered into that certain agreement entitled Agreement Between and Among the City of South San Francisco, the Redevelopment Agency of the City of South San Francisco, and the San Mateo County Harbor District" effective March 25, 2011 (the "**2011 Agreement**"), which is attached hereto as **Exhibit B**.

7. The Parties entered into that certain agreement entitled "Implementation Agreement By and Between the City of South San Francisco and the San Mateo County Harbor District Related to the 2011 Agreement by and Among the City, District, and the City's Former Redevelopment Agency" effective September 6, 2017 (the "**2017 Implementation Agreement**") in order to further implement the 2011 Agreement, which is attached hereto as **Exhibit C**.

8. In an effort to clarify the Parties' respective rights and obligations with regard to the Marina Property to reflect changed circumstances and facilitate the mutual desired improvement, operation, and maintenance of the portions of the Marina Property that remain under the Parties' control, the Parties met and conferred on several occasions during 2018. The Parties desire by this Agreement to establish, among other things, the following:

A. A clear demarcation of the geographical boundaries of the Marina Property that remain under the ownership or control of the Parties;

B. The Parties' respective rights and obligations with respect to the following:

i. Construction of replacement Docks

ii. Operation and maintenance of the Marina Area.

iii. Operation and maintenance of the Landside Area.

iv. A framework for implementation, annual monitoring, making recommendations, and planning for future development.

9. The Parties wish to enter into a new agreement to supersede and replace the JPA, while retaining the 2011 Agreement and the 2017 Implementation Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated into and form a material part of this Agreement.

2. Effect of Prior Agreements. The Parties acknowledge and agree that this Agreement supersedes the JPA which will automatically expire and be of no force as of the

effective date of this Agreement. The 2011 Agreement and the 2017 Implementation Agreement remain in effect as per their own terms.

3. Term. This Agreement will remain in full force and effect for a period of fifteen (15) years from the Effective Date (the "**Initial Term**"), unless terminated otherwise as provided for in this Agreement. The Agreement will automatically renew for two (2) additional periods of ten (10) years each (each, a "**Renewal Term**") unless one party gives the other notice of its determination not to renew. The determination not to extend the Initial Term or Renewal Term must be made by the legislative body of either Party at least two (2) years prior to the expiration date of the Initial Term or any Renewal Term and is considered a termination subject to the provisions of Section 9. The Initial Term and any Renewal Term are collectively referred to as the "**Term**."

4. Obligations of the District.

A. Replacement of Docks 12, 13, and 14. The Parties agree that Docks 12, 13, and 14 in the east basin, including the docks and ramps, are beyond their useful life and require substantial repair and replacement. The Parties further agree that the replacement of Docks 12, 13 and 14 is a material provision of this Agreement. The District, at its sole cost and expense, is responsible for such replacement and repair of Docks 12, 13, and 14 in the east basin, including the docks and ramps (collectively, the "**Marina Infrastructure Project**").

i. Project Schedule. The District will take all reasonable steps within its control to complete the Marina Infrastructure Project by December 31, 2024. The City Manager and District General Manager, or their designees, will meet and confer at least once a year to provide status updates on the project schedule.

ii. Permits and Approvals. The District is responsible for obtaining all necessary permits and approvals for the Marina Infrastructure Project. The City will cooperate with the District in order to expeditiously obtain approvals by all governing agencies having jurisdiction over the Marina Infrastructure Project.

iii. Total Project Costs. The District estimates that the total anticipated cost for the Marina Infrastructure Project is less than \$5 Million Dollars ("**Total Project Costs**"). The District will be responsible for timely funding the Total Project Costs in order to complete the Marina Infrastructure Project prior to December 31, 2024.

B. Replacement of Docks 1-6. No later than December 31, 2023, and sooner if deemed necessary by the District General Manager, the District will commission and obtain a report on the condition of Docks 1-6. Prior to issuing a final report, the District will provide a draft report to the City for its review and comment. If the final report required by this paragraph recommends the replacement of any of Docks 1-6, the District General Manager must prepare and present for Commission approval a plan for the replacement of the docks identified in the report. A failure to approve any such plan will not be considered a Default under this Agreement unless at the time the plan is considered by the Commission, the occupancy rates at the Marina Area are below the threshold set forth in the applicable Operational Performance Indicators, attached hereto as **Exhibit D**, and incorporated herein. In the event the District does not commence replacement of Docks 1-6 by 2024, then prior to every term extension, the District will commission a new report and present the report to the Commission in the same manner as set forth in this subsection.

C. Operation and Maintenance. The District is responsible for the operation and maintenance of the Marina Area, the East Landside, the Marina Serving Facilities in the West Landside, and the Fueling Infrastructure, including any portion that may be in the West Landside (District O and M Area). The District will have control and possession of all property and improvements within the District O and M Area and the City may not, without written approval of the District, take any actions that, directly or indirectly, prevent or interfere with the District's exercise of control or possession of property and improvements within the District O and M Area. The District will operate and maintain the District O and M Area in accordance with best practices for marinas and public spaces and in accordance with the applicable Operational Performance Indicators, attached hereto as **Exhibit D**, and incorporated herein. The City Manager and District General Manager will meet and confer as necessary with regard to all specific maintenance and operation issues in order to ensure that the Marina Property is well managed. The District's failure to operate and maintain the District O and M Area may be a Default of this Agreement as set forth in Section 9 below. In particular, the District's failure to substantially meet the Operational Performance Indicators may constitute a Default under this Agreement. Without limitation to the general obligation to operate and maintain the District O and M Area, the District has the following specific obligations:

i. Harbor Master's Office. In addition to its obligations to operate the District O and M Area, the District will operate and maintain the East Landside in order to provide access to the District's existing harbormaster office (the 'spit') as well as in order to operate and maintain the harbormaster office). The District's obligations under this subsection are not a limitation on the City's responsibility as set forth in Section 5 and nothing in this section is intended to limit the City's obligations with regard to sea level rise, land subsidence, and water quality, as set forth in Section 5.D, 5.E, or 6.C. Should the City improve the spit and/or appropriately mitigate against tidal inundation, the City and the District agree to determine the best and highest use of the existing harbormaster's office that may include District office space and/or other public use. In furtherance of its obligations under Section 5, the City may require the District to vacate the harbormaster office, only if the City provides the District with continued access to the Docks and suitable harbormaster office space at a mutually agreed upon location, and at the City's sole expense.

ii. Dredging. The District is responsible for all required dredging and related maintenance activities necessary for the operation of the Marina.

iii. Replacement of Facilities. The District must operate and maintain facilities within its control such that the District O and M Area is kept in a state of good repair and meet the Operational Performance Indicators set forth in Exhibit D. Such operation and maintenance may require replacement of facilities or portions of facilities in order to meet the District's obligations under Exhibit D. The Parties agree to meet and confer if circumstances unforeseen at the time of the Effective Date compel the replacement of capital infrastructure such that it would be unreasonable for the District to bear the sole cost of replacement.

D. Development and Leases. District is responsible for all leases within the District O and M Area. All District development will be consistent with the City's adopted Oyster Point Specific Plan, and subject to normal City Planning and Building Department review and approval. In addition, the District agrees to consult with the City prior to the execution of any leases and must obtain written consent from the City prior to the execution of any leases that are either longer than ten years or have a term beyond any Initial or Renewal Term then in effect.

E. Revenues from District Operations. The District may charge fees in connection with its operation of the District O and M Area. The District will receive and retain one hundred percent (100%) of such operating revenue. The District will provide the City with reports, at least annually, detailing the operating revenue.

5. Obligations of the City.

A. Utilities at Marina Property. The City will maintain the existing pump station and the District will maintain the existing sewer vacuum and sewer ejection system. The City will provide a sanitary sewer collection system. Upon installation of the new sewer lines, the City will continue to be responsible for the maintenance of collection main lines; the District will continue to be responsible for maintenance of laterals to points of connection.

B. Police and Fire Protection at Marina Property. The City will provide police and fire protection services to the Marina Property.

C. Operations & Maintenance. The City is responsible for the operation and maintenance of the West Landside, except for the areas within the West Landside that are within the District O and M Area (the City O and M Area). The City will have control and possession of all property within the City O and M Area and the District may not, without written approval of the City, take any actions that, directly or indirectly, prevent or interfere with the City's exercise of control or possession of the City O and M Area. The City will operate and maintain the City O and M Area in accordance with best practices for public spaces. The City Manager and District General Manager will meet and confer as necessary with regard to all specific maintenance and operation issues in order to ensure that the Marina Property. The City's failure to operate and maintain the City O and M Area may be a default of this Agreement as set forth in Section 9 below. In particular, the City's failure to substantially meet the Operational Performance Indicators may constitute a Default under this Agreement.

D. Sea Level Rise. The City is solely responsible for monitoring and protecting against landside inundation caused by sea level rise.

E. Landfill Subsidence.

i. The City is solely responsible for monitoring and protecting against landside inundation caused by landfill subsidence.

ii. The City is solely responsible, including taking corrective actions, for damages caused by landfill subsidence.

iii. The City is not responsible for damages caused by landfill subsidence to new construction or new improvements affixed to the land by the District.

iv. The District is responsible, including taking corrective actions, for damages caused by landfill subsidence caused solely by its Default.

v. In the event of concurrent responsibility for damages caused by landfill subsidence under the standards set forth in subsections ii through iv above, the City and District will meet and confer to determine a course of action to address the damages.

vi. Regardless of the allocation of responsibility set forth in this Section 5.E, the City, and not the District, is responsible for meeting all standards regarding landfill subsidence imposed by any governmental agencies, and is solely responsible for compliance with any actions ordered by any court or governmental agency regarding landfill subsidence.

F. No Assignment. Prior to the sale or assignment of its interest in any portion of the District O and M Area, the City must obtain the prior written consent and approval of the District, which approval will not be unreasonably withheld.

G. Revenues from City Operations. The City may charge fees in connection with its operation of the City O and M Area. The City will receive and retain one hundred percent (100%) of such operating revenue. The City will provide the District with reports, at least annually, detailing the operating revenue.

6. Obligations of Both Parties.

A. Cooperation of the Parties. Notwithstanding the Parties' separate obligations set forth in this Agreement, the Parties desire to cooperate in all matters involving the implementation of this Agreement. Each Party will allow access by the other to the Marina Property to carry out the performance of this Agreement. Neither Party may, without written approval of the other, take any action that, directly or indirectly, prevents or interferes with the other Party's exercise of control or possession of the property identified in this Agreement as within that Party's control or possession.

B. Authority of City Manager and District General Manager. The City Manager and District General Manager will meet periodically as necessary to discuss and agree on the administration and implementation of this Agreement. At a minimum, the City Manager and District General Manager will prepare the Annual Report described in Section 8. In addition to their obligation to prepare an Annual Report, the City Manager and District Manager have the authority to modify Exhibit D, including the Operational Performance Indicators, and to take the following actions in furtherance of this Agreement.

i. Shared Maintenance. The City Manager and District General Manager may, without the need for separate authorization by the Parties' legislative bodies, enter into yearly agreements for the shared provision of maintenance services despite the separation of maintenance obligations discussed otherwise in this Agreement, if such shared provision of maintenance will avoid duplication of effort and maximize the efficient use of public funds and proper maintenance of common areas in the Marina Property. Shared maintenance obligations subject to this section may include, but are not limited to, the arrangement for solid waste collection, janitorial services, and the construction, operation, and maintenance of any future shared capital improvements. Notwithstanding the preceding sentence, if the cost of any such shared yearly agreement exceeds the delegated authority of the City Manager or District General Manager pursuant to District or City policies, approval by the Parties' legislative bodies will be a condition of any such yearly agreement.

ii. Maintenance Checklist. In support of such shared maintenance obligations, the City Manager and the District General Manager will approve a checklist for evaluation of joint maintenance objectives. The checklist will provide for the evaluation of the condition, cleanliness, and general upkeep of the public facilities. The checklist will also be a

way of measuring the Operational Performance Indicators and will be maintained as an attachment to Exhibit D.

C. Water Quality. Each party will be responsible for water quality as it relates to each Party's obligations and responsibilities as follows:

i. Marina Area. The District will take all appropriate, and if necessary immediate, remediation and/or protective actions for any material spill or discharge within the Marina Area or the East Landside, but is only responsible for the costs of such efforts to the extent the need for such efforts is caused by District (or its tenants', employees', or contractors') activities or inactivity. The City will reimburse the District for its costs related to remediation and protective actions taken related to material spill or discharges that are not caused by District (or its tenants', employees', or contractors') activities. The District will implement marina operation and maintenance activities and suitable best management practices consistent with industry standards (i.e. the California Clean Marinas Guidebook, produced by the California Coastal Commission and the Clean Marina Clean Facility Program) and the District's Health and Safety Regulations (Chapter 3.30). Unless caused by District's, (or its tenants', employees', or contractors') activities or inactivity, the District is not responsible for meeting any standards regarding water quality imposed by any governmental agency, and is not responsible for taking any actions ordered by any court or governmental agency regarding water quality.

ii. Landside. The City is responsible for monitoring groundwater, and for protection of water quality, including but not limited to water quality related to leachate discharge and storm water discharge at the Marina Property not caused solely by District (or its tenants', employees', or contractors') activities within the District O and M Area. The City will reimburse the District for its costs related to water quality remediation and protective actions taken that are not caused by District (or its tenants, employees, or contractors) activities. The District will implement marina operation and maintenance activities and suitable best management practices consistent with industry standards (i.e. the California Clean Marinas Guidebook, produced by the California Coastal Commission and the Clean Marina Clean Facility Program) and the District's Health and Safety Regulations (Chapter 3:30). Unless caused by District's, (or its tenants', employees', or contractors') activities or inactivity, the District is not responsible for meeting any standards regarding water quality imposed by any governmental agency, and is not responsible for taking any actions ordered by any court or governmental agency regarding water quality.

D. Governance. Each Party's legislative body will establish a standing committee made up of two members of the legislative body to receive reports from the City Manager or the District General Manager and to make recommendations to their legislative bodies regarding this Agreement. At least once each year, the two standing committees will convene a joint meeting to receive the Annual Report discussed in Section 8. The Parties' legislative bodies may, but are not required, to meet to consider the Annual Report.

E. Indemnities.

i. Except to the extent subject to subparagraph iii and iv, and to the fullest extent allowed by law, each Party must defend, indemnify and hold harmless the other Party and their officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal,

state, or municipal law or ordinance, to the extent caused by, or alleged to have been caused by, the negligence or willful misconduct of the indemnifying Party. The foregoing obligation will not apply when the injury, loss of life, damage to property, or violation of law arises solely from the negligence or willful misconduct of the Party or its officers, employees, or agents. It is understood that the duty to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

ii. In the event that either party engages a third party to provide services that require entry onto the Marina Property, each Party will require that any third party contractor will, to the fullest extent allowed by law, defend, indemnify and hold harmless both Parties and their officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, arising out of the performance of any contract by a third party contractor or its employees, subcontractors, or agents. The foregoing obligation of the contractor will not apply when the injury, loss of life, damage to property, or violation of law arises solely from the gross negligence or willful misconduct of the Party or its officers, employees, or agents. It is understood that the duty of contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. In addition to the foregoing indemnity, any contract with a third party contractor will require the contractor to name both parties as additional insured to any insurance policies required by the contract.

iii. Notwithstanding subparagraph (i), the City must indemnify the District, its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out or related to incidents of sea level rise, land subsidence, and water quality, including issues related to any leachate discharge at the Marina Property. The City's indemnity obligation does not apply to losses, liabilities, claims, suits, actions, damages, and causes of action to the extent the District is responsible for the damages under Section 5.E or 6.C.

iv. Notwithstanding subparagraph (i), the District must indemnify the City, its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out or related to incidents of land subsidence and water quality, including issues related to any leachate discharge at the Marina Property, but only to the extent that the District is responsible for damages under Section 5.E or 6.C

v. The indemnities in this section will survive expiration or termination of this Agreement.

7. Detailed Survey. The Parties agree to meet and establish a timeline by which a detailed survey that will establish precise legal descriptions for all the property designations used in this Agreement will be prepared. The Parties agree that the description of defined geographic areas used in this Agreement may change over time as the use of the Marina Property is developed and the exhibits defining the areas within the Agreement may be amended from time to time. The City Manager and the District General Managers are authorized to amend the exhibits to reflect the results of the completed survey.

8. Annual Review and Report. The Parties will conduct an annual review of the Agreement beginning in the first quarter of 2020. To initiate the annual review, the City Manager

and the District General Manager will coordinate and review compliance by the City and the District with the obligations under this Agreement and jointly prepare a written report ("**Annual Report**") to be presented to the joint meeting of the Party's standing committee described in Section 6.D. The Annual Report must, at a minimum, identify compliance with existing Operational Performance Indicators as set forth in Exhibit D, provide an update on the progress made by each of the Parties toward implementing this Agreement, including budgetary information for the Fueling Infrastructure and Marina Infrastructure, address any future planning for the Marina Property, and identify recommendations to improve performance and additional performance indicators to be added as part of this Agreement. In the event the Parties are unable to agree on the status of the Operational Performance Indicators in the Annual Report, the Annual Report will include a report from an independent third party agreeable to both parties to conduct an inspection of the facilities in order to assess the status of the performance of the Operational Performance Indicators, as set forth in **Exhibit D**. No later than in the tenth year of the Agreement Term, and also in the seventh year of any Renewal Term, the Parties will also engage in a thorough review of the Agreement and identify any provisions that require negotiation and possible amendment. Any proposed amendment will be presented to a joint meeting of the Party's standing committees and then to the Parties' legislative bodies for action as necessary.

A. As part of the Annual Report, the District will provide the City with financial reports that detail the Operating Revenue and Expenses attributed to the District O and M Area.

B. In order to determine initial cost, useful life and current value, the District will include in the Annual Report the fixed asset schedule related to its capital assets at the Marina Property ("Asset Schedule"). The Asset Schedule will not include the following items:

- i. any Fueling Infrastructure that has been funded from CFD; proceeds.
- ii. any assets paid for with funds other than Harbor District funds, for which the District has no ongoing obligations for repayment.

9. Termination.

A. Termination by Either Party. Either Party may terminate this Agreement by determination of a Party's legislative body not to renew the Agreement as set forth in Section 3.

B. Termination by the City for Cause. If the District fails to perform any material provisions of this Agreement, the City may find the District to be in Default. If the District does not cure such Default within 60 days after receipt of written notification from the City that such failure has occurred, or provide a plan to cure such default which is acceptable to the City in the reasonable exercise of its judgment, then the City may, by written notice of Default, terminate this Agreement for cause, effective 365 days after notice of termination, or earlier if agreed by both parties. The parties agree that not every violation of a provision of this Agreement is grounds for Default. A reasonable materiality standard will apply. In addition, the term "Default" for purposes of this Section also includes the following:

- i. Failure of the District to substantially meet the Operational Performance Indicators, as set forth in **Exhibit D**. If the District disputes the City's finding of

such failure, the District may at its sole expense commission an independent third party agreeable to both parties to conduct an inspection of the facilities to assess its performance of its obligations as set forth in **Exhibit D**. Unless the parties agree to a different time, the report of the inspection must be completed within 30 days of the notice of Default and will be shared with both Parties. The City must withdraw its notice of Default if the inspection report finds that the District has substantially met the Operational Performance Indicators set forth in **Exhibit D**. Unless the parties agree to a different time, the District will have the longer of (i) 30 days from completion of the report of inspection or (ii) 60 days from the notice of Default to cure any deficiencies, or provide a plan to cure any deficiencies that is acceptable to the City in the reasonable exercise of its discretion.

ii. Failure of the District to operate the Marina Area for a period of more than 30 calendar days.

iii. Notwithstanding the above, the District will not be in Default if its failure to perform is caused by reasons reasonably outside its control. Such failures expressly include, but may not be limited to: failure caused by the default or delayed performance by a third party contractor of work to replace any of the Docks or other improvements that are not a result of District's actions; failures caused by labor unrest or work stoppages; failures resulting from a Casualty Event in which damage, destruction, or loss of property due to an event that is sudden, unexpected, or unusual makes it impossible or impractical for the District to perform its obligations under this Agreement; a change in law that prohibits the District's performance hereunder; interference in possession or performance of materials or services by a governmental entity in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Marina Property.

C. Termination by the District for Cause. If the City fails to perform any material provisions of this Agreement, the District may find the City to be in Default. If the City does not cure such Default within 60 days after receipt of written notification from the District that such failure has occurred, or provide a plan to cure such default which is acceptable to the District in the reasonable exercise of its judgment, then the District may, by written notice of default, terminate this Agreement for cause effective 365 days after notice of termination or earlier if agreed by both parties. The parties agree that not every violation of a provision of this Agreement is grounds for Default. A reasonable materiality standard will apply. In addition, the term "Default" for purposes of this Section also includes the following:

i. Failure of the City to substantially meet the Operational Performance Indicators, as set forth in **Exhibit D**. If the City disputes the District's finding of such failure, the City may at its sole expense commission an independent third party agreeable to both parties to conduct an inspection of the facilities to assess its performance of its obligations as set forth in **Exhibit D**. Unless the parties agree to a different time, the report of the inspection must be completed within 30 days of notice of Default and will be shared with both Parties. The District must withdraw its notice of Default if the inspection report finds that the City has substantially met the Operational Performance Indicators set forth in **Exhibit D**. Unless the parties agree to a different time, the City will have the longer of (i) 30 days from completion of the report of inspection or (ii) 60 days from the notice of Default to cure any deficiencies, or provide a plan to cure any deficiencies that is acceptable to the District in the reasonable exercise of its discretion.

ii. Notwithstanding the above, the City will not be in Default if its failure to perform is caused by reasons reasonably outside its control. Such failures expressly

include, but may not be limited to: failure caused by the default or delayed performance by a third party contractor that are not the result of the City's actions; failures caused by labor unrest or work stoppages; failures resulting from a Casualty Event in which damage, destruction, or loss of property due to an event that is sudden, unexpected, or unusual makes it impossible or impractical for the City to perform its obligations under this Agreement; a change in law that prohibits the City's performance hereunder; interference in possession or performance of materials or services by a governmental entity in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Marina Property.

D. Obligations Upon Termination; Procedures

The Parties agree, that upon termination, the following principles should apply to the termination procedures:

- 1 In the event of termination for convenience, neither party should receive an unreasonable benefit of property, assets, or funds disproportionate to the Party's investment.
- 2 On termination for cause, the non-defaulting party may incur damages caused by the defaulting party. It is difficult as of the Effective Date to determine with any precision what those damages will be. In addition to the provisions set forth below, the parties therefore agree to submit any claim for damages to binding arbitration. The arbitrator may not award damages that are punitive in nature, or result in a recovery that is disproportionate to the default that caused the termination.
- 3 Regardless of whether termination is for convenience or cause, the Parties agree that between notice of termination and the effective date of actual termination, the Parties will make best efforts to cooperate in achieving a smooth transition to City control of the Marina Property. The Parties will need to cooperate on issues including but not limited to: transitions as may be necessary related to any tenancies at the Marina Property, appropriate notice to District or City employees, transition/assignment of any existing third party contracts, notice to the public of a transition in responsibility.

i. **Upon termination of this Agreement by City for convenience** (non-renewal of Term: Section 3), the following principles are subject to agreement by the parties, and in that case, the termination process will follow these general steps:

- a. The City will have possession of and take title to the entire Marina Property, including all Docks and other improvements affixed to the land.
- b. The District will have possession of and take title to all of its personal property at the Marina Property (for instance vehicles).
- c. The City may elect to be the successor in interest to all District permits, leases, and other agreements for operation and maintenance at the Marina Property.
- d. Subject to DBW approval, the City will be the successor in interest to any DBW Grant Agreements still in effect as of the effective date of termination.

e. For any permits, leases, and other agreements that the City has elected to continue, the City will retain all operating revenue from the Marina Property as of the effective date of termination. For any permits, leases, and other agreements that the City does not wish to continue, the District will endeavor to terminate those permits, leases or agreements prior to the effective date of the termination.

f. The City will pay the District, on an agreed upon schedule, at an annual rate no less than the annual depreciation established in the District's fixed Asset Schedule (which schedule will be kept up to date and included in each year's Annual Report), an amount equal to the variable "D" in the following formula:

$$D = A \times (B/C)$$

A= Actual cost paid by District for replacement of Docks, or other improvements affixed to the land that the District has built or replaced during the Term.

B= Remaining useful life of existing Dock or improvement

C= Initial useful life of existing Dock or improvement

Useful Life is defined as the estimated lifespan of a depreciable fixed asset, during which it can be expected to contribute to District operations, as detailed in the most recent Annual Report.

g. The Parties agree to identify any other actual and reasonable costs necessary to effect the termination and will apportion those costs according to the objectives set forth in this subsection D. In the event that the parties do not agree on the amount of reimbursement, or in the event that either party has additional claims against the other for damages resulting from the termination of this agreement that are not resolved by the procedures in sections a-e above, the parties agree to submit to third party arbitration any additional termination claim either may have against the other. The arbitration will be administered by the Judicial Arbitration and Mediation Services ("JAMS") under its rules then in effect. It will be conducted by a single neutral arbitrator agreed to by the parties, or if the parties cannot agree upon an arbitrator, before one assigned by JAMS. In reaching a decision, the arbitrator must consider the termination procedure objectives set forth in this subsection D and prepare a written decision that includes findings of fact, the reasons underlying the decision, and conclusions. Each party will bear its own costs and fees in connection with the arbitration.

ii. **Upon termination of this Agreement by City for Default by District** the following principles are subject to agreement by the parties, and in that case, the termination process will follow these general steps:

a. The City will have possession of and take title to the entire Marina Property, including all Docks and other improvements affixed to the land.

b. The District will have possession of and take title to all of its personal property at the Marina Property (for instance vehicles).

c. The City may elect to be the successor in interest to all District permits, leases, and other agreements for operation and maintenance at the Marina Property.

d. Subject to DBW approval, the City will be the successor in interest to any DBW Grant Agreements still in effect as of the effective date of termination.

e. For any permits, leases, and other agreements that the City has elected to continue, the City will retain all operating revenue from the Marina Property as of the effective date of termination. For any permits, leases, and other agreements that the City does not wish to continue, the District will endeavor to terminate those permits, leases or agreements prior to the effective date of the termination.

f. The City will pay the District, on an agreed upon schedule, at an annual rate no less than the annual depreciation established in the District's fixed Asset Schedule (which schedule will be kept up to date and included in each year's Annual Report), an amount equal to the variable "D" in the following formula:

$$D = A \times (B/C)$$

A= Actual cost paid by District for replacement of Docks, or other improvements affixed to the land that the District has built or replaced during the Term.

B= Remaining useful life of existing Dock or improvement

C= Initial useful life of existing Dock or improvement

Useful Life is defined as the estimated lifespan of a depreciable fixed asset, during which it can be expected to contribute to District operations, as detailed in the most recent Annual Report.

g. The Parties agree to identify any other actual and reasonable costs necessary to effect the termination and will apportion those costs according to the objectives set forth in this subsection D. In the event that the parties do not agree on the amount of reimbursement, or in the event that either party has additional claims against the other for damages resulting from the termination of this agreement that are not resolved by the procedures in sections a-e above, the parties agree to submit to third party arbitration any additional termination claim either may have against the other. The arbitration will be administered by the Judicial Arbitration and Mediation Services ("JAMS") under its rules then in effect. It will be conducted by a single neutral arbitrator agreed to by the parties, or if the parties cannot agree upon an arbitrator, before one assigned by JAMS. In reaching a decision, the arbitrator must consider the termination procedure objectives set forth in this subsection D and prepare a written decision that includes findings of fact, the reasons underlying the decision, and conclusions. Each party will bear its own costs and fees in connection with the arbitration.

iii. **Upon termination of this Agreement by District for convenience** the following principles are subject to agreement by the parties, and in that case, the termination process will follow these general steps:

a. The City will have possession of and take title to the entire Marina Property, including all Docks and other improvements affixed to the land.

b. The District will have possession of and take title to all of its personal property at the Marina Property (for instance vehicles).

c. The City may elect to be the successor in interest to all District permits, leases, and other agreements for operation and maintenance at the Marina Property.

d. Subject to DBW approval, the City will be the successor in interest to any DBW Grant Agreements still in effect as of the effective date of termination.

e. For any permits, leases, and other agreements that the City has elected to continue, the City will retain all operating revenue from the Marina Property as of the effective date of termination. For any permits, leases, and other agreements that the City does not wish to continue, the District will endeavor to terminate those permits, leases or agreements prior to the effective date of the termination.

f. The City will pay the District, on an agreed upon schedule, at an annual rate no less than the annual depreciation established in the District's fixed Asset Schedule (which schedule will be kept up to date and included in each year's Annual Report), an amount equal to the variable "D" in the following formula:

$$D = A \times (B/C)$$

A= Actual cost paid by District for replacement of Docks, or other improvements affixed to the land that the District has built or replaced during the Term.

B= Remaining useful life of existing Dock or improvement

C= Initial useful life of existing Dock or improvement

Useful Life is defined as the estimated lifespan of a depreciable fixed asset, during which it can be expected to contribute to District operations, as detailed in the most recent Annual Report.

g. The Parties agree to identify any other actual and reasonable costs necessary to effect the termination and will apportion those costs according to the objectives set forth in this subsection D. In the event that the parties do not agree on the amount of reimbursement, or in the event that either party has additional claims against the other for damages resulting from the termination of this agreement that are not resolved by the procedures in sections a-e above, the parties agree to submit to third party arbitration any additional termination claim either may have against the other. The arbitration will be administered by the Judicial Arbitration and Mediation Services ("JAMS") under its rules then in effect. It will be conducted by a single neutral arbitrator agreed to by the parties, or if the parties cannot agree upon an arbitrator, before one assigned by JAMS. In reaching a decision, the arbitrator must consider the termination procedure objectives set forth in this subsection D and prepare a written decision that includes findings of fact, the reasons underlying the decision, and conclusions. Each party will bear its own costs and fees in connection with the arbitration. .

iv. **Upon termination of this Agreement by District for Default by City** the following principles are subject to agreement by the parties, and in that case, the termination process will follow these general steps:

a. The City will have possession of and take title to the entire Marina Property, including all Docks and other improvements affixed to the land.

b. The District will have possession of and take title to all of its personal property at the Marina Property (for instance vehicles).

c. The City may elect to be the successor in interest to all District permits, leases, and other agreements for operation and maintenance at the Marina Property.

d. Subject to DBW approval, the City will be the successor in interest to any DBW Grant Agreements still in effect as of the effective date of termination.

e. For any permits, leases, and other agreements that the City has elected to continue, the City will retain all operating revenue from the Marina Property as of the effective date of termination. For any permits, leases, and other agreements that the City does not wish to continue, the District will endeavor to terminate those permits, leases or agreements prior to the effective date of the termination.

f. The City will pay the District, on an agreed upon schedule, at an annual rate no less than the annual depreciation established in the District's fixed Asset Schedule (which schedule will be kept up to date and included in each year's Annual Report), an amount equal to the variable "D" in the following formula:

$$D = A \times (B/C)$$

A= Actual cost paid by District for replacement of Docks, or other improvements affixed to the land that the District has built or replaced during the Term.

B= Remaining useful life of existing Dock or improvement

C= Initial useful life of existing Dock or improvement

Useful Life is defined as the estimated lifespan of a depreciable fixed asset, during which it can be expected to contribute to District operations, as detailed in the most recent Annual Report.

f. The Parties agree to identify any other actual and reasonable costs necessary to effect the termination and will apportion those costs according to the objectives set forth in this subsection D. In the event that the parties do not agree on the amount of reimbursement, or in the event that either party has additional claims against the other for damages resulting from the termination of this agreement that are not resolved by the procedures in sections a-e above, the parties agree to submit to third party arbitration any additional termination claim either may have against the other. The arbitration will be administered by the Judicial Arbitration and Mediation Services ("JAMS") under its rules then in effect. It will be conducted by a single neutral arbitrator agreed to by the parties, or if the parties

cannot agree upon an arbitrator, before one assigned by JAMS. In reaching a decision, the arbitrator must consider the termination procedure objectives set forth in this subsection D and prepare a written decision that includes findings of fact, the reasons underlying the decision, and conclusions. Each party will bear its own costs and fees in connection with the arbitration. .

10. Dispute Resolution. The Parties agree to try in good faith to resolve all disputes. In the event of a dispute that cannot be resolved through a meet and confer process between the City Manager and the District General Manager, the Parties may, if mutually agreed, engage in an alternate dispute resolution process such as mediation or arbitration. The parties will mutually agree upon all terms associated with such a dispute resolution process and will each bear their own costs associated with such a dispute resolution process.

As part of its commitment to try and resolve disputes, in addition to the independent third party process identified in Section 9, the Parties may agree at any time to commission an independent third party to conduct an inspection of the facilities to assess the Parties' performance of the obligations as set forth in **Exhibit D**. The report of the inspections will be shared with both Parties and any deficient Party will make a good faith effort to correct deficiencies within 30 days, with confirmation of the correction documented in a follow-up report. Any such inspection report will be included in the Annual Report provided for in Section 8.

11. Notices. All notices or communications to be sent pursuant to this Agreement must be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices must be sent by: (a) personal delivery, in which case notice is effective upon delivery; or (b) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

If to the City: City of South San Francisco
400 Grand Avenue
Attn: City Manager
Phone: (650) 829-6623
Facsimile: (650) 829-6623

If to the District: San Mateo County Harbor District
504 Avenue Alhambra, 2nd Floor
P.O. Box 1449
El Granada, CA 94108
Attn: General Manager
Phone: (650) 583-4400
Facsimile: (650) 583-4611

Either Party may change its address by providing written notice to the other Party in the manner set forth above.

12. Authority. By executing this Agreement, the signatory for each Party warrants and represents that he/she has the authority and/or has obtained all necessary approvals to enter into this Agreement on behalf of and bind the Party on whose behalf he/she has executed this Agreement.

13. Severability. If any term or provision of this Agreement or the application thereof is, to any extent, held to be invalid or unenforceable, such term or provision will be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

14. Entire Agreement; Amendments in Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest after approval by the legislative bodies of both Parties. This Agreement may be executed in multiple counterparts, each of which will be an original and all of which together constitute one agreement.

15. Successors and Assigns; No Third-Party Beneficiaries. This Agreement is binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that except as authorized herein neither Party may transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent is void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and does not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

16. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California. Venue will be in a court of competent jurisdiction in San Mateo County.

17. Captions. The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the Agreement.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the date first written above.


CITY

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

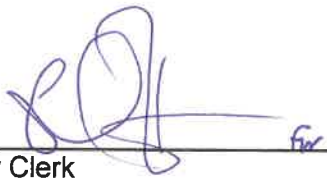
By: 
Name: Mike Furnell
City Manager

DISTRICT

**SAN MATEO COUNTY HARBOR
DISTRICT,**
a political subdivision of the State of
California

By: 
Name: Steve McGrath
General Manager

ATTEST:

By: 
City Clerk

ATTEST:

By: 
District Secretary

APPROVED AS TO FORM:

By: 
City Attorney

APPROVED AS TO FORM:

By: _____
District Counsel

Exhibit List

- Exhibit A – Marina Property**
- Exhibit B – 2011 Agreement**
- Exhibit C – 2017 Implementation Agreement**
- Exhibit D – Operational Performance Indicators**

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the date first written above.

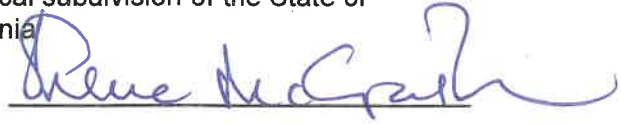
CITY

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation


By: 
Name: Mike Farrell
City Manager

DISTRICT

SAN MATEO COUNTY HARBOR
DISTRICT,
a political subdivision of the State of California

By: 
Name: STEVE McGrath
General Manager

ATTEST:

By: 
City Clerk

ATTEST:

By: 
District Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

APPROVED AS TO FORM:

By: 
District Counsel

Exhibit List

- Exhibit A – Marina Property**
- Exhibit B – 2011 Agreement**
- Exhibit C – 2017 Implementation Agreement**
- Exhibit D – Operational Performance Indicators**

EXHIBIT A

Marina Property

Exhibit A
Oyster Point Operations/Maintenance
Responsibility Map



Legend

- City of SSF Operations/Maintenance
- Harbor District Operations/Maintenance
- Land Boundary
- Water Boundary

EXHIBIT B
2011 AGREEMENT

**AGREEMENT BETWEEN AND AMONG THE CITY OF SOUTH SAN FRANCISCO,
THE REDEVELOPMENT AGENCY OF THE CITY OF SOUTH SAN FRANCISCO,
AND THE SAN MATEO COUNTY HARBOR DISTRICT**

This Agreement Between and Among the City of South San Francisco, The Redevelopment Agency of South San Francisco, and the San Mateo County Harbor District (this "AGREEMENT"), dated and made effective as of March 25, 2011 (the "Effective Date"), is entered into by and among the City of South San Francisco, a municipal corporation ("City"), the Redevelopment Agency of the City of South San Francisco, a public body, corporate and politic ("Agency"), and the San Mateo County Harbor District, a political subdivision of the State of California ("District"). City, Agency and District are hereinafter collectively referred to as the "Parties."

RECITALS

A. City is the owner of certain real property located in the City and commonly known as the Oyster Point Marina ("Marina Property"), as shown on the parcel map attached hereto as Exhibit A. City and District have entered into a joint powers agreement related to the development, operations, and maintenance of the Marina Property pursuant to Government Code section 6500 *et seq.* ("JPA"). City desires redevelopment of the Marina Property including potential commercial and office/research and development uses and public amenities.

B. District entered into certain long-term leases with King Ventures for certain portions of the Marina Property ("King Leases"), as shown generally on Exhibit A. District uses rent revenue from the King Leases to pay debt service on loans from the California Department of Boating and Waterways ("DBW"), which has a security interest in the King Leases.

C. Oyster Point Ventures, LLC ("Developer") is the owner of certain property located in the City, commonly known as the Oyster Point Business Park ("Business Park"), and adjacent to the Marina Property as shown on Exhibit A. Developer acquired the Business Park for the specific purpose of redeveloping the Business Park as a modern research and development life sciences campus with substantial public amenities.

D. Developer has proposed the development of an office/research and development life sciences campus, commercial development (including retail, restaurants, and hotel uses), and substantial public amenities located on the Business Park and a portion of the Marina Property as shown on Exhibit B ("Project"). In furtherance of Project, Developer also acquired King Ventures' interests in the King Leases. In addition, the City and Agency have proposed additional public and private improvements on a separate portion of the Marina Property as shown on Exhibit B.

E. The Parties anticipate that in addition to the Developer's acquisition of the King Leases, the Project will require one or more agreements with Developer to exchange interests in portions of the Marina Property ("Conveyance Agreement"), a Disposition and Development Agreement or similar agreement ("DDA") to establish conveyance and financing terms for development of portions of the Marina Property, and a development agreements and various land use entitlements to govern development of Project components at the Business Park and portions of the Marina Property ("City Approvals") (collectively, the "Developer Binding Agreements"). The Parties have agreed that the City and the Agency shall be the entities that negotiate and contract directly with Developer.

F. On May 27, 2009, the Parties entered into a Memorandum of Understanding ("MOU") as an expression of preliminary points of agreement among the Parties concerning development of the Project. This Agreement will supersede any points of agreement contained within the MOU.

G. City, in conjunction with Agency, pursuant to the California Environmental Quality Act (Section 21000 *et seq.* of the Public Resources Code, and the Guidelines set forth at 14 California Code of Regulations section 15000 *et seq.*, "CEQA"), has prepared and circulated for public comment a Draft EIR to evaluate the potential environmental impacts of the proposed Project. No construction will be authorized until (i) City, in conjunction with Agency, has certified as adequate and approved a Final EIR; (ii) City has approved the land use entitlements required for the Project; and (iii) any agreements or regulatory permits required by any other applicable regulatory agencies have been obtained. The City, by Resolution No. 48-2011 certified the Oyster Point Specific Plan Environmental Impact Report ("EIR") for the Project and all related improvements.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1 Purpose and Effectiveness of this Agreement. This Agreement supersedes all of those preliminary points of agreement contained within the MOU. The Parties expressly acknowledge and agree that: (i) the terms and conditions set forth in this Agreement are subject to the approval of, or modification by, the governing bodies of City, Agency and District; and (ii) following approval of this Agreement by City, Agency and District, the Parties intend for the provisions contained within this Agreement to be self-executing upon occurrence of the required conditions precedent and will not require any further approval by the governing bodies of the City, Agency and District.

Section 2 Agency Rights and Obligations. Any Agency rights and obligations under this Agreement will automatically be assigned to City in the event that Agency is terminated, or no longer has the ability to fulfill its obligations as set forth herein. Any assignment of rights and obligations pursuant to this Section does not require any further approval by the governing bodies of the City, Agency and District.

END OF
JPA

Section 3 Term. The term of this Agreement (the "Term") shall commence on the Effective Date, and shall terminate on November 11, 2026, unless extended or earlier terminated as provided herein.

Section 4 JPA Amendment. Upon point of conveyance of any portion of the Marina Property to Developer, Section 2 and Section 3 of the JPA, and those incorporated exhibits (Exhibit 1 and Exhibit 2), are hereby amended to remove from the terms of the JPA those conveyed portions of the Marina Property, as more particularly described in Exhibit C, attached hereto and incorporated by reference. Agency and District hereby consent to this amendment of the JPA, and no further approval by the governing bodies of the City, Agency and District is required. The timing of the property conveyance and JPA amendment occur pursuant to the provisions of the Disposition and Development Agreement between the Agency and the Developer. The remaining terms of the JPA will remain in full force and effect, unless otherwise amended pursuant to the terms of the JPA.

Section 5 Lease Revenue. In the event the King Leases are conveyed to the City or Agency and thereafter terminated prior to District's payment of its existing debt obligations to DBW which as of the

Effective Date total \$10,083,374.03, Agency will provide the District an annual amount not to exceed the amount of minimum rent (as defined in the King Leases), including inflation adjustments set forth in the King Leases, that District is already entitled to under the King Leases ("King Lease Rent") commencing after termination of the King Leases and continuing until the DBW debt service is retired which the parties agree is not later than December 31, 2019. Agency will prorate any funds provided to DBW if the King Leases are terminated during a portion of a year. For purposes of example only if the King Leases were terminated on February 28, 2011, the annual payment due to the District for minimum rent would equal \$211,656, which is the same amount Developer presently pays for lease payments.

Section 6 Marina Operations.

6.1 Dock Improvements. City (with funding provided by the Agency) or Agency will commit and pay funds for design, engineering, permitting and construction of: (1) up to two new docks at the Harbor District operated harbor adjacent to the Marina Property in an amount not to exceed Two Million Dollars (\$2,000,000.00) with payment to be made within three years of the Effective Date, provided that District (i) satisfies the District's obligation in Section 6.2, (ii) provides City with evidence that any necessary regulatory permits for the new dock or docks have been obtained, and (iii) District provides evidence of and commits to commence and complete construction of the dock or docks within 18 months of the time the City/Agency provides the funds; and (2) wave attenuators as required pursuant to the agreement between the Army Corps of Engineers and the District in an amount not to exceed six hundred thousand dollars (\$600,000) within one year of the Effective Date, provided that District (i) satisfies the District's obligations in Section 6.2, (ii) provides City with evidence that any necessary regulatory permits for the attenuators have been obtained, and (iii) District provides evidence of and commits to have the contractor commence and complete construction of the attenuators within 24 months of the time the City/Agency provides the funds.

6.2 District Capital Improvement and Management Plans for Harbor Operations. Prior to the Agency's obligation to pay funds for dock improvements as set forth in Section 6.1, District will provide the Agency and City with a draft capital improvement plan showing the new dock or docks and a management plan to increase berth occupancy and direct revenue, both of which documents shall be subject to review and approval by the City, which such approval shall not be unreasonably withheld.

6.3 Government Approvals. District is solely responsible for any permits, approvals and government entitlements required for dock improvements. Upon written request from the District, the City will waive fees for permits, approvals, and other entitlements required for dock improvements.

Section 7 District Office Space.

7.1 Temporary Office Space. Upon City's receipt of Developer's request for conveyance of the property, the City and District will meet to discuss the District's temporary office space needs. The City will endeavor to provide six (6) months notice to the District of actual conveyance. Upon actual conveyance of property and receipt of a written request from the District and assuming the Redevelopment Agency retains its current land holdings, City/Agency will lease to District up to approximately 3,600 square feet of temporary office space in a property owned by the City/Agency until the earlier of termination of the JPA or at such time as the Permanent Office Space is available for occupancy. The rental rate for the temporary office lease space shall be one dollar per year. District shall take the leased space in its "as-is" condition and shall be responsible for all costs associated with obtaining permits for and constructing tenant

improvements within the space. District shall also pay all utility costs, maintenance costs, custodial services and applicable taxes for the temporary office lease space during the term of the lease.

7.2 Office/Commercial Space. Provided that the Phase IC Improvements have been completed, the City will lease to the District for one dollar per year an adequate amount of space in the area designated in Exhibit D to allow the District to sublease the property and construct up to 40,000 square feet of commercial harbor related uses as specified in the Oyster Point Specific Plan with an FAR based on a two story structure platform. The lease term shall terminate November 11, 2026, provided that the parties agree that the lease term may be extended by mutual consent if the District proposes a use that is consistent with the Oyster Point Specific Plan including the design guidelines therein and provided that the City and District agree on the revenue sharing for the lease revenues received after November 11, 2026. District or its sublessees shall be responsible for all costs associated with obtaining permits for and constructing the buildings and tenant improvements within the leased area. Any proposed use shall obtain any necessary land use entitlements from the City and any other regulatory agency with jurisdiction over the area. City agrees that if the Bay Conservation and Development Condition imposes a requirement for replacement recreational/open space, City will agree that the new recreation/open space constructed as part of the Oyster Point Specific plan may be identified and used as replacement recreational/open space. District shall also pay all utility costs, maintenance costs, custodial services and applicable taxes for the permanent office lease space during the term of the lease.

Section 8 City Consultation. For twenty-four (24) months following the Effective Date of this Agreement, City and Agency will consult with District regarding potentially extending the term of the JPA, and potentially amending the JPA to address the respective roles of the City and the District in operating the Marina Property; addition to or replacement of existing infrastructure; removal of outdated JPA provisions; the City's and District's respective obligations regarding providing services to the Marina Property, including police, fire, and landscaping; potential alternative energy projects at the Oyster Point Marina and/or potential revenue sharing from commercial properties to fund additional capital improvements. This provision does not obligate any Party to agree to any terms that may be discussed.

Section 9 District Costs. Upon submission of an invoice with reasonable supporting information the Agency will reimburse the District for its actual and reasonable costs of negotiating this Agreement for an amount not to exceed \$35,000.00.

Section 10 Additional Debt by District. District will not incur any additional debt secured by any revenue generated by the Marina Property or the property itself without first obtaining express written consent from the City.

Section 11 Marina Property Access. During the Term, District shall provide City, Agency and/or Developer access to the Marina Property and will cooperate with City, Agency and/or Developer to enable such parties or their representatives to obtain access to the Marina Property for the purpose of obtaining data and making tests necessary to investigate the condition of the Marina Property, provided that City, Agency and/or Developer comply with all safety rules and does not unreasonably interfere with the operations of any current tenants. City, Agency and/or Developer shall at all times keep the Marina Property free and clear of all liens and encumbrances affecting title to the Marina Property.

Section 12 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified

below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery; or

(ii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of South San Francisco
400 Grand Ave.
South San Francisco, CA 94080
Attn: City Manager
Phone: (650) 829-6620
Facsimile: (650) 829-6623

Agency: Redevelopment Agency of the City of South San Francisco
400 Grand Ave.
South San Francisco, CA 94080
Attn: Executive Director
Phone: (650) 829-6620
Facsimile: (650) 829-6623

with a copy to: Meyers Nave
575 Market Street, Suite 2600
San Francisco, CA 94105
Attn: Steven T. Mattas
Phone: (415) 421-3711
Facsimile: (415) 421-3767

District: San Mateo County Harbor District
400 Oyster Point Blvd., Suite 300
South San Francisco, CA 94080
Attn: General Manager
Phone: (650) 583-4400
Facsimile: (650) 583-4611

Section 13 Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

Section 14 Entire Agreement; Amendments in Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the

Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

Section 15 Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

Section 16 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 17 Relationship of Parties. The Parties agree that nothing in this Agreement is intended to or shall be deemed or interpreted to create among them the relationship of buyer and seller, or of partners or joint venturers.

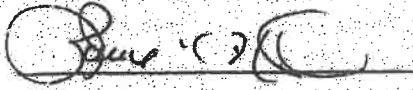
Section 18 Captions. The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

SIGNATURES ON THE NEXT PAGE

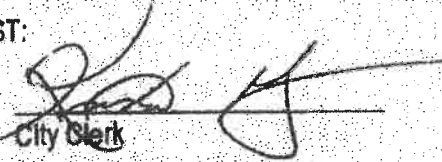
IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding effective as of the date first written above.

CITY

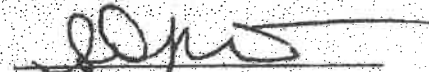
CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: 
Name: Barry M. NAGEL
City Manager

ATTEST:


By: 
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney

DISTRICT

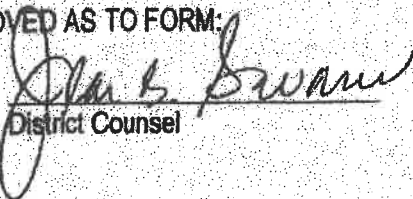
SAN MATEO COUNTY HARBOR DISTRICT,
a political subdivision of the State of California

By: 
Name: Peter Grenell
General Manager

ATTEST:

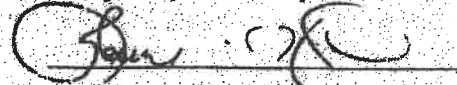
By: 
District Secretary

APPROVED AS TO FORM:

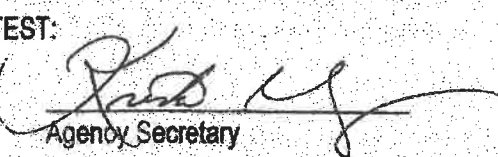
By: 
District Counsel

AGENCY

REDEVELOPMENT AGENCY OF THE CITY OF
SOUTH SAN FRANCISCO,
a public body, corporate and politic

By: 
Name: Barry M. NAGEL
Executive Director

ATTEST:

By: 
Agency Secretary

APPROVED AS TO FORM:

By: 
Agency General Counsel

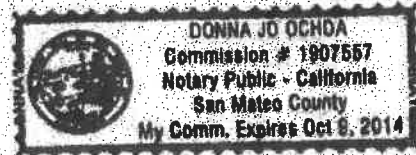
State of California)
)
County of San Mateo)

On March 25, 2011, before me, Donna Jo Ochoa, Notary Public, personally appeared Barry M. Nagel, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Donna Jo Ochoa (Seal)



Re:

RE: _____

Property Address or Name: _____

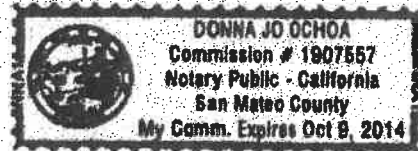
State of California)
)
County of San Mateo)

On March 25, 2011, before me, Donna Jo Ochoa Notary Public, personally appeared Barry M. Nagel, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Donna Jo Ochoa (Seal)



Re:

RE: _____

Property Address or Name: _____

ACKNOWLEDGMENT

State of California
County of San Mateo

On March 25, 2011 before me, Deborah Nixon, Notary Public
(insert name and title of the officer)

personally appeared Peter Grenell, Robert Bernardo and Jean B. Savaree
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~
subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in
~~his/her~~ their authorized capacity(ies), and that by ~~his/her~~ their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Deborah Nixon (Seal)

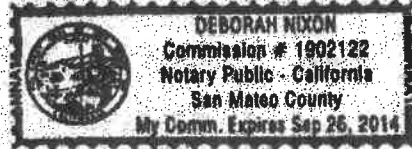
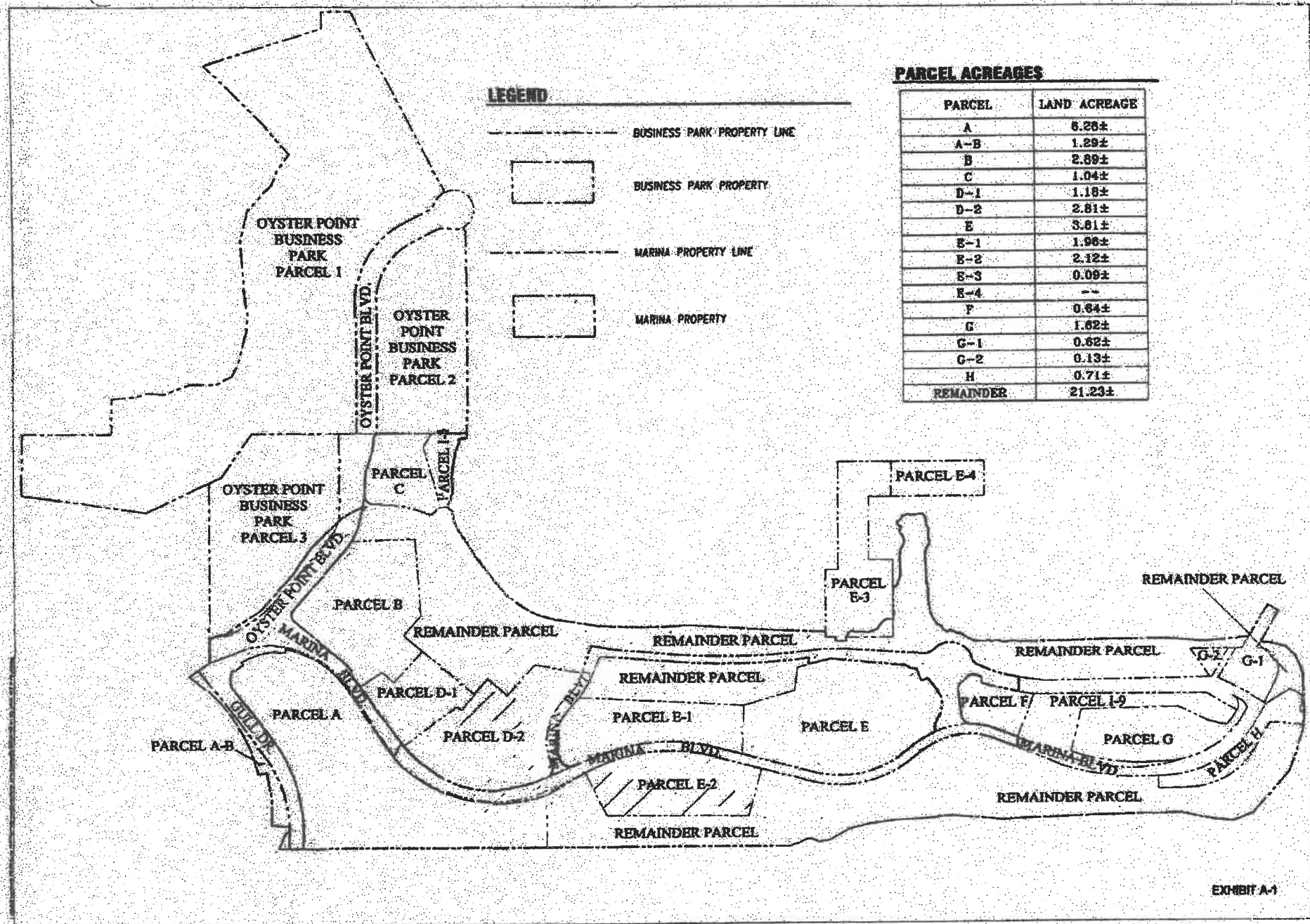


Exhibit List


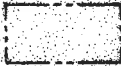


EXHIBIT A

MAP OF THE PROPERTY

1613418.3



LEGEND

-  BUSINESS PARK PROPERTY LINE
-  BUSINESS PARK PROPERTY
-  MARINA PROPERTY LINE
-  MARINA PROPERTY

PARCEL ACREAGES

PARCEL	LAND ACREAGE
A	6.25±
A-B	1.29±
B	2.89±
C	1.04±
D-1	1.18±
D-2	2.81±
E	3.81±
E-1	1.96±
E-2	2.12±
E-3	0.09±
E-4	--
F	0.64±
G	1.62±
G-1	0.62±
G-2	0.13±
H	0.71±
REMAINDER	21.23±

EXHIBIT B

CONCEPTUAL SITE PLAN FOR THE PUBLIC REALM
WITH PHASE ONE SSKS DEVELOPMENT

Prepared for the City of South San Francisco by ROMA Design Group

FEBRUARY 22, 2011

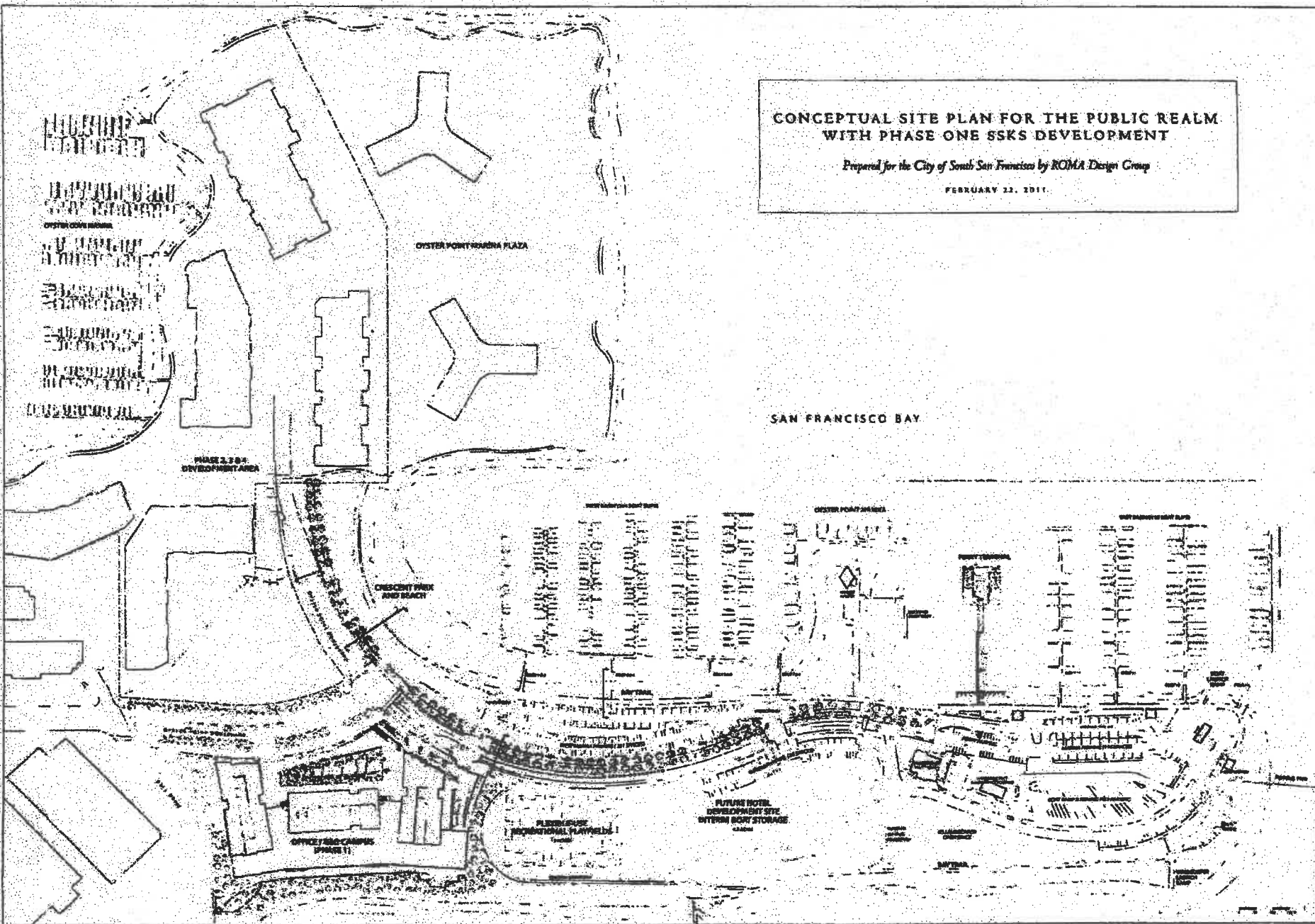
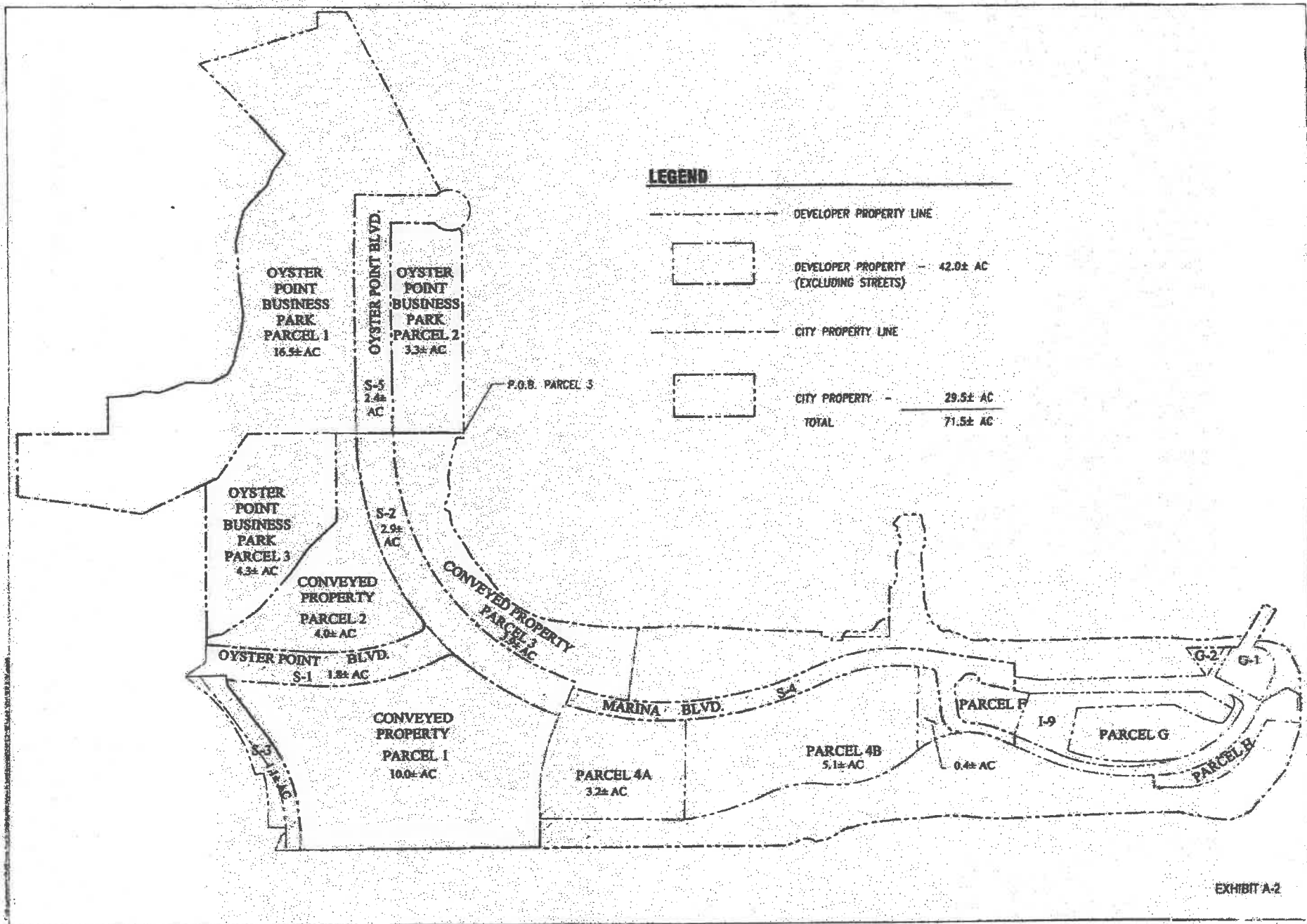


EXHIBIT C



LEGEND

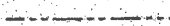
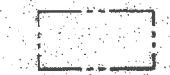

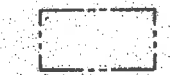
	DEVELOPER PROPERTY LINE	
	DEVELOPER PROPERTY (EXCLUDING STREETS)	42.0± AC
	CITY PROPERTY LINE	
	CITY PROPERTY	29.5± AC
	TOTAL	71.5± AC

EXHIBIT D

CONCEPTUAL SITE PLAN FOR THE PUBLIC REALM WITH PHASE ONE SSKS DEVELOPMENT

Prepared for the City of South San Francisco by ROMA Design Group

FEBRUARY 22, 2011

POTENTIAL
LEASABLE AREA

SAN FRANCISCO BAY

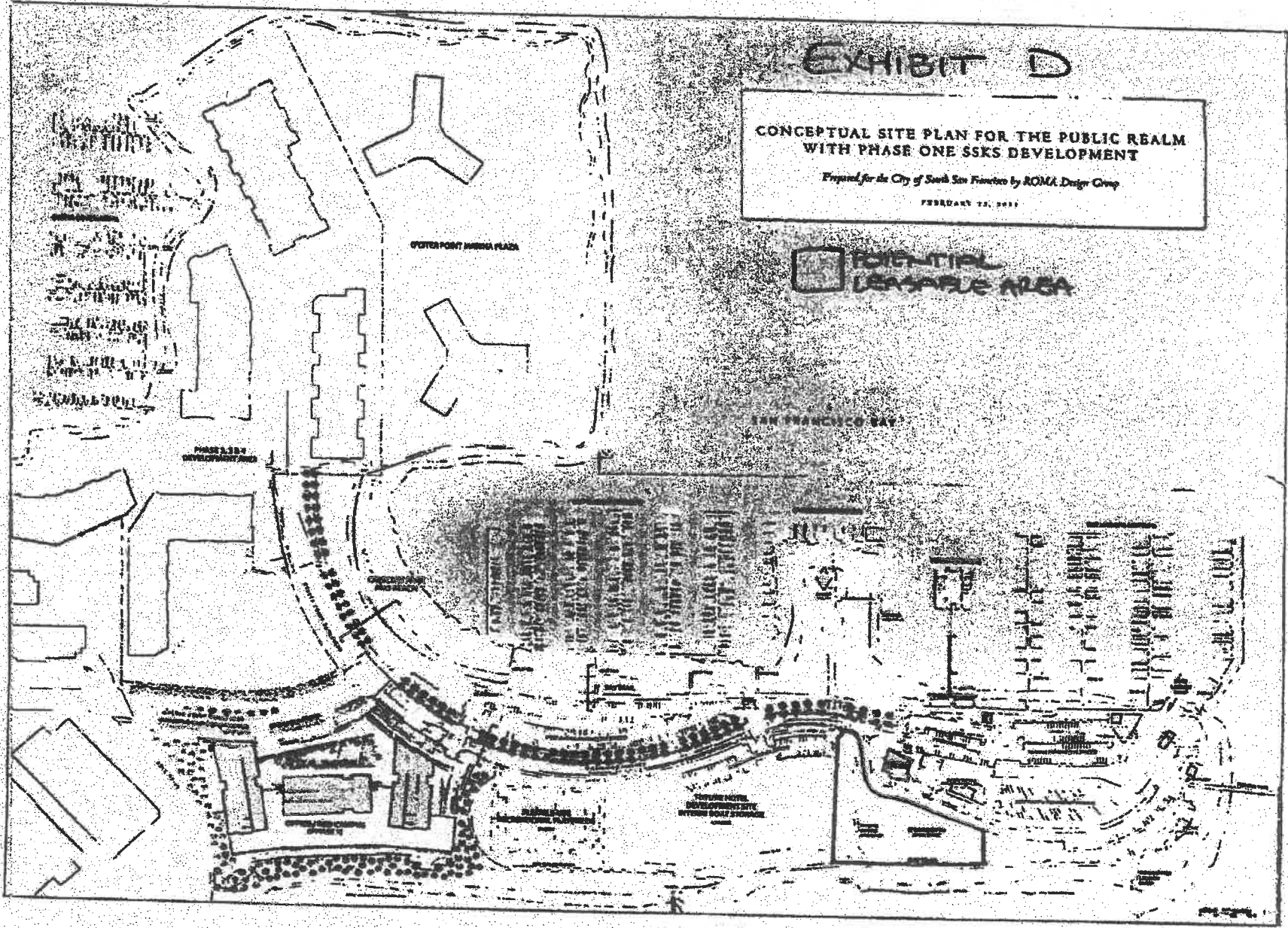


EXHIBIT C

2017 IMPLEMENTATION AGREEMENT

IMPLEMENTATION AGREEMENT BY AND BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND THE SAN MATEO COUNTY HARBOR DISTRICT RELATED TO THE 2011 AGREEMENT BY AND AMONG THE CITY, DISTRICT, AND THE CITY'S FORMER REDEVELOPMENT AGENCY

This agreement, dated and made effective as of ~~August 6~~^{September}, 2017 (the "Effective Date"), is entered into by and between the City of South San Francisco, a municipal corporation ("City"), and the San Mateo County Harbor District, a political subdivision of the State of California ("District") and is hereinafter referred to as "AGREEMENT." City and District are hereinafter collectively referred to as the "Parties," and sometimes individually as "Party."

RECITALS

A. Whereas, City is the owner of certain real property located in the City and commonly known as the Oyster Point Marina ("**Marina Property**"), as shown on **Exhibit 1** attached hereto. City and District have entered into a Joint Powers Agreement, dated July 6, 1977, related to the development, operations, and maintenance of the Marina Property pursuant to Government Code section 6500 et seq. ("**JPA**").

B. Whereas, District entered into certain long-term leases with King Ventures for certain portions of the Marina Property ("**King Leases**"), as shown generally on **Exhibit 2**. The King Leases were subsequently acquired by Oyster Point Development, LLC ("**Developer**") pursuant to an assignment from the previous developer Oyster Point Ventures, LLC.

C. Whereas, pursuant to the terms of the Disposition and Development Agreement by and among the City, the Redevelopment Agency of South San Francisco ("**Redevelopment Agency**") and Oyster Point Ventures, LLC, dated March 23, 2011 ("**DDA**"), portions of the Marina Property ("**Conveyed Property**") as shown in Exhibit C to the 2011 Agreement are to be conveyed by the City to the Developer and the Developer's interest in some of the King Leases are to be conveyed from Developer to City and others related to the Conveyed Property are to be extinguished.

D. Whereas, on March 25, 2011, the Parties and the Redevelopment Agency entered into an agreement ("**2011 Agreement**") which formalized and superseded the points of agreement contained within a 2009 Memorandum of Understanding between the Parties and set forth the Parties and Redevelopment Agency's rights and obligations related to implementation of the DDA and amendment to JPA related to Conveyed Property.

E. Whereas Recitals D and E and Exhibit B to the 2011 Agreement provides that development of the Marina Property including the Conveyed Property will include in specified locations office/research and development life science campus, commercial development (including retail, restaurants and hotel uses) and public amenities including specifically public recreational uses and a hotel on property easterly of the Conveyed Property.

F. Whereas, pursuant to Sections 6.1 and 6.2 of the 2011 Agreement, the District provided to the City a Capital Improvement and Management Plan and the Redevelopment Agency and City paid the District \$2,600,000 for dock improvements and wave attenuators which the District has installed at Oyster Point Marina.

G. Whereas, pursuant to Section 9 of the 2011 Agreement, the Redevelopment Agency agreed to pay and did pay the District \$31,173.17 to reimburse District costs incurred in negotiating the 2011 Agreement.

H. Whereas, the District has informed the City that the District has paid off the debt owed to the California Department of Boating and Waterways as referenced in Recital B and Section 5 of the 2011 Agreement.

I. Whereas, pursuant to Section 4 of the 2011 Agreement, upon conveyance of the Conveyed Property, and without further action by the City and District, the Conveyed Property will be automatically removed from property covered and subject to the JPA and all rights and obligations of the Parties set forth in the JPA related to Conveyed Property will terminate.

J. Whereas, Developer is proceeding with construction authorized in the DDA and referred in Recital E of the 2011 Agreement and the Parties desire to enter into this Agreement to implement the 2011 Agreement in furtherance of construction of the Phase IC, ID and IIC on the Marina Property including the Conveyed Property.

K. Whereas the Marina Property includes property on which improvements will be made as part of construction of Phases IC, ID and IIC.

L. Whereas, the King Leases provide for the installation, maintenance and repair of fueling facilities in and adjacent to the area identified as parcels E-3 and E-4 on Exhibit 2 and whereas the facilities were installed and operated by the various lessees and sub-lessees of the King Leases and are in need of repair.

M. Whereas, the Parties desire to enter into this Agreement to implement the improvements referenced in the 2011 Agreement and to confirm that the recreation parcel and the hotel parcel portions of the Marina Property will be removed from the property covered by the JPA and that as a result of that removal the District's rights and obligations including specifically the obligation for maintenance for those properties will terminate upon conveyance of the Conveyed Property to the Developer.

N. Whereas, the District desires to retain access to and usage of the fueling system on the dock and the related fuel lines and fuel tanks on the Marina Property and desires to have a license agreement providing such access and usage rights for portion of the fueling system that is not now or subsequently authorized by the JPA.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1 **Term.** The term of this Agreement (the "**Term**") shall commence on the Effective Date, and shall terminate on the later of November 11, 2026, or the satisfaction by the City of its funding obligations set forth in Section 6, unless extended or earlier terminated by mutual consent of the parties. For avoidance of doubt, if the City has not satisfied its funding obligations set forth in Section 6, the parties intend this agreement to remain in place even if the JPA is terminated, unless otherwise determined by mutual consent of the Parties.

Section 2 Termination of E, E-1, E-2, E-3 and E-4 Parcel King Leases. The District will consent to a request by Developer and City to assign all existing King Leases pertaining to Parcels E, E-1, E-2, E-3, and E-4 to the City. Upon the close of escrow for conveyance of the Conveyed Properties from the City to Developer, any and all existing King Leases pertaining to Parcels E, E-1, E-2, E-3 and E-4, or portions thereof, shall be terminated and shall be of no further force and effect.

Section 3 Removal of Land Subject to the JPA Obligations. Upon close of escrow for the conveyance of the Conveyed Properties from the City to Developer pursuant to the DDA, Section 2 and Section 3 of the JPA, and those incorporated exhibits (JPA Exhibits 1 and 2) are hereby amended to remove from the terms of the JPA the land designated in Exhibit 3 and the rights and obligations set forth in the JPA shall no longer apply to land designated in Exhibit 3.

Section 4 Access to Marina Property During and for Construction of Phase IC and Phase IIC Improvements. District and City agree that City, Developer and their contractors shall have access to the Marina Property under the control of District during construction of the Phase IC and Phase IIC improvements set forth in the DDA. The Phase IC and Phase IIC improvements are shown on Exhibit 4 attached hereto. City agrees that it shall require any contractors retained by the Developer or the City (either on behalf of the City or on behalf of the Successor Agency) to maintain at all times vehicular and pedestrian access routes to District-related operations (including but not limited to docks, fueling facilities, boat ramps, parking lots, bathrooms, ferry terminal, harbor master's office and the yacht club). District agrees that Developer, City or their contractor may install fences and restrict access to construction areas necessary to construct the Phase IC and IIC improvements.

City shall require that Developer or City contractors shall defend, indemnify and hold harmless the City, Successor Agency and District and their officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of contractor or its employees, subcontractors, or agents. The foregoing obligation of the contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of the City, Successor Agency, District or their officers, employees, or agents and (2) the actions of contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Section 5 Fueling Infrastructure Operations and License. In addition to the rights conferred to District in the JPA to maintain and operate a fueling service for users of the Oyster Point Marina, City agrees to grant District a non-exclusive license for the land shown in Exhibit 5 ("**License Area**"), for a term not to exceed to the term of the JPA (current or as amended), to continue to operate and maintain the fuel utility lines, fuel tanks with up to 20,000 gallon capacity (which are currently constructed as two underground tanks), fueling docks, and fueling station, as well as any other related facilities or improvements appurtenant to the fueling service

at the marina (collectively, “**Fueling Infrastructure**”). The City further agrees that as part of this license, the City will cooperate with District to allow District and its fuel suppliers and fuel system contractors access across City roads and parking lots to the extent necessary for District to continue to maintain and operate the Fueling Infrastructure.

Subject to the Districts' rights set forth in Section 6, the District shall operate, or cause to be operated, the Fueling Infrastructure (existing and as repaired or replaced pursuant to Section 6 below) for the term of the JPA. District shall at District's sole cost, operate and maintain the Fueling Infrastructure (as repaired or replaced pursuant to Section 6 below) in accordance with all government permits and federal, state, and local laws and regulations. District shall also hold harmless, defend and indemnify City for claims or damage that arise from District's maintenance and operation of the Fueling Infrastructure. Nothing herein prevents the District from temporarily or permanently ceasing operating the Fueling Infrastructure existing as of the Effective Date as deemed necessary by the District in its sole discretion to comply with any regulatory requirements, or unanticipated circumstances affecting the condition of the Fueling Infrastructure, or as necessary to accomplish the Improvements described in Section 6 of this Agreement.

Section 6 Fuel Dock and Fuel Line Repair. In order to facilitate the continued provision of fueling services at Oyster Point Marina and only if the Oyster Point area community facilities district (“OPCFD”) referenced herein is established and the necessary funds have been paid to the City from the OPCFD, the City shall provide the District with the necessary funding so that the District can commence and complete the repair and replacement of the Fueling Infrastructure, and any necessary remediation required by such repair and replacement, consistent with proposed improvements set forth in Exhibit 6 (the “Improvements”). The Improvements are contemplated to be completed in two phases, the Initial Improvements and the Land Side Improvements as set forth and defined in Exhibit 6. The maximum amount of funding the City will provide to the District for design and construction of the Improvements, with all such funding originating exclusively from the OPCFD, shall not exceed the total amount collected by the OPCFD for facilities purposes, less administrative costs. This not to exceed amount is \$2,500,000, subject to a two (2) percent annual increase for each calendar year commencing in 2019. The design and engineering plans for the Improvements shall be subject to approval by District's General Manager and City's City Manager.

A. To fund the Improvements, the City intends to form the OPCFD. The City agrees to take all actions necessary and within its reasonable control to consider formation of the OPCFD not later than April 30, 2018. If the OPCFD is formed later than April 30, 2018, (1) the dates for funding and performing the Improvements set forth in sub-paragraphs B and C, below, will be extended by the same amount of time as delay in formation of the OPCFD, and (2) the parties will meet and confer to establish the exact schedule for funding and performing the Improvements, with the District ultimately retaining all rights set forth in sub-paragraph D.

B. Following and only upon formation of the OPCFD, the City will provide the District with the necessary funding to enable the District to design, commence and complete the Initial Improvements. If the OPCFD is formed, the City will provide funding for the District to complete the design and engineering phase of the Initial Improvements no later than December 31, 2018. The total amount payable for the design and engineering phase of the Initial

Improvements is estimated at \$75,000. If the OPCFD is formed, the City will provide funding for the District to complete the construction phase of the Initial Improvements no later than December 31, 2020. The total amount payable for the construction phase of the Initial Improvements is estimated at \$1,175,000. The City will only provide funding for the District to complete the Initial Improvements in the total not to exceed amount of \$1,250,000, subject to a two (2) percent annual increase for each calendar year commencing in 2019 until the Initial Improvements are complete consistent with the completion deadlines set forth herein. In the event that actual costs for the Initial Improvements exceed the amount the City is obligated to fund pursuant to the previous sentence, the parties agree to meet to consider any reasonable request by the District to allocate costs from the Landside Improvements funding set forth in sub-paragraph C to the Initial Improvements, so long as the City's total funding obligation for the Improvements is not increased beyond the \$2,500,000 (as adjusted) described in the first paragraph of this Section 6. Assuming that the City provides funding pursuant to the schedule set in this sub-paragraph B, the District will make best efforts to ensure that the Initial Improvements are complete no later than December 31, 2020. Nothing herein prevents the District from completing the Initial Improvements prior to the City providing funding, subject to reimbursement by the City, up to the not-to-exceed amounts set forth in this sub-paragraph. If the Initial Improvements are not complete by December 31, 2020, the parties will meet and confer in good faith regarding the continued operation of the Fueling Infrastructure and the related obligations of one or both parties.

C. Following and only upon formation of the OPCFD, the City will provide the District with the necessary funding to enable the District to design, commence and complete the Landside Improvements. If the OPCFD is formed, the City will provide funding according to a schedule that will allow the District to complete the Landside Improvements no later than December 31, 2025. The parties will meet and confer as to the exact schedule for funding and performing the Landside Improvements. Assuming that the City provides funding pursuant to the schedule agreed to by the parties, the District will complete the Landside Improvements no later than December 31, 2025, unless otherwise agreed to by the parties. The total amount payable for the Landside Improvements shall not exceed the total not-to exceed amount specified in the first paragraph of this Section 6, less amounts already paid by the City for the Initial Improvements. Nothing herein prevents the District from completing the Landside Improvements prior to the City providing funding, subject to reimbursement by the City, up to the not-to-exceed amount set forth in this sub-paragraph.

D. In the event that the OPCFD is not established by April 30, 2018, the parties agree to meet and confer in good faith regarding the continued operation of the Fueling Infrastructure and the related obligations of one or both parties, in particular if necessary to make minor schedule adjustments as contemplated in sub-paragraph A. The City and District further agree that if the parties are unable to agree to mutually acceptable terms related to continued operation of the Fueling Infrastructure and the related obligations of one or both parties, the District may elect, at its sole discretion, and upon written notice to the City, the following:

i. The District may cease operation and maintenance of the Fueling Infrastructure and will have no further obligations to do so.

ii. The City will assume sole and complete responsibility for the operation and maintenance of the Fueling Infrastructure. The City may choose to operate and maintain the Fueling Infrastructure, but is under no obligation to do so and may instead choose to take whatever action it deems appropriate to limit and/or cease operation and maintenance of the Fueling Infrastructure, as consistent with applicable law. The District will cooperate with any such action taken by the City, provided that the parties will meet and confer to minimize the impact of any City action on District operations. Whether or not it operates and maintains the Fueling Infrastructure, the City will be solely responsible for compliance with all government permits and federal, state, and local laws and regulations associated with the Fueling Infrastructure, including without limitation compliance with state law related to the continued operation or decommissioning of the underground fuel tanks and fuel lines. The City shall hold harmless, defend and indemnify the District for claims or damages that arise from City's maintenance and operation (or non-operation and non-maintenance) of the Fueling Infrastructure after the effective date of this Implementation Agreement.

iii. The City will have no obligations to provide funding to the District for the Improvements as set forth in this Agreement and the District will have no obligations to complete the Improvements as set forth in this Agreement.

E. The City will reimburse the District \$90,000 to be used for repairs that the City and District agree are necessary for operation of the current fueling infrastructure system. This reimbursement obligation terminates upon commencement of construction of the new fuel dock.

F. The City is applying for a Boating Infrastructure Grant from the California Division of Boating and Waterways that may be used to pay in part for the Improvements (the Grant). Notwithstanding anything to the contrary in this Section 6, in the event that the City receives funding for the Improvements from the Grant, it will dedicate all such funding for the Improvements and, upon making Grant funding available to the District, may reduce proportionately the amount it funds the Improvement from the proceeds of the OPCFD so long as the City's total obligation to fund the Improvements remains in the amount set forth in this Section 6.

Section 7 Reimbursement of District Costs. Upon submission of an invoice with reasonable supporting information, City agrees to reimburse the District for its actual and reasonable costs of negotiating this Agreement in an amount not to exceed \$35,000.

Section 8 2011 Agreement. Except as stated herein, the 2011 Agreement remains in force and effective between the Parties and the Successor Agency to former Redevelopment Agency.

Section 9 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice is effective upon delivery; or

(b) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of South San Francisco
400 Grand Ave.
South San Francisco, CA 94080
Attn: City Manager
Phone: (650) 877-8501
Facsimile: (650) 829-6623

with a copy to: Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Attn: South San Francisco City Attorney
Phone: (510) 808-2000
Facsimile: (510) 444-1108

District: San Mateo County Harbor District
504 Avenue Alhambra, 2nd Floor
El Granada, CA 94018
Attn: General Manager
Phone: (650) 583-4400
Facsimile: (650) 583-4611

Section 10 Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

Section 11 Entire Agreement; Amendments in Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

Section 12 Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that except as authorized herein neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit,

2846008.1

and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

Section 13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 14 Relationship of Parties. The Parties agree that nothing in this Agreement is intended to or shall be deemed or interpreted to create among them the relationship of buyer and seller, or of partners or joint venturers.

Section 15 Captions. The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the date first written above.

CITY

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

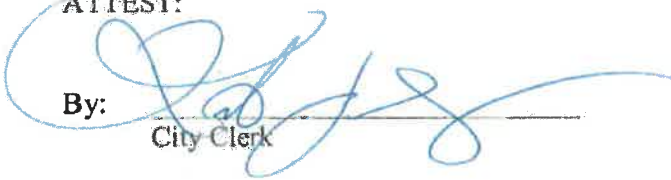
By: 
Name: Mike Farrell
City Manager

DISTRICT

SAN MATEO COUNTY HARBOR DISTRICT,
a political subdivision of the State of California

By: _____
Name: _____
General Manager

ATTEST:

By: 
City Clerk

ATTEST:

By: _____
District Secretary

APPROVED AS TO FORM:

By: 
City Attorney

APPROVED AS TO FORM:

By: _____
District Counsel

Exhibit List

- Exhibit 1** – Map showing Marina Property
- Exhibit 2** – King Leases
- Exhibit 3** – Additional Property to be Removed from JPA
- Exhibit 4** – Phase IC and Phase IIC Improvements
- Exhibit 5** – License Area
- Exhibit 6** – Conceptual Scope of Improvements

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the date first written above.

CITY

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____

Name: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

DISTRICT

SAN MATEO COUNTY HARBOR DISTRICT,
a political subdivision of the State of California

By: Stephen A. McGrath

Name: STEPHEN A. McGRATH
General Manager

ATTEST:

By: [Signature]
~~District Secretary~~ DIRECTOR OF ADMIN. SVCS.

APPROVED AS TO FORM:

By: [Signature]
District Counsel

Exhibit List

- Exhibit 1 – Map showing Marina Property**
- Exhibit 2 – King Leases**
- Exhibit 3 – Additional Property to be Removed from JPA**
- Exhibit 4 – Phase IC and Phase IIC Improvements**
- Exhibit 5 – License Area**
- Exhibit 6 – Conceptual Scope of Improvements**

EXHIBIT 1

(Map Showing Marina Property)

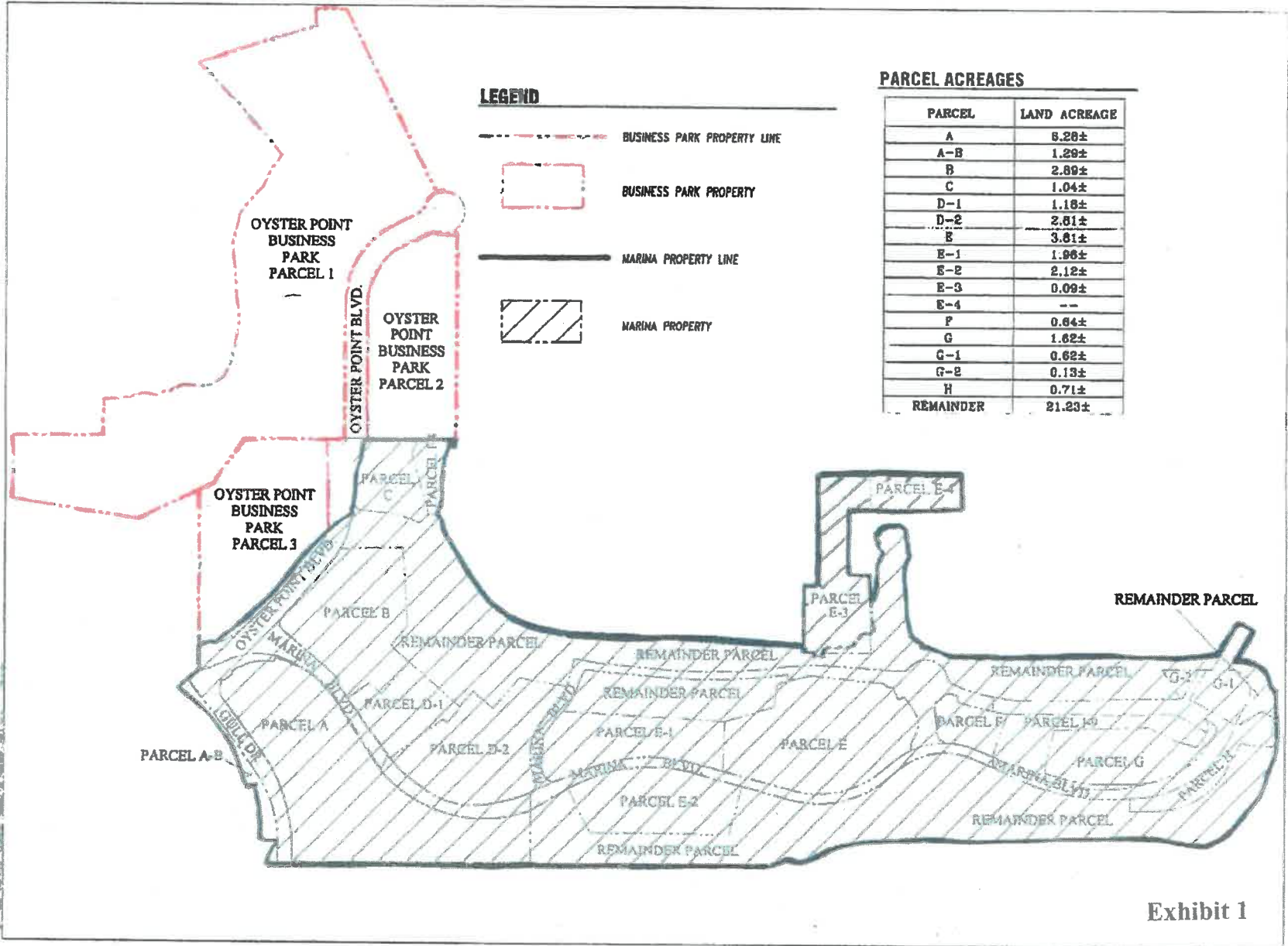


Exhibit 1

EXHIBIT 2

(King Leases)

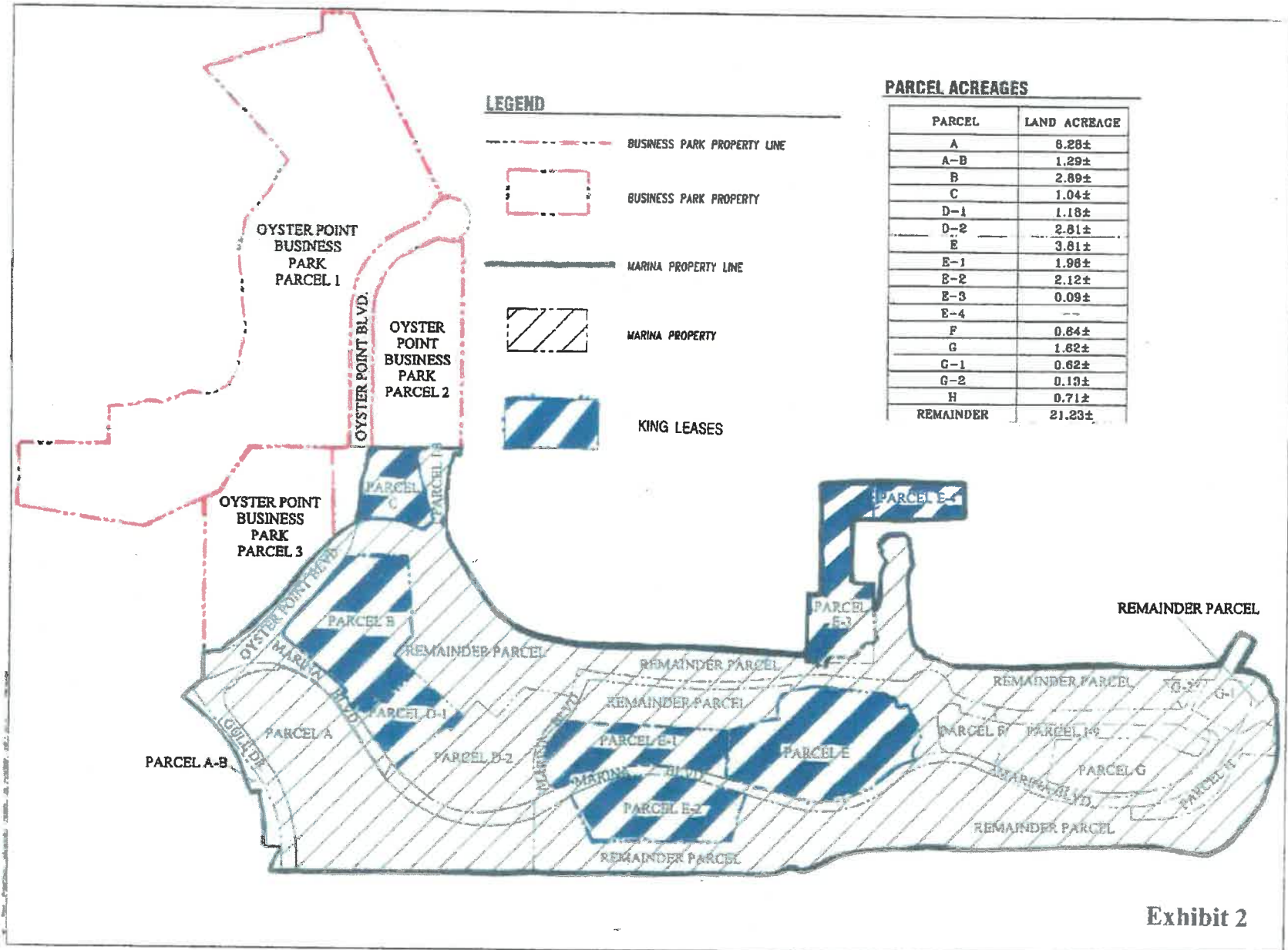


Exhibit 2

EXHIBIT 3

(Area removed from JPA)

SEE SHEET 2

SAN FRANCISCO BAY

REMAINDER PARCEL 1
55 PM

PARCEL 1

PARCEL 2

PARCEL 4

PARCEL 6
247965 S.F.
OR 5.69 ACRES

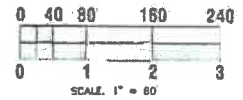
PARCEL 5
118411 S.F.
OR 2.72 ACRES

LEGEND

---	DISTINCTIVE BOUNDARY LINE
---	PARCEL LINE
---	ADJACENT PROPERTY LINE
---	CENTER LINE
---	EXISTING EASEMENT LINE
---	PROPOSED EASEMENT LINE
---	TIE LINE
⊙	EXISTING STREET MONUMENT
○	FOUND MONUMENT AS NOTED
BOOC	SET 3/4" IRON PIPE, TAG L.S. 4918
CL	BAY CONSERVATION AND DEVELOPMENT COMMISSION
(C)	CENTER LINE
FD	EXISTING
FD	FOUND
Ar	ARC RADIUS
Δ	ARC DELTA
L	ARC LENGTH
DOC	DOCUMENT NUMBER
IP	IRON PIPE
LLA	LOT LINE ADJUSTMENT
M-M	MONUMENT TO MONUMENT DISTANCE
PM	PARCEL MAP
O.R.	OFFICIAL RECORDS
(R)	RADIAL BEARING
SPF	SEARCHED FOR NOT FOUND
(T)	TOTAL DISTANCE

BASIS OF BEARINGS

THE BEARINGS SHOWN HEREON ARE BASED ON THE RECORD BEARING OF NORTH 00°00'55" WEST BETWEEN FOUND MONUMENTS ON THE CENTER LINE OF OYSTER POINT BOULEVARD AS SHOWN ON PARCEL MAP 99-005 BY BOOK 72, PAGES 6 - 8



**PARCEL MAP 17-0002
OYSTER POINT**

A RESUBDIVISION OF PARCELS B, C, E, E-1, E-2 & REMAINDER PARCEL 1 OF PARCEL MAP 89-223 RECORDED JANUARY 3, 1989 IN VOLUME 55 OF PARCEL MAPS AT PAGES 81-84, AND PARCELS D-1 & D-2 OF PARCEL MAP 89-282 RECORDED MAY 23, 1989 IN VOLUME 52 OF PARCEL MAPS AT PAGES 25-28, AND PARCEL A OF PARCEL MAP 89-005 RECORDED DECEMBER 9, 1989 IN BOOK 72 OF PARCEL MAPS AT PAGES 6-8 IN SAN MATEO COUNTY RECORDS

SOUTH SAN FRANCISCO SAN MATEO COUNTY CALIFORNIA

JUNE, 2017

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San Mateo, CA 94403
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wilseyham.com

SHEET 4 OF 4



Excluded Parcels

Exhibit 3-2

EXHIBIT 4

(Phase IC and Phase IIC Improvements)

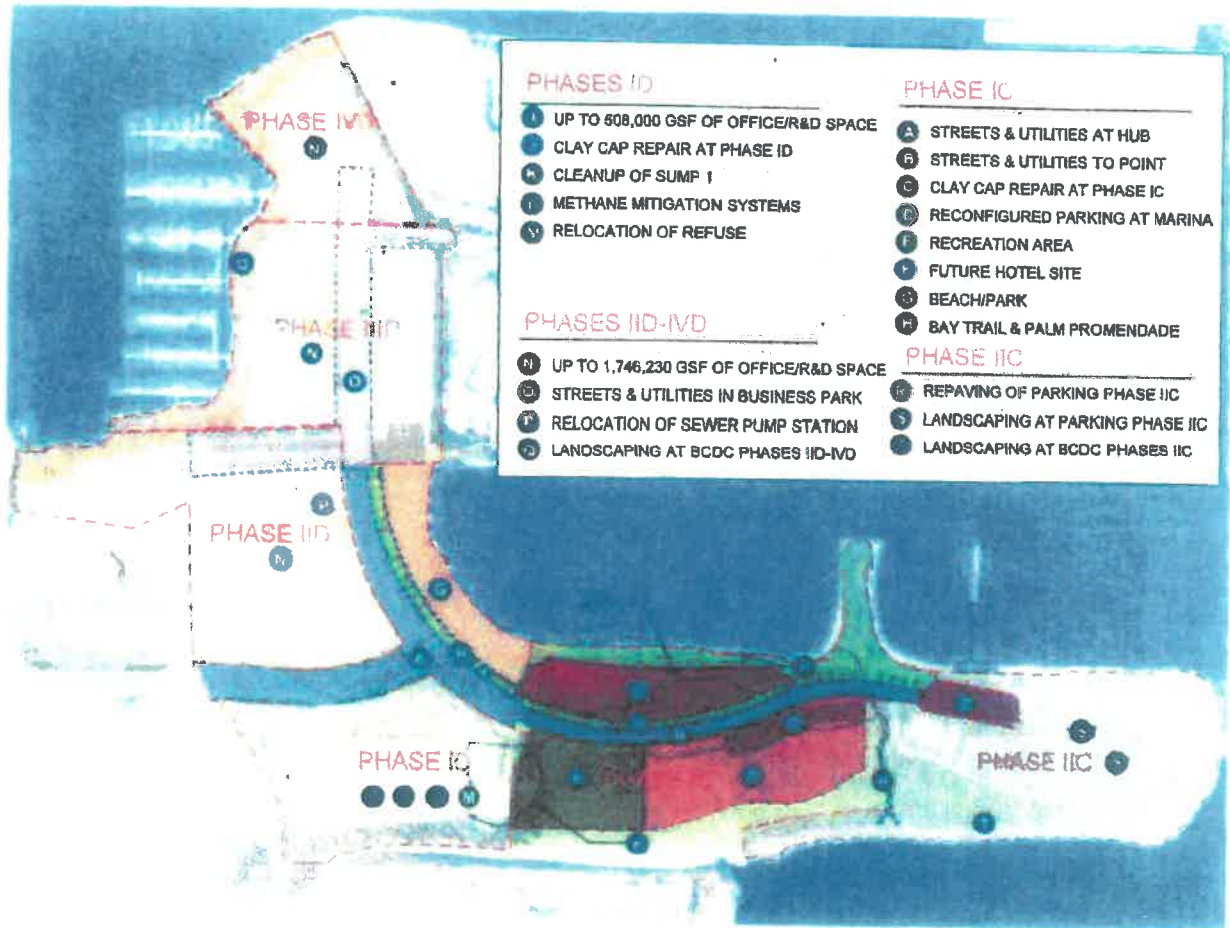
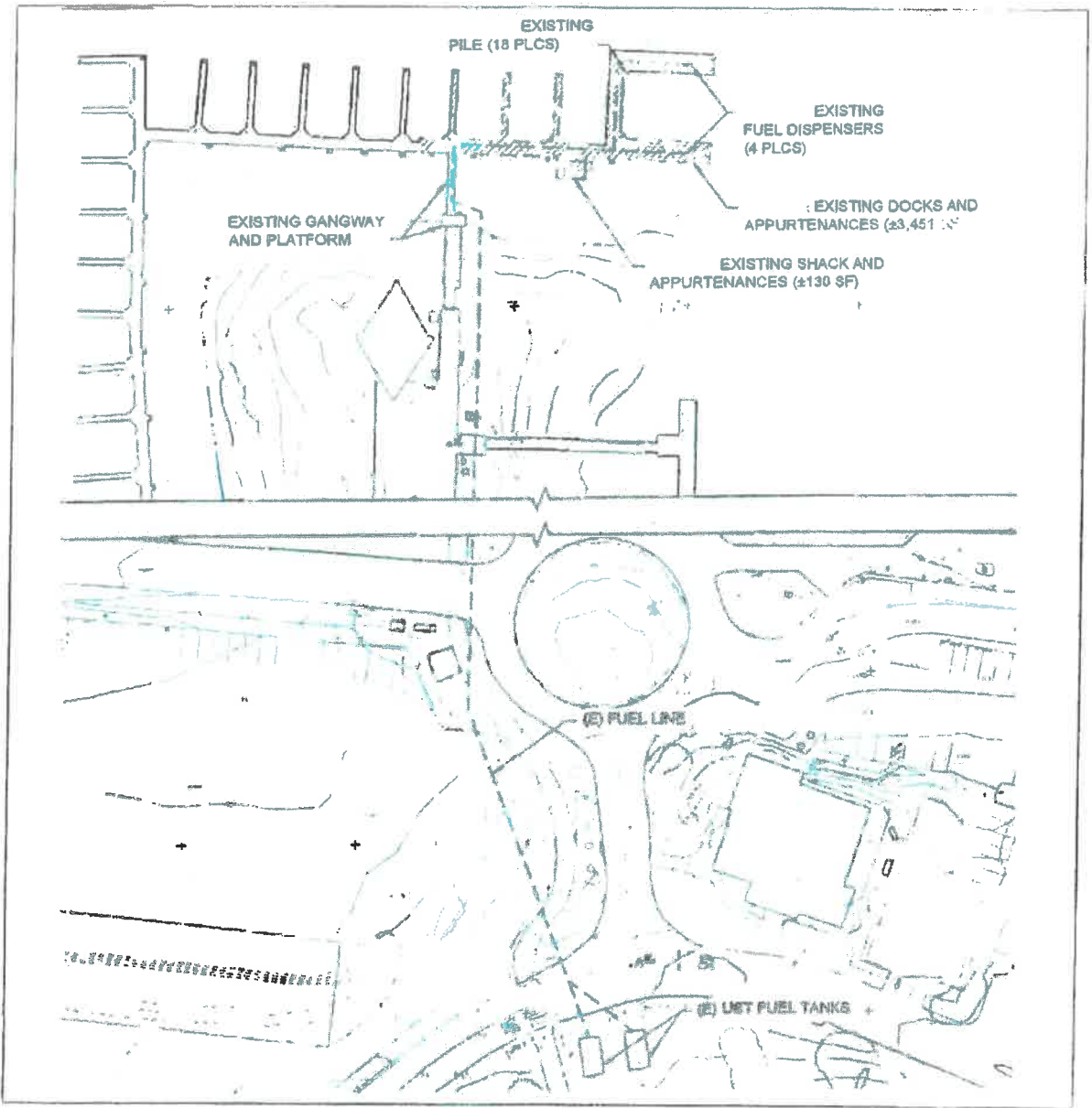


Exhibit 4

EXHIBIT 5

(License Area)



--- *License Area includes location of existing fuel line and five (5) feet on either side of the fuel line

EXHIBIT 6

(Conceptual Scope of Improvements)

Described below are potential Initial Improvements and Landside Improvements as referenced in the agreement and the Anchor Report, dated May 26, 2017.

Initial Improvements

1. Potential minor repairs include:
 - Replace deck on existing fuel dock (if appropriate)
 - Repairing broken cleats and loose rub rails on existing fuel dock
 - Relocate/secure electrical utility wire/conduit on existing fuel dock
 - Replace/repair approach structure girders
 - Replace/repair gangway walking surface

2. Fuel dock and on-dock utilities replacement

Landside Improvements

Fuel system replacement in conformance with current codes and regulations. Components of the system includes:

- Double-walled underground fuel tank(s)
- Double-walled pipes
- Sump vaults
- Fuel pumps
- Dispensers

EXHIBIT D

Operational Performance Indicators.

Both Parties will carry out their maintenance obligations in accordance with best practices for public spaces and marinas. Barring a Casualty Event, or other circumstances that reasonably prevent the Parties from carrying out their respective operational and maintenance obligations, the Parties agree that the following Operational Performance Indicators (OPIs) will be used to guide the Parties' performance under this agreement. These OPIs may not reflect all conditions or circumstances, and may be amended from time to time by mutual agreement of both the District General Manager and City Manager.

The OPIs are intended to govern the upkeep and maintenance of all facilities, address chronic conditions and not to address short term situation or matters outside of the Parties' control.

- 1) Marina Occupancy (District only)
 - a) The District will endeavor to maintain occupancy at greater than 80% of the mean of Bay Area marinas as measured over eight consecutive quarters

- 2) Streets and parking areas:
 - a) The Parties will keep the streets and parking areas in a state of good repair
 - b) The parties will endeavor to maintain a Pavement Condition Index (PCI) greater than 80 but in no event less than 45 as measured over four consecutive quarters.
 - c) Ponding water on impervious surface. Areas greater than 32 sq.ft. with water ponding greater than 1" in depth shall be remediated within 120 days of initial observance.

- 3) Landscaping Maintenance:
 - a) Edges shall be trimmed, and areas mowed as necessary
 - b) Weeds, dead plants shall be removed as part of regular maintenance schedule
 - c) Irrigation is in functional condition, with heads and drip systems maintained

- 4) Solid waste
 - a) Solid waste shall not be allowed to accumulate
 - b) Trashcans will be emptied on a schedule to prevent repeated overflowing
 - c) Recycling containers are adequately distributed

- 5) Restrooms
 - a) All fixtures are operational
 - b) Supplies are present in sufficient quantity
 - c) A maintenance log is maintained in each facility

- d) Each facility is checked at least daily

- 6) Building shells
 - a) Roofs shall be maintained without leaks
 - b) Windows shall be maintained without breaks
 - c) Exterior paint shall be maintained with no/minimal fading/peeling

- 7) Trails and Public Areas
 - a) Trails and Public Areas shall be maintained in a state of good repair

- 8) Stormwater (City only)
 - a) Maintain compliance with City's Stormwater Pollution Prevention Program (SWPPP)

- 9) Environmental Protection
 - a) The District shall maintain Clean Marina certification (www.cleanmarina.org - or equivalent.