

**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 \_\_\_\_, 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2011, the Parties and the Redevelopment Agency entered into an agreement (“**2011 Agreement**”) which formalized and superseded the points of agreement contained within a 2009 Memorandum of Understanding between the Parties and set forth the Parties and Redevelopment Agency's rights and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 November 11, 2026, as provided in the 2011 Agreement and the JPA, unless extended or earlier terminated 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.

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.**

**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:

(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) 877-8501  
Facsimile: (650) 829-6623

**with a copy to:** Meyers Nave  
555 12<sup>th</sup> 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, 2<sup>nd</sup> Floor  
El Granada, CA 94018  
Attn: General Manager  
Phone: (650) 583-4400  
Facsimile: (650) 583-4611

**Section 9 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 10 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 11 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, 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 12 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 13 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 14** **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**

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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: \_\_\_\_\_

Name: \_\_\_\_\_  
General Manager

ATTEST:

By: \_\_\_\_\_  
District Secretary

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

**EXHIBIT 1**

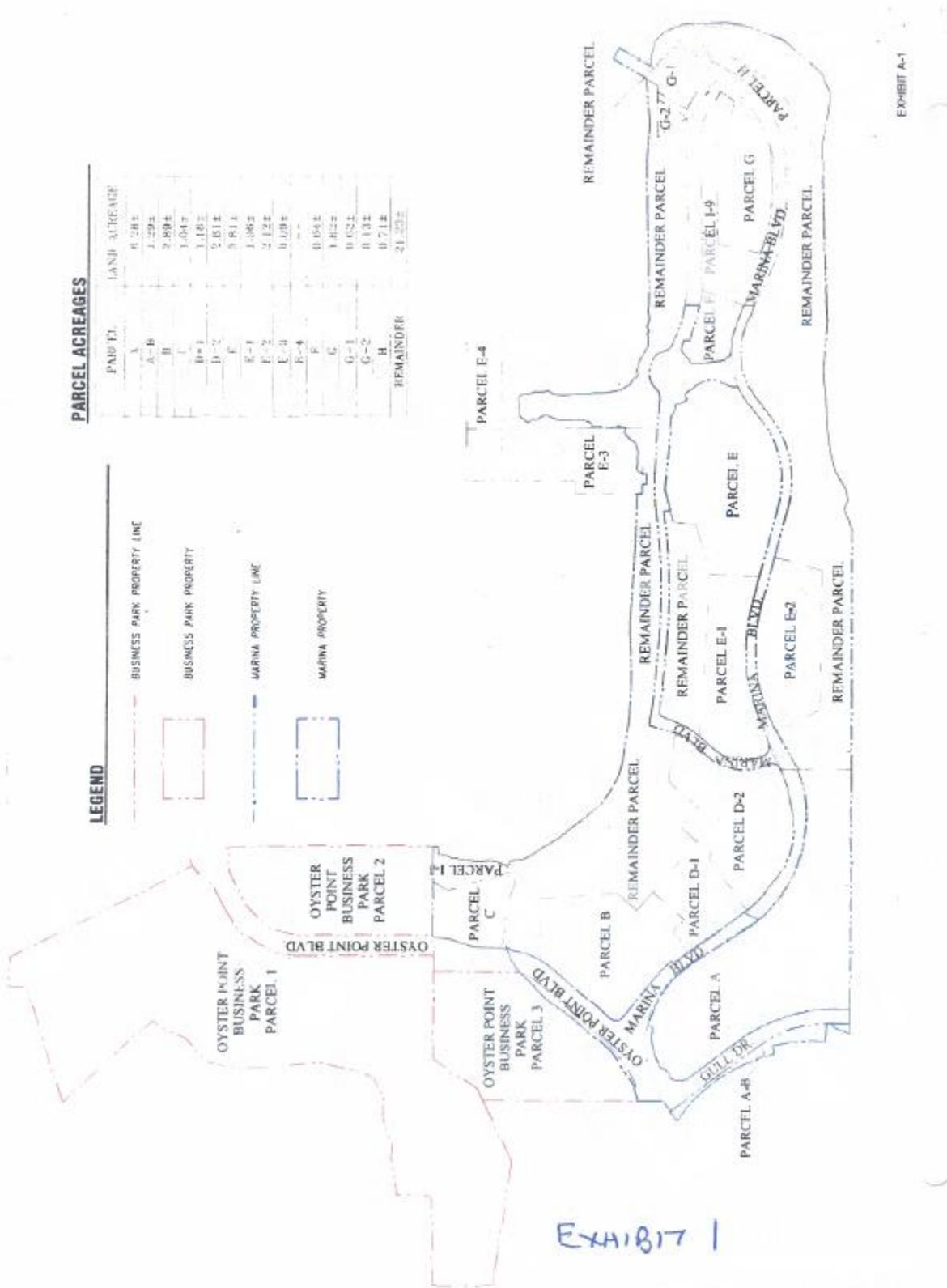


EXHIBIT 2

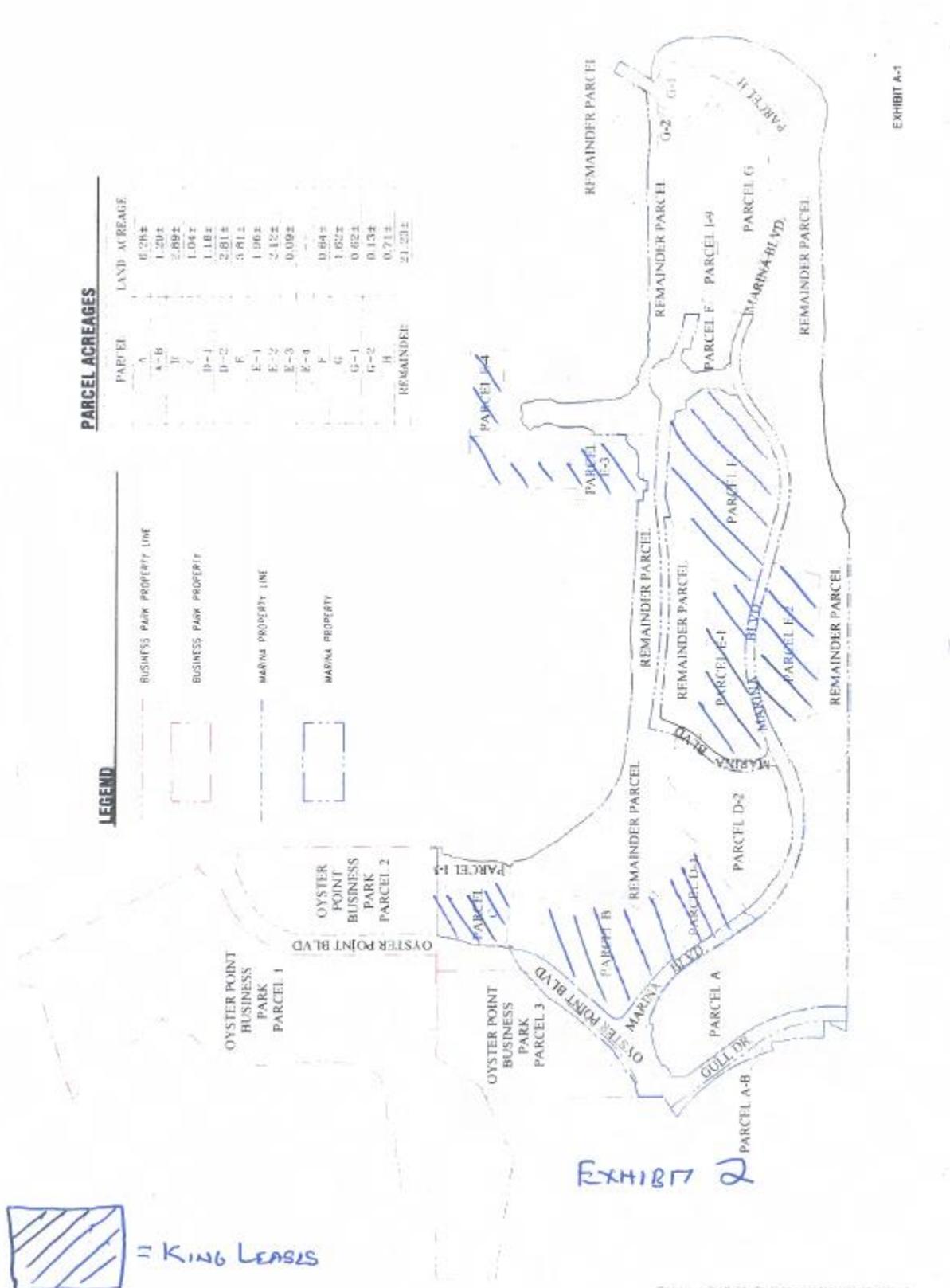






EXHIBIT 4



EXHIBIT 4

EXHIBIT 5

(License Area – to be inserted)

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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

2841833.1