

This agreement, dated and made effective as of _____, 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: _____
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 A – Marina Property**
- Exhibit B – 2011 Agreement**
- Exhibit C – 2017 Implementation Agreement**
- Exhibit D – Operational Performance Indicators**

EXHIBIT A

Marina Property

DRAFT

DRAFT

EXHIBIT B

2011 AGREEMENT

EXHIBIT C

2017 IMPLEMENTATION AGREEMENT

DRAFT

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.