

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**by and among**

**THE REDEVELOPMENT AGENCY OF THE  
CITY OF SOUTH SAN FRANCISCO**

**and**

**OYSTER POINT VENTURES, LLC**

**and**

**THE CITY OF SOUTH SAN FRANCISCO**

March 23, 2011

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THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into effective as of March 23, 2011 (“**Effective Date**”) by and between the Redevelopment Agency of the City of South San Francisco, a public body corporate and politic (“**Agency**”), and Oyster Point Ventures, LLC, a Delaware limited liability company (“**Developer**”). Agency and Developer are hereinafter collectively referred to herein individually as a “**Party**” and collectively as the “**Parties**.” The City of South San Francisco, a municipal corporation (“**City**”), joins as a Party to certain portions of this Agreement, as set forth herein.

## RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (“**CRL**”), the Agency has responsibility to implement the redevelopment plan for the Downtown/Central Redevelopment Project Area (the “**Project Area**”) established by the Redevelopment Plan adopted for the Project Area pursuant to Ordinance No. 1056-89, adopted on July 12, 1989 and as subsequently amended (the “**Redevelopment Plan**”).

B. City is the owner of the real property located within the Project Area, commonly known as the Oyster Point Marina property and more particularly identified on the site plan attached hereto as in Exhibit A-1 attached hereto (the “**Marina Property**”). Within 180 days after the execution of this Agreement, the Agency will acquire from City the portion of the Marina Property consisting of approximately 17.90 acres described in Exhibit B attached hereto and identified on Exhibit A-2 attached hereto (the “**Conveyed Property**”). At Developer’s election, upon satisfaction of certain conditions precedent, and subject to and in accordance with the terms and conditions of this Agreement, the Agency will convey the Conveyed Property to Developer. The portion of the Marina Property that is retained by the City or the Agency shall be referred to herein as the “**City Property**”.

C. Developer is the owner of the real property located adjacent to the Marina Property, commonly known as the Oyster Point Business Park, and more particularly identified in Exhibit A-1 attached hereto (the “**Business Park Property**”). In addition, Developer has a long-term leasehold interest in a portion of the Marina Property described in Exhibit C (the “**King Lease Property**”) pursuant to Developer’s acquisition of the interests of the original lessee under certain ground leases executed by or on behalf of King Ventures as lessee and the San Mateo County Harbor District (the “**Harbor District**”) as lessor (collectively, the “**King Leases**,” listed in Exhibit C). The underlying fee interest in the King Lease Property is owned by the City. The Harbor District’s authority to enter into the King Leases stems from a joint powers agreement executed by and between the City and the Harbor District that addresses the development, operations, and maintenance of the Marina Property (the “**Harbor District JPA**”). As part of the consideration for Developer’s acquisition of the Conveyed Property, Developer shall terminate those certain King Leases that affect any portion of the Conveyed Property (the “**Terminated King Leases**”) concurrent with Developer’s acquisition of the Conveyed Property. All other King Leases shall be assigned by the Developer to the Agency (the “**Assigned King Leases**”) along with all development rights Developer possesses pursuant thereto.

D. Developer and Agency seek development of the Business Park Property and the Marina Property consistent with the Redevelopment Plan, the Oyster Point Specific Plan adopted by City Ordinance No. 1437-2011 (the “**Specific Plan**”), and the Oyster Point Phase I Precise Plan adopted concurrently therewith by City Resolution No. 48-2011 (the “**Precise Plan**”).

E. Developer and Agency propose a redevelopment project in which Developer will undertake the construction of certain public improvements, and the Agency and the Developer will each provide certain financing to assist in the development of such public improvements, all as more particularly set forth herein. As used in this Agreement, the term “**Redevelopment Project**” refers collectively to Developer’s construction of certain private improvements on the Conveyed Property (the “**Phase ID Improvements**”) and certain public improvements on the Conveyed Property and portions of the City Property (the “**Phase IC Improvements**”), as more particularly described in Section 3.2. Implementation of the Redevelopment Project is part of an overall plan for the intended development of a life sciences campus that is to include research and development facilities, office buildings, public improvements, public amenities and open space on the Conveyed Property and the Business Park Property (collectively, the “**Developer Property**”) consistent with the Specific Plan (collectively, the “**Developer Project**”). The Developer Project is also the subject of a separate Development Agreement between Developer and City, entered substantially concurrently herewith.

F. Independently or pursuant to agreements with third parties, the City and/or the Agency intend to cause the City Property to be developed as a “Ferry Village” that may include retail, commercial, restaurant and hotel uses, public open space/recreational uses and amenities and improvements related to the existing marina (all of the foregoing, collectively the “**City/Agency Project**”). As described below, pursuant to this Agreement, Developer will fund certain components of the City/Agency Project.

G. The Redevelopment Project includes remediation of existing environmental degradation and contamination, including repair or replacement of the cap of a closed municipal landfill located immediately adjacent to the San Francisco Bay and remediation of an industrial sump within that closed municipal landfill. Implementation of the Redevelopment Project will raise the level of certain portions of the closed landfill and its perimeter to counteract the projected effects of sea level rise on the closed landfill and the surrounding property, and protect the environment from potential release of the contents of the landfill into the Bay.

H. The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the construction of public improvements and the redevelopment of the Conveyed Property and the City Property as more particularly set forth herein. In connection with its approval of this Agreement, the Agency has determined that (i) the disposition and development of the Conveyed Property pursuant to this Agreement and the development of the Redevelopment Project and the Developer Project pursuant to the Specific Plan (a) are consistent with the Redevelopment Plan and any implementation plan for the Project Area; (b) will be of benefit to the Project Area; and (c) will further the goals of the Redevelopment Plan by improving the physical appearance of the Project Area, remediating hazardous materials, increasing economic development opportunities, and providing recreational and public amenities; and (ii) the Agency financing described herein is necessary to make construction of the public improvements described herein economically feasible.

I. Pursuant to the California Environmental Quality Act (“CEQA”), on March 23, 2011, the City Council certified a final Environmental Impact Report for the Developer Project and the City/Agency Project and adopted concurrently therewith a Mitigation Monitoring and Reporting Program in connection therewith.

J. The City Council and the Agency have each approved by all requisite actions the disposition of the Conveyed Property as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing, including without limitation the requirements of Sections 33431 and 33433 of the CRL.

K. A material inducement to Agency to enter into this Agreement is the agreement by Developer to enter into this Agreement and to develop the Redevelopment Project and those components of the City/Agency Project that are the responsibility of Developer pursuant to this Agreement within the time periods specified herein and in accordance with the provisions hereof; the Agency would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

L. A material inducement to Developer to enter into this Agreement and develop the Redevelopment Project and those components of the City/Agency Project that are the responsibility of Developer pursuant to this Agreement is the Agency’s undertaking the contractual obligation to set aside and commit immediately the monies necessary to meet the Agency’s obligations to provide specific funding for the Redevelopment Project as provided in this Agreement; the Developer would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Agency to take such actions and in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

## ARTICLE I DEFINITIONS

1.1 Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

“Agency Funding Deposit” is defined in Section 3.4.4.

“Agency Phase IC Funding Requirement” is defined in Section 3.4.2.

“Assigned King Leases” is defined in Recital C.

“Business Park Property” is defined in Recital C.

“Certificate of Completion” is defined in Section 6.10.1.

“CFD Proceeds” is defined in Section 3.2.1.

**“City”** means the City of South San Francisco, a municipal corporation.

**“City Council”** means the City Council of the City of South San Francisco.

**“City/Agency Project”** is defined in Recital F.

**“City Property”** is defined in Recital B.

**“Claims”** is defined in Section 6.14.1.

**“Closing Date”** or **“Close of Escrow”** shall be the date selected by Developer with no less than ninety (90) days written notice delivered to the Agency, or such earlier date as agreed to by the Agency and Developer in writing.

**“Conditions of Approval”** is defined in Section 6.2.

**“Conveyed Property”** is defined in Recital B.

**“Contract Documents”** is defined in Section 4.2.1(c).

**“Dedicated Property”** is defined in Section 6.11.1.

**“Developer Construction Plans”** is defined in Section 6.19.

**“Developer Funding Requirement”** is defined in Section 3.4.6.

**“Developer Project”** is defined in Recital E.

**“Developer Property”** is defined in Recital E and means, collectively, the Conveyed Property and the Business Park Property.

**“Development Agreement”** means that certain Development Agreement that will provide certain vested rights with respect to the development of the Developer Property that the Parties anticipate will be executed by and between Developer and City substantially concurrently herewith.

**“Effective Date”** means March 23, 2011, the date on which Agency, City, and Developer have all executed this Agreement.

**“Environmental Laws”** is defined in Section 5.7.2.

**“Financing Plan”** is defined in Section 4.2.1 (b).

**“Harbor District”** is defined in Recital C.

**“Harbor District JPA”** is defined in Recital C.

**“Hazardous Material”** is defined in Section 5.7.1.

**“Hub”** means those certain street and utility improvements as shown on Exhibit 3.2.1.

**“Improvements”** is defined in Section 4.1.2.

**“Improvement Costs”** is defined in Section 3.4.1.

**“Indemnitees”** is defined in Section 6.14.1.

**“King Lease Property”** is defined in Recital C.

**“King Leases”** is defined in Recital C.

**“Marina Property”** is defined in Recital B.

**“MOU”** is defined in Section 2.3.

**“Official Records”** means the Official Records of San Mateo County.

**“Phase IC Improvements”** is defined in Recital E and further described in Section 3.2.1 and Exhibit 3.2.1.

**“Phase IC Improvement Costs”** is defined in Section 3.4.1 and further described in Exhibit 3.2.1.

**“Phase ID Improvements”** is defined in Recital E and further described in Section 3.2.2 and Exhibit 3.2.2.

**“Phase ID Improvement Costs”** is defined in Section 3.4.1 and further described in Exhibit 3.2.2.

**“Phase IIC Improvements”** is defined in Section 3.2.2 (a) and further described in Exhibit 3.3.2.

**“Phase IID, IIID and IVD Improvements”** is defined in Section 3.3.1 and further described in Exhibit 3.3.1.

**“Precise Plan”** means that certain plan for development of the Redevelopment Project known as the Oyster Point Phase I Precise Plan.

**“Project Schedule”** is defined in Section 3.2.

**“Redevelopment Project”** means collectively the development and construction of the Phase IC Improvements described in Section 3.2.1 and the development and construction of the Phase ID Improvements described in Section 3.2.2.

**“Repurchase Option”** is defined in Section 10.12.

**“Right of First Refusal”** is defined in Section 2.5.1.

“**ROFR Contract**” is defined in Section 2.5.1.

“**ROFR Property**” is defined in Section 2.5.1.

“**Specific Plan**” means that certain plan for development of the Developer Property and the City Property entitled Oyster Point Specific Plan, including the Specific Plan Appendix and Design Guidelines.

“**Terminated King Leases**” is defined in Recital C.

“**Third Party**” is defined in Section 2.5.1.

“**Third Party Price and Terms**” is defined in Section 2.5.1.

“**Transfer**” is defined in Section 8.3.

## **ARTICLE II REPRESENTATIONS; EFFECTIVE DATE; INTENT OF AGREEMENT**

2.1 Developer’s Representations. Developer represents and warrants to Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 to be materially untrue, Developer shall immediately give written notice of such fact or condition to Agency. Developer acknowledges that Agency shall rely upon Developer’s representations made herein notwithstanding any investigation made by or on behalf of Agency.

2.1.1 Authority. Developer is a limited liability company, duly organized and in good standing under the laws of the State of Delaware, and in good standing and authorized to do business in California. Developer’s sole members are: (a) SRI Nine Oyster Point, LLC, a limited liability company that is duly organized and in good standing under the laws of the State of Delaware, and in good standing and authorized to do business in California, and (b) SKS Oyster Point, LLC, a limited liability company that is duly organized and in good standing under the laws of the State of Delaware, and in good standing and authorized to do business in California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer, enforceable in accordance with its terms.

2.1.2 No Conflict. Developer’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

2.1.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or, to the best of Developer’s knowledge, has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

2.1.4 No Developer Bankruptcy. Neither Developer nor any of its members is the subject of a bankruptcy or insolvency proceeding.

2.2 Effective Date; Memorandum. The obligations of Developer and Agency hereunder shall be effective as of the Effective Date. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of this Agreement substantially in the form attached hereto as Exhibit 2.2 which shall be recorded in the Official Records.

2.3 Intent of this Agreement; Related Agreements. This Agreement sets forth certain rights and obligations of the Parties with respect to the development and financing of the Redevelopment Project. This Agreement is executed pursuant to that certain Memorandum of Understanding (Oyster Point Marina) dated as of May 13, 2009, and executed by and among the City, the Agency and the Developer (the “**MOU**”). In the event of inconsistency between the terms set forth in the MOU and the terms set forth in this Agreement, this Agreement shall prevail.

2.4 Parties. The Parties hereby acknowledge and agree that City joins this Agreement as a Party only with respect to those Sections that expressly set forth rights and/or obligations relating to the City. In no event shall City have any rights or obligations in connection with this Agreement except as expressly set forth in such Sections. Developer and Agency expressly agree that neither shall have any right to make a claim, and shall not make a claim, against the City for any purported obligation of the City under this Agreement except for those obligations which the City explicitly has accepted. For the avoidance of doubt, the City shall have no obligation for procuring or paying for the release of any lien or encumbrance on the Conveyed Property. In addition, Developer expressly and unconditionally releases City from any potential liability arising from the obligations set forth in Sections 5.2 and 5.6.

2.5 Developer’s Right of First Refusal.

2.5.1 The Parties intend for the City Property and the Developer Property to be developed with compatible uses and design. In recognition of the value of maintaining integrated planning and consistency of development, if at any time prior to the earlier of (1) issuance of a certificate of occupancy for the last building to be constructed in connection with the Phase IVD Improvements of the Developer Project as described on Exhibit 3.3.1, or (2) the termination of this Agreement, City or Agency (as applicable) enters into a contract (“**ROFR Contract**”) with a third party (“**Third Party**”) for the sale or long term ground lease (*i.e.*, a ground lease with a term of at least 35 years (including any option periods)) of any portion of the City Property identified on Exhibit 2.5.1 attached hereto and made a part hereof (the “**ROFR Property**”), City or Agency (as applicable) shall deliver a copy of the ROFR Contract to Developer and Developer shall have ten (10) business days after receipt of the ROFR Contract to notify City or Agency (as applicable) in writing of Developer’s election to purchase or lease (as applicable) the ROFR Property for a price equal to the actual amount to be paid by the Third Party under the ROFR Contract and on the material terms and conditions agreed to by the Third Party and City or Agency (as applicable) in the ROFR Contract (“**Third Party Price and Terms**”) (the rights granted to Developer in this Section 2.5 shall be referred to herein as the “**Right of First Refusal**”). Developer’s failure to notify City or Agency (as applicable) of its election within such ten (10) business day period shall be deemed an election by Developer not to purchase or lease (as applicable) the ROFR Property. If Developer elects to purchase or



lease (as applicable) the ROFR Property, then Developer and City or Agency (as applicable) shall enter into a purchase or lease (as applicable) contract for the ROFR Property the terms of which shall be substantially similar to the form of the ROFR Contract with the Third Party Price and Terms (with reasonable allowances for modifications to non-material terms, such as an extension of contingency periods, the closing date or the commencement date). If Developer elects not to purchase or lease (as applicable) the ROFR Property, then City or Agency (as applicable) shall be free to sell or lease (as applicable) the ROFR Property to the Third Party on the material terms of the ROFR Contract, the Third Party Price and Terms; provided that if such sale or lease (as applicable) is not consummated within twelve (12) months after the date of the ROFR Contract, then such sale or lease (as applicable) and any other proposed sale or lease (as applicable) of the ROFR Property shall again be subject to Developer's Right of First Refusal. City or Agency (as applicable) hereby agrees that if Developer exercises the Right of First Refusal, Developer shall have the right to designate an affiliate of Developer as the grantee or lessee (as applicable) of the ROFR Property.

#### 2.5.2 Intentionally Deleted.

2.5.3 At Closing, a memorandum of this Right of First Refusal, in the form attached hereto as Exhibit 2.5.3, shall be executed by City or Agency (as applicable) and recorded against the ROFR Property. Upon such time that Developer no longer has the right to exercise its Right of First Refusal pursuant to the terms of this Section 2.5, Developer shall promptly execute and acknowledge any document reasonably requested by City or Agency (as applicable) to terminate the aforementioned memorandum, including, without limitation, a quitclaim deed.

2.5.4 The provisions of this Section 2.5 and Developer's Right of First Refusal to purchase the Property pursuant to the terms hereunder shall survive the Closing.

### ARTICLE III PROJECT SCOPE AND FINANCING

3.1 Roles of the Parties and Control of Development. The Parties intend that (i) subject to compliance with the terms and processes set forth in the Oyster Point Specific Plan, applicable precise plans, City's normal design review and building permit procedures and City's right to mandate specifications for improvements that will be publicly owned, Developer shall be in sole control of planning and development of the Redevelopment Project and Developer Project; and (ii) City and Agency shall be in sole control of planning and development of the City/Agency Project. With the exception of the public improvements to be funded by Developer as set forth below in Section 3.3.2, Developer shall have no responsibility for planning, funding, or construction of any portion of the City/Agency Project. Aside from the Agency's funding obligations as set forth in this Agreement, neither City nor Agency shall have any rights to, nor responsibility for, planning or development of any improvements on property owned by Developer.

3.2 Scope of Development. The Parties intend that the Redevelopment Project will be undertaken in phases as described in this Section and Exhibit 3.2A. The project schedule attached as Exhibit 3.2B (the "**Project Schedule**") represents the Parties' reasonable estimates of Redevelopment Project milestones. In no event shall any failure to meet the timeframe set forth in the Project Schedule be considered a default under this Agreement.

3.2.1 Phase IC Improvements. Developer shall cause to be constructed the Phase IC Improvements described in this Section 3.2.1. The Phase IC Improvements are described in greater detail in Exhibit 3.2.1 attached hereto and will be funded in part by the Agency and in part by Developer or, at the option of Developer, with proceeds from a Mello Roos/Community Facilities District (“**CFD Proceeds**”) pursuant to Section 3.4 below. The Phase IC Improvements consist of construction of the following public infrastructure improvements and amenities on portions of the City Property and the Conveyed Property, as more particularly described and identified in Exhibit 3.2.1:

(i) Streets and utilities (including grading, subgrade, base, paving, curb and sidewalk, street lights, storm water, sanitary sewer, combined trench for gas, electric and telecom, impermeable utility trench at sanitary landfill areas, and temporary streets and utilities) in the following locations:

(1) At the future Hub area;

(2) Extending east from the Hub across the Marina

Property;

(ii) Repair of and/or upgrade to the clay cap covering the Oyster Point Landfill on specified City-owned parcels and raising the level of certain portions of the Oyster Point Landfill and its perimeter to counteract the projected effects of sea level rise;

(iii) Reconfiguration and reconstruction of existing parking areas on specified City-owned parcels;

(iv) Grading and construction of open space recreation areas on specified City-owned parcels;

(v) Demolition and grading at the future “hotel site” on specified City-owned parcels;

(vi) Landscaping of the beach/park area on specified parcels of the Conveyed Property; and

(vii) Landscaping and other improvements including construction of portions of Bay Trail, public restrooms and palm promenade, on specified City-owned parcels all as shown on that certain Conceptual Site Plan for the Public Realm with Phase One SSKS Development dated February 22, 2011 shown on Exhibit 3.2.11.

3.2.2 Phase ID Improvements. Developer will construct the Phase ID Improvements described in this Section 3.2.2 on the Conveyed Property. The public improvement/remediation components of the Phase ID Improvements will be financed in part by Developer and, at the option of Developer, in part with CFD Proceeds pursuant to Section 3.4 below. The Phase ID Improvements consist of the following improvements, as more particularly described and identified in Exhibit 3.2.2:

- the Conveyed Property;
- (i) Repair of the clay cap covering the Oyster Point Landfill on
  - (ii) Remediation of the area identified on Exhibit 3.2.2 as “Sump 1”;
  - (iii) Installation of methane control and monitoring systems on the Conveyed Property;
  - (iv) Other improvements and construction activities necessitated by building on landfill on the Conveyed Property;
  - (v) Relocation of refuse on the Conveyed Property to accommodate new buildings; and
  - (vi) Development of research and development and/or office buildings on the Conveyed Property consisting of an aggregate of not less than Five Hundred Eight Thousand (508,000) square feet and not more than Six Hundred Thousand (600,000) square feet.

3.3 Additional Development. As of the Effective Date, the parties intend that the development of the City Property and Developer Property will include the additional improvements described in this Section 3.3. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, neither Party shall have any obligation to construct the improvements described in this Section 3.3, or, if such improvements are constructed, to construct them in any particular order or in accordance with any particular schedule. Except for (a) Agency’s obligation to fund the clay cap repair as set forth in Section 3.3.2(a)(iv) below (which the Parties agree is an express obligation of the Agency), and (b) Developer’s obligation to provide funding for certain Phase IIC Improvements, as set forth below, which obligation shall be contingent upon Agency’s determination to proceed with the Phase IIC Improvements pursuant to this Agreement, this Section 3.3 is set forth herein for explanatory purposes only and shall not create any obligations or liabilities on the part of either Party.

3.3.1 Developer Project. In accordance with the Development Agreement approved by City, on approximately forty-two (42) acres of the Business Park Property and the Conveyed Property, Developer intends to develop a life sciences campus that will consist of research and development and office buildings with an aggregate gross square footage of approximately 2.25 – 2.254230 million square feet, together with associated structured parking. The estimated square footage is predicated on a floor area ratio (FAR) of 1.25, taking into account areas that will be (a) reserved for public amenities (including private streets, beach, park, a portion of the Bay Trail, other public rights of way, public open space, public parking areas, and recreational areas), and (b) available for potential future development. In connection with such additional improvements, Developer intends to construct the following public and private improvements in phases (the “**Phase IID, IIID and IVD Improvements**”) which are described in greater detail in Exhibit 3.3.1 attached hereto and which will be partially financed by Developer and partially funded with CFD Proceeds.

- (a) Development of streets and utilities at the Business Park Property;

- (b) Relocation and expansion of capacity of Sewer Pump Station No. 1;
- (c) Landscaping within 100-foot shoreline band at the Business Park Property; and
- (d) Development of buildings for research and development and/or office use so that the FAR across the entire Business Park Property and Conveyed Property (including that portion of the Conveyed Property developed in Phase ID) will be 1.25, comprising a total of up to approximately 2.25 – 2.254230 million gross square feet of such development.

3.3.2 City/Agency Project. City and Agency intend to seek development of the City/Agency Project, including retail, commercial, restaurant and hotel uses, public open space and recreational uses on the City Property. City/Agency may also consider development of research and development and/or office development on the 3.2 acre portion of the City Property currently designated for recreational uses, however, any such development (1) would require additional environmental analysis, (2) may not occur until the earlier of (i) the issuance of a building permit for the second (2<sup>nd</sup>) building in Phase IVD of the Developer Project or (ii) the termination of this Agreement, and (3) would be subject to Developer's Right of First Refusal as set forth in Section 2.5.

(a) Phase IIC Improvements. If and at such time as City/Agency commence construction of any of the public infrastructure improvements and amenities described in this Section 3.3.2(a) (the "**Phase IIC Improvements**"), Developer and City and/or Agency will each be responsible for funding and/or construction of the Phase IIC Improvements. The Phase IIC Improvements, which are depicted and described in greater detail in Exhibit 3.3.2 attached hereto, will be planned and constructed by City/Agency, and will be funded in part by Developer and in part by City or Agency as described below. Developer's funding obligations set forth in this Section 3.3.2 shall be conditioned on the City/Agency's construction of all of the Phase IIC Improvements (rather than a portion thereof) and are inclusive of, and not separate from, the Developer Funding Requirement described in Section 3.4.6 below.

- (i) Developer to fund sewer pump station at the Marina;
- (ii) Agency to fund clay cap repair at specified City Property (Parcel IIC) at the Marina, in accordance with the requirements of the Regional Water Quality Control Board;
- (iii) Agency to fund repaving of existing parking areas at specified City Property (Parcel IIC) at the Marina; and
- (iv) Agency to fund landscaping of certain City Property within the jurisdiction of San Francisco Bay Conservation and Development Commission ("**BCDC**") on City Parcel IIC.

#### 3.4 Financing of Redevelopment Project.

3.4.1 Improvement Costs. The Parties have estimated the cost of the Phase IC Improvements (the "**Phase IC Improvement Costs**") and the Phase ID Improvements (the

**“Phase ID Improvement Costs”** and, together with the Phase IC Improvement Costs, the **“Improvement Costs”**). The Improvement Costs and the respective Agency and Developer responsibility for payment for each component of the Improvement Costs are detailed in Exhibit 3.4.1 attached hereto. As more particularly described in Exhibit 3.4.1, Agency and Developer each have responsibility to pay for certain components of the public improvements included in Phases IC and ID, including, without limitation, Developer’s obligation to deliver to City an amount equal to One Million One Hundred Thousand Dollars (\$1,100,000) on the date that Developer commences construction of the Phase ID Improvements (commencement of construction as used in the foregoing shall be defined as commencement of excavation for the placement of a foundation for a structure within the portion of the Developer Property to be redeveloped in Phase ID). In addition, as indicated in Exhibit 3.4.1, the Parties intend that certain Improvement Costs may, at the option of Developer, be funded with CFD Proceeds. Nothing in this Agreement is intended to or shall be interpreted as a guaranty by the Agency to make up any shortfall with respect to the availability of CFD Proceeds.

3.4.2 Payment of Phase IC and ID Improvement Costs. Agency will pay an amount equal to Agency’s specified share of the Phase IC Improvement Costs in the aggregate amount, subject to adjustment pursuant to Section 3.4.3 below, of Eighteen Million, Three Hundred Ninety Nine Thousand, Four Hundred Sixty Dollars (\$18,399,460) (the **“Agency Phase IC Funding Requirement”**). Agency shall, at Closing and approximately every three (3) months thereafter, deliver funds into an escrow account that is equal to the estimated amount of Phase IC Improvement Costs that will be incurred by the Developer in the following three (3) month period pursuant to the terms of an Escrow Holdback Agreement in the form attached hereto as Exhibit 3.4.2, to be entered into by and among Agency, Developer and the Title Company at Closing (**“Escrow Holdback Agreement”**). Agency shall periodically deliver such funds within five (5) business days after receipt of written request from Developer, which request shall be accompanied by a description of the work to be completed during such three (3) month period. Any interest accruing on such escrowed funds shall become a part of the escrowed funds and shall be used only in connection with the construction of the Phase IC Improvements.

3.4.3 Allocation of Responsibility; Cost Overruns and Savings. The Parties hereby agree that the allocation of costs and contributions in connection with the Phase IC Improvement Costs and the Phase ID Improvement Costs shall be as set forth on Exhibit 3.4.1, which Exhibit also sets forth which Party shall be responsible for any cost overruns above, and which Party shall be entitled to retain any cost savings below, the estimated costs of such Improvements. Notwithstanding the foregoing, with respect to the Phase IC Improvement Costs associated with streets and utilities at the Hub, as described in Exhibit 3.2.1, any cost overruns shall be shared by the Parties on the proportional basis set forth on Exhibit 3.4.1 based on each Party’s responsibility for funding such streets and utilities, and any cost savings shall be paid by the Parties towards the construction of the Phase IIC Improvements for which the Agency is required to pay. Agency shall apply such cost savings in the following order of priority: first, to complete the clay cap repair in Phase IIC, second, to construct the new sewer pump station, and if any funds remain after completion of the clay cap repair and construction of the pump station, to any other Phase IIC Improvements in the Agency’s discretion. Notwithstanding the foregoing, the City shall pay any additional costs beyond those shown on Exhibit 3.4.1, including without limitation those additional costs that may arise (a) related to the Bay Trail,

palm promenade, and Marina parking lot, including but not limited to increased costs required by BCDC; (b) related to agreements reached with the Harbor District; and (c) related to changes in scope or quality requested or required by City.

3.4.4 Obligation to Set Aside Funds for Agency Funding Requirement; Agency Budget. The Agency Funding Requirement is an indebtedness of the Agency to Developer under this Agreement, and in order to induce Developer to enter into this Agreement, upon execution of this Agreement the Agency agrees that it will set aside immediately in a separate account funds in the amount of the Agency Funding Requirement (“**Agency Funding Deposit**”). Such Agency Funding Deposit shall be held in such account, and without the express written agreement of Developer, shall not be withdrawn or used for any purpose whatsoever, except to pay at the times and in the amounts required to fulfill Agency’s obligation to pay the Agency Funding Requirement. The Agency Funding Deposit initially placed in such separate account may be replaced at a later date with funds lawfully available for that purpose, including, by way or example, proceeds from the issuance of bonds secured by tax-increment from the Redevelopment Project, on and subject to the same terms and limitations applicable to the Agency Funding Deposit. In order to satisfy Agency’s obligations to pay the Agency Funding Requirement without violating any applicable time limits on Agency action pursuant to the Redevelopment Plan, Agency also will take all reasonably necessary actions from time to time, including without limitation, recognition of the Agency Funding Requirement as an indebtedness of the Agency in all financial reports and documents, and inclusion of the Agency Funding Requirement in the Agency’s annual budget, and making prepayments or additional payments if necessary.

3.4.5 [Intentionally Deleted]

3.4.6 Payment of Phase IIC Improvement Costs. The Parties have estimated the cost of the Phase IIC Improvements (the “**Phase IIC Improvement Costs**”). Developer will pay to Agency Developer’s contribution to the Phase IIC Improvement Costs in an amount not to exceed Eight Hundred Thirty-Nine Thousand Four Hundred Ninety Dollars (\$839,490) (the “**Developer Funding Requirement**”) upon Developer’s commencement of construction of the sewer pump station at the Marina. Commencement of construction as used in this Section 3.4.6 shall be defined as commencement of excavation for the placement of a foundation for the sewer pump station. Notwithstanding the foregoing, Agency acknowledges and agrees that Developer will only be obligated to pay the Developer Funding Requirement if (i) Agency has issued Certificates of Completion (defined below) for the Phase IC Improvements and Phase ID Improvements as set forth in Section 3.2.1 and Section 3.2.2; and (ii) City or Agency have commenced construction of all of the Phase IIC Improvements for which Developer has a funding obligation.

3.4.7 Allocation of Responsibility. Agency shall be responsible for payment of all Phase IIC Improvement Costs not required to be paid by the Developer Funding Requirement, and shall pay for any cost overruns above, and shall be entitled to retain any cost savings below, the estimated costs of such Improvements.

## ARTICLE IV     DISPOSITION OF THE CONVEYED PROPERTY; CONDITIONS PRECEDENT TO DISPOSITION

4.1     Property Exchange. Subject to the terms and conditions set forth herein, and provided that all conditions precedent to the conveyance of the Conveyed Property have been satisfied or waived by Agency, at such time as the Parties are prepared to initiate construction of the Phase I Improvements: (i) Developer will assign to City, and City will assume from Developer, Developer's interest in the Assigned King Leases; and (ii) Agency shall convey to Developer, and Developer shall accept from Agency, fee title to the Conveyed Property, in accordance with the terms, covenants and conditions set forth in this Agreement. The conveyance of the Conveyed Property from Agency to Developer shall be accomplished by recordation of the Deed (defined below), and an amendment to the Harbor District JPA in the form attached hereto as Exhibit 4.1 to be entered into between the City and the Harbor District. As used herein, "Conveyed Property" shall include the following:

4.1.1     all rights, privileges and easements appurtenant to the Conveyed Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Conveyed Property, as well as all development rights, air rights, and water rights relating to the Conveyed Property and any rights-of-way or other appurtenances affecting the Conveyed Property (collectively, the "**Appurtenances**");

4.1.2     all of Agency's right, title and interest in and to all improvements and fixtures located on the Conveyed Property, as well as all other apparatus, equipment and appliances used in connection with the operation or occupancy of the Conveyed Property (collectively, the "**Improvements**");

4.1.3     all personal property owned by the Agency located on or in or used in connection with the Conveyed Property and Improvements as of the date hereof and as of the Closing Date (the "**Personal Property**"); and

4.1.4     any intangible personal property now or hereafter owned by the Agency and used in the ownership, use or operation of the Conveyed Property, Improvements and Personal Property, and, to the extent approved by Developer pursuant to this Agreement, any contract rights, utility contracts or other agreements or rights relating to the ownership, use and operation of the Conveyed Property, as defined below (collectively, the "**Intangible Property**").

### 4.2     Conditions Precedent.

4.2.1     Agency's Conditions Precedent. Agency's obligation to convey the Conveyed Property to Developer is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 4.2.1 unless any such condition is waived by Agency acting in the discretion of its Executive Director. Prior to conveyance of the Conveyed Property, Developer shall satisfy all of the following conditions:

(a)     Due Authorization and Good Standing. Developer shall have delivered to Agency each of the following: (i) certificate of good standing, certified by the Delaware Secretary of State indicating that Developer and Developer's manager or managing

member are properly organized and in good standing in the State of Delaware; (ii) certificate of good standing, certified by the California Secretary of State indicating that Developer and Developer's managing member are in good standing and authorized to do business in the State of California; (iii) a certified resolution indicating that Developer's managing member has authorized the transactions contemplated by this Agreement and that the persons executing this Agreement on behalf of Developer have been duly authorized to do so; (iv) certified copy of Developer's LLC-1; and (v) certified copy of Developer's managing member's LLC-1.

(b) Financing. Developer shall have provided evidence to the Agency, which is commercially reasonably satisfactory, of (a) Developer's acceptance of a loan commitment from a lender or lenders in connection with Developer's financing of the Redevelopment Project, or (b) evidence of the availability of funds from such other alternative sources in connection with the financing of the Redevelopment Project, as reasonably approved by Agency (the "**Financing Plan**"). Developer may obtain, and Agency shall approve, such alternative sources of financing from, without limitation, funds on hand, lines of credit, and/or equity commitments from partners and/or investors. The Parties hereby agree that Agency shall approve of Developer's Financing Plan provided that Developer is able to evidence funding from sources that collectively are sufficient to fund the estimated costs of the Redevelopment Plan.

(c) Contract Documents, Budget and Schedule. City and Agency shall have reasonably approved of the Contract Documents (defined below), budget and schedule for the public improvement components of the Redevelopment Project, which shall be deemed acceptable provided that they are materially consistent with the form of the Contract Documents, budget and schedule delivered to the City and Agency by the Developer prior to the Effective Date. As used herein "**Contract Documents**" means all contract documents upon which Developer and Developer's contractors shall rely in developing the public improvement components of the Redevelopment Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications.

(d) Permits and Entitlements. For the avoidance of doubt, City and Agency confirm that Developer has obtained all known City discretionary entitlements, permits, licenses and approvals required for the development of the Redevelopment Project, but not including permits for demolition, grading, building, or other ministerial approvals, or has provided evidence reasonably satisfactory to Agency that receipt of such permits and approvals is subject only to such conditions as Agency may reasonably approve. City and Agency also confirm that Developer has obtained CEQA and General Plan, Zoning, and Specific Plan-level entitlements for the Redevelopment Project.

(e) Payment of Fees. Subject to any contrary provision of the Development Agreement, Developer shall have paid when due all customary and reasonable fees and charges in connection with the processing of City and all other applicable agency permits and approvals applicable to the Redevelopment Project.

(f) Insurance and Performance Bonds. Developer shall have provided evidence reasonably satisfactory to Agency that Developer has obtained insurance coverage



meeting the requirements set forth in Article VI and shall have provided to Agency performance bonds or other assurance of completion reasonably satisfactory to Agency pursuant to the requirements set forth in Section 6.5.

4.2.2 Developer's Conditions Precedent. Developer's obligation to accept the Conveyed Property from Agency and proceed to Closing is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 4.2.2 unless any such condition is waived by Developer in writing. If any of the conditions are not satisfied, Developer shall have the right in its sole discretion either to waive in writing the condition precedent and proceed with the purchase or terminate this Agreement, in which event Developer and Agency shall each be released from all obligations hereunder, except for such matters that expressly survive the termination of this Agreement. Prior to the Closing Date, the following conditions shall have been satisfied:

(a) Agency's Representations and Warranties. All of Agency's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

(b) Condition of Conveyed Property. The physical condition of the Conveyed Property shall be substantially the same on the day of Closing as on the date of Developer's execution of this Agreement, reasonable wear and tear and construction performed under the terms of this Agreement excepted, and, as of the day of Closing, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened, which after Closing would materially adversely affect the value of the Conveyed Property or the ability of Developer to develop the Conveyed Property in the manner in which it intends.

(c) Permits and Entitlements. Developer shall have obtained all known entitlements, permits, licenses and approvals required for the development of the Redevelopment Project, including without limitation all known permits for demolition, grading, building, or other ministerial approvals.

(d) Financing. Developer shall have received a loan commitment from a lender or lenders, or obtained funds from such other alternative sources, in connection with the financing of the Redevelopment Project, which financing shall be deemed sufficient in Developer's sole and absolute discretion.

(e) Release of Liens. The Agency shall have caused the Conveyed Property to be released from any and all liens or encumbrances related to any loans that encumber the Conveyed Property, including, without limitation, any liens of mortgages, deeds of trust, and financing statements related to that certain Consolidated Loan Agreement by and between the Department of Boating and Waterways and the San Mateo County Harbor District. The Agency hereby agrees that if required by the Department of Boating and Waterways, the Agency shall enter into a guaranty agreement in connection with the release of the Conveyed Property from such liens.

(f) Issuance of Title Policies. The Title Company (defined below) shall be irrevocably and unconditionally committed to issue to Developer the Title Policies, free and clear

of all liens, and subject to only the exceptions expressly set forth therein, and including the endorsements attached thereto.

(g) Easements. The parties shall have agreed upon the form of temporary and permanent easement agreements to be recorded against the Conveyed Property and the City Property at Closing pursuant to which Developer, and its employees, contractors, consultants, agents, invitees and guests shall have access to and from the Conveyed Property, and other easements for utilities serving the Conveyed Property (including, without limitation, potable water, wastewater, storm water, gas, electricity, cable and other services), emergency vehicular access, maintenance easements, and such other easement rights as reasonably required by Developer in connection with its intended development and use of the Conveyed Property.

(h) Insurance. City/Agency shall have provided evidence reasonably satisfactory to Developer that City/Agency has obtained insurance coverage meeting the requirements set forth in Article VI.

4.3 Consideration. The consideration payable by Developer for the Conveyed Property shall be: (i) the conveyance to City of the Assigned King Leases; and (ii) the payment of the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000) (the “**Purchase Price**”). The Assigned King Leases shall be conveyed to Agency at the Close of Escrow. The Purchase Price shall be payable in two (2) installments of Two Million, Two Hundred and Fifty Thousand Dollars (\$2,250,000) each. The first installment shall be payable to Agency at Close of Escrow. The second installment shall be payable in full on the date that Developer obtains the first building permit for a building within Phase IIID.

4.4 Escrow; Escrow Instructions. The Parties shall open escrow at the office of Chicago Title Company at 455 Market Street, 21st Floor, San Francisco, CA 94105, 415-788-0871, Attention: Nicki Carr (“**Title Company**” or “**Escrow Agent**”) in order to consummate the conveyance and exchange of property interests contemplated hereby and the closing of escrow for the transactions contemplated hereby (such closing of escrow shall be referred to herein as the “**Closing**”). Agency and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Agency or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Agency and Developer, shall serve as escrow instructions for the transactions contemplated hereby. In the event the Closing does not occur on or before the Closing Date, the Escrow Agent shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which were deposited hereunder. Any such return shall not, however, relieve either party of any liability it may have for its wrongful failure to close.

4.5 Costs of Closing and Escrow. Each Party shall pay the cost of any title insurance such Party elects to purchase in connection with the acquisition of the property interests to be acquired by such Party. Developer shall pay all other closing costs and escrow fees (including without limitation recording fees, escrow charges, real estate transfer taxes, and documentary transfer taxes associated with the assignment of the Assigned King Leases to Agency and the conveyance of the Conveyed Property to Developer).

4.6 Closing. At the Closing, the Agency shall convey to Developer marketable and insurable fee simple title to the Conveyed Property, including, without limitation, the Appurtenances and the Improvements, by a duly executed and acknowledged grant deed substantially in the form attached hereto as Exhibit 4.6A (the “**Deed**”). Evidence of delivery of marketable and insurable fee simple title shall be the issuance by Title Company to Developer of the Title Policies (defined below). Each Party shall deposit into escrow executed counterpart originals of assignment and assumption agreements in the form attached hereto as Exhibit 4.6B to effectuate the transfer of Developer’s interests in the Assigned King Leases to Agency (the “**Assignment and Assumption of the King Leases**”). The Terminated King Leases shall be terminated on the Closing Date by the execution and delivery of the Lease Termination Agreements (defined below). On the Closing Date the Escrow Agent shall cause the Deed, the Assignment and Assumption of the King Leases, and the Memorandum to be recorded in the Official Records.

4.6.1 At or before the Closing, Agency shall deliver to Developer or the Title Company, as appropriate, the following:

- (a) a duly executed and acknowledged Deed;
- (b) a duly executed Bill of Sale in the form attached hereto as Exhibit 4.6.1A;
- (c) an Assignment and Assumption of the King Leases executed and acknowledged by the City;
- (d) a duly executed Assignment of Intangible Property in the form attached hereto as Exhibit 4.6.1B (the “**Assignment of Intangible Property**”);
- (e) Lease Termination Agreements terminating the Terminated King Leases, duly executed by the Harbor District and the Agency (the “**Lease Termination Agreements**”);
- (f) an amendment to the Harbor District JPA, eliminating applicability of the JPA to the Conveyed Property in the form attached hereto as Exhibit 4.1;
- (g) a request for partial reconveyance in connection with the Deed of Trust benefiting the Harbor District which currently encumbers the Conveyed Property, duly executed by the California Department of Boating and Waterways, in such form reasonably required by the Title Company in order to release such deed of trust lien from the Conveyed Property and issue the Title Policies to Developer;
- (h) a FIRPTA affidavit (in the form attached as Exhibit 4.6.1C) pursuant to Section 1445(b)(2) of the Internal Revenue Code of 1986 (the “**Code**”), and on which Developer is entitled to rely, that Agency is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code, and a properly executed California Form 593-C;
- (i) agreements to which the City or Agency is a party terminating each and every sublease, license or occupancy agreement affecting the Conveyed Property, duly

executed by each and every subtenant, licensee or party to an occupancy agreement occupying the Conveyed Property;

(j) a closing statement in form and content satisfactory to Developer and Agency;

(k) an affidavit of title and gap indemnity agreement in the Title Company's customary form;

(l) a duly executed and acknowledged Escrow Holdback Agreement;

(m) a duly executed and acknowledged Boundary Line Agreement, or such other agreement reasonably acceptable to the Title Company sufficient to remove any tideland or submerged land exception on the title to the Conveyed Property; and

(n) any other instruments, records or correspondence called for hereunder which have not previously been delivered.

Developer may waive compliance on Agency's part under any of the foregoing items by an instrument in writing.

4.6.2 At or before the Closing, Developer shall deliver to Agency or the Title Company, as appropriate, the following:

(a) a duly executed Assignment and Assumption of the King Leases;

(b) a duly executed Assignment of Intangible Property;

(c) a closing statement in form and content satisfactory to Developer and Agency;

(d) a duly executed and acknowledged Escrow Holdback Agreement; and

(e) the portion of the Purchase Price due and payable at Closing pursuant to Section 4.3 hereof.

(f) agreements to which the Developer is a party terminating each and every sublease, license or occupancy agreement affecting the Conveyed Property, duly executed by each and every subtenant, licensee or party to an occupancy agreement occupying the Conveyed Property;

Agency and Developer shall each deposit such other instruments as are reasonably required by the escrow holder or otherwise required to close the escrow and consummate the purchase of the Conveyed Property in accordance with the terms hereof. Agency and Developer hereby designate Title Company as the "Real Estate Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder.

4.7 Prorations. With respect to the Conveyed Property, Agency shall be entitled to all income produced from the operation of the Conveyed Property which is allocable to the period prior to Closing Date and shall be responsible for all expenses allocable to that period; provided, however, that to the extent any portion of the Conveyed Property is subject to the King Leases prior to Closing, income and expenses for the period prior to the Closing Date shall be governed by the terms of such King Leases. After Closing and the concurrent termination of the Terminated King Leases, Developer shall be entitled to all income and responsible for all costs with respect to the Conveyed Property. With respect to the portion of the Marina Property that is subject to the King Leases but is not a part of the Conveyed Property, income and expenses for the period prior to the Closing Date shall be governed by the terms of such King Leases, and as of 12:01 a.m. on the Closing Date, Agency shall be entitled to all income and responsible for all costs thereafter. At the Closing, all items of income and expense with respect to the Property listed below shall be prorated in accordance with the foregoing principles and the rules for the specific items set forth hereafter:

4.7.1 Utility Charges. Agency shall cause all the utility meters for the King Lease Property and the Conveyed Property to be read on the Closing Date.

4.7.2 Other Apportionments. Amounts payable under the Assumed Contracts, annual or periodic permit and/or inspection fees (calculated on the basis of the period covered), and liability for other property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

4.7.3 Real Estate Taxes and Special Assessments. General real estate taxes payable for the tax year in which the Closing occurs shall be prorated by Agency and Developer as of the Closing Date.

4.7.4 Preliminary Closing Adjustment. Agency and Developer shall jointly prepare a preliminary Closing adjustment on the basis of all sources of income and expenses, and shall deliver such computation to the Title Company prior to Closing.

4.7.5 Post-Closing Reconciliation. If any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other party within ten (10) days after delivery of a bill therefor.

4.7.6 Survival. The provisions of this Section 4.7 shall survive the Closing.

4.8 Representations and Warranties of Agency. Agency hereby represents and warrants to and covenants with Developer as follows:

4.8.1 To the best of Agency's knowledge, the use and operation of the Conveyed Property now are, and at the time of Closing will be, in compliance with all applicable building codes, environmental, zoning and land use laws, and other applicable local, state and federal laws and regulations (collectively, "**Laws**").

4.8.2 The Due Diligence Documents delivered to Developer in connection with this Agreement (including, without limitation, the Service Contracts) are and at the time of

Closing will be true, correct and complete copies of such documents. Except as shown on Exhibit 4.8.2, and excluding any Service Contracts entered into by Developer in its capacity as the lessee under the King Leases, there are no other Service Contracts affecting the Conveyed Property.

4.8.3 There are no condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or, to Agency's knowledge, planned to be instituted, which would detrimentally affect the use, operation or value of the Conveyed Property.

4.8.4 There is no litigation pending or, after due and diligent inquiry, to the best of Agency's knowledge threatened, against Agency or any basis therefor that arises out of the ownership of the Conveyed Property or that might detrimentally affect the value or the use or operation of the Conveyed Property for its intended purpose or the ability of Agency to perform its obligations under this Agreement.

4.8.5 This Agreement and all documents executed by Agency which are to be delivered to Developer at the Closing are and at the time of Closing will be duly authorized, executed and delivered by Agency, are and at the time of Closing will be legal, valid and binding obligations of Agency enforceable against Agency in accordance with their respective terms, are and at the time of Closing will be sufficient to convey title (if they purport to do so), and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Agency or the Conveyed Property is subject.

4.8.6 At the time of Closing there will be no outstanding written or oral contracts made by Agency for any improvements to the Conveyed Property which have not been fully paid for and Agency shall cause to be discharged all mechanics' and materialmen's liens arising from any labor or materials furnished to the Conveyed Property prior to the time of Closing.

4.8.7 Agency is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

4.8.8 Except as disclosed on Exhibit 4.8.8, the Conveyed Property is not in violation of any Environmental Laws (defined below). Except as disclosed on Exhibit 4.8.8, neither Agency, nor to the best of Agency's knowledge any third party, has used, manufactured, generated, treated, stored, disposed of, or released any Hazardous Material on, under or about the Conveyed Property. Except as disclosed on Exhibit 4.8.8, neither Agency, nor to the best of Agency's knowledge any third party has installed, used or removed any storage tank on, from or in connection with the Conveyed Property except in full compliance with all Environmental Laws, and to the best of Agency's knowledge there are no storage tanks or wells located on, under or about the Conveyed Property. Except as disclosed on Exhibit 4.8.8, to the best of Agency's knowledge, the Conveyed Property does not consist of any building materials that contain Hazardous Material. The disclosures contained in Exhibit 4.8.8 represent all of the information within Agency's knowledge, control and/or possession relating to the use, manufacture, generation, treatment, storage, disposal or release of Hazardous Material on, under or about the Conveyed Property.

4.8.9 Agency has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in any of the Conveyed Property.

4.8.10 Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

#### 4.9 Condition of Title.

4.9.1 At Closing, Agency shall cause the Title Company to issue Developer ALTA extended coverage owner's policies of title insurance (Form 2006) in the amount of the value of the Conveyed Property as determined in Developer's sole and absolute discretion, at no more than the Title Company's standard rates, insuring fee simple title to the Conveyed Property and all appurtenances and improvements thereon in Developer, in the forms attached hereto as Exhibit 4.9.1, subject only to the exceptions showing in Schedule B thereof and also including all endorsements attached thereto, and incorporating those changes as indicated thereon by handwritten comments, without further revision or amendment except as expressly approved by Developer (the "**Title Policies**"). The Title Policies shall include without limitation full coverage against mechanics' and materialmen's liens. Agency's failure to cause such Title Policies to be issued to Developer in the forms required herein shall be deemed a default under this Agreement, and Developer shall have all of its rights and remedies pursuant to Section 10.6.2 below.

4.9.2 At the Close of Escrow, Developer shall convey to Agency Developer's leasehold interest in the property encumbered by the Assigned King Leases free and clear of all recorded liens, encumbrances, taxes, assessments and leases voluntarily created by Developer during its tenancy under the Assigned King Leases, except as approved in writing by Agency, and Agency shall convey to Developer fee simple title to the Conveyed Property free and clear of all recorded liens, encumbrances, taxes, assessments and leases except as set forth in the Title Policies.

4.10 Feasibility Studies. Developer, City and Agency may undertake additional inspection, review and testing of the Conveyed Property and the King Lease Property, respectively, including without limitation (i) review of the physical condition of such property, including inspection and examination of soils, environmental factors, and archeological information relating to the Conveyed Property; (ii) further review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Conveyed Property; (iii) further evaluation of the Conveyed Property to determine its feasibility for such Party's intended use; and (iv) further review and investigation of any potential relocation costs pursuant to Section 7260 et seq. of the California Government Code. All of the foregoing are hereinafter collectively referred to as "**Feasibility Studies**." The Parties may consult with or retain civil engineers, contractors, soils and geologic engineers, architects and other specialists in its investigation, and may consult with or retain other consultants to determine if the Conveyed Property is suitable for each Party's intended use. At Close of Escrow, the Conveyed Property and Developer's interest in the King Property shall be conveyed substantially in the respective condition of each as of the Effective Date, reasonable wear and tear and construction permitted by this Agreement excepted.

4.11 Contracts, Reports and Investigations. Developer, City, and Agency each agree to make available within fifteen (15) business days following the Effective Date of this Agreement, any and all additional information (beyond that which each Party has already provided to the other Party), third-party studies, third-party reports, third-party investigations, service contracts, leases, rental agreements and other obligations concerning or relating to the property such Party has agreed to convey pursuant to the this Agreement which are in such Party's possession or which are reasonably available to such Party, including without limitation surveys, third-party studies, third-party reports and third-party investigations concerning the property's physical, environmental, or geological condition, habitability, or the presence or absence of Hazardous Materials in, on or under the property and its compliance with all applicable state and federal environmental laws (collectively, the "**Due Diligence Documents**"). Developer shall advise Agency prior to Closing which of the service contracts Developer will assume at Closing (the "**Assumed Contracts**") and Agency shall terminate as of the Closing Date all such agreements which Developer elects not to assume.

4.12 Right of Entry. Prior to Closing, each Party grants to the other and to such other Party's agents and employees the right, upon reasonable notice, to enter upon the property such Party shall acquire pursuant to this Agreement for the purpose of inspecting, examining, surveying and reviewing such property. Each Party shall obtain the other Party's advance consent in writing to any proposed physical testing of the property, which consent shall not be unreasonably conditioned, withheld or delayed. Each Party shall also obtain any necessary approvals from the Harbor District. Physical tests shall be scheduled during normal business hours unless otherwise approved by the owner of the property to be tested. Each Party agrees to indemnify, defend and hold the other Party harmless from and against all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs of litigation) resulting from such Party's activities pursuant to this Section except to the extent that such liability, loss, cost, damage and expense arises as a result of the negligence or other wrongful conduct of the indemnified Party or the indemnified Party's agents or employees. Notwithstanding anything to the contrary set forth herein, the foregoing indemnity shall not apply to the mere discovery of any pre-existing condition, except to the extent exacerbated by such party. This Section shall survive the expiration or termination of this Agreement and the Close of Escrow.

4.13 Condemnation. If condemnation proceedings are commenced or threatened against any of the Conveyed Property, then, notwithstanding anything to the contrary set forth in this Agreement, Developer shall have the right, at its election, either to terminate this Agreement or to not terminate this Agreement and accept the Conveyed Property. Developer shall have thirty (30) days after Agency notifies Developer that condemnation proceedings are commenced or threatened against any of the Conveyed Property to make such election by delivery to Agency of an election notice (the "**Election Notice**"). Developer's failure to deliver the Election Notice within such thirty (30) day period shall be deemed an election to terminate this Agreement. If this Agreement is terminated by delivery of notice of termination to Agency, then Developer and Agency shall each be released from all obligations hereunder, except for such matters that expressly survive the termination of this Agreement. If Developer elects not to terminate this Agreement, Agency shall give Developer a credit against the first installment of the Purchase Price at the Closing (and, to the extent necessary, the second installment of the Purchase Price) in the amount reasonably determined by Developer and Agency (after consultation with unaffiliated experts) to be the value of any



Property taken as a result of such proceeding, in which case this Agreement shall otherwise remain in full force and effect, and Agency shall be entitled to any condemnation awards.

4.14 Maintenance of the Conveyed Property. Except to the extent such matters are the responsibility of the Developer in its capacity as the lessee under the King Leases, between Agency's execution of this Agreement and the Closing, Agency shall maintain the Conveyed Property in good order, condition and repair, reasonable wear and tear excepted, and shall make all repairs, maintenance and replacements of the Improvements and any Personal Property and otherwise operate the Conveyed Property in the same manner as before the making of this Agreement, as if Agency were retaining the Conveyed Property.

4.15 Developer's Consent to Contracts and Leases Affecting the Conveyed Property; Termination of Existing Contracts.

4.15.1 Agency shall not, after the Effective Date, enter into any new leases or contracts relating to the Conveyed Property, or any amendments thereof, or terminate any lease, or waive any rights of Agency under any contract, without in each case obtaining Developer's prior written consent thereto (which consent shall not be unreasonably withheld).

4.15.2 Agency shall terminate prior to the Closing, at no cost or expense to Developer, any and all Service Contracts affecting the Conveyed Property that are not Assumed Contracts (excluding any Service Contracts entered into by Developer in its capacity as the lessee under the King Leases).

4.15.3 From and after the Effective Date, Agency shall not further encumber the Conveyed Property with any monetary or non-monetary liens or encumbrances.

4.16 Insurance. Through the Closing Date, Agency shall maintain or cause to be maintained, at Agency's sole cost and expense, Agency's existing policy or policies set forth in the ABAG Memorandum of Coverage providing shared risk coverage for the Conveyed Property.

## ARTICLE V ENVIRONMENTAL MATTERS

5.1 Environmental Remediation. The Parties anticipate that development of the Redevelopment Project will require environmental remediation and related geotechnical work, including cleanup of sumps on the Marina Property, a methane monitoring system as set forth in Section 5.3, relocation of refuse, and repair and/or replacement of the clay cap covering the landfill. The Parties agree to allocate costs for these remediation activities as set forth in Exhibit 3.4.1.

5.2 Environmental Indemnification. With respect to preexisting environmental conditions pertaining to the presence of Hazardous Materials and the pre-existing landfill present on the Marina Property ("**Pre-Existing Environmental Conditions**"), including those conditions identified in the documents listed in Exhibit 4.8.8, the Parties intend that, subject to the limitations set forth in this Section, both before and following Developer's acquisition of the Conveyed Property, Agency shall retain responsibility for all such Pre-Existing Environmental Conditions, whether discovered prior to or after the Effective Date. Agency shall indemnify, defend, release, and hold harmless Developer from any and all costs, damages, claims, liabilities or expenses (including, without limitation, reasonable attorneys' fees and disbursements) arising from or

otherwise related to the Pre-Existing Environmental Conditions; provided, however: (i) Developer shall be responsible for payment of the costs incurred in furtherance of the remediation activities described in Section 5.1; and (ii) neither City nor Agency shall have any obligation to defend, indemnify or hold Developer harmless for, and Developer shall be solely responsible for, remediation, damages, penalties, or other costs to the extent arising from or to the extent otherwise related to (a) any release of Hazardous Materials that are brought onto the Conveyed Property by Developer or its employees, contractors, consultants, invitees, agents; or (b) exacerbation of the Pre-Existing Environmental Conditions arising from the negligence, gross negligence, or willful misconduct of Developer's or Developer's employees, contractors, consultants, invitees, or agents or its/their failure to conduct the remediation in compliance with all Applicable Laws.

5.3 Methane and Leachate Monitoring. The Parties intend that City/Agency and/or Harbor District shall retain responsibility for landfill-related methane release monitoring and ground water leachate control monitoring on the City Property and the Developer Property, as well as maintenance, repair, or replacement of the equipment and systems necessary to conduct necessary monitoring, and shall submit any reports required by the local enforcement agency for both the City Property and the Developer Property. Developer will not acquire responsibility to carry out methane monitoring, ground water leachate control monitoring or related maintenance, repair, or replacement on the City Property or Developer Property, or any other environmental assessment, stabilization, remediation, or associated costs related to Pre-Existing Environmental Conditions. Notwithstanding the foregoing, the Parties intend that (i) Developer will fund initial installation of methane monitoring and ground water leachate control monitoring systems on the Conveyed Property; and (ii) Developer will cooperate to the extent reasonably necessary with any methane monitoring and ground water leachate control monitoring activities conducted by City or a third party.

5.4 Environmental Disclosure. Agency hereby discloses certain Pre-Existing Environmental Conditions as more particularly described in the reports listed in Exhibit 4.8.8, copies of which have been provided to Developer. To the extent the Agency has copies of investigation reports, it will provide copies of such reports to Developer upon request; but the Parties acknowledge that Agency will not be conducting a public records search of any regulatory agency files—although the Agency urges Developer to do so to satisfy itself regarding the environmental condition of the Conveyed Property. By execution of this Agreement, except with respect to Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, and without limiting Agency's obligations as set forth in this Article V, Developer: (i) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Conveyed Property; (ii) acknowledges that it will have an opportunity to conduct its own independent review and investigation of the Conveyed Property prior to the Close of Escrow; and (iii) agrees to rely solely on its own experts in assessing the environmental condition of the Conveyed Property and its sufficiency for its intended use.

5.5 Property Sold "AS IS." Except with respect to Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, Developer specifically acknowledges that the Agency is selling and Developer is purchasing the Conveyed Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Agency, its employees, board members, agents, or brokers as to any

matters concerning the Conveyed Property. Except with respect to Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, the Agency makes no representations or warranties as to any matters concerning the Conveyed Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Conveyed Property; (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater; (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Conveyed Property; (iv) the development potential of the Conveyed Property, and the Conveyed Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Conveyed Property for any particular purpose; (v) the zoning or other legal status of the Conveyed Property or any other public or private restrictions on use of the Conveyed Property; (vi) the compliance of the Conveyed Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vii) the presence or removal of Hazardous Material, substances or wastes on, under or about the Conveyed Property or the adjoining or neighboring property; or (viii) the condition of title to the Conveyed Property.

5.6 Developer to Rely on Own Experts; Limitations on Agency's Environmental Representations and Warranties. Developer understands that notwithstanding the delivery by Agency to Developer of any materials, including, without limitation, third party reports, Developer will rely entirely on Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, and Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Conveyed Property. Notwithstanding anything to the contrary set forth in this Agreement, Developer may not bring any action against Agency for a breach of any representation or warranty contained in Section 4.8.8 above unless and until the aggregate amount of all liability and losses arising out of any such breach exceeds One Million Five Hundred Thousand Dollars (\$1,500,000) (provided, however, that once the foregoing threshold amount is met, Developer shall be entitled to recover the entire amount of such losses from Agency). In addition, in no event will Agency's liability for all such breaches exceed, in the aggregate, an amount equal to Four Million Dollars (\$4,000,000). Notwithstanding the foregoing, nothing set forth in this Section 5.6 shall serve to limit, modify or amend Agency's obligations set forth in Section 5.2 above. The provisions of this Section 5.6 shall survive the Closing.

#### 5.7 Definitions.

5.7.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methytertbutyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

5.7.2 “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

## **ARTICLE VI DEVELOPMENT OF THE PROPERTY**

6.1 Permits and Approvals; City Actions; Cooperation. Developer acknowledges that the execution of this Agreement by City and Agency does not constitute any approval for the Project, and does not relieve Developer from the obligation to apply for and to obtain from City and all other agencies with jurisdiction over the Developer Property, all necessary approvals, entitlements, and permits for the development of the Developer Project (including without limitation, approval of the Developer Project in compliance with CEQA; amendments to the City’s General Plan, the Specific Plan, and the City’s Zoning Ordinance; approval of parcel maps, subdivision maps and/or use permits, as applicable; and authorization, approvals or permits from the U.S. Army Corps of Engineers, the Bay Conservation and Development Commission, the San Francisco Bay Regional Water Quality Control Board, the Bay Area Air Quality Management District, the County of San Mateo Health Services Department and the California Department of Public Health), nor does it limit in any manner the discretion of the City or any other agency in the approval process, except as otherwise set forth in the Development Agreement. Developer covenants that prior to the commencement of any construction, it shall obtain all necessary permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the Developer Property, and shall not commence construction work on the Redevelopment Project prior to issuance of building permits required for such work. Agency staff shall work cooperatively with Developer in good faith to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

6.2 Design Review; Conditions of Approval. Developer shall develop the Conveyed Property in accordance with the terms and conditions of this Agreement, and any construction shall be in compliance with the terms and conditions of all approvals, entitlements and permits that the

City or any other governmental body or agency with jurisdiction over the Developer Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Redevelopment Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Redevelopment Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

6.3 Intentionally Deleted.

6.4 Development Schedule and Phasing. Following transfer of the Conveyed Property, Developer shall thereafter endeavor to complete construction of the Redevelopment Project and substantially satisfy all other obligations of Developer under this Agreement within the time periods set forth in this Section, unless such time periods are extended upon mutual written consent of the Agency and the Developer based upon a Force Majeure Event (defined below) or as otherwise agreed by the Parties. Without limiting the foregoing, Developer shall commence demolition of the existing improvements on the Conveyed Property within two hundred seventy (270) calendar days following conveyance of the Conveyed Property to Developer, and shall diligently prosecute to completion the development and construction of the Redevelopment Project. Each Party shall use diligent and commercially reasonable efforts to perform the obligations to be performed by such Party pursuant to this Agreement in order to permit issuance of a Certificate of Completion for each Phase of the Redevelopment Project as promptly as feasible

6.5 Performance and Payment Bonds.

6.5.1 Prior to commencement of each phase of the Redevelopment Project, Developer shall cause its general contractor to deliver to the Agency copies of payment bond(s) and performance bond(s) (or other surety instrument acceptable to Agency in its reasonable discretion), issued by a surety reasonably acceptable to the Agency licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction for such phase of the Redevelopment Project (the “**Performance Security**”). The Performance Security shall name the Agency as co-obligee. If, and to the extent Developer is required to post a performance bond or other security in favor of the City pursuant to California Government Code sections 66499-66499.10 to guaranty completion of the Phase IC Improvements (the “**City Security**”), the posting of such City Security shall satisfy the requirements of this Section 6.5 for such Phase IC Improvements.

6.5.2 With respect to the Phase ID Improvements, in lieu of the Performance Security, subject to Agency’s approval of the form and substance thereof, Developer may submit evidence satisfactory to the Agency of Developer’s ability to commence and complete construction of the Phase ID Improvements in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Agency required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Agency. Such evidence must be submitted to Agency in approvable form in sufficient time to allow for Agency’s review and approval prior to the scheduled construction start date.

6.5.3 Upon completion by Developer of any distinct portion of the Redevelopment Project for which a Certificate of Completion is issued, the Agency shall release such portion of the Performance Security that is equal to the ratio of the cost of the completed improvements to the total Improvement Costs within thirty (30) days after receipt of written request from Developer.

6.6 Developer's Insurance Obligations. Except as otherwise stated herein, prior to the commencement of construction for each phase of the Redevelopment Project on the Conveyed Property or any portion thereof or on any portion of the City Property, Developer shall obtain the insurance policies described in this Section 6.6. Except as otherwise stated herein, Developer shall maintain each such policy (or equivalent replacement policy) in effect until the issuance of a Certificate of Completion for the applicable phase of work.

6.6.1 Workers' Compensation. Throughout the term of this Agreement, Developer shall comply with, and shall ensure that Developer's contractors comply with, the laws of the State of California concerning workers' compensation. Without limiting the generality of the foregoing, Developer shall maintain in effect throughout the term of this Agreement, one or more policies of worker's compensation insurance as required by law. Developer's policy shall also include employer's liability coverage in an amount not less than \$1,000,000 per accident.

6.6.2 General Liability Insurance. Developer and the general contractor working on behalf of Developer (or if using multiple prime contracts, each general contractor) on the Redevelopment Project shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement commercial general liability insurance in the amount of \$5,000,000 per occurrence for bodily injury, personal injury, and property damage, products, completed operations, and contractual liability coverage. Such insurance shall be written on an occurrence basis, and shall provide that (i) the Indemnitees shall be named as additional insureds under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by the Agency or by other named or additional insureds will be called upon to cover a loss covered thereunder.

6.6.3 Automobile Liability Insurance. Developer and the general contractor working on behalf of Developer (or if using multiple prime contracts, each general contractor) on the Redevelopment Project shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage. Such insurance shall be written on an occurrence basis, and shall provide that (i) the Indemnitees shall be named as additional insureds under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by the Agency or other named or additional insureds will be called upon to cover a loss covered thereunder.

6.6.4 Course of Construction Insurance. Developer shall obtain at its sole cost and keep in full force and effect throughout the course of construction, Course of Construction insurance with policy limits no less than \$5,000,000, with no coinsurance penalty provisions, and in the standard "Builders Risk" form of policy. The Agency and the City shall be named as

loss payee as their interests may appear, and the insurer shall waive all rights of subrogation against the Agency and City.

6.6.5 Certificates of Insurance. Developer shall file with the Agency, prior to commencement of construction of the Redevelopment Project or any portion thereof, and prior to commencement of construction on the Conveyed Property or the City Property pursuant to this Agreement, certificates of insurance in form acceptable to Agency, evidencing the insurance coverage required pursuant to this Section together with duly executed endorsements evidencing additional insured status as required pursuant to this Section 6.6. Developer hereby agrees to notify Agency of any cancellation, major change in coverage, expiration, termination or nonrenewal of the coverage at least thirty (30) calendar days prior to the effective date of such cancellation or change in coverage (except that only ten (10) calendar days prior notice shall be required for cancellation due to non-payment of premiums). Developer shall deliver copies of the insurance policies to Agency upon receipt of written request from Agency.

6.6.6 Other Requirements. Developer shall also furnish or cause to be furnished to Agency evidence satisfactory to Agency that the general contractor (or if using multiple prime contracts, each general contractor) with whom it has contracted for the performance of work on the Conveyed Property carries the same insurance required of Developer hereinabove, and in the amounts of coverage specified. Companies writing the insurance required hereunder shall be authorized to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Agency and City as loss payees as their interests may appear.

6.6.7 Reinstatement. If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Agency a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Agency may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse Agency for such reasonable expense upon receipt of billing from Agency.

6.6.8 Primary Coverage; Waiver of Subrogation. Coverage provided by Developer and its general contractor (or if using multiple prime contracts, each general contractor) shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City and Agency.

6.7 City/Agency's Shared Risk Coverage/Insurance Obligations. Except as otherwise stated herein, prior to the commencement of construction of the Phase IIC Improvements, City/Agency shall maintain shared risk coverage under the Memorandum of Coverage with ABAG Plan Corporation (or any commercially reasonable successor shared risk coverage entity selected by the City) or the insurance policies described in this Section 6.7. Except as otherwise stated herein,

City/Agency shall maintain each such policy (or equivalent replacement policy) in effect until the issuance of a Certificate of Completion for the Phase IIC Improvements.

6.7.1 Workers' Compensation. Throughout the term of this Agreement, City/Agency shall comply with, and shall ensure that City/Agency's contractors comply with, the laws of the State of California concerning workers' compensation. Without limiting the generality of the foregoing, City/Agency shall maintain in effect throughout the term of this Agreement, one or more policies of worker's compensation insurance as required by law. City/Agency's policy shall also include employer's liability coverage in an amount not less than \$1,000,000 per accident.

6.7.2 General Liability Shared Risk Coverage. City/Agency and all contractors working on behalf of City/Agency on the Phase IIC Improvements shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement commercial general liability insurance or in the case of the City/Agency shared risk coverage under the Memorandum of Coverage from ABAG Plan (or any commercially reasonable successor shared risk coverage entity selected by the City) in the amount of \$5,000,000 per occurrence for bodily injury, personal injury, and property damage, products, completed operations, and contractual liability coverage. Such insurance or shared risk coverage shall be written on an occurrence basis, and shall provide that (i) Developer shall be named as an additional insured under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by Developer or by other named or additional insureds will be called upon to cover a loss covered thereunder.

6.7.3 Automobile Liability Insurance. City/Agency and all contractors working on behalf of City/Agency on the Phase IIC Improvements shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement automobile liability insurance or in the case of the City /Agency shared risk coverage under the Memorandum of Coverage from ABAG Plan (or any commercially reasonable successor shared risk coverage entity selected by the City) in the amount of \$1,000,000 per occurrence for bodily injury and property damage. Such insurance or shared risk coverage shall be written on an occurrence basis, and shall provide that (i) Developer shall be named as an additional insured under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by Developer or other named or additional insureds will be called upon to cover a loss covered thereunder.

6.7.4 Certificates of Insurance. City/Agency shall provide to Developer, prior to commencement of construction of the Phase IIC Improvements or any portion thereof, certificates of insurance or shared risk coverage evidencing the insurance coverage required pursuant to this Section together with duly executed endorsements evidencing additional insured status as required pursuant to this Section 6.7. Such certificates shall include a statement of obligation on the part of the carrier to notify Developer of any cancellation, major change in coverage, expiration, termination or nonrenewal of the coverage at least thirty (30) calendar days prior to the effective date of such cancellation or change in coverage (except that only ten (10) calendar days prior notice shall be required for cancellation due to non-payment of premiums). City/Agency shall deliver copies of the insurance policies to Developer upon request.



6.7.5 Other Requirements. City/Agency shall also furnish or cause to be furnished to Developer evidence satisfactory to Developer that any contractor with whom it has contracted for the performance of work on the Phase IIC Improvements carries the same insurance required of City/Agency hereinabove, and in the amounts of coverage specified, and each general contractor shall be required to obtain certification of insurance from all subcontractors. Companies writing the insurance required hereunder shall be licensed (or authorized, as applicable) to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Developer as an additional insured.

6.7.6 Reinstatement. If any insurance policy or coverage required hereunder is canceled or reduced, City/Agency shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, provide to Developer a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so provide such certificate, Developer may, without further notice and at its option, procure such insurance coverage at City/Agency's expense, and City/Agency shall promptly reimburse Developer for such reasonable expense upon receipt of billing from Developer.

6.7.7 Primary Coverage; Waiver of Subrogation. Coverage provided by City/Agency and its contractors shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Developer, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of Developer.

6.8 Rights of Access. For the purposes of assuring compliance with this Agreement, representatives of the Agency shall have the reasonable right of access to the Conveyed Property, upon reasonable prior notice to Developer, without charges or fees and at normal construction hours during the period of construction, including, without limitation, for the purpose of conducting inspections at Agency expense of the work being performed in constructing the Phase IC Improvements. Agency representatives shall be identified in writing by the Agency Executive Director or his/her designee. Agency shall minimize any interference with any construction by Developer or Developer's use of the Conveyed Property.

6.9 Equal Opportunity. Developer shall direct its contractors and subcontractors to refrain from unlawful discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Redevelopment Project.

6.10 Certificate of Completion.

6.10.1 Promptly after substantial completion (subject to correction of punch list items) of all construction and development of all or any distinct portion of the Phase IC Improvements or the Phase ID Improvements capable of independent use, Developer shall provide to Agency an instrument so certifying. Upon receipt of such certificate, Agency shall confirm that such portion of the Redevelopment Project has been substantially completed, which confirmation may be based upon inspection by the Chief Building Official and Fire Marshal of

the City, and upon such confirmation shall furnish Developer with a final Certificate of Completion, substantially in the form attached hereto as Exhibit 6.10.1 (“**Certificate of Completion**”). The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of the applicable portion of the Phase IC Improvements and the Phase ID Improvements required to be installed upon the Conveyed Property. Upon completion of all Phase IC Improvements and Phase ID Improvements, Agency shall issue a final Certificate of Completion confirming the completion of the Redevelopment Project. The final Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of San Mateo County.

6.10.2 If Agency refuses or fails to furnish a Certificate of Completion after written request from Developer, Agency shall, within ten (10) business days after receipt of such written request, provide Developer with a written statement of the reasons Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain Agency’s opinion of the action Developer must take to obtain a Certificate of Completion. If Agency shall have failed to provide such written statement within said 10-day period, Developer shall be deemed entitled to the Certificate of Completion, and Agency shall promptly issue such final Certificate of Completion to Developer.

6.10.3 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Redevelopment Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

6.11 Easements. Developer and City and/or Agency agree to execute and record instruments in form and content acceptable to such Parties over the City Property and the Conveyed Property, granting to the other Party access, utility and maintenance easements in connection with each Party’s proposed use and development of the City Property and the Conveyed Property, as applicable. Each Party agrees to cooperate with the other Party in good faith to identify and prepare such easements to the extent requested by the other Party.

6.11.1 Dedication of Beach/Park Area. Upon Developer’s completion of the landscaping of the beach/park area as identified on Exhibit 6.11.1 (the “**Dedicated Property**”), Developer and City shall enter into an agreement pursuant to which Developer shall dedicate (by conveyance of fee title or an easement) the Dedicated Property to the City for purposes of parks and recreation. Upon completion of such dedication, (i) City (or its designee) shall be solely responsible for the maintenance and repair of all improvements thereon, (ii) City shall be solely responsible for any and all liabilities in connection with the Dedicated Property, including, without limitation, any claims arising out of personal injury or property damage on the Dedicated Property, and (iii) City shall be responsible for any and all costs relating to the Dedicated Property, including, without limitation, the payment of all property taxes and assessments relating to the Dedicated Property.

6.12 Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Redevelopment Project in conformity with all applicable federal,

state and local laws, rules, ordinances and regulations (“**Applicable Laws**”), including without limitation, all applicable federal and state labor laws and standards, all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and subject to the provisions of the Development Agreement anticipated to be executed by the Parties substantially concurrently herewith, applicable provisions of the City’s Zoning Ordinance, building, plumbing, mechanical and electrical codes, and all other applicable provisions of the City’s Municipal Code.

6.13 Agency Disclaimer. Developer acknowledges that the Agency and City are under no obligation, and neither Agency nor City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Phase ID Improvements. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Phase ID Improvements. Any review or inspection of the Phase ID Improvements undertaken by the Agency or the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the Agency or the City as to the quality of the design or construction of the Phase ID Improvements.

6.14 Indemnity.

6.14.1 Developer shall indemnify, defend (with counsel reasonably approved by Agency) and hold Agency, City, and their respective elected and appointed officials, officers, commissions, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against any and all actual, out-of-pocket liability, loss, fines, penalties, forfeitures, costs, damages (including without limitation attorneys’ fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, deficiencies, and orders (all of the foregoing collectively “**Claims**”) that directly or indirectly, in whole or in part, are caused by, arise from, or relate to, any of the following:

(a) Developer’s failure to comply in all material respects with this Agreement and/or with all Applicable Laws relating to the construction or operation of the Redevelopment Project.

(b) Developer’s failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including the requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781), whether or not any insurance policies shall have been determined to be applicable to any such Claims.

(c) Defects in the Developer Construction Plans (as defined in Section 6.19) or defects in any work done by Developer or its contractors pursuant to the Developer Construction Plans, whether or not any insurance policies have been determined to be applicable to any such Claims.

(d) Any Claims to attack, set aside, void, or annul any approval by the City or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Redevelopment Project or this Agreement. City/Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. If City/Agency fails to promptly notify Developer of any legal action against City/Agency or if City/Agency fails to cooperate in the defense, Developer shall not thereafter be responsible for City/Agency's defense. Agency and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency and/or City choose to do so, Developer shall reimburse Agency and/or City for reasonable attorneys' fees and expenses incurred. In the event City/Agency and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel.

6.14.2 Developer's indemnification obligations set forth in this Section shall not apply to Claims caused by, arising from, or relating to the gross negligence or willful misconduct of the Indemnitees. The provisions of this Section 6.14 shall survive for four (4) years following the latter of the termination of this Agreement or the issuance of the final Certificate of Completion for the Redevelopment Project. It is further agreed that Agency and City do not and shall not waive any rights against Developer which they may have pursuant to this Section 6.14 by virtue of Agency's receipt of any of the insurance policies described in this Agreement.

6.15 Liens and Stop Notices. Until the issuance of a Certificate of Completion for the Redevelopment Project, Developer shall not allow to be placed on the Conveyed Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting Conveyed Property, Developer shall within twenty (20) days of such recording or service: (i) pay and discharge (or cause to be paid and discharged) the same; or (ii) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (iii) provide other assurance reasonably satisfactory to Agency that the claim of lien or stop notice will be paid or discharged.

6.16 Right of Agency to Satisfy Liens on the Conveyed Property. If Developer fails to satisfy or discharge any lien or stop notice on the Conveyed Property (following conveyance of such property to Developer) or on any City Property on which Developer is undertaking work pursuant to this Agreement in accordance with Article III above or fails to provide reasonable assurance to Agency with respect to the same, the Agency shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall promptly reimburse Agency for such paid lien or stop notice. Alternatively, the Agency may require Developer to immediately deposit with Agency the amount necessary to satisfy such lien or claim pending resolution thereof. The Agency may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Redevelopment Project for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Conveyed Property or the Redevelopment Project improvements. The Agency may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Agency deems necessary or desirable to protect its interest in the City Property.

6.17 Subordination. Any lien created or claimed under the provisions of this Agreement shall expressly be made subject and subordinate to the rights of any lender providing funds used for financing the acquisition or development of the Conveyed Property.

6.18 Prevailing Wage Requirements. To the full extent required by applicable federal and state law, Developer and its contractors, subcontractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (“**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions. This requirement is applicable to all development located on the Conveyed Property and/or the City Property and any infrastructure constructed that benefits the Conveyed Property and/or the City Property that is in whole or part paid for with tax increment funds or other sources of public funds. Developer covenants to take no action which would cause Agency to violate the Prevailing Wage Laws.

If applicable pursuant to Prevailing Wage Laws, the hourly and daily rate of wages to be paid to each of the classes of mechanics and workers employed in connection with construction of the Redevelopment Project shall not be less than the rate of such wages then prevailing in San Mateo County. If Prevailing Wage requirements apply to any portion of the Redevelopment Project, Developer agrees to and shall forfeit, as a penalty to Agency, the sums established and applicable pursuant to California Labor Code Section 1720 *et seq.* for each calendar day or portion thereof that each worker employed in connection with the Redevelopment Project is paid less than the rates designated in this paragraph for any work pursuant to this Agreement performed by or on behalf of Developer.

6.19 Construction Plans. Developer shall submit to City’s Building Department construction plans for those portions of the Developer Project that are also within the Redevelopment Area, and for which Developer is primarily responsible for designing, financing and constructing as identified in Exhibit 3.2.2 (the “**Developer Construction Plans**”).

6.20 Construction Pursuant to Plans. Any development of the Redevelopment Project shall be in accordance with the approved Contract Documents and/or applicable Developer Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City and/or the Agency pertaining to the Project. Developer shall comply with all lawful directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Conveyed Property or the Redevelopment Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Redevelopment Project shall be performed by licensed contractors, engineers or architects, as applicable.

6.21 Defects in Developer Construction Plans. Neither Agency nor City shall be responsible to Developer or to any third party for any defect in the Developer Construction Plans or for any structural or other defect in any work done pursuant to the Developer Construction Plans.

## ARTICLE VII USE OF THE PROPERTY

7.1 Maintenance. Following conveyance to Developer, Developer shall at its own expense, maintain the Conveyed Property, including the landscaping, in good physical condition, in good repair, and in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Developer shall use reasonable efforts to maintain the Conveyed Property in a condition substantially free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable actions to prevent the same from occurring on the Conveyed Property. Developer shall prevent and/or rectify any substantial physical deterioration of the Conveyed Property and shall make all repairs, renewals and replacements necessary to keep the Conveyed Property and the improvements located thereon in good condition and repair, reasonable wear and tear and construction permitted by this Agreement excepted.

7.2 Taxes and Assessments. After Closing, Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Conveyed Property and payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Conveyed Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

7.3 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Conveyed Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself, its transferees and assigns, and all persons claiming under or through it or them, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Conveyed Property or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Conveyed Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer and shall enforce the same diligently and in good faith.

All deeds (excluding mortgages or deeds of trust), leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Conveyed Property or the improvements located thereon shall contain the following language:

7.3.1 In deeds (excluding mortgages or deeds of trust), the following language shall appear:

“Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.”

7.3.2 In Leases, the following language shall appear:

“The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.”

7.3.3 In Contracts, the following language shall appear:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

**ARTICLE VIII    LIMITATIONS ON TRANSFERS, CHANGE IN OWNERSHIP AND  
CONTROL OF DEVELOPER**

8.1    Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out

the Redevelopment Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the Agency. It is because of these qualifications, experience, financial capacity and expertise that the Agency has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

## 8.2 Transfers Not Requiring Approval.

8.2.1 Entities Controlled by Developer. Notwithstanding any contrary provision hereof, Developer shall be permitted to assign this Agreement without Agency consent to an entity or entities controlling Developer (or either member of Developer), controlled by Developer (or by either member of Developer) or under common control with Developer (or either member of Developer), provided that Developer (or either member of Developer) owns and controls no less than fifty percent (50%) of such successor entity. Furthermore, notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent, and Agency approval shall not be required for: (i) the granting of easements or permits to facilitate development of the Conveyed Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of commercial space to individual tenants; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Redevelopment Project or the Conveyed Property, and subject to the requirements of Article IX, Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

8.2.2 Non-assuming Transferees. Notwithstanding any contrary provision hereof, at any time following the commencement of demolition of existing improvements on the Conveyed Property, Developer shall be permitted to complete a Transfer of certain Conveyed Property in accordance with this Section 8.2.2. Except as otherwise required by Developer in Developer's sole discretion, either concurrently with or following any such transfer, the development rights of Developer under this Agreement shall terminate with respect to, and Agency's consent shall not be required in connection with, the Transfer of that portion of the Conveyed Property to be developed in Phase IID (the "**Phase IID Property**"), or any portion thereof, and that has been created as one or more separate legal parcels for uses permitted under this Agreement. The transferee in such a transaction and its successors ("**Non-Assuming Transferees**") shall be deemed to have no obligations under this Agreement. A Transfer of the Phase IID Property, or any portion thereof, to a Non-Assuming Transferee shall have no effect on Developer's obligations to complete the Redevelopment Project pursuant to this Agreement, nor shall it have any effect on Developer's rights with respect to the remaining Conveyed Property not subject to such a Transfer.

8.3 Limitation on Transfer. Except in accordance with this Article VIII, prior to the completion of the Redevelopment Project, Developer shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Conveyed Property or this Agreement, without the prior written approval of Agency, which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the Agency's consent



shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the completion of the Redevelopment Project, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of Agency, which approval shall not be unreasonably delayed, conditioned, or withheld. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of fifty-one percent (51%) or more in aggregate of the present ownership and/or control of Developer, taking all transfers into account on a cumulative basis, but specifically excluding transfers of the beneficial interests of the members of Developer to other members and/or the affiliates of members.

8.4 Request for Approval; Notice. For any Transfer that requires Agency’s approval, Developer shall notify Agency in writing of its request for consent, which notice shall include: (i) the proposed effective date of Transfer or assignment (which shall not be less than forty-five (45) days nor more than three hundred sixty-five (365) days after Developer’s notice); (ii) the name and address of the proposed transferee; (iii) current, audited financial statements of the proposed transferee certified by an officer, partner, or owner thereof and any other relevant information pertaining to the proposed transferee’s qualifications or financial capabilities, and development capacity that Agency may reasonably and timely request; and (iv) the instruments and other legal documents proposed to effect any Transfer of this Agreement, the Conveyed Property or interest therein. The transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement arising after the effective date of the Transfer with respect to the property conveyed to the transferee and all obligations of Developer with respect thereto arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations, either in the applicable assignment documents or by virtue of its failure to obtain a release contemplated in Section 8.6.1) and shall agree to be subject to all other terms and conditions set forth in this Agreement.

8.5 Approval. Agency may refuse to give its consent to a proposed Transfer only if, in light of the proposed transferee’s development experience and financial resources, such transferee would not, in Agency’s reasonable opinion, be able to perform the obligations proposed to be assumed by such transferee. In making such determination, Agency shall evaluate: (i) the financial ability of the proposed transferee to own and develop the Conveyed Property, or portion thereof so transferred; and (ii) the experience of the proposed transferee and its senior managerial personnel to develop the Conveyed Property or portion thereof so transferred. Notwithstanding the foregoing, Agency shall not withhold its consent to a proposed Transfer if the proposed transferee meets the following qualifications: (1) the proposed transferee shall have a good reputation as a developer in the office or research and development building community; (2) the proposed transferee shall have a reputation for fair and honest business dealings with persons or entities generally; (3) the proposed transferee’s objectives with respect to development of the Conveyed Property it would be acquiring pursuant to the transfer do not differ materially from those of Developer; and (4) the proposed transferee has a net worth sufficiently sound and strong to undertake and complete the obligations to be performed by Developer pursuant to the terms of this Agreement. In any case where consent to a proposed Transfer is requested, Agency’s approval shall not be unreasonably delayed, conditioned, or withheld. Failure of Agency to notify Developer in writing of its consent or disapproval within thirty (30) calendar days of written notification by Developer to Agency of a proposed Transfer shall be deemed to be an approval of the proposed Transfer. Consent to any proposed Transfer may

be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board.

#### 8.6 Effect of Transfer without Agency Consent.

8.6.1 In the absence of specific written agreement by the Agency, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

8.6.2 If, in violation of this Agreement, the Developer Transfers all or any part of the Conveyed Property prior to the recordation of the Certificate of Completion for the Project, the Agency shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (i) the purchase price paid by the Developer to the Agency for the Conveyed Property, and (ii) the costs incurred by Developer in connection with the improvement and development of the Conveyed Property, including carrying charges, interest, fees, taxes, assessments and escrow fees through the date of such Transfer. Such excess consideration shall belong to and be paid to the Agency by the Developer and until so paid, the Agency shall have a lien on the Conveyed Property (which lien shall be subordinate to any mortgage or deed of trust liens affecting the Conveyed Property) for such amount. The provisions of this Section 8.6.2 have been agreed upon so as to discourage land speculation by Developer; accordingly, these provisions shall be given a liberal interpretation to accomplish that end. Following the recordation of the Certificate of Completion, the provisions of this Section 8.6.2 shall have no further force and effect.

8.7 Recovery of Agency Costs. Developer shall reimburse Agency for all reasonable and necessary Agency costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within thirty (30) days following Agency's delivery to Developer of an invoice detailing such costs. Notwithstanding the foregoing, in no event shall such costs exceed Fifteen Thousand Dollars (\$15,000) per Transfer request.

8.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Subject to approval by Agency as to qualifications and financial capabilities of Developer's assignee pursuant to Section 8.5 above, Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement to any third party or parties acquiring an interest or estate in the Redevelopment Project or any portion thereof including, without limitation, purchasers or ground lessees of lots or parcels.

### **ARTICLE IX SECURITY FINANCING AND RIGHTS OF MORTGAGEES**

9.1 Subordination. Any lien created or claimed under the provisions of this Agreement shall expressly be made subject and subordinate to the rights of any lender who provides financing to Developer for the acquisition or development of the Conveyed Property (each, a "**Mortgagee**").

9.2 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument, are permitted to be placed upon the Conveyed Property

for the purpose of securing loans for financing the acquisition of the Conveyed Property, the design and construction of the Improvements, and any other expenditures necessary for, or incurred in connection with, the development of the Conveyed Property pursuant to this Agreement. As used herein, the terms “**Mortgage**” shall mean any security instrument used in financing real estate acquisition, construction and land development.

9.3 Holder Not Obligated to Construct. The holder of any Mortgage authorized by this Agreement shall not be obligated to complete construction of the Improvements or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such Mortgagee to devote the Conveyed Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. No Mortgagee of Developer shall become personally liable for the performance or observance of any covenants or conditions to be performed by Developer hereunder unless and until such Mortgagee acquires Developer’s interest in the Conveyed Premises and enters into a new agreement with the Agency. Agency agrees that any such Mortgagee may sell, assign or otherwise dispose of its fee interest hereunder to which it has so succeeded or which it has so acquired. Upon any such sale, assignment or disposition, such Mortgagee shall be released from all obligations and liabilities of Developer whatsoever arising under this Agreement from and after the date of such sale, assignment or disposition provided that the purchaser, assignee, or transferee signs the Assumption Agreement attached hereto as Exhibit 9.3.

9.4 Notice of Default and Right to Cure. Whenever Agency delivers any notice of: (i) default under this Agreement, (ii) a termination of this Agreement, or (iii) a matter on which Agency may predicate or claim a default hereunder, Agency shall concurrently deliver a copy of such notice to each Mortgagee of record. No such notice by Agency to Developer shall be deemed to have been duly given unless and until a copy thereof has been so provided to each Mortgagee of record. In the event of any new Mortgage, the assignment of an existing Mortgage or in the event of a change of address of a Mortgagee or of an assignee of such Mortgagee, notice of the new name and address, as applicable, shall be provided to Agency. Each such Mortgagee shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer extended by an additional sixty (60) days. Agency shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by Developer. Developer authorizes each Mortgagee to take any such action at such Mortgagee’s option and does hereby authorize entry upon the Conveyed Property by the Mortgagee for such purpose. In the event that possession of the Conveyed Property (or any portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Conveyed Property or Improvements, as applicable, within sixty (60) days after receipt of the Agency’s notice, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A Mortgagee who chooses to exercise its right to cure or remedy a default or breach shall first notify Agency of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction of the Redevelopment Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer’s obligations to Agency under this Agreement. The Mortgagee in that event must agree to complete, in the manner provided in this Agreement, the Redevelopment Project and the Improvements and submit evidence reasonably satisfactory to Agency that it has the

development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such Mortgagee properly completing the Redevelopment Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement and shall be entitled to a Certificate of Completion upon compliance with the requirements of this Agreement.

9.5 Limitations on Termination of the Agreement. Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles Agency to terminate this Agreement, Agency shall have no right to terminate this Agreement unless, following the expiration of the period of time given Developer to cure such default, Agency shall notify every Mortgagee of record of Agency's intent to so terminate at least 45 days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least 60 days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money (a "**Termination Notice**"). The provisions of Section 9.6 below shall apply if, during such 45 or 60 day period, any Mortgagee shall:

- (1) notify Agency of such Mortgagee's desire to avoid the termination of the Agreement; and
- (2) pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the Termination Notice to such Mortgagee and which may become due during such 30 or 60-day period, and
- (3) comply or in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Agreement then in default and reasonably susceptible of being complied with by such Mortgagee, *provided however*, that such Mortgagee shall not be required during such 60-day period to cure or commence to cure any default consisting of Developer's failure to satisfy and discharge any lien, charge or encumbrance against the Developer's interest in this Agreement or the Conveyed Property junior in priority to the lien of the Mortgage held by such Mortgagee, or any other default that is not reasonably susceptible of being cured without possession of the Conveyed Property.

9.6 Procedure on Default.

9.6.1 If Agency shall elect to terminate this Agreement by reason of any default of Developer, and a Mortgagee shall have proceeded in the manner provided for by Section 9.5 above, the specified date for the termination of this Agreement as fixed by Agency in its Termination Notice shall be extended for a period of six (6) months, provided that such Mortgagee shall, during such six (6) month period:

(a) Pay or cause to be paid the rent, additional rent and other monetary obligations of Developer under this Agreement as the same become due, and continue its good faith efforts to perform all of Developer's other obligations under this Agreement, excepting

(i) obligations of Developer to satisfy or otherwise discharge any lien, charge or encumbrance against Developer's interest in this Agreement or the Conveyed Property junior in priority to the lien of the Mortgage held by such Mortgagee, (ii) nonmonetary obligations not reasonably susceptible of being cured by such Mortgagee, and (iii) any other default that is not reasonably susceptible of being cured without possession of the Conveyed Property; and

(b) if not enjoined or stayed, take steps to acquire or sell Developer's interest in this Agreement by foreclosure of the Mortgage or other appropriate means and prosecute the same to completion with due diligence.

9.6.2 If at the end of such six (6) month period such Mortgagee is complying with Section 9.6.1, this Agreement shall not then terminate, and the time for completion by such Mortgagee of its proceedings shall continue so long as such Mortgagee is enjoined or stayed and for so long as such Mortgagee proceeds to complete steps to acquire or sell Developer's interest in this Agreement by foreclosure of the Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing contained herein shall be construed to require a Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Mortgagee shall discontinue such foreclosure proceedings, this Agreement shall continue in full force and effect as if Developer had not defaulted under this Agreement.

9.6.3 If a Mortgagee is complying with Section 9.6.1, upon the acquisition of Developer's fee interest in the Conveyed Property by such Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise, this Agreement shall continue in full force and effect as if Developer had not defaulted under this Agreement.

9.6.4 For the purposes of this Article IX, the making of a Mortgage shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement, nor shall any Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement so as to require such Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Developer to be performed hereunder, but the purchaser at any sale of the Conveyed Property in any proceedings for the foreclosure of any Mortgage, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any Mortgage shall be deemed to be an assignee or transferee within the meaning of this Article IX, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Developer to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the Conveyed Property.

9.6.5 Any Mortgagee or other acquirer of the Conveyed Property pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Conveyed Property, without further consent of Agency, sell and assign the Conveyed Property on such terms and to such persons and organizations as are acceptable to such Mortgagee or acquirer and thereafter be relieved of all obligation under this Agreement; provided that such assignee has delivered to Agency its written agreement to be bound by all of the provisions of this Agreement.

9.6.6 Notwithstanding any other provisions of this Agreement, any sale of the Conveyed Property in any proceedings for the foreclosure of any Mortgage, or the assignment or transfer of this Agreement in lieu of the foreclosure of any Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Agreement.

9.7 New Agreement. In the event of the termination or rejection of this Agreement as a result of Developer's default, as a result of any election under any laws relating to bankruptcy or insolvency, or as a result of any other cause, Agency shall deliver to each Mortgagee a written notice that the Agreement has been terminated (a "**Notice of Termination**"). Agency agrees to enter into a new agreement ("**New Agreement**") with such Mortgagee or its designee upon the terms, covenants and conditions of this Agreement, provided:

9.7.1 Such Mortgagee shall make written request upon Agency for such New Agreement within 60 days after the date such Mortgagee receives Agency's Notice of Termination.

9.7.2 Any New Agreement made pursuant to this Section 9.7 shall be prior to any Mortgage or other lien, charge or encumbrance on the fee of the Conveyed Property, and the developer under such New Agreement shall have the same right, title and interest in and to the Conveyed Property and the buildings and improvements thereon as Developer had under this Agreement.

9.7.3 The developer under any such New Agreement shall be liable to perform the obligations imposed on such developer by such New Agreement only during the period such person has ownership of the Conveyed Property.

9.8 New Agreement Priorities. If more than one Mortgagee shall request a New Agreement pursuant to Section 9.7, Agency shall enter into such New Agreement with the Mortgagee whose Mortgage is prior in lien, or with the designee of such Mortgagee.

9.9 Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Mortgagee or its designee as a condition to its exercise of right hereunder to cure any default of Lessee not reasonably susceptible of being cured by such Mortgagee, in order to exercise any rights available to such Mortgagee hereunder.

9.10 Agency Right to Cure Defaults. In the event of a breach or default by Developer under a Mortgage secured by the Conveyed Property, Agency may cure the default, without acceleration of the subject loan, following prior notice thereof to the Mortgagee of such instrument and Developer. In such event, Developer shall be liable for, and Agency shall be entitled to reimbursement from Developer for all costs and expenses incurred by Agency associated with and attributable to the curing of the default or breach.

9.11 Holder to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant Mortgage or acknowledged by the holder prior to its creating any security right or interest in the Conveyed Property or the Improvements.

9.12 Modifications to Agreement. Agency shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter Agency's substantive rights and obligations under this Agreement.

9.13 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case); (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

9.14 Participation in Insurance and Condemnation Proceedings. It is agreed, notwithstanding any provisions contained in the Agreement to the contrary, that, at all times while a Mortgage remains in effect, all policies of insurance called for in this Agreement or otherwise in effect for the Conveyed Property shall, in addition to any provisions required under this Agreement, contain a standard mortgagee protection endorsement, and the Mortgagee under such Mortgage shall be entitled to hold the originals or certificates of all such policies. Such Mortgagee shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of such Mortgagee. In addition, at all times while a Mortgage remains in effect, the Mortgagee under such Mortgage shall have the right to participate in any settlement or stipulation of judgment with respect to any condemnation proceeding affecting all or any portion of the Conveyed Property or any agreement to sell all or any portion of the Conveyed Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without such Mortgagee's prior written consent.

## **ARTICLE X      DEFAULTS, REMEDIES AND TERMINATION**

10.1    [Intentionally Deleted]

10.2    Event of Developer Default. The occurrence of any of the following shall, upon expiration of the applicable cure period, constitute a "**Developer Event of Default**":

10.2.1 Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights therein or in the Conveyed Property and/or the Improvements in violation of Article VIII;

10.2.2 There is a change in the ownership or identity of Developer or the parties in control of Developer or the degree thereof in violation of Article VIII;

10.2.3 Developer does not maintain the necessary equity capital and mortgage financing for the acquisition and development of the Conveyed Property as set forth in the Financing Plan, and fails to cure such default within sixty (60) days following receipt of written notice from Agency;

10.2.4 Following Closing, and prior to the issuance of a Certificate of Completion, a default or breach arises under any loan secured by a mortgage, deed of trust or

other security instrument recorded against the Conveyed Property or part thereof and remains uncured beyond any applicable cure period such that the holder of such security instrument has exercised or given notice of its intent to exercise the right to accelerate repayment of such loan;

10.2.5 Intentionally deleted.

10.2.6 Following Closing, and after the construction of any improvements has commenced, Developer abandons or suspends construction of any Phase of the Redevelopment Project prior to completion of such Phase of construction, without Agency consent, for a period of one hundred and eighty (180) days, unless such delay or suspension is due to Force Majeure Events as specified in Section 11.2 or due to the written request of City or Agency.

10.2.7 Following Closing, Developer fails to maintain insurance on the Conveyed Property and the Redevelopment Project as required by Article VI and fails to cure such default within ten (10) days following receipt of written notice from Agency;

10.2.8 Following Closing, Developer fails to pay taxes or assessments due on the Conveyed Property or the Redevelopment Project or fails to pay any other charge that may result in a lien on the Conveyed Property or the Redevelopment Project, and Developer fails to cure such default within thirty (30) days following receipt of written notice from Agency;

10.2.9 Any representation or warranty contained in this Agreement or in any financial statement or certificate submitted to Agency in connection with this Agreement is known to Developer to be and proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency;

10.2.10 Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Conveyed Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

10.2.11 A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for either of the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties; or (iv) directing the winding up or liquidation of the Developer;

10.2.12 If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an



assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

10.2.13 Developer fails to pay when due any sum payable by Developer to City or Agency pursuant to this Agreement, and such failure continues for thirty (30) days after Agency notifies Developer thereof in writing;

10.2.14 Developer shall voluntarily suspend its business or shall have been dissolved or terminated; or

10.2.15 Developer defaults in the performance of any material term, provision, covenant or agreement contained in this Agreement, other than an obligation enumerated in this Section 10.2, and excluding Developer's failure to perform the Closing Obligation specified in Section 10.10. Notwithstanding anything to the contrary set forth in this Agreement, the Parties hereby acknowledge and agree that with respect to the Closing Obligation described in Section 10.10 below, the remedies set forth in Section 10.10.2(c) shall be Agency's sole and exclusive remedies, and that Agency shall not have any other remedies set forth in this Article X.

10.3 Agency Event of Default. Provided that the Developer has satisfied its obligations hereunder, the following events shall constitute a breach or default by Agency (each, an "**Agency Event of Default**"):

10.3.1 Agency, without good cause, fails to convey the Conveyed Property to Developer within the time and in the manner set forth in Article IV and Developer is otherwise entitled to such conveyance; or

10.3.2 Agency fails to meet any of its funding obligations under the Agency Phase IC Funding Requirement, including a failure to periodically deliver any funds pursuant to Section 3.4.2 above; or

10.3.3 Agency or City (as applicable) conveys or leases, or attempts to convey or lease, any portion of the City Property to any third party in violation of Developer's Right of First Refusal as set forth in Section 2.5; or

10.3.4 Agency breaches any other material provision of this Agreement and fails to cure such breach within any applicable cure period.

10.4 Notice; Cure of Default. In the event of an alleged default or breach of any of the terms or conditions of this Agreement (other than the Closing Obligation), the Party alleging such default or breach shall give the other Party notice in writing specifying the nature of the alleged default and the manner in which the default may be satisfactorily cured. The notice shall specify a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days in the event of a monetary default or sixty (60) days in the event of a nonmonetary default (unless a shorter cure period is specified in Section 10.2 above); provided, however, that or if the default is of a nature that it cannot reasonably be cured within sixty (60) days, an Event of Default shall not arise hereunder if the defaulting Party commences to cure the default within sixty (60) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default.

Delay in giving such notice shall not constitute a waiver of any default or of any such rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies; provided, however, that in no event shall the injured Party terminate this Agreement or institute any legal proceeding against the Party in default without provision of notice of default and expiration of the applicable cure period.

10.5 Right to Terminate Agreement. If an Event of Default shall occur and be continuing beyond any applicable cure period, then the non-defaulting Party shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement and the rights of the defaulting Party and its assignees hereunder. If the non-defaulting Party makes such election, that Party shall give written notice to the defaulting Party and, if such notice is provided to Developer, to any Mortgagee entitled to such notice, specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of the defaulting Party under this Agreement, shall expire and terminate, except for such matters that expressly survive the termination of this Agreement.

10.6 Remedies; Specific Performance; Limitation on Damages.

10.6.1 Agency's Rights. Upon the occurrence of a Developer Event of Default and the expiration of any applicable cure period, Agency shall have the right, in addition to any other rights or remedies provided in this Agreement and subject to any applicable restrictions set forth in this Agreement, to institute an action in accordance with Section 10.15 to seek specific performance of the terms of this Agreement, or to cure, correct, prevent or remedy any default, or to recover damages, or to obtain any other remedy available to Agency at law or in equity consistent with the purpose of this Agreement; provided, however, (i) Agency acknowledges and agrees that the remedies set forth in Section 10.10.2 are Agency's sole remedies for Developer's failure to perform the Closing Obligation, as defined in Section 10.10.1, (ii) Agency may exercise the Repurchase Option (defined below) only under the conditions set forth in Section 10.12, and (iii) Developer shall not be liable for any consequential or incidental damages.

10.6.2 Developer's Rights. Upon the occurrence of an Agency Event of Default and the expiration of any applicable cure period, Developer shall have the right, in addition to any other rights or remedies provided in this Agreement and subject to any applicable restrictions set forth in this Agreement, to institute an action in accordance with Section 10.15 to seek specific performance of the terms of this Agreement, to cure, correct, prevent or remedy any default, or to recover damages, or to obtain any other remedy available to Developer at law or in equity.

Upon the occurrence of a City Event of Default and the expiration of any applicable cure period, the sole remedy available to Developer against the City shall be specific performance. For purposes of this paragraph only, the successful party in such action shall be entitled to recover from the unsuccessful party all costs, expenses and reasonably attorneys fees incurred by the prevailing party in the enforcement proceeding.

10.7 Remedies Cumulative. Subject to the limitations set forth in Section 10.6, the rights and remedies of the parties under this Agreement shall be cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party will not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default.

10.8 [Intentionally Deleted]

10.9 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights or remedies under this Agreement shall operate as a waiver of any default or of any such right or remedy, nor deprive such Party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies. Without limiting the generality of the foregoing, the failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

10.10 Termination of DDA; Disposition of King Property.

10.10.1 Developer Obligation at Horizon Date. By no later than May 29, 2018 (i.e., the ninth (9<sup>th</sup>) anniversary of the Commencement Date of the MOU and hereafter, the “**Horizon Date**”), Developer shall accept the conveyance of the Conveyed Property pursuant to Article IV (the “**Closing Obligation**”); provided, however, that Developer shall not be required to complete the Closing Obligation and shall not be in default of this Agreement if such failure results from the failure of a condition precedent, a Force Majeure Event, or the default on the part of Agency or City of the terms set forth in this Agreement.

10.10.2 Agency Remedies.

(a) If Developer does not perform the Closing Obligation by the Horizon Date, Agency may (but shall not be obligated to) give to Developer a formal written notice of intent to terminate this Agreement (“**Notice of Intent to Terminate**”), and after giving such notice, shall have the right to exercise the remedies set forth in subsection (c) below.

(b) If Agency provides a Notice of Intent to Terminate, Developer shall have one year from the date of delivery of such notice to complete the Closing Obligation; provided, however, that Developer shall not be in default of this Agreement if such failure results from the failure of a condition precedent, a Force Majeure Event, or the default on the part of Agency or City of the terms set forth in this Agreement.

(c) If Developer has not completed the Closing Obligation at the end of the one-year period following delivery of the Notice of Intent to Terminate, Agency may, but shall not be obligated to take both of the following actions (provided, however, that if Agency elects to take the action described in clause (i), it must also take the action described in clause (ii)):

(i) Terminate this Agreement; and

(ii) Purchase for all cash the King Leases and entitlements for the Redevelopment Project at a fixed price of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**King Lease Purchase Price**”); provided, however, the King Lease Purchase Price shall be reduced by the sum of Five Hundred Thousand Dollars (\$500,000) per year for each

year commencing May 29, 2016 (i.e., the seventh (7th) anniversary of the Commencement Date of the MOU) that Developer has failed to complete all of the actions identified in Section 10.10.2(b) up to a maximum reduction of One Million Five Hundred Thousand Dollars (\$1,500,000). If Agency exercises the option set forth in this paragraph, Developer shall convey Developer's interest in the King Leases and the King Lease Property within sixty (60) days following Agency's delivery of notice of its exercise of the option in accordance with the provisions of this paragraph and Sections 4.4 through 4.7 above.

10.11 Effect of Termination. The termination of this Agreement, in part or in whole, shall not affect the rights or obligations of Developer or City under the separate Development Agreement covering the Developer Property.

10.12 Option to Purchase, Enter and Possess. The Agency shall have the additional right at its option, following expiration of the notice and cure period described in Section 10.4, and in accordance with the dispute resolution procedures in Section 10.15, to purchase, enter and take possession of the Conveyed Property with all improvements thereon (the "**Repurchase Option**"), if after Closing, Developer (i) fails to begin construction of the Redevelopment Project within the time specified in Section 6.4 as such date may be extended pursuant to the terms hereof, and after written notice from Agency, (ii) abandons or suspends construction of the Redevelopment Project for a period of one hundred eighty (180) days after written notice from Agency; or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Conveyed Property or this Agreement in violation of Article VIII.

10.12.1 To exercise the Repurchase Option, the Agency shall pay to the Developer cash in an amount equal to:

- (a) The purchase price paid to the Agency by the Developer for the Conveyed Property; plus
- (b) The fair market value of any new improvements constructed by Developer and existing on the Conveyed Property at the time of exercise of the Option; less
- (c) Any gains or income withdrawn or made by the Developer from the applicable portion of the Conveyed Property or the improvements thereon; less
- (d) The value of any liens or encumbrances on the applicable portion of the Conveyed Property which the Agency assumes or takes subject to.

10.12.2 In order to exercise the Repurchase Option, Agency shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Agency with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Agency's receipt of such summary, Agency shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 10.12, and Developer shall execute and deposit into such escrow a grant deed transferring to Agency all of Developer's interest in the Conveyed Property, or portion thereof, as applicable and the improvements located thereon.

10.13 Memorandum of Option to Purchase. The parties shall cause a memorandum or memoranda of the rights granted the Agency in Section 10.12 of this Agreement to be recorded in the Official Records at the time of the Close of Escrow for conveyance of the Conveyed Property to Developer. In lieu of such memorandum, in Agency's discretion, the rights afforded Agency pursuant to Section 10.12 may be described in the Grant Deed. The Agency will not withhold consent to reasonable requests for subordination of the Repurchase Option to deeds of trust provided for the benefit of construction lenders identified in the Financing Plan provided that the instruments effecting such subordination include reasonable protections to the Agency in the event of default, including without limitation, extended notice and cure rights.

10.14 Rights of Mortgagees. Any rights of Agency under this Article X shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments.

10.15 Disputes.

10.15.1 Dispute Resolution. In the event of any dispute arising out of or relating to this Agreement, other than (i) disputes arising out of Developer's Right of First Refusal as provided for in Section 2.5, (ii) those disputes in which the complaining party is seeking to terminate the Agreement, or (iii) disputes brought by Developer, the City or Agency in connection with any obligations that are enforceable only by a court of law (e.g., a writ of mandate), the dispute shall be submitted to binding expedited arbitration pursuant to the procedures set forth in Exhibit 10.15.1. The Arbitrator (as defined in Exhibit 10.15.1) shall dismiss any matter seeking to terminate the Agreement or disputes brought by Developer in connection with any obligations that are enforceable only by a court of law.

**NOTICE: BY SIGNING IN THE SPACE BELOW, DEVELOPER AND AGENCY ARE AGREEING TO HAVE ANY DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION. THE PARTIES ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF AGENCY OR DEVELOPER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THAT PARTY MAY BE COMPELLED TO ARBITRATE BY LAW. AGENCY'S AND DEVELOPER'S AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. THE PARTIES HAVE READ AND UNDERSTAND THE ABOVE AND AGREE TO SUBMIT TO NEUTRAL ARBITRATION UNDER THIS SECTION. BY SIGNING BELOW, THE PARTIES AGREE THAT THEY SHALL NOT RAISE ANY OBJECTION TO THE ENFORCEMENT OF SUCH ARBITRATION PROVISIONS OF THIS AGREEMENT, BASED UPON ANY PURPORTED LACK OF AUTHORITY TO ENTER INTO SUCH AGREEMENT OR OTHERWISE.**

By Agency:

BARRY M. NAGEL  
Name: [Signature]

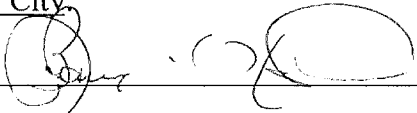
By Developer:

[Signature]  
Name: Jedd Sklar

Title: CITY MANAGER

Date: 3-23-2011

By City:



Name: Barry Nagel

Title: CITY MANAGER

Date: 3-23-2011

Title: Vice President

Date: 3-23-11

10.15.2 Enforcement of Arbitration. The judgment of the arbitrator may be entered and enforced in the Superior Court of San Mateo County, California. Any legal action to compel either Party to submit to binding arbitration, and any other legal action brought pursuant to this Section 10.15, shall be instituted exclusively in the Superior Court of San Mateo County, California.

10.15.3 Litigation. Any legal action brought pursuant to this Section 10.15 shall be instituted exclusively in the Superior Court of San Mateo County, California and both Parties expressly consent to the jurisdiction of such court.

10.15.4 Service of Process. In the event that any legal action is commenced by Developer against Agency, service of process on Agency will be made by personal service upon the Clerk of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer will be made by personal service upon Developer's agent for service of process of Developer at the address listed in Section 11.3 herein or in such other manner as may be provided by law.

## ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

### 11.2 Enforced Delay; Extension of Times of Performance.

11.2.1 Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to the following events (each a "**Force Majeure Event**"): war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight

embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of Agency or City as required in this Agreement), failure by City or any agency or entity with jurisdiction over the Marina Property to approve or issue any entitlements, permits, licenses or approvals required for the construction of any Improvements contemplated herein, or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

11.2.2 Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency). Agency and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Redevelopment Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 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:

11.3.1 personal delivery, in which case notice is effective upon delivery;

11.3.2 certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

11.3.3 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;

11.3.4 facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

If to Agency, to: Community Development Director  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080  
Phone: (650) 829-6629  
Fax: (650) 829-6623

With a Copy to: Meyers Nave  
575 Market Street, Suite 2600  
San Francisco, CA 94105  
Attn: Steven T. Mattas, Agency Attorney  
Phone: (415) 421-3711  
Fax: (415) 421-3767

If to Developer, to: SRI Nine Oyster Point LLC  
235 Montgomery Street, 16th Floor  
San Francisco, CA 94104  
Attn: Corporate Secretary  
Phone: (415) 772-7069  
Fax: (415) 772-7148

With Copies to: SRI Nine Oyster Point LLC  
235 Montgomery Street, 16th Floor  
San Francisco, CA 94104  
Attn: Todd Sklar  
Phone: (415) 772-7069  
Fax: (415) 772-7148

Oyster Point Ventures LLC  
601 California Street, Suite 1310  
San Francisco, CA 94108  
Attn: Dan Kingsley  
Phone: (415) 421-8200  
Fax: (415) 421-8201

Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
Attn: Zane Gresham  
Phone: (415) 268-7000  
Fax: (415) 260-7522

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys'



fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VIII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies hereunder.

11.8 Survival. All representations made by Developer hereunder and all obligations by either party to indemnify the other Party shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by any grant deed conveying the Conveyed Property to Developer or any successor in interest, and neither such grant deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein.

11.9 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.10 Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Agency Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

11.11 Entire Agreement. This Agreement, including Exhibits A through Exhibit 10.15.1 attached hereto and incorporated herein by this reference, together with the other Agency

Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

11.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.13 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.15 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of Agency or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

11.16 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Conveyed Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

11.18 Cooperation. Prior to Closing, the Parties shall cooperate and do all acts as may be reasonably required or requested by the other in order to revise any legal descriptions attached hereto in order to create insurable legal descriptions that are satisfactory to the Title Company.

**SIGNATURES ON FOLLOWING PAGES.**

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

**DEVELOPER**

**OYSTER POINT VENTURES LLC,  
a Delaware limited liability company**

By: SRI Nine Oyster Point LLC,  
a Delaware limited liability company,  
its Managing Member

By: [Signature]

Name: David Sklar

Its: vice president

By: SKS Oyster Point, LLC,  
a Delaware limited liability company,  
its Member

By: [Signature]

Name: DANIEL KINGSLEY

Its: MEMBER

**AGENCY**

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

By: [Signature]

Name: Barry M. Vagel  
Executive Director

ATTEST:

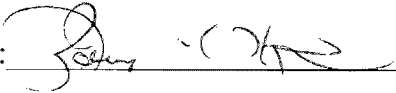
By: [Signature]  
Agency Secretary

APPROVED AS TO FORM:

By: [Signature]  
Agency General Counsel

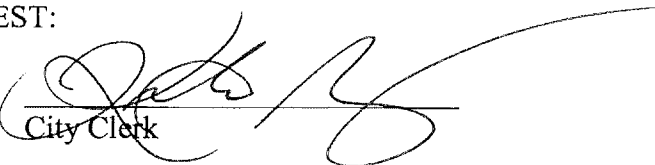
**CITY**

**CITY OF SOUTH SAN FRANCISCO,  
a municipal corporation**

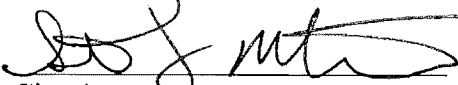
By: \_\_\_\_\_

Name: Barry M. Nagel  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

1615523.1

**EXHIBITS TO**  
**DISPOSITION AND DEVELOPMENT AGREEMENT**

**by and among**

**THE REDEVELOPMENT AGENCY OF THE  
CITY OF SOUTH SAN FRANCISCO**

**and**

**OYSTER POINT VENTURES, LLC**

**and**

**THE CITY OF SOUTH SAN FRANCISCO**

## **List of Exhibits**

Exhibit A-1: Map Identifying Marina Property and Business Park Property

Exhibit A-2: Map Identifying Conveyed Property, City Property, and Developer Property

Exhibit B: Legal Description of Conveyed Property

Exhibit C: King Lease Property

Exhibit 2.2: Form of Memorandum of Disposition and Development Agreement

Exhibit 2.5.1: Description of Property Subject to Developer's Right of First Refusal

Exhibit 2.5.3: Memorandum of Right of First Refusal

Exhibit 3.2A: Description of Phases of Redevelopment Project

Exhibit 3.2B: Estimated Project Schedule

Exhibit 3.2.1: Phase IC Site and Infrastructure Improvements: Description and Cost

Exhibit 3.2.2: Phase ID Site and Infrastructure Improvements: Description and Cost

Exhibit 3.3.1: Phase IID, IIID, and IVD Site and Infrastructure Improvements: Description and Cost

Exhibit 3.3.2: Phase IIC Site and Infrastructure Improvements: Description and Cost

Exhibit 3.4.1: Redevelopment Project Cost Allocation

Exhibit 3.4.2: Form of Escrow Holdback Agreement

Exhibit 4.1: Form of Amendment to the Joint Powers Agreement Between the San Mateo County Harbor District and the City of South San Francisco

Exhibit 4.6A: Form of Grant Deed

Exhibit 4.6B: Form of Assignment and Assumption of the King Leases

Exhibit 4.6.1A: Form of Bill of Sale

Exhibit 4.6.1B: Form of Assignment of Intangible Property

Exhibit 4.6.1C: Form of FIRPTA Affidavit

Exhibit 4.8.2: Service Contracts

Exhibit 4.8.8: Pre-Existing Environmental Conditions

Exhibit 4.9.1: Form of Title Policies

Exhibit 6.10.1: Form of Certificate of Completion

Exhibit 6.11.1: Legal Description and Depiction of Dedicated Property

Exhibit 9.3: Assumption Agreement

Exhibit 10.15.1: Expedited Arbitration Procedures

**Exhibit A-1**

Map Identifying Marina Property and Business Park Property



# **PARCEL ACREAGES**

PARCEL	LAND ACREAGE
A	6.28±
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	0.84±
G	1.62±
G-1	0.62±
G-2	0.13±
H	0.71±
REMAINDER	21.23±

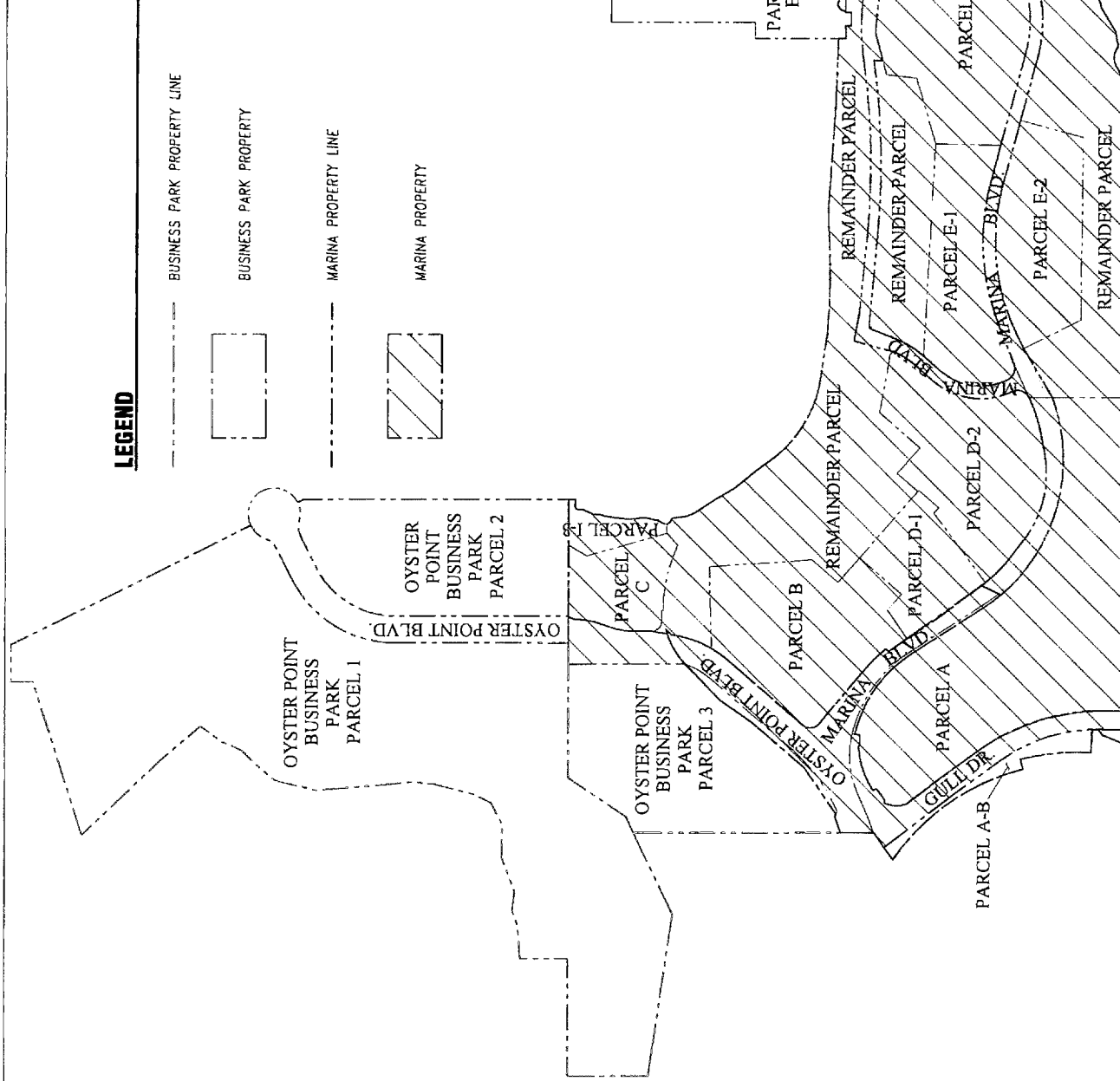
## **LEGEND**

--- BUSINESS PARK PROPERTY LINE

--- BUSINESS PARK PROPERTY

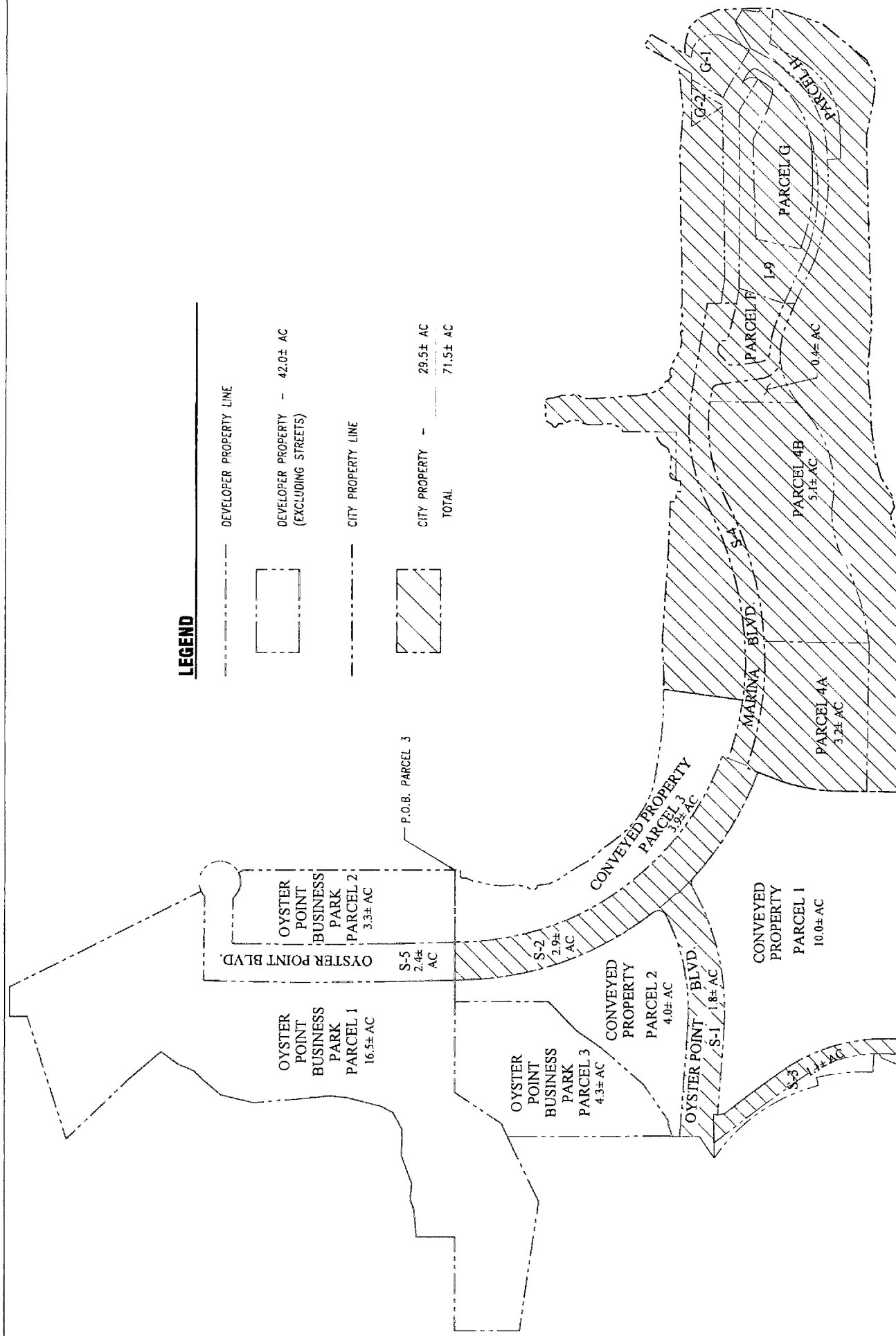
--- MARINA PROPERTY LINE

--- MARINA PROPERTY



**Exhibit A-2**

Map Identifying Conveyed Property, City Property, and Developer Property



**Exhibit B**

**Legal Description of Conveyed Property**

## **CONVEYED PROPERTY**

ALL THAT REAL PROPERTY LOCATED IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA. THE BELOW DESCRIBED PARCEL CONSISTING OF THREE SEPARATE PARCELS; SAID PARCEL BEING A PORTION OF OYSTER POINT BOULEVARD, MARINA BOULEVARD, AND A PORTION OF PARCELS A, B, C, D, AND A PORTION OF THE REMAINDER PARCEL AS SHOWN ON THE PARCEL MAP RECORDED AT BOOK 55 AT PAGES 61 THROUGH 64 IN THE RECORDS OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA. .

SAID PARCEL IS ALSO A PORTION OF PARCEL A AND A PORTION OF GULL DRIVE AS SHOWN ON PARCEL MAP RECORDED IN BOOK 72 AT PAGES 6, 7 AND 8 IN THE RECORDS OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA.

SAID PARCEL MORE PARTICULAR DESCRIBED AS FOLLOWS:

### **PARCEL 1 OF 3**

BEGINNING AT A POINT AT THE SOUTH EAST CORNER OF PARCEL 4 AND THE SOUTH WEST CORNER OF PARCEL 3, AS RECORDED IN BOOK 52 AT PAGES 58 AND 59 OF THE RECORDS OF SAN MATEO COUNTY CALIFORNIA, THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 4 AND ITS PROLONGATION

- 1) S89° 59' 36"W FOR 327.72 FEET;
- 2) THENCE S01° 24' 26"E FOR 28.57 FEET;
- 3) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 949.00 FEET AND A CENTRAL ANGLE OF 41° 54' 50" FROM WHICH THE RADIUS POINT BEARS N88° 49' 12"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 694.23 FEET,
- 4) THENCE S46° 40' 44"W FOR 3.50 FEET;
- 5) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 952.50 FEET AND A CENTRAL ANGLE OF 26° 28' 51" FROM WHICH THE RADIUS POINT BEARS S70° 45' 23"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 440.22 FEET,
- 6) THENCE S00° 45' 17"W FOR 169.54 FEET. TO A POINT AND

### **THE TRUE POINT OF BEGINNING**

- 1) THENCE S89° 55' 25"W FOR 737.35 FEET TO A POINT ON THE EASTERLY SIDE OF GULL DRIVE AND AT THE SOUTH WEST CORNER OF PARCEL A AS RECORDED IN BOOK 72 OF PARCEL MAPS AT PAGE 7. THENCE NORTHERLY ALONG SAID GULL DRIVE

2) THENCE N01° 39' 45"E FOR 27.23 FEET;

3) THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 520.55 FEET AND A CENTRAL ANGLE OF 37° 40' 44" FOR AN ARC LENGTH OF 342.32 FEET, SAID CURVE HAVING A CHORD BEARING OF N17° 10' 37"W FOR 336.19 FEET;

4) THENCE N36° 00' 59"W FOR 111.60 FEET;

5) THENCE N37° 35' 47"W FOR 95.40 FEET;

6) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 68.40 FEET AND A CENTRAL ANGLE OF 18° 11' 27" FROM WHICH THE RADIUS POINT BEARS N70° 36' 44"E, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 21.72 FEET, SAID CURVE HAVING A CHORD BEARING OF N10° 17' 32"W FOR 21.63 FEET;

7) THENCE S85° 46' 55"E FOR 254.12 FEET;

8) THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 754.00 FEET AND A CENTRAL ANGLE OF 32° 35' 48" FOR AN ARC LENGTH OF 428.96 FEET, SAID CURVE HAVING A CHORD BEARING OF N77° 55' 12"E FOR 423.20 FEET;

9) THENCE N61° 37' 17"E FOR 14.42 FEET;

10) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 24.00 FEET AND A CENTRAL ANGLE OF 70° 50' 44" FROM WHICH THE RADIUS POINT BEARS S28° 22' 42"E, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 29.68 FEET, SAID CURVE HAVING A CHORD BEARING OF S82° 57' 20"E FOR 27.82 FEET;

11) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 952.50 FEET AND A CENTRAL ANGLE OF 22° 16' 08" FROM WHICH THE RADIUS POINT BEARS N42° 28' 01"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 370.20 FEET, SAID CURVE HAVING A CHORD BEARING OF S58° 40' 03"E FOR 367.88 FEET;

12) THENCE S20° 54' 17"W FOR 74.52 FEET;

13) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 526.93 FEET AND A CENTRAL ANGLE OF 19° 39' 18" FROM WHICH THE RADIUS POINT BEARS S70° 45' 23"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 180.76 FEET, SAID CURVE HAVING A CHORD BEARING OF S09° 24' 58"W FOR 179.87 FEET;

14) THENCE S00° 45' 17"W FOR 169.54 FEET,

TO THE TRUE POINT OF BEGINNING,

THE AREA BEING 10.07 ACRES.

#### **PARCEL 2 OF 3**

BEGINNING AT A POINT AT THE SOUTH EAST CORNER OF PARCEL 4 AND THE SOUTH WEST CORNER OF PARCEL 3 AS RECORDED IN BOOK 52 AT PAGES 58 AND 59 OF THE RECORDS OF SAN MATEO COUNTY CALIFORNIA, THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 4 AND ITS PROLONGATION

S89° 59' 36"W FOR 327.72 FEET TO THE TRUE POINT OF BEGINNING

1) THENCE S01° 24' 26"E FOR 28.57 FEET;

2) THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 949.00 FEET AND A CENTRAL ANGLE OF 36° 40' 32" FOR AN ARC LENGTH OF 607.46 FEET, SAID CURVE HAVING A CHORD BEARING OF S19° 44' 42"E FOR 597.14 FEET;

3) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 24.00 FEET AND A CENTRAL ANGLE OF 101° 45' 03" FROM WHICH THE RADIUS POINT BEARS S51° 55' 03"W, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 42.62 FEET, SAID CURVE HAVING A CHORD BEARING OF S12° 47' 35"W FOR 37.24 FEET;

4) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 646.00 FEET AND A CENTRAL ANGLE OF 30° 32' 59" FROM WHICH THE RADIUS POINT BEARS N26° 19' 53"W, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 344.44 FEET, SAID CURVE HAVING A CHORD BEARING OF S78° 56' 36"W FOR 340.38 FEET;

5) THENCE N85° 46' 55"W FOR 327.57 FEET;

6) THENCE N00° 39' 36"E FOR 21.92 FEET;

7) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 385.83 FEET AND A CENTRAL ANGLE OF 06° 04' 37" FROM WHICH THE RADIUS POINT BEARS N15° 01' 45"W, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 40.92 FEET, SAID CURVE HAVING A CHORD BEARING OF N71° 55' 56"E FOR 40.90 FEET;

8) THENCE S63° 09' 49"E FOR 5.95 FEET;

9) THENCE N55° 57' 31"E FOR 133.63 FEET;

10) THENCE N40° 57' 35"E FOR 164.01 FEET;

11) THENCE N34° 49' 05"E FOR 94.14 FEET;

12) THENCE N46° 03' 23"E FOR 112.47 FEET;

13) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 239.17 FEET AND A CENTRAL ANGLE OF 01° 40' 18" FROM WHICH THE RADIUS POINT BEARS S43° 52' 16"E, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 6.98 FEET, SAID CURVE HAVING A CHORD BEARING OF N46° 57' 53"E FOR 6.98 FEET;

14) THENCE N00° 00' 49"W FOR 277.41 FEET;

15) THENCE N89° 59' 37"E FOR 64.09 FEET,

TO THE TRUE POINT OF BEGINNING,

THE AREA BEING 3.993 ACRES.

**PARCEL 3 OF 3**

BEGINNING AT A POINT AT THE SOUTH EAST CORNER OF PARCEL 4 AS SHOWN ON THE PARCEL MAP RECORDED IN BOOK 52 AT PAGE 59 OF THE RECORDS OF SAN MATEO COUNTY, CALIFORNIA

- 1) THENCE S00° 00' 55"E FOR 16.61 FEET;
- 2) THENCE S89° 59' 05"W FOR 18.77 FEET;
- 3) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 5.00 FEET AND A CENTRAL ANGLE OF 87° 02' 04" FROM WHICH THE RADIUS POINT BEARS N87° 03' 01"W, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 7.60 FEET, SAID CURVE HAVING A CHORD BEARING OF S46° 28' 01"W FOR 6.89 FEET;
- 4) THENCE S02° 57' 02"W FOR 12.14 FEET;
- 5) THENCE S22° 32' 46"W FOR 26.79 FEET;
- 6) THENCE S05° 17' 28"W FOR 16.62 FEET;
- 7) THENCE S14° 33' 22"W FOR 18.66 FEET;
- 8) THENCE S07° 07' 20"W FOR 46.52 FEET;
- 9) THENCE S02° 39' 54"E FOR 26.13 FEET;
- 10) THENCE S11° 27' 55"E FOR 9.33 FEET;
- 11) THENCE S03° 55' 51"W FOR 16.94 FEET;
- 12) THENCE S15° 09' 09"W FOR 13.90 FEET;
- 13) THENCE S07° 33' 30"W FOR 7.72 FEET;
- 14) THENCE S31° 12' 57"W FOR 14.75 FEET;
- 15) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 12.00 FEET AND A CENTRAL ANGLE OF 99° 15' 11" FROM WHICH THE RADIUS POINT BEARS S58° 47' 02"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 20.79 FEET, SAID CURVE HAVING A CHORD BEARING OF S18° 24' 37"E FOR 18.28 FEET;
- 16) THENCE S68° 02' 11"E FOR 4.44 FEET;
- 17) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 6.73 FEET AND A CENTRAL ANGLE OF 57° 05' 06" FROM WHICH THE RADIUS POINT BEARS S33° 25' 31"W, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 6.71 FEET, SAID CURVE HAVING A CHORD BEARING OF S28° 01' 56"E FOR 6.43 FEET;
- 18) THENCE S10° 34' 28"E FOR 6.58 FEET;
- 19) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 89.35 FEET AND A CENTRAL ANGLE OF 34° 25' 13" FROM WHICH THE RADIUS POINT BEARS N89° 41' 32"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 53.68 FEET, SAID CURVE HAVING A CHORD BEARING OF S17° 31' 04"E FOR 52.87 FEET;



- 20) THENCE S33° 05' 28"E FOR 51.02 FEET;
- 21) THENCE S30° 08' 44"E FOR 51.48 FEET;
- 22) THENCE S39° 10' 44"E FOR 68.51 FEET;
- 23) THENCE S36° 43' 24"E FOR 31.32 FEET;
- 24) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 290.17 FEET AND A CENTRAL ANGLE OF 44° 11' 01" FROM WHICH THE RADIUS POINT BEARS N56° 01' 39"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 223.76 FEET, SAID CURVE HAVING A CHORD BEARING OF S56° 03' 52"E FOR 218.26 FEET;
- 25) THENCE S81° 27' 48"E FOR 127.43 FEET;
- 26) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 1550.60 FEET AND A CENTRAL ANGLE OF 05° 19' 25" FROM WHICH THE RADIUS POINT BEARS N05° 19' 30"E, THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 144.08 FEET, SAID CURVE HAVING A CHORD BEARING OF S87° 20' 13"E FOR 144.02 FEET;
- 27) THENCE S07° 36' 22"W FOR 236.51 FEET;
- 28) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 856.00 FEET AND A CENTRAL ANGLE OF 12° 03' 11" FROM WHICH THE RADIUS POINT BEARS N07° 36' 22"E, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 180.07 FEET, SAID CURVE HAVING A CHORD BEARING OF N76° 22' 03"W FOR 179.74 FEET;
- 29) THENCE N20° 13' 04"E FOR 20.00 FEET;
- 30) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 836.00 FEET AND A CENTRAL ANGLE OF 68° 56' 49" FROM WHICH THE RADIUS POINT BEARS N19° 38' 45"E, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 1006.00 FEET, SAID CURVE HAVING A CHORD BEARING OF N35° 52' 51"W FOR 946.39 FEET;
- 31) THENCE N01° 24' 25"W FOR 25.81 FEET; to a point on the south side of said parcel 4
- 32) THENCE N89° 59' 36"E FOR 214.69 FEET, TO A POINT AT THE SOUTH EAST CORNER OF SAID PARCEL 4 AND THE TRUE POINT OF BEGINNING,

THE AREA BEING 3.932 ACRES.

LEGAL DESCRIPTION PREPARED BY \_\_\_\_\_

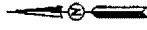
KENNETH P. MOORE PLS 4918

EXPIRES 12-31-12

DATE 3-10-11

DATE: 03-11-11

- T.P.O.B. 1



**Exhibit C**

King Lease Property

**Terminated King Leases**

<b>Description</b>	<b>Recording Date</b>	<b>Recording No.</b>
<b>Parcel B Ground Lease and related documents</b>		
Lease between the San Mateo County Harbor District, as lessor, and Oyster Point Village, Ltd., as lessee, dated January 3, 1985, including the following Exhibits attached thereto: <ul style="list-style-type: none"><li>• Exhibit A: Legal description and drawing of Parcel B;</li><li>• Exhibit B: Design Criteria for Construction by Lessees of the San Mateo County Harbor District - 1980; and</li><li>• Exhibit C: Oyster Point Marina Specific Plan, dated September 1983, as approved by the City of South San Francisco on September 7, 1983, Resolution 124-83.</li></ul>	N/A	N/A
Abstract of the Ground Lease between San Mateo County Harbor District, as lessor, and Oyster Point Village, Ltd., as lessee, dated January 3, 1985.	April 10, 1987	87052593
South San Francisco Park Recreation and Parkway District City of South San Francisco, State of California, Resolution No. RPD-5 approving Amendment to Oyster Point Marina Leases, dated October 23, 1985 and Amendment to Leasehold Agreements for Parcels B and D at Oyster Point Marina/Park.	December 27, 1985	85138852 85138854 85138855
Assignment of Lease between Oyster Point Village, Ltd., as assignor, and Chin Investment Company of San Francisco, as assignee, dated August 25, 1989.	August 29, 1989	89113866
Assignment and Assumption of Lease between Chin Investment Company of San Francisco, as assignor, and John E. King, as assignee, dated October 17, 1996.	October 31, 1996	96-134637
Assignment and Assumption of Lease between John E. King, d/b/a Oyster Point Village Limited, as assignor, and Oyster Point Village, as assignee, dated April 15, 1997.	April 25, 1997	97-048936
General Conditions used by the Harbor District as of the date of the Parcel B Ground Lease.	N/A	N/A

Consent to Assignment and Amendment of the Parcel B Ground Lease, dated February 5, 2009, by and between the San Mateo County Harbor District, as ground lessor, and Oyster Point MV LLC, as assignee.	N/A	N/A
Joinder Parcel B Ground Lease, dated May 27, 2009, by the City of South San Francisco and the South San Francisco Recreation and Park District.	N/A	N/A
Site Locations Lease Assignment by Oyster Point Village, LTD by Oyster Pointe Village Assoc., Inc. as lessor, and Jaime B. and Cynthia G. Ferrer, III, as lessee.	May 19, 1986	86054025

<p align="center"><b>Parcel C Ground Lease and related documents</b></p>
--

Ground Lease between the San Mateo County Harbor District, as landlord, and Oyster Point Inn II, LLC, as tenant, dated December 31, 1998.	N/A	N/A
<ul style="list-style-type: none"> <li>Exhibit A: Leasehold Description of Parcel C</li> </ul>		
Amendment to Ground Lease between the San Mateo County Harbor District, as landlord, and Oyster Point Inn II, LLC, as tenant, dated as of March 15, 2000.	N/A	N/A
Joinder by the City of South San Francisco and the South San Francisco Recreation and Park District, dated April 5, 1999.	N/A	N/A
Memorandum of Ground Lease Agreement and Amendment thereto between the San Mateo County Harbor District, as landlord, and Oyster Point Inn II, LLC, as tenant, dated as of April 11, 2006.	April 12, 2006	06-054049
Consent to Assignment and Amendment of the Parcel C Ground Lease, dated February 5, 2009, by and between the San Mateo County Harbor District, as ground lessor, and Oyster Point MV LLC as assignee.	N/A	N/A
Joinder Parcel C Ground Lease, dated May 27, 2009, by the City of South San Francisco and the South San Francisco Recreation and Park District.	N/A	N/A

<p align="center"><b>Parcel D-1 Ground Lease and related documents</b></p>		
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Lease between the San Mateo County Harbor District and the City of South San Francisco, as lessors, and Inn Development, Inc., as lessee, dated September 14, 1989, including the following Exhibits attached thereto:	N/A	N/A
<ul style="list-style-type: none"> <li>Exhibit A: Design Criteria for Construction by Lessees of the San Mateo County Harbor District - 1980; and</li> <li>Exhibit B: Oyster Point Marina Specific Plan, dated September 1983, as approved by the City of South San Francisco on September 7, 1983, Resolution 124-83.</li> </ul>		
Memorandum of Lease between the San Mateo County Harbor District and the City of South San Francisco, as lessors, and Inn Development, Inc., as lessee, dated September 13, 1989.	October 13, 1989	89137949
Letter Agreement between the San Mateo County Harbor District, as lessor, and Inn Development, Inc., as lessee, dated September 13, 1989.	N/A	N/A
First Amendment to Lease between San Mateo County Harbor District and the City of South San Francisco, as lessors, and Inn Development, Inc., as lessee, dated March 4, 1992.	N/A	N/A
Assignment and Assumption of Lease between Inn Development, Inc., as assignor, and Oyster Point Marina Inn, as assignee, dated April 3, 1997.	April 25, 1997	97-048940
General Conditions used by the Harbor District as of the date of the Parcel D-1 Lease.	N/A	N/A
Consent to Assignment and Amendment of the Parcel D-1 Ground Lease, dated February 5, 2009, by and between the San Mateo County Harbor District, as ground lessor, and Oyster Point MV LLC, as assignee.	N/A	N/A
Joinder Parcel D-1 Ground Lease, dated May 27, 2009, by the City of South San Francisco and the South San Francisco Recreation and Park District.	N/A	N/A

## Assigned King Leases

Description	Recording Date	Recording No.
<b>Parcel E Ground Lease and related documents</b>		
Lease and Management Agreement between the San Mateo County Harbor District, as lessor, and Steve Duguay and V.I.P. Marine, Inc., as lessees, dated July 1, 1986, including the following Exhibits attached thereto:	December 8, 1988	88167037
<ul style="list-style-type: none"> <li>• Exhibits A - A-5: Legal descriptions and drawings of Parcels E, E-1, E-2, E-3 and E-4;</li> <li>• Exhibit B: Design Criteria for Construction by Lessees of the San Mateo County Harbor District - 1980; and</li> <li>• Exhibit C: Oyster Point Marina Specific Plan, dated September 1983, as approved by the City of South San Francisco on September 7, 1983, Resolution 124-83.</li> </ul>		
Assignment of Lease and Consent of Landlord between the San Mateo County Harbor District, as landlord, and Steve Duguay and V.I.P. Marine, Inc., as tenants and assignors, and California Commerce Bank, as bank and assignee, dated November 4, 1988.	December 8, 1988	88167037
Assignment between V.I.P. Marine, Inc. and Steve Duguay, as assignors, and Summit Marine Corporation, as assignee, dated December 7, 1989	March 16, 2001	01-033858 and 01-033859
Assignment of Lease Agreement between SM Realty, Inc., formerly known as Summit Marine Corporation, as assignor, and Marine Collections, LLC, as assignee, dated March 5, 2001.	March 16, 2001	01-033858 and 01-033859
General Conditions used by the Harbor District as of the date of the Parcel E, E-1, E-2, E-3 and E-4 Lease.	N/A	N/A
Consent to Assignment and Amendment of the Parcel E, E-1, E-2, E-3, and E-4 Ground Lease, dated February 5, 2009, by and between the San Mateo County Harbor District, as ground lessor, and Oyster Point MV LLC, as assignee.	N/A	N/A
Joinder Parcel E, E-1, E-2, E-3 and E-4 Ground Lease, dated May 27, 2009, by the City of South San Francisco and the South San Francisco Recreation and Park District.	N/A	N/A

## **Legal Descriptions**

### Parcel B Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A Portion of Parcel B, as shown on that certain Map entitled, "PARCEL MAP BEING A SUBDIVISION OF LANDS SHOWN ON THAT RECORD OF SURVEY FILED IN BOOK 8 AT PAGE 22 AND ALSO IN THE DEED DESCRIBED IN BOOK 1462 O.R. 2 AS FILED IN THE RECORDER'S OFFICE AT SAN MATEO COUNTY, SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA", filed in the office of the Recorder of the County of San Mateo, State of California on January 9, 1985 in Book 55 of Parcel Maps at pages 61, 62, 63 and 64, described as follows:

BEGINNING at a point from which the most Northerly corner of Parcel B, as shown on that certain Parcel Map described above, bears North 3° 59' 29" West 100.00 feet; thence from said point of beginning the following 6 courses and distances:

South 03° 59' 29" East 144.00 feet;  
South 41° 00' 31" West 82.07 feet;  
South 48° 59' 29" East 78.00 feet;  
South 41° 00' 31" West 132.00 feet;  
North 48° 59' 29" West 50.00 feet;  
South 55° 39' 25" West 82.61 feet;

Thence, 2.00 feet along the arc of a non-tangent curve to the right, the chord of which bears North 32° 12' 14" West, with a radius of 1,280.00 feet and subtending a central angle of 00° 05' 22", to a point of tangent reversing curvature; thence 50.26 feet along the arc of a curve to the left with a radius of 399.29 feet and subtending a central angle of 07° 12' 44"; thence non-tangent, North 33° 51' 19" East 10.43 feet; thence 55.00 feet along the arc of a non-tangent curve to the left with a radius of 409.29 feet and subtending a central angle of 07° 41' 58", the chord of which bears North 43° 28' 19" West; thence North 03° 57' 25" West 299.01 feet to a point on the Southeasterly line of Oyster Point Boulevard; thence North 40° 52' 20" East 49.00 feet; thence South 49° 07' 40" East 101.85 feet; thence North 86° 00' 31" East 151.99 feet to the point of beginning.

APN: 015-010-600 (portion), 015-190-190 (portion)

### Parcel C Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel C, as shown on that certain map entitled "Parcel Map, Being a Resubdivision of Lands Shown on that Certain Map Entitled, Parcel Map Being a Resubdivision of Lands Shown on that Record of Survey Filed in Book 8 at Page 22 and Also in the Deed Described in Book 1462 O.R. 2, as Filed in the Recorder's Office at San Mateo County, South San Francisco, San Mateo County, California," filed in the office of the County Recorder of San Mateo County, State of California, on January 9, 1985 in Book 55 of Parcel Maps at Page(s) 61 through 64, inclusive.

APN: 015-190-190 (portion)

Parcel D-1 Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel "D-1", as shown on that certain map entitled "Parcel Map 89-262, South San Francisco, San Mateo County, California," filed in the office of the County Recorder of San Mateo County, State of California, on May 23, 1989 in Book 62 of Maps at Page(s) 25 and 26.

APN: 015-010-260

Parcel E Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcels E, E-1, E-2, E-3 and E-4, as shown on that certain map entitled, "Parcel Map, Being a Resubdivision of Lands Shown on that Record of Survey Filed in Book 8 at Page 22 and Also in the Deed Described in Book 1462 O.R. 2 as Filed in the Recorder's Office at San Mateo County, South San Francisco, San Mateo County, California," filed in the office of the County Recorder of San Mateo County, State of California on January 9, 1985 in Volume 55 of Parcel Maps at Pages 61 to 64 inclusive.

APN: 015-010-060 (Portion), 015-010-600 (Portion)



**Exhibit 2.2**

**Form of Memorandum of Disposition and Development Agreement**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105  
Attn: Zane Gresham, Esq.

---

(Space above this line for Recorder's use only)

**MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT ("Memorandum"), dated as of \_\_\_\_\_, 201\_\_, is executed by and among Redevelopment Agency of the City of South San Francisco, a public body corporate and politic ("**Agency**"), The City of South San Francisco, a municipal corporation ("**City**"), and Oyster Point Ventures, LLC, a Delaware limited liability company ("**Developer**"). Agency, City and Developer, together with their respective successors and assigns, are hereinafter sometimes referred to collectively as "**Parties**", and individually as a "**Party**."

WITNESSETH:

The Parties do hereby acknowledge that:

1. Memorandum of Disposition and Development Agreement. That certain Disposition and Development Agreement was entered into by and among Agency, City and Developer on \_\_\_\_\_, 2011 (the "DDA"), which DDA relates to that certain land located in the City of South San Francisco, County of San Mateo, State of California, more particularly described on Exhibit A (the "Property").
2. Purpose. The sole purpose of preparing and recording this Memorandum is to give notice of provisions in the DDA pursuant to which each Party has certain responsibilities and obligations with respect to the development of the Property. In the event of any conflict between the terms of this Memorandum on the one hand, and the terms of the DDA on the other hand, the terms of the DDA shall control.
3. Other Provisions. The other provisions of the DDA shall be as provided in the DDA, which, by this reference, is incorporated herein.
4. Counterparts. This Memorandum may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

Memorandum of DDA

EXECUTED by the Parties as of the date set forth on the respective acknowledgement pages attached hereto, and effective as of the date first written above.

**DEVELOPER**

**OYSTER POINT VENTURES LLC,  
a Delaware limited liability company**

By: SRI Nine Oyster Point LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: SKS Oyster Point, LLC,  
a Delaware limited liability company,  
its Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[Signatures continue on following page]*

**AGENCY**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

**CITY**

**CITY OF SOUTH SAN FRANCISCO,  
a municipal corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

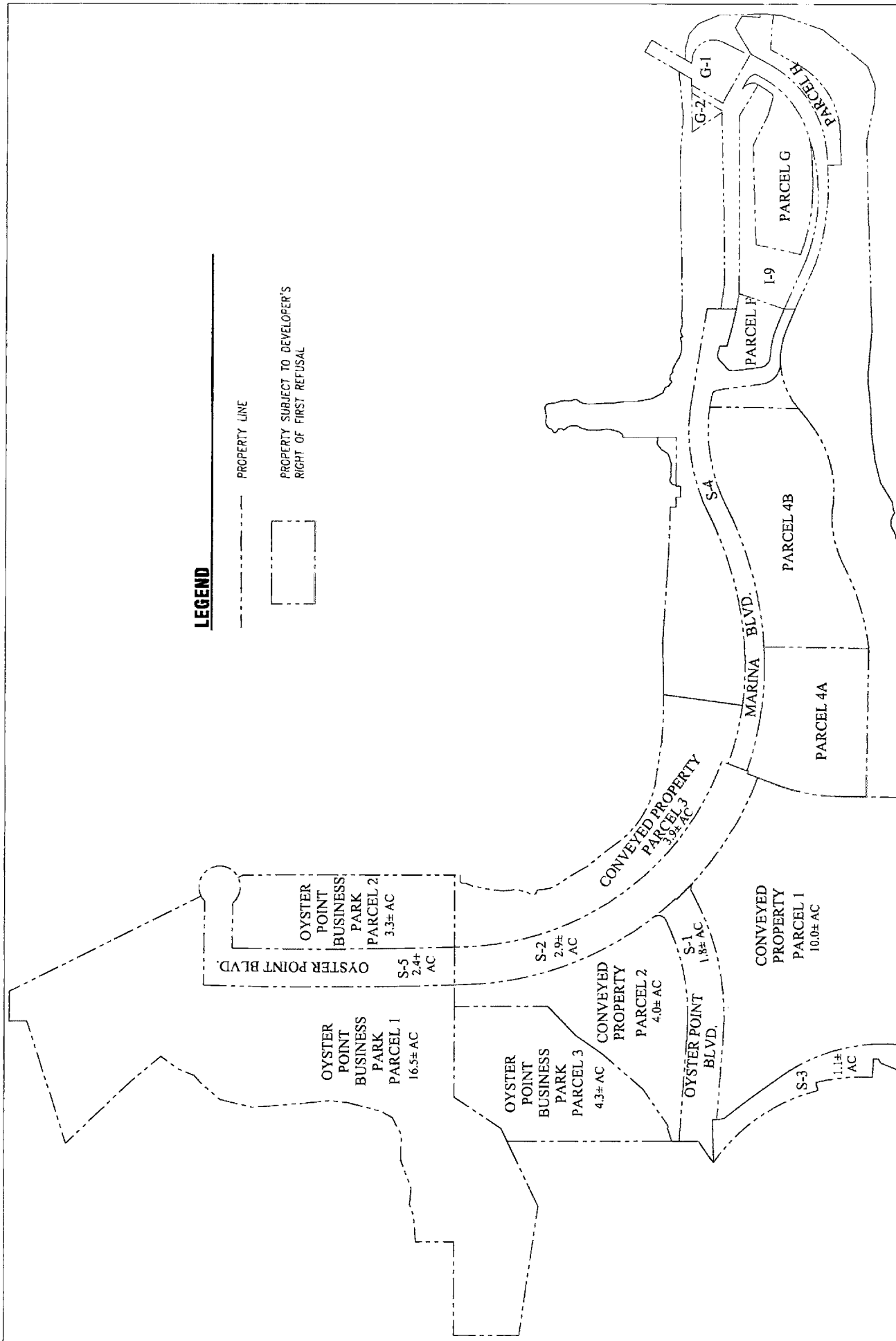
APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Memorandum of DDA

**Exhibit 2.5.1**

Description of Property Subject to Developer's Right of First Refusal



**Exhibit 2.5.3**

**Memorandum of Right of First Refusal**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105  
Attn: Zane Gresham, Esq.

---

(Space Above for Recorder's Use)

**MEMORANDUM OF RIGHT OF FIRST REFUSAL**

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL ("**Memorandum**"), dated as of \_\_\_\_\_, 201\_\_ (the "**Effective Date**"), is executed by and among Redevelopment Agency of the City of South San Francisco, a public body corporate and politic ("**Agency**"), The City of South San Francisco, a municipal corporation ("**City**"), and Oyster Point Ventures, LLC, a Delaware limited liability company ("**Developer**"). Agency, City and Developer, together with their respective successors and assigns, are hereinafter sometimes referred to collectively as "**Parties**", and individually as a "**Party**." All initial capitalized terms used herein but not herein defined shall have the meaning ascribed to such terms in the DDA (defined below).

WITNESSETH:

The Parties do hereby acknowledge that:

1. Memorandum of Right of First Refusal. Pursuant to that certain Right of First Refusal (the "Right of First Refusal") contained in Section 2.5 of that certain Disposition and Development Agreement entered into by and among Agency, City and Developer on \_\_\_\_\_, 2011 (the "**DDA**"), City and Agency have granted to Developer and its successors and assigns a right of first refusal to acquire certain real property situated in the City of South San Francisco, County of San Mateo, State of California, more particularly described on Exhibit A, together with all improvements located thereon (the "**Property**"), for the period commencing on the date hereof and expiring upon the earlier to occur of (1) the issuance of a certificate of occupancy for the last building to be constructed in Phase IVD of the Developer Project, and (2) twenty (20) years after the Effective Date (the "**Expiration Date**").

2. Purpose. The sole purpose of preparing and recording this Memorandum is to give notice of the Right of First Refusal as set forth in the DDA, and is subject to all the terms, conditions and provisions thereof. In the event of any conflict between the terms of this

Memorandum on the one hand, and the terms of the DDA on the other hand, the terms of the DDA shall control.

3. Other Provisions. The other provisions of the Right of First Refusal shall be as provided in the DDA, which, by this reference, is incorporated herein.

4. Counterparts. This Memorandum may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

EXECUTED by the Parties as of the date set forth on the respective acknowledgement pages attached hereto, and effective as of the date first written above.

**DEVELOPER**

**OYSTER POINT VENTURES LLC,  
a Delaware limited liability company**

By: SRI Nine Oyster Point LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: SKS Oyster Point, LLC,  
a Delaware limited liability company,  
its Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[Signatures continue on following page]*

**AGENCY**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

**CITY**

**CITY OF SOUTH SAN FRANCISCO,  
a municipal corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney



EXHIBIT A  
PROPERTY DESCRIPTION

**Exhibit 3.2A**

**Description of Phases of Redevelopment Project**

### PHASES ID

- I UP TO 508,000 GSF OF OFFICE/R&D SPACE
- J CLAY CAP REPAIR AT PHASE ID
- K CLEANUP OF SUMP 1
- L METHANE MITIGATION SYSTEMS
- M RELOCATION OF REFUSE

### PHASE IC

- A STREETS & UTILITIES AT HUB
- B STREETS & UTILITIES TO POINT
- C CLAY CAP REPAIR AT PHASE IC
- D RECONFIGURED PARKING AT MARINA
- E RECREATION AREA
- F FUTURE HOTEL SITE
- G BEACH/PARK
- H BAY TRAIL & PALM PROMENADE

### PHASES IID-IVD

- N UP TO 1,746,230 GSF OF OFFICE/R&D SPACE
- O STREETS & UTILITIES IN BUSINESS PARK
- P RELOCATION OF SEWER PUMP STATION
- Q LANDSCAPING AT BCDC PHASES IID-IVD

### PHASE IIC

- R REPAVING OF PARKING PHASE IIC
- S LANDSCAPING AT PARKING PHASE IIC
- T LANDSCAPING AT BCDC PHASES IIC



### **Exhibit 3.2B**

#### **Estimated Project Schedule**

This Exhibit sets forth the Parties' reasonable estimates of project milestones, based on each Party's good-faith, diligent pursuit of their respective responsibilities, in compliance with applicable law. These milestones include the items listed below, for illustrative purposes only.

1. Initiate preparation of EIR and project entitlements: Third quarter 2009
2. Complete environmental review and Agency and City approval of project entitlements: First quarter 2011
3. Approval and execution of Disposition and Development Agreement to govern transfer of the King Leases and Conveyed Property: First quarter 2011
4. Projected date for exchange of interests in King Leases and Conveyed Property pursuant to Disposition and Development Agreement: Second quarter 2013
5. Projected establishment of a communities facilities district and issuance of Mello-Roos Bonds: Second quarter 2013
6. Projected date to commence construction of Phase I Improvements: Third quarter 2013

The Parties recognize that despite their respective diligent good faith efforts, the achievement of these milestones is subject to circumstances and actions of others beyond their respective reasonable control, such as actions by other governmental agencies, market conditions, financing, and other business and economic factors, and that such circumstances are taken into account in the DDA and DA. This estimated schedule does not affect the Parties' rights or remedies under any termination provisions that are included in the DDA and DA.

**Exhibit 3.2.1**

**Phase IC Site and Infrastructure Improvements: Description and Cost**

### **EXHIBIT 3.2.1A: Street and Utilities at Hub**

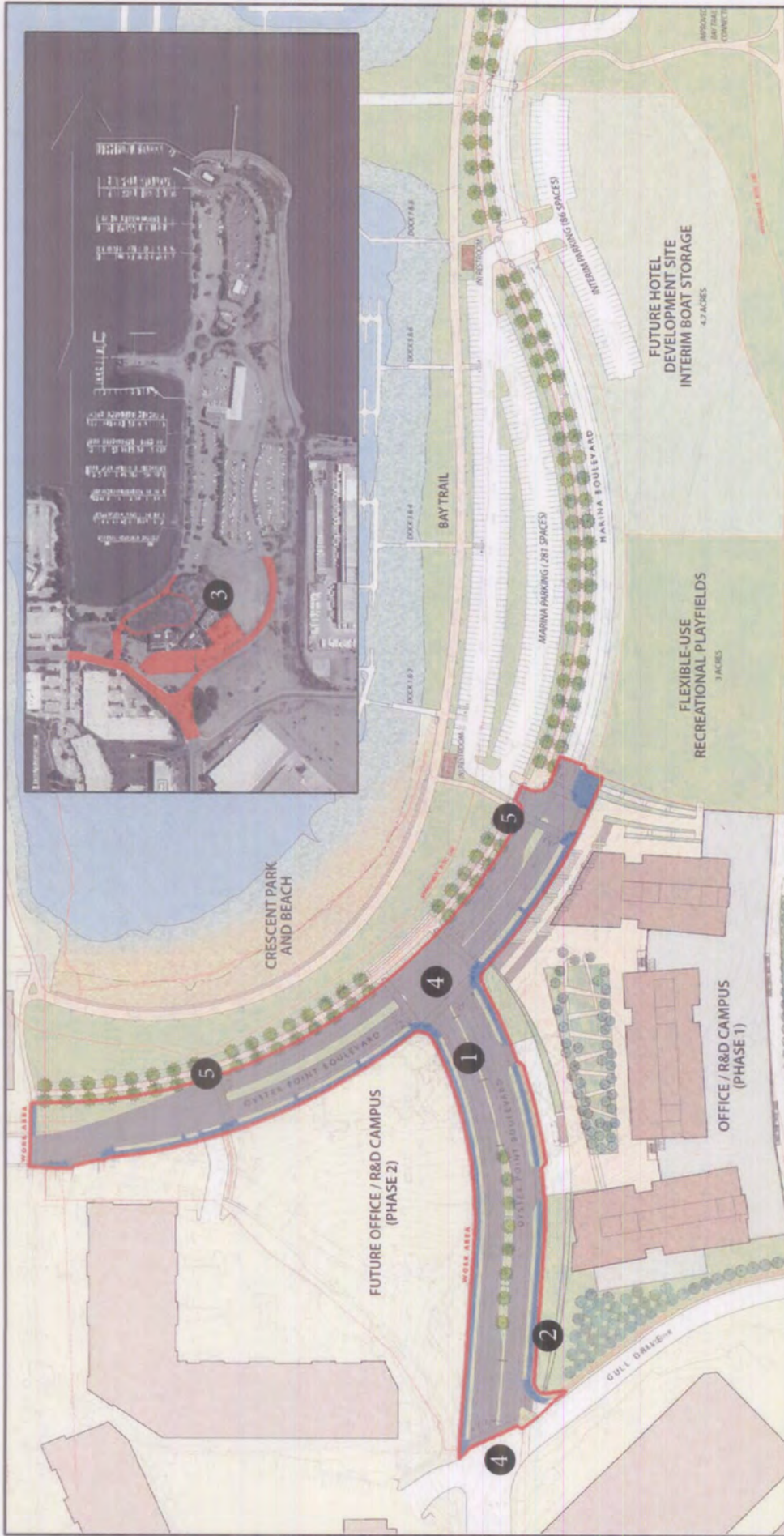
The designation “Streets and Utilities at Hub” refer to the components listed below located along the new portions of Oyster Point Blvd and Marina Blvd directly adjacent to Phases I and II of the Developer Project. To allow for the desired configuration of parcels, portions of Oyster Point Blvd and Marina Blvd and related utilities will be relocated.

The construction of the new streets and utilities includes the following components:

- (a) temporary roads
- (b) grinding and off haul(if necessary) of existing paving
- (d) import/export soil
- (e) fine grading and compaction
- (f) road base
- (g) asphalt paving and striping
- (h) concrete curbs, gutters, sidewalks, and landscaping on each side of roadway
- (i) aggregate base at curbs and sidewalks
- (j) islands with associated topsoil and curbs
- (k) traffic signalization and signage
- (l) electrical road and sidewalk lighting
- (m) temporary utilities
- (n) storm sewer (drain piping, catch basins, outfall interceptors, manholes and curb cuts)
- (o) sanitary sewer (piping, forced main, and manholes)
- (p) domestic water line
- (q) fire service stubs and hydrants
- (r) gas lines
- (s) joint utility trench with electrical prim conduits and pull boxes and telecom conduits

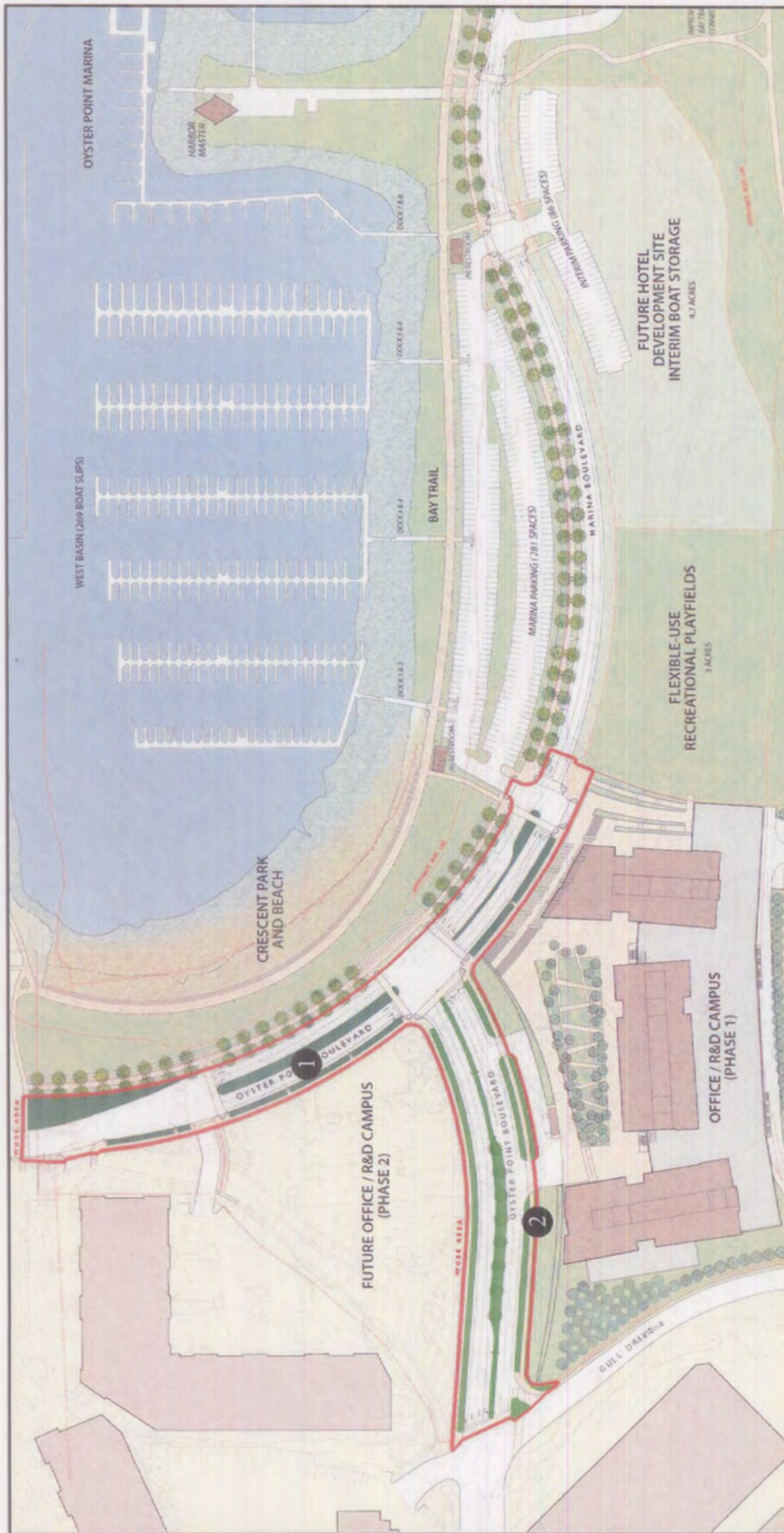
**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





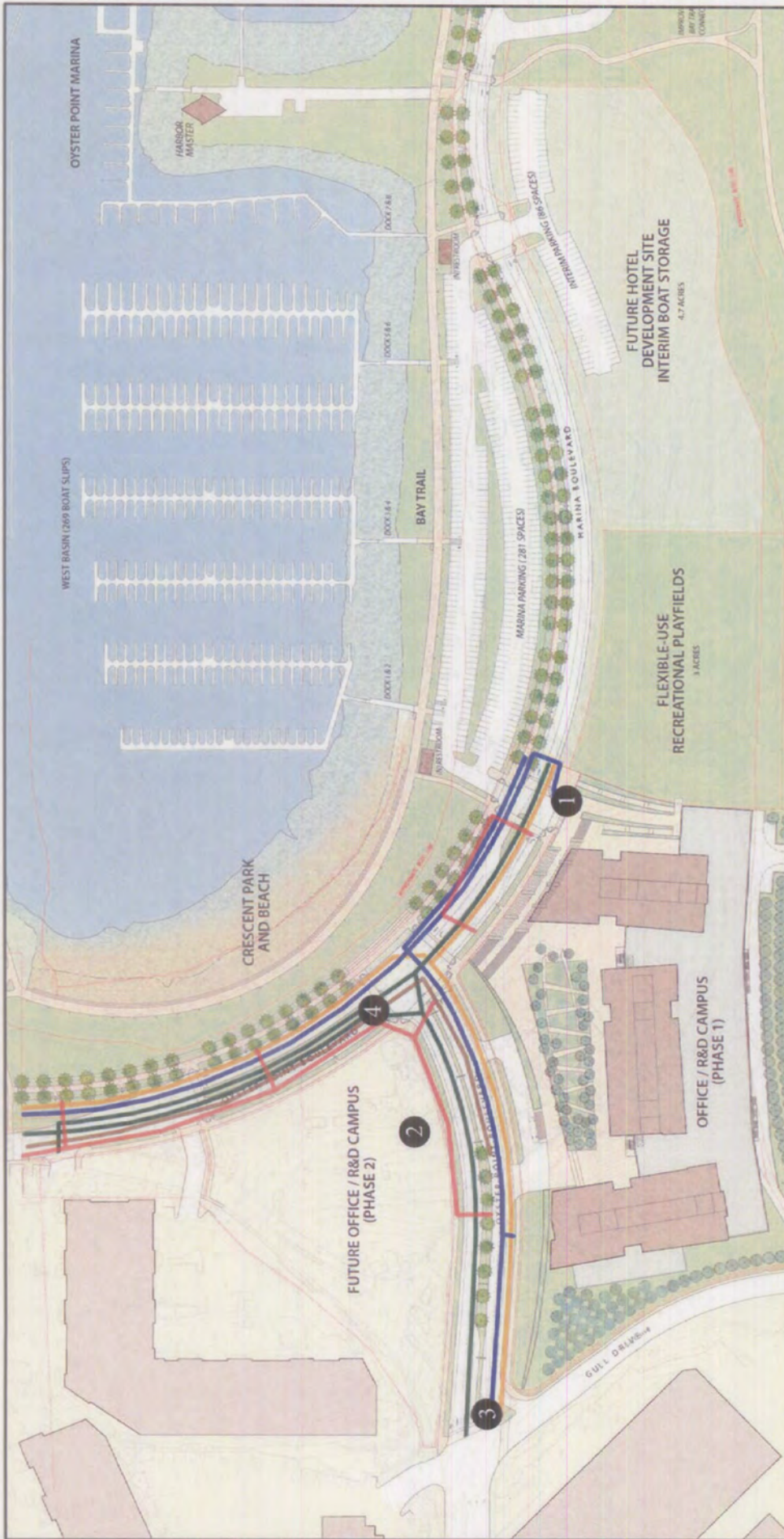
<p><b>KEY NOTES</b></p> <p>1. Shaded area (grey) identifies New roadways at Hub (totalling 172,500 SF). Paved areas are fine graded and then constructed with a pavement section of 7" asphalt concrete over 14" aggregate base. Striping at the New roadways is included. Streetside lights (33 EA) are included.</p> <p>2. Shaded area (blue) identifies New city sidewalks at Hub (totalling 25,025 SF). Sidewalk areas are fine graded and the constructed with a section of 4" cement concrete over 8" aggregate base. Curbs and gutters (3,575 LF) are included, along with aggregate base for the curbs.</p> <p>3. Paving at shaded areas (178,902 SF) at Inset map to be demolished, ground, stored on site for a period of time, and offhauled if necessary. An allowance for temporary roads (up to 24,000 SF) is included so that access to the Marina area is continuous during work for the New roads.</p> <p>4. Replacement of the traffic signal at Gull Dr. and Oyster Point Blvd. is allowed for, as is a new signal at Oyster Point Blvd. and Marina Blvd.</p> <p>5. New signalized pedestrian crosswalks.</p> <p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010. Inset map from Google Maps.</p>	<p><b>Hathaway 100 Dinwiddie</b> YEARS OF BUILDING</p> <p>HATHAWAY DINWIDDIE CONSTRUCTION COMPANY 275 Battery Street Suite 300 San Francisco, CA 94111 tel. 415.984.2718 fax. 415.956.5669</p>	
	<p><b>Oyster Point Site and Improvement</b> South San Francisco, CA</p>	
	<p><b>Conceptual Design Drawing</b> Exhibit 3.2.1A: Streets and Utilities at Hub</p>	
<p><b>SKS Investments</b></p>		<p>2011-03-16 Exhibit 3.2.1A-1</p>





<p><b>KEY NOTES</b></p> <p>1. Area shaded (dark green) represents planted areas at Marina Boulevard, and totals 19,870 SF. This area to be fine graded and receive 24" topsoil and planting.</p> <p>2. Area shaded (light green) represents planted areas at Hub, and totals 19,105 SF. This area to be fine graded and receive 24" topsoil and planting.</p> <p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010. Inset map from Google Maps.</p>	<p><b>Hathaway   100 YEARS OF BUILDING</b> <b>Dinnwiddie</b></p> <p>HATHAWAY DINNIDDIE CONSTRUCTION COMPANY 275 Battery Street San Francisco, CA 94111 tel: 415.986.2718 fax: 415.986.5669</p>	
	<p><b>Oyster Point Site and Improvement</b> South San Francisco, CA</p>	<p><b>Conceptual Design Drawing</b> Exhibit 3.2.1A: Streets and Utilities at Hub</p>
<p><b>SKS Investments</b></p>		<p>2011-03-16 Exhibit 3.2.1A-2</p>





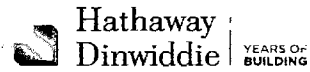
<p><b>KEY NOTES</b></p> <ol style="list-style-type: none"> <li>1. Blue shading represents the domestic water system, which consists of 2,055 LF of domestic water line and 8 fire hydrants.</li> <li>2. Red shading represents the storm drain system, which consists of 1,537 LF of storm drain piping, 10 catch basins, 4 manholes, and 1 outfall interceptor.</li> <li>3. Orange shading represents the joint trench (1,568 LF), which includes gas line, telecommunications pathways, electrical conduit, and 11 electrical pull boxes.</li> <li>4. Green (forced main - 2,614 LF) and brown (gravity piping - 1,017 LF) shading represent the sanitary sewer system. Work includes 6 manholes.</li> <li>5. An allowance for temporary utilities while the New work is being installed is included.</li> </ol>	<p><b>Hathaway   100 YEARS OF BUILDING Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE CONSTRUCTION COMPANY</p> <p>275 Battery Street San Francisco, CA 94111 tel: 415.986.2718 fax: 415.956.5669</p>	<p><b>Oyster Point Site and Improvement</b> South San Francisco, CA</p> <p><b>Conceptual Design Drawing</b> Exhibit 3.2.1A: Streets and Utilities at Hub</p>
<p><b>GENERAL NOTES</b></p> <ol style="list-style-type: none"> <li>1. Base map provided by ROMA Design Group, October 2010. Inset map from Google Maps.</li> </ol>	<p>2011.03.16</p>	<p><b>SKS Investments</b></p>
	<p>Exhibit</p>	<p><b>3.2.1A-3</b></p>

OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

2/25/2011 (revised 3/15/2011)

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Streets and Utilities at Hub								
3.2.1A-1		4	0001	01090	traffic signalization			
3.2.1A-1		4	0001	01090	gull + oyster point intersection - reconfiguration of sensors/equip	1	LS	\$ 350,000 \$ 350,000
3.2.1A-1		4	0001	01090	oyster point + marina blvd intersection - new signal	1	LS	\$ 350,000 \$ 350,000
3.2.1A-1		4	0001	01090	lighted pedestrian crosswalks	2	LS	\$ 35,000 \$ 70,000
3.2.1A-1		4	0001	01090	signals required by future phases - see future phase estimate	excl		excl
3.2.1A-1		3	2000	02070	grind paving - a.o.	178,902	SF	\$ 0.50 \$ 89,451
3.2.1A-1		3	2000	02070	stockpile grinding - a.o.	8,283	CY	\$ 5.00 \$ 41,413
3.2.1A-1		3	2000	02070	offhaul and dispose grindings - a.o.	8,283	CY	\$ 12.00 \$ 99,390
3.2.1A-1	1 and 2	2	2000	02200	finegrade and compact asphalt and flatwork areas	147,525	SF	\$ 2.00 \$ 295,050
3.2.1A-1		2	2000	02200	curb cuts	6,375	LF	\$ 7.00 \$ 44,625
3.2.1A-1		1	2000	02200	paving and aggregate base - oyster point and marina boulevard - hub	122,500	SF	\$ 10.00 \$ 1,225,000
3.2.1A-1		3	2000	02200	temporary roadways	24,000	SF	\$ 5.50 \$ 132,000
3.2.1A-1		2	2000	02200	aggregate base - city sidewalk	25,025	SF	\$ 4.00 \$ 100,100
3.2.1A-1		2	2000	02200	aggregate base at curbs	6,375	LF	\$ 8.00 \$ 51,000
3.2.1A-1		1	2000	02270	sediment basin	excl		excl
3.2.1A-1		1	2000	02270	a.o. swppp controls - see section 02200	excl		excl
3.2.1A-1		1	2000	02270	installation of swppp controls - see section 02200	incl		incl
3.2.1A-1		1	2000	02270	silt fences	incl		incl
3.2.1A-1		1	2000	02270	straw wattles	incl		incl
3.2.1A-1		1	2000	02270	straw blankets	incl		incl
3.2.1A-1		1	2000	02270	rock wattles	incl		incl
3.2.1A-1		1	2000	02270	filter fabric	incl		incl
3.2.1A-1		1	2000	02270	rock at entrance	incl		incl
3.2.1A-1		1	2000	02270	winterization/ stabilization rock	incl		incl
3.2.1A-1		1	2000	02270	summer maintenance	incl		incl
3.2.1A-1		1	2000	02270	winter maintenance	incl		incl
3.2.1A-1		1	2000	02270	a.o. best management practices	incl		incl
3.2.1A-3		5	2020	02600	temp utilities	1	LS	\$ 150,000.00 \$ 150,000
3.2.1A-3		2	2020	02600	storm drain piping - hub	1,537	LF	\$ 185.00 \$ 284,345
3.2.1A-3		2	2020	02600	storm catch basins - hub	10	EA	\$ 2,500.00 \$ 25,000
3.2.1A-3		2	2020	02600	storm drain manholes - hub	4	EA	\$ 6,500.00 \$ 26,000
3.2.1A-3		2	2020	02600	outfall interceptor	1	EA	\$ 50,000.00 \$ 50,000
3.2.1A-3		4	2020	02600	sanitary piping - hub	1,017	LF	\$ 150.00 \$ 152,550
3.2.1A-3		4	2020	02600	forced main - hub	2,614	LF	\$ 150.00 \$ 392,100
3.2.1A-3		4	2020	2600	forced main - allowance for connection to PSI	1	EA	\$ 75,000.00 \$ 75,000
3.2.1A-3		4	2020	02600	sanitary manholes - hub	6	EA	\$ 6,500.00 \$ 39,000
3.2.1A-3		4	2020	02600	connection and settlement vault at each building	4	EA	\$ 30,000.00 \$ 120,000
3.2.1A-3		1	2020	02600	domestic water line - hub	2,055	LF	\$ 125.00 \$ 256,875
3.2.1A-3		1	2020	02600	fire hydrants	8	EA	\$ 7,500.00 \$ 60,000
3.2.1A-3		3	2020	02600	gas line	1,968	LF	\$ 50.00 \$ 98,400
3.2.1A-3		3	2020	02600	trench and backfill for joint trench	1,968	LF	\$ 150.00 \$ 295,200
3.2.1A-3		3	2020	02600	electrical prim conduits	1,968	LF	\$ 60.00 \$ 118,080
3.2.1A-3		3	2020	02600	electrical prim pull boxes	11	EA	\$ 6,500.00 \$ 71,500
3.2.1A-3		3	2020	02600	secondary conduits/ settlement vault	4	BL	\$ 35,000.00 \$ 140,000
3.2.1A-1		1	2020	02600	electrical road and sidewalk lighting - hub	14	EA	\$ 8,500.00 \$ 119,000
3.2.1A-1		1	2020	02600	electrical road and sidewalk lighting - marina boulevard	19	EA	\$ 8,500.00 \$ 161,500
3.2.1A-3		3	2020	02600	telecommunications- 6 ea x 4" in joint trench	1,968	LF	\$ 60.00 \$ 118,080
3.2.1A-2		2	2010	02230	topsoil - planted areas - hub	1,420	CY	\$ 95.00 \$ 134,900
3.2.1A-2		1	2010	02230	topsoil - planted areas - marina	1,480	CY	\$ 95.00 \$ 140,600
3.2.1A-1		2	2010	02550	city sidewalk	25,025	SF	\$ 8.00 \$ 200,200
3.2.1A-1		2	2010	02550	vertical curbs	2,800	LF	\$ 12.00 \$ 33,600
3.2.1A-1		2	2010	02550	curb and gutter	3,575	LF	\$ 16.00 \$ 57,200
3.2.1A-2		2	2010	02900	planted areas - hub	19,105	SF	\$ 12.00 \$ 229,260



**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**

**LINE ITEM DETAIL**

2/25/2011 (revised 3/15/2011)

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
<b>DIAGRAM NOTE</b>								
3.2.1A-2		I	2010	02900	planted areas - marina boulevard	19,870	SF	\$ 12.00 \$ 238,440
3.2.1A-1		I	2010	02515	road striping	1	LS	\$ 35,000.00 \$ 35,000
<b>Subtotal - Streets and Utilities at Hub</b>								<b>\$ 6,669,859</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 1,267,273</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 59,528</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 7,996,660</b>
<b>Soft Costs - 20%</b>								<b>\$ 1,599,332</b>
<b>Total</b>								<b>\$ 9,595,992</b>

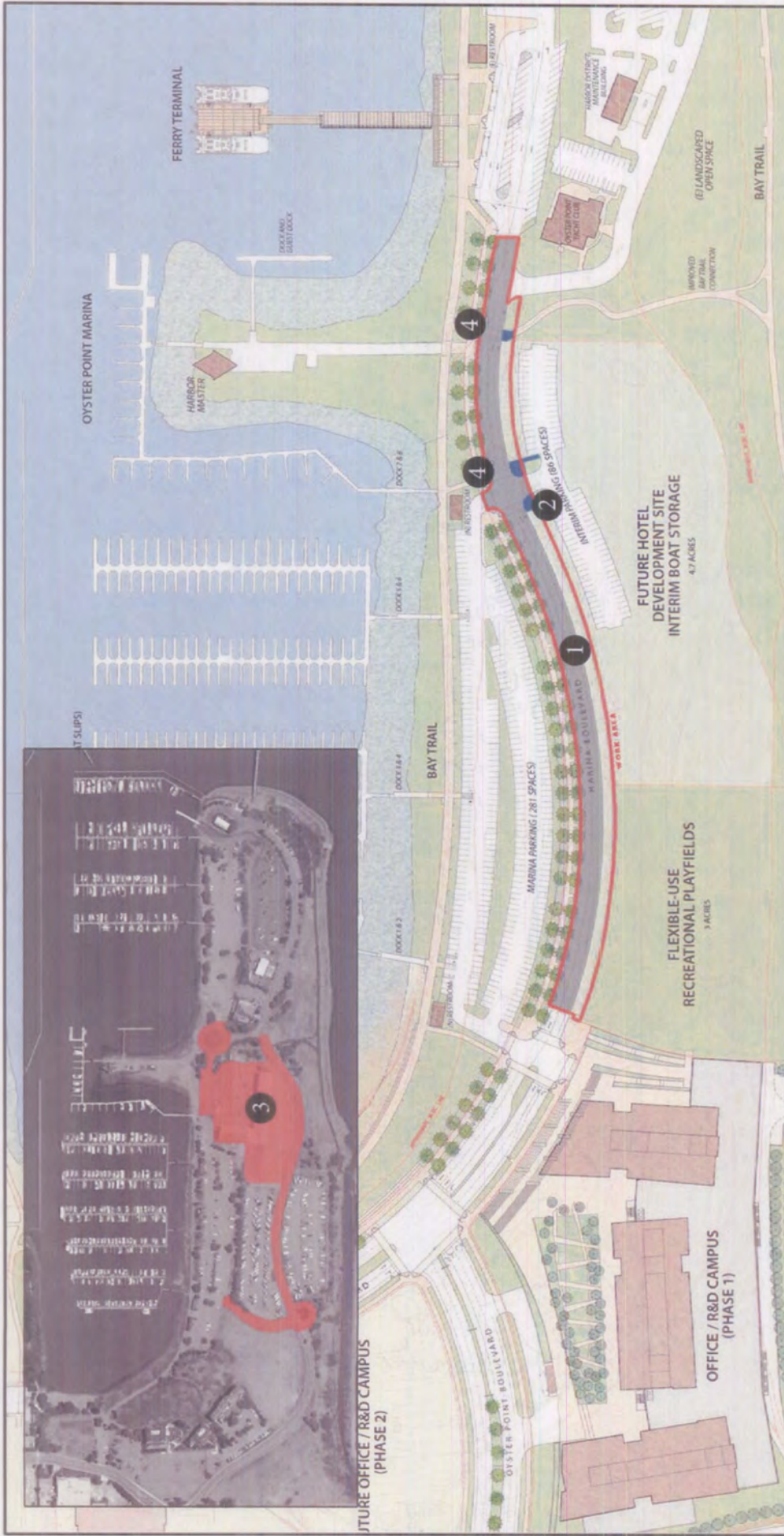
### **EXHIBIT 3.2.1B: Streets and Utilities to Point**

“Streets and Utilities to Point” refers to the components listed below located to the east of the Phase I property line, adjacent to the recreation fields, hotel site and marina parking extending to the existing traffic circle on Marina Blvd next to the yacht club building. To allow for the desired configuration of parcels, portions of Marina Blvd and related utilities will be relocated. The construction of the new streets and utilities includes the following components:

- (a) temporary roads
- (b) grinding and off haul(if necessary) of existing paving
- (c) grading (including necessary refuse relocation and clay cap modification associated with roads and utilities)
- (d) import/export soil
- (e) fine grading and compaction
- (f) road base
- (g) asphalt paving and striping
- (h) concrete curbs and gutters on each side of roadway with landscaping on south side of roadway
- (i) aggregate base at curbs and sidewalks
- (k) traffic signage
- (l) electrical road and sidewalk lighting
- (m) temporary utilities
- (n) storm sewer (drain piping, catch basins, outfall interceptors, manholes and curb cuts)
- (o) sanitary sewer (piping, forced main, and manholes)
- (p) domestic water line
- (q) fire service stubs and hydrants
- (r) gas lines
- (s) joint utility trench with electrical prim conduits and pull boxes and telecom conduits.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





<p><b>Hathaway 100 YEARS OF BUILDING Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE CONSTRUCTION COMPANY 275 Battery Street Suite 300 San Francisco, CA 94111 tel: 415.986.2718 fax: 415.956.5669</p>	<p><b>Oyster Point Site and Improvement</b> South San Francisco, CA</p>	<p><b>Conceptual Design Drawing</b> Exhibit 3.2.1B: Streets and Utilities to Point</p>
<p><b>SKS Investments</b></p>	<p>2011-03-16</p>	<p>3.2.1B-I</p>
<p><b>GENERAL NOTES</b></p> <ol style="list-style-type: none"> <li>1. Base map provided by ROMA Design Group, October 2010. Inset map from Google Maps.</li> </ol>	<p><b>KEY NOTES</b></p> <ol style="list-style-type: none"> <li>1. Shaded area (grey) identifies New roadways (totalling 48,600 SF). Paved areas are fine graded and then constructed with a pavement section of 7" asphalt concrete over 14" aggregate base. Striping at the New roadways is included. Street/sidewalk lights (14 EA) are included.</li> <li>2. Shaded area (blue) identifies New city sidewalks (totalling 1,781 SF). Sidewalk areas are fine graded and the constructed with a section of 4" cement concrete over 8" aggregate base. Curbs and gutters (2,780 LF) are included, along with aggregate base for the curbs.</li> <li>3. Paving at shaded (red) areas (totalling 216,609 SF) at inset map to be demolished ground, stored on site for a period of time, and offhauled if necessary. An allowance for temporary roads (up to 56,000 SF) is included so that access to the Marina area is continuous during work for the New roads.</li> <li>4. New signalized pedestrian crosswalk.</li> </ol>	<p><b>GENERAL NOTES</b></p> <ol style="list-style-type: none"> <li>1. Base map provided by ROMA Design Group, October 2010. Inset map from Google Maps.</li> </ol>









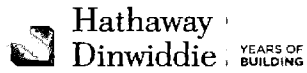
OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

2/25/2011 (revised 3/15/2011)

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Streets and Utilities to Point								
3.2.1B-1	4	0001	01090	lighted pedestrian crosswalks	2	LS	\$ 35,000	\$ 70,000
3.2.1B-1	3	2000	02070	grind paving - a.o.	216,609	SF	\$ 0.50	\$ 108,305
3.2.1B-1	3	2000	02070	stockpile grinding - a.o.	10,028	CY	\$ 5.00	\$ 50,141
3.2.1B-1	3	2000	02070	offhaul and dispose grindings - a.o.	10,028	CY	\$ 12.00	\$ 120,338
3.2.1B-3	4	2000	02200	misc soil material - existing on site - see other estimates				
3.2.1B-3	4	2000	02200	place foundation layer	43,333	CY	\$ 6.00	\$ 260,000
3.2.1B-3	4	2000	02200	place clay cap - utilities	40,000	SF	\$ 2.00	\$ 80,000
3.2.1B-3	4	2000	02200	place protection layer	21,667	CY	\$ 5.00	\$ 108,333
3.2.1B-3	4	2000	02200	collect refuse - utilities	12,000	CY	\$ 7.50	\$ 90,000
3.2.1B-3	4	2000	02200	place refuse - utilities	12,000	CY	\$ 7.50	\$ 90,000
3.2.1B-3	4	2000	02200	tarping	40,000	SF	\$ 0.35	\$ 14,000
3.2.1B-1	1	2000	02200	finegrade and compact asphalt and flatwork areas	50,381	SF	\$ 2.00	\$ 100,762
3.2.1B-1	2	2000	02200	curb cuts	2,780	LF	\$ 7.00	\$ 19,460
3.2.1B-1	1	2000	02200	paving and aggregate base - marina boulevard	48,600	SF	\$ 10.00	\$ 486,000
3.2.1B-1	3	2000	02200	temporary roadways	56,000	SF	\$ 5.50	\$ 308,000
3.2.1B-1	2	2000	02200	aggregate base - city sidewalk	1,781	SF	\$ 4.00	\$ 7,124
3.2.1B-1	2	2000	02200	aggregate base at curbs	2,780	LF	\$ 8.00	\$ 22,240
3.2.1B-1	1	2000	02270	sediment basin	excl			excl
3.2.1B-1	1	2000	02270	a.o. swppp controls - see section 02200				
3.2.1B-1	1	2000	02270	installation of swppp controls - see section 02200	incl			incl
3.2.1B-1	1	2000	02270	silt fences	incl			incl
3.2.1B-1	1	2000	02270	straw waddies	incl			incl
3.2.1B-1	1	2000	02270	straw blankets	incl			incl
3.2.1B-1	1	2000	02270	rock waddies	incl			incl
3.2.1B-1	1	2000	02270	filter fabric	incl			incl
3.2.1B-1	1	2000	02270	rock at entrance	incl			incl
3.2.1B-1	1	2000	02270	winterization/ stabilization rock	incl			incl
3.2.1B-1	1	2000	02270	summer maintenance	incl			incl
3.2.1B-1	1	2000	02270	winter maintenance	incl			incl
3.2.1B-1	1	2000	02270	a.o. best management practices	incl			incl
3.2.1B-3	6	2020	02600	temp utilities	1	LS	\$ 150,000.00	\$ 150,000
3.2.1B-3	2	2020	02600	storm drain piping - marina boulevard	516	LF	\$ 185.00	\$ 95,460
3.2.1B-3	2	2020	02600	storm catch basins - marina boulevard	6	EA	\$ 2,500.00	\$ 15,000
3.2.1B-3	4	2020	02600	sanitary piping - marina boulevard - n.r.	excl			excl
3.2.1B-3	4	2020	02600	forced main - marina boulevard	1,349	LF	\$ 150.00	\$ 202,350
3.2.1B-3	4	2020	02600	sanitary manholes - marina boulevard - n.r.	excl			excl
3.2.1B-3	1	2020	02600	domestic water line - marina boulevard	1,764	LF	\$ 125.00	\$ 220,500
3.2.1B-3	1	2020	02600	fire service stubs	134	LF	\$ 115.00	\$ 15,410
3.2.1B-3	1	2020	02600	fire hydrants	6	EA	\$ 7,500.00	\$ 45,000
3.2.1B-3	3	2020	02600	gas line	1,351	LF	\$ 50.00	\$ 67,550
3.2.1B-3	3	2020	02600	trench and backfill for joint trench	1,351	LF	\$ 150.00	\$ 202,650
3.2.1B-3	3	2020	02600	electrical prim conduits	1,351	LF	\$ 60.00	\$ 81,060
3.2.1B-3	3	2020	02600	electrical prim pull boxes	excl	EA	\$ 6,500.00	excl
3.2.1B-1	1	2020	02600	electrical road and sidewalk lighting - marina boulevard	14	EA	\$ 8,500.00	\$ 119,000
3.2.1B-3	3	2020	02600	telecommunications- 6 ea x 4" in joint trench	1,351	LF	\$ 60.00	\$ 81,060
3.2.1B-2	1	2010	02230	topsoil - planted areas - marina	1,770	CY	\$ 95.00	\$ 168,150
3.2.1B-1	2	2010	02550	city sidewalk	1,781	SF	\$ 8.00	\$ 14,248
3.2.1B-1	2	2010	02550	curb and gutter	2,780	LF	\$ 16.00	\$ 44,480





**OYSTER POINT BUSINESS PARK**  
**SHORENSTEIN / SKS INVESTMENTS**  
**LINE ITEM DETAIL**  
**2/25/2011 (revised 3/15/2011)**

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
<b>DIAGRAM NOTE</b>								
3.2.1B-2	I	2010	02900	planted areas - marina boulevard	23,812	SF	\$ 12.00	\$ 285,744
3.2.1B-1	I	2010	02515	road striping	1	LS	\$ 35,000.00	\$ 35,000
<b>Subtotal - Streets and Utilities to Point</b>								<b>\$ 3,777,365</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 717,699</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 33,713</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 4,528,777</b>
<b>Soft Costs - 20%</b>								<b>\$ 905,755</b>
<b>Total</b>								<b>\$ 5,434,533</b>

### **EXHIBIT 3.2.1C: Clay Cap Repair at City Parcels IC:**

The eastern peninsula of Oyster Point was formerly operated as a municipal (Class III) landfill starting in the 1950s. The landfill was closed in the 1970s in accordance with the State of California Regional Water Quality Control Board (RWQCB) regulatory guidelines that governed at the time. This closure was completed prior to the adoption of California Code of Regulations Title 27, which currently regulates Class III landfill closures. In June 2000, the RWQCB issued Order No. 00-046 which states that where new development is planned of a closed Class III landfill, a cap shall be placed on the landfill that meets the applicable post-closure maintenance requirements outlined in Title 27.

In February 2009, Treadwell and Rollo issued a report entitled “Geotechnical Investigation of the Landfill Cover, Oyster Point Landfill,” which outlines modifications to the clay cap necessary to meet the requirements of Title 27. These modifications include increasing the thickness of the Landfill Cover in approximately seven areas, increasing the thickness of the Low Hydraulic Conductivity Layer (clay layer) in approximately four areas, and reducing the permeability of the Low Hydraulic Conductivity Layer in one area (this also could be accomplished by thickening the clay layer).

The prescriptive cap/cover designated in Title 27, Section 21090 for Class III landfills consists of the following layers, from top to bottom:

- Erosion-resistant layer (via vegetative layer): at least one foot of soil that contains no waste and is capable of sustaining native or other plant growth
- Low hydraulic conductivity layer: at least one foot of soil containing no waste or leachate and compacted to attain a hydraulic conductivity of  $1 \times 10^{-6}$  cm/sec
- Foundation layer: at least two feet of soil, contaminated soil, incinerator ash, or other waste materials, provided that such materials have appropriate engineering properties to be used for a foundation layer for construction of the low hydraulic conductivity layer

“Clay Cap Repair at City Parcels IC” refers to the improvements described above to be implemented on the City Property to the west of the Ferry Terminal.

If part or all of the clay cap repair in the area described in this exhibit overlaps with the clay cap repair and landfill cover required for refuse relocation from the Developer Property as outlined in Exhibit 3.2.2A and 3.2.2D, then the landfill cover improvements in this Exhibit will no longer be necessary at the overlap areas as they will be included in the scope of this Exhibit 3.2.2A.

At the time of completion of landfill cover modifications, rough grading of the top of the Erosion-resistant layer should be coordinated to no more than 2.5 inches (0.20 ft) of finish grade as outlined in the final grading plan in the construction documents.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



<p><b>KEY NOTES</b></p> <p>1. Shaded areas identified as potentially deficient in utility of landfill cover in geotechnical report<sup>1</sup> and in HDCCO cost study exercises. Yellow shading indicates areas where thickness of low permeability layer is insufficient; pink shading indicates area where permeability of cover over landfill is excessive. New clay cap to be installed at these areas (up to 108,000 SF). Cross section consists of a 2'-0" soil foundation layer, a 1'-0" low permeability layer, and a 1'-0" soil erosion layer.</p> <p>2. Orange shading indicates areas where landfill cover is less than 4'-0". Final design grades at these areas to compensate; no clay cap repair required.</p> <p>3. See Exhibit X-2 for clay cap repairs related to utility work on Marina Boulevard.</p> <p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010.</p> <p>2. Geotechnical report referenced is "Geotechnical Investigation of the Landfill Cover Oyster Point Landfill" from Treadwell &amp; Rollo, dated February 13, 2009.</p>	<p><b>Hathaway</b> 100 YEARS OF BUILDING</p> <p><b>Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE CONSTRUCTION COMPANY</p> <p>275 Battery Street Suite 300 San Francisco, CA 94111</p> <p>tel: 415.984.2718 fax: 415.956.5669</p>	<p><b>Oyster Point Site and Improvement</b> South San Francisco, CA</p> <p><b>Conceptual Design Drawing</b> Exhibit 3.2.1C: Clay Cap Repair at City Parcels IC</p>
	<p>2011.03.04</p> <p>Exhibit</p>	<p><b>SKS Investments</b></p> <p>3.2.1C</p>

**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**

**LINE ITEM DETAIL**

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
<b>DIAGRAM NOTE</b>								
<b>Clay Cap Repair at City Parcels Phase IC</b>								
3.2.1C	I	2000	02070	demo - surface improvements - see #20 repaving of city parking	*****			*****
3.2.1C	I	2000	02200	mass grading - cut - collect landfill protection layer	12,000	CY	\$ 4.25	\$ 51,000
3.2.1C	I	2000	02200	repair clay cap - select areas	108,000	SF	\$ 2.00	\$ 216,000
3.2.1C	I	2000	02200	place foundation layer	8,000	CY	\$ 6.00	\$ 48,000
3.2.1C	I	2000	02200	place protection layer	12,000	CY	\$ 5.00	\$ 60,000
3.2.1C	I	2000	02550	replace surface improvements - see #20 repaving of city parking	*****			*****
<b>Subtotal - Clay Cap Repair at City Parcels Phase IC</b>								<b>\$ 375,000</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 71,250</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 3,347</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 449,597</b>
<b>Soft Costs - 20%</b>								<b>\$ 89,919</b>
<b>Total</b>								<b>\$ 539,516</b>

#### **EXHIBIT 3.2.1D: Reconfiguration of Parking at Marina**

Reconfiguration of Parking at Marina includes the parking lot north of the new Marina Blvd, east of the Beach/Park and west of the Ferry Terminal. The work will include complete demolition of the existing parking lot and installation of new drainage, bioswales to treat stormwater, asphalt paving, striping, landscaped parking islands, and lighting. Grading associated with clay cap modification under these parking areas is included in the improvements for Exhibit 3.2.1C

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**
**LINE ITEM DETAIL**

2/25/2011 (revised 3/15/2011)

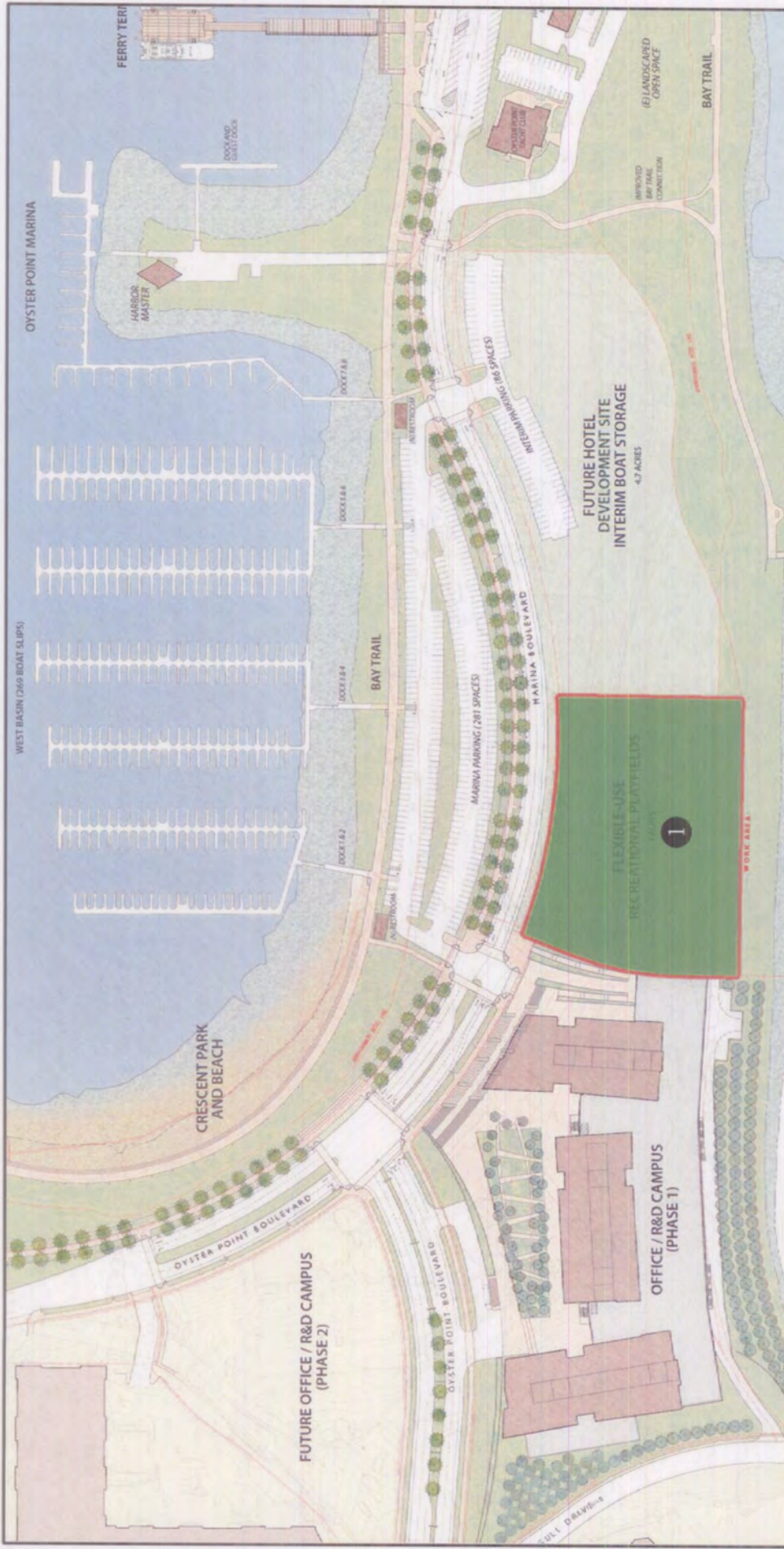
EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Reconfiguration of Parking at Marina								
3.2.ID	1	2000	02070	grind paving - existing parking lots	262,730	SF	\$ 0.50	\$ 131,365
3.2.ID	1	2000	02070	stockpile grindings - existing parking lots	12,163	CY	\$ 5.00	\$ 60,817
3.2.ID	1	2000	02070	offhaul and dispose grindings - existing parking lots	12,163	CY	\$ 12.00	\$ 145,961
3.2.ID	2	2000	02200	paving and aggregate base - parking	147,600	SF	\$ 10.00	\$ 1,476,000
3.2.ID	2	2020	02600	parking lot drainage	147,600	SF	\$ 1.00	\$ 147,600
3.2.ID	2	2020	02600	electrical on grade parking lighting	147,600	SF	\$ 2.00	\$ 295,200
3.2.ID	3	2010	02230	topsoil - planted areas - parking island	1,940	CY	\$ 95.00	\$ 184,300
3.2.ID	4	2010	02230	bioswale soil	1,660	CY	\$ 75.00	\$ 124,500
3.2.ID	3	2010	02900	planted areas - parking island	17,365	SF	\$ 12.00	\$ 208,380
3.2.ID	4	2010	02900	planting - bioswale -	22,294	SF	\$ 8.00	\$ 178,352
<b>Subtotal - Reconfiguration of Parking Lot at Marina</b>								<b>\$ 2,952,475</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 560,970</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 26,351</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 3,539,796</b>
<b>Soft Costs - 20%</b>								<b>\$ 707,959</b>
<b>Total</b>								<b>\$ 4,247,756</b>

### **EXHIBIT 3.2.1E: Grading/Construction of Recreation Area**

Grading/Construction of Recreation Area includes fine grading and compaction as well as turf landscaping with a sand base, drainage, and irrigation. Rough grading of this area is included in Exhibits 3.2.2A.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





<p><b>KEY NOTES</b></p> <p>1. Shaded area (131,567 SF) to be cleared, fine graded, and utilized for the construction of recreation fields. The playing field cross section is turf over 7" stabilized sand over 3.5" sand. Perimeter and interior drainage for two full-size soccer fields is included (totaling 6,000 LF); the drainage system is 4" perforated pipe set in an 8" crushed rock trench treated with fabric trench liner. An irrigation system is also included.</p>	<p><b>Hathaway   100 YEARS OF BUILDING</b>  <b>Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE  CONSTRUCTION COMPANY  275 Battery Street  Suite 300  San Francisco, CA 94111  tel: 415.986.2718  fax: 415.956.5669</p>	<p><b>Oyster Point Site and Improvement</b>  South San Francisco, CA</p>
<p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010.</p>	<p><b>Conceptual Design Drawing</b>  Exhibit 3.2.IE: Grading / Construction of Recreation Area</p>	<p><b>SKS Investments</b></p>
<p>2011-03-04  Exhibit</p>	<p>3.2.IE</p>	

OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Grading/Construction of Recreation Area								
3.2.1E	I	2000	02200	finegrade and compact - rec fields	131,567	SF	\$ 2.00	\$ 263,134
3.2.1E	I	2010	02900	drainage line	6,000	LF	\$ 22.00	\$ 132,000
3.2.1E	I	2010	02900	sand - 7"	4,250	TN	\$ 50.00	\$ 212,500
3.2.1E	I	2010	02900	stabilized sand - 3.5"	2,125	TN	\$ 95.00	\$ 201,875
3.2.1E	I	2010	02900	sod	131,567	SF	\$ 1.00	\$ 131,567
3.2.1E	I	2010	02900	irrigation system	131,567	SF	\$ 3.25	\$ 427,593
Subtotal - Grading/Construction of Recreation Area								\$ 1,368,669
General Conditions and Markups - 19%								\$ 260,047
GC Bonds - 0.75%								\$ 12,215
Subtotal - CONSTRUCTION HARD COSTS								\$ 1,640,931
Soft Costs - 20%								\$ 328,186
Total								\$ 1,969,117

**EXHIBIT 3.2.1F: Demo/Grading of Hotel Site**

Demo/Grading of the Hotel Site includes fine grading, compaction, and hydroseeding of this area. Rough grading of this area is included in Exhibits 3.2.2A.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



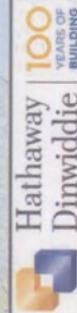


#### KEY NOTES

1. Existing structure to be demolished.
2. Shaded area to be cleared, line graded, and hydroseeded. Area = 177,880 SF.

#### GENERAL NOTES

1. Base map provided by ROMA Design Group, October 2010.
2. Inset map from Google Maps.



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fax: 415.956.5669

**Oyster Point Site and Improvement  
South San Francisco, CA**

**Conceptual Design Drawing  
Exhibit 3.2.1F: Demo / Grading of Hotel Site**

**SKS Investments**

2011.03.16

Exhibit

**3.2.1F**

OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

2/25/2011 (revised 3/15/2011)

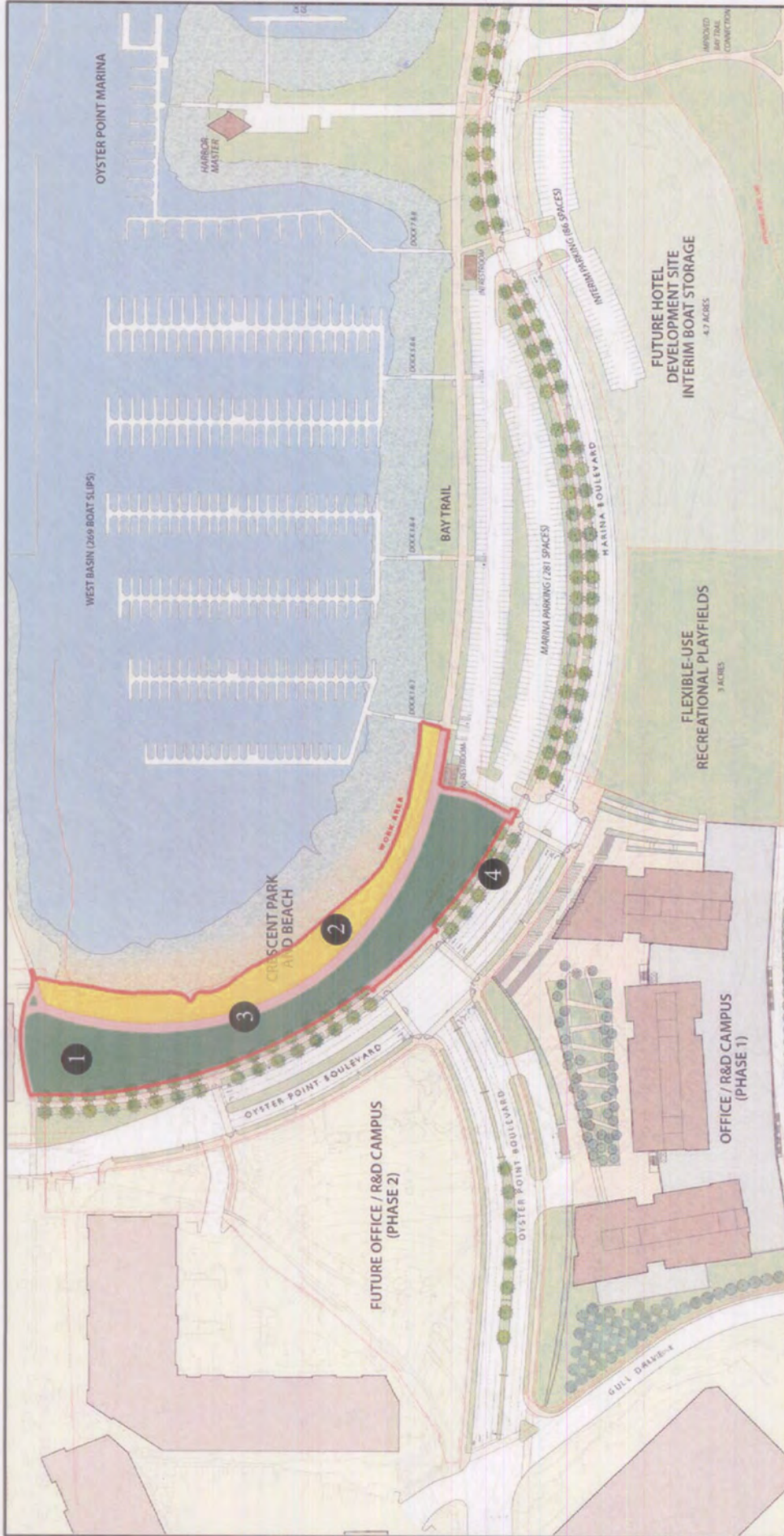
EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Demo/Grading of Hotel Site								
3.2.1F	1	2000	02070	demo steel framed and tiltup buildings	27,054	SF	\$ 2.75	\$ 74,399
3.2.1F	1	2000	02070	demo guard booth	1	EA	\$ 5,000.00	\$ 5,000
3.2.1F	2	2000	02200	finegrade and compact - hotel site	169,166	SF	\$ 2.00	\$ 338,332
3.2.1F	2	2010	02900	hydroseed - hotel site	177,880	SF	\$ 0.75	\$ 133,410
Subtotal - Demo/Grading of Hotel Site								\$ 551,141
General Conditions and Markups - 19%								\$ 104,717
GC Bonds - 0.75%								\$ 4,919
Subtotal - CONSTRUCTION HARD COSTS								\$ 660,776
Soft Costs - 20%								\$ 132,155
Total								\$ 792,931

### **EXHIBIT 3.2.1G: Landscaping of Beach/Park**

The Beach/Park area is a parcel of approximately 3 acres located to the north and east of the Oyster Point Blvd. and Marina Blvd. intersection. Improvements included in the Beach/Park are grading, finegrading and compaction as well as a landscaping allowance, asphalt paving at the bay trail with concrete seatwalls and lighting, and sand import at the beach area.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





<p><b>KEY NOTES</b></p> <p>1. Area shaded in green is considered Crescent Park, and totals 69,721 SF. This area to be fine graded and receive 24" topsoil and planting.</p> <p>2. Area shaded in pink is considered Bay Trail, and totals 18,794 SF. This area to be fine graded and then constructed with a section of 4" asphalt concrete over 8" aggregate base.</p> <p>3. Area shaded in yellow is considered Crescent Beach, and totals 33,174 SF. This area to be fine graded and receive 24" of imported sand. Work also includes torchiere lighting (25 EA) and a two-tier cement concrete seawall at the boundary to Crescent Park (1,590 LF).</p> <p>4. Palm trees and sidewalks at Oyster Point Boulevard are with the improvements for "Landscaping at BCDC Area in City Parcels 1C" (see Exhibit W-8).</p>	<p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010.</p> <p>2. No work is planned below high tide line.</p>	<p><b>Hathaway   100 YEARS OF BUILDING   Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE CONSTRUCTION COMPANY 275 Battery Street Suite 300 San Francisco, CA 94111 tel: 415.986.2718 fax: 415.956.5469</p>	<p>Oyster Point Site and Improvement South San Francisco, CA</p>
<p>Conceptual Design Drawing Exhibit 3.2.1G: Landscaping of Beach / Park</p>	<p>SKS Investments</p>	<p>2011.03.16 Exhibit 3.2.1G</p>	

**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**
**LINE ITEM DETAIL**

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
<b>Landscaping of Beach/Park</b>								
3.2.1G	I and 2	2000	02200	finegrade and compact - crescent park	87,585	SF	\$ 2.00	\$ 175,170
3.2.1G	3	2000	02200	finegrade and compact - crescent beach	33,174	SF	\$ 2.00	\$ 66,348
3.2.1G	1	2000	02200	topsoil - crescent park	6,490	CY	\$ 95.00	\$ 616,550
3.2.1G	3	2000	02200	imported sand - 24" - crescent beach	2,460	TN	\$ 65.00	\$ 159,900
3.2.1G	3	2010	02550	concrete seawall - crescent beach	1,590	LF	\$ 125.00	\$ 198,750
3.2.1G	1	2010	02900	landscaping - crescent park	69,721	SF	\$ 12.00	\$ 836,652
3.2.1G	2	2010	02900	bay trail - crescent park	17,864	SF	\$ 12.00	\$ 214,368
3.2.1G	2	2020	02600	bay trail lighting - torchieres - crescent park	25	EA	\$ 6,500.00	\$ 162,500
<b>Subtotal - Landscaping of Beach/Park</b>								<b>\$ 2,430,238</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 461,745</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 21,690</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 2,913,673</b>
<b>Soft Costs - 20%</b>								<b>\$ 582,735</b>
<b>Total</b>								<b>\$ 3,496,408</b>



### **EXHIBIT 3.2.1H: Landscaping at Bay Trail and Palm Promenade – Phase IC**

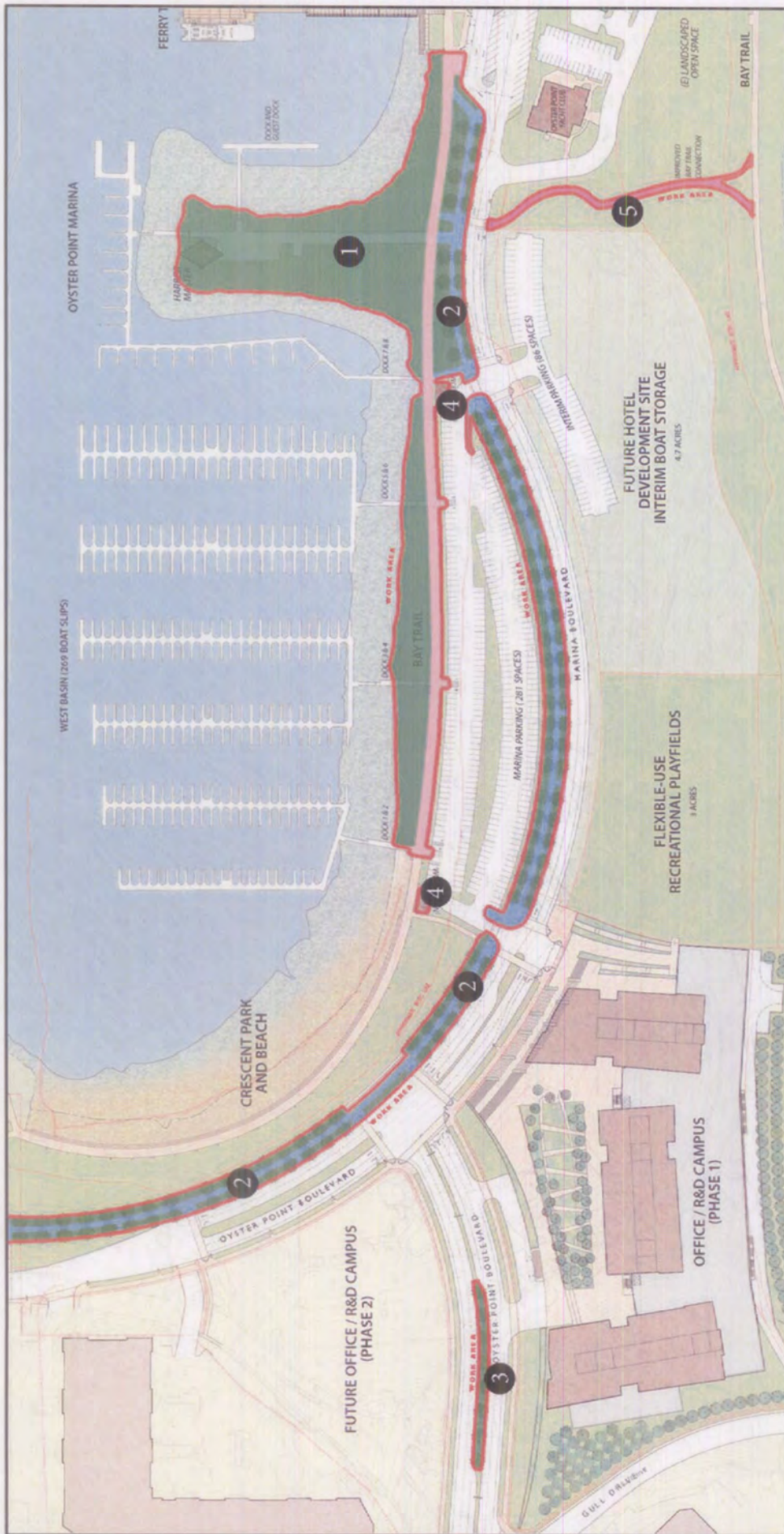
The “Palm Promenade” is a band of land east of the new Oyster Point Blvd. and north of Marina Blvd. that stretches to the west of the Ferry Terminal. Improvements include new sidewalks, Canary Island Palm trees with sand/root bed/structural soil, drainage, irrigation, and landscaping between trees.

Improvements at the Bay Trail consist of finegrading and compaction, asphalt paving of the trail with lighting, as well as a landscaping/topsoil allowance. There is an additional allowance for an improved connection to the existing Bay Trail to the south. Also included is an allowance for two new restrooms which will be single-story structures modest in size and level of finish.

An allowance is included for improvements to the existing Bay Trail connection running north-south across the Point between the future hotel site and Phase IIC.

The palm trees in the median on Oyster Boulevard west of the intersection of Marina Boulevard are also included in the overall budget for this work area.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



<p>Oyster Point Site and Improvement South San Francisco, CA</p>	<p><b>Hathaway   100</b> <b>Dinwiddie</b> YEARS OF BUILDING</p>	<p><b>KEY NOTES</b></p> <p>1. Green shading at BDCDC is considered New planting areas, and totals 106,191 SF. This area to be fine graded and then constructed with a cross section of planting over 24" of topsoil. Pink shading is considered Bay Trail, and totals 19,659 SF. This area to be fine graded and then constructed with a section of 4" asphalt concrete over 8" aggregate base. Work at the Bay Trail also includes torchiere lighting (36 EA).</p> <p>2. A Palm Promenade, consisting of City Sidewalks (29,890 SF), canary palm trees (108 EA) and flanking bands of planted area (45,639 SF) will be installed directly adjacent to the Boulevard. Trees are fine graded and constructed with a section of 4" cement concrete over 8" aggregate base. Work at each end includes a root bed (totaling 2,300 TN) and a linear french drain section (totaling 1,975 LF). Planted areas are fine graded and receive 24" topsoil and planting.</p> <p>3. An additive alternate to work at this area is the installation of 8 canary palm trees at the west spur of Oyster Point Boulevard. Requirements at each tree would include a sand root bed (totaling 350 TN), additional topsoil import (totaling 10 CY), and a linear french drain section (totaling 300 LF).</p> <p>4. 2 New restrooms are to be installed alongside the Bay Trail.</p> <p>5. An allowance for an improved Bay Trail connection is included.</p> <p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010.</p> <p>2. No work is planned below high tide line.</p>
<p>Conceptual Design Drawing Exhibit 3.2.1H: Landscaping at BDCDC Area and Palm Promenade</p>	<p><b>HATHAWAY DINWIDDIE</b> <b>CONSTRUCTION COMPANY</b> 275 Battery Street Suite 300 San Francisco, CA 94111 tel: 415.986.2718 fax: 415.956.5649</p>	<p>2011-03-16 Exhibit</p>
<p>SKS Investments</p>	<p>3.2.1H</p>	

**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**
**LINE ITEM DETAIL**

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
<b>DIAGRAM NOTE</b>								
<b>Landscaping at Bay Trail and Palm Promenade - Phase 1C</b>								
3.2.1H	4	0001	01090	restrooms - city parking		2	EA	\$ 125,000 \$ 250,000
3.2.1H	4	0001	01090	ejection pit	incl			incl
3.2.1H	4	0001	01090	forced main	incl			incl
3.2.1H	1	2000	02200	finegrade and compact - bcde	125,850	SF	\$ 2.00	\$ 251,700
3.2.1H	2	2000	02200	finegrade and compact - palm promenade	45,639	SF	\$ 2.00	\$ 91,278
3.2.1H	2	2000	02200	aggregate base - sidewalks	29,890	SF	\$ 4.00	\$ 119,560
3.2.1H	1	2000	02200	topsoil - 24" - bcde	9,330	CY	\$ 95.00	\$ 886,350
3.2.1H	2	2000	02200	topsoil - 24" - planted areas - palm promenade	3,390	CY	\$ 95.00	\$ 322,050
3.2.1H	2	2000	02200	topsoil - trees - canary palms	870	CY	\$ 95.00	\$ 82,650
3.2.1H	2	2010	02550	sidewalk - palm promenade	38,175	SF	\$ 8.00	\$ 305,400
3.2.1H	1	2010	02900	landscaping - bcde	106,191	SF	\$ 12.00	\$ 1,274,292
3.2.1H	1	2010	02900	bay trail - bcde	19,659	SF	\$ 12.00	\$ 235,908
3.2.1H	2	2010	02900	planted areas - palm promenade	45,639	SF	\$ 12.00	\$ 547,668
3.2.1H	2	2010	02900	canary palms - marina boulevard	108	EA	\$ 11,000.00	\$ 1,188,000
3.2.1H	2	2010	02900	sand root bed	2,300	TN	\$ 50.00	\$ 115,000
3.2.1H	2	2010	02900	french drain	1,975	LF	\$ 65.00	\$ 128,375
3.2.1H	3	2010	02900	canary palms - median	8	EA	\$ 11,000.00	\$ 88,000
3.2.1H	3	2010	02900	sand root bed - median	350	TN	\$ 50.00	\$ 17,500
3.2.1H	3	2010	02900	french drain - median	300	LF	\$ 65.00	\$ 19,500
3.2.1H	3	2010	02230	topsoil - trees - canary palms - median	10	CY	\$ 95.00	\$ 950
3.2.1H	5	2010	2900	Allowance for Improved Bay Trail Connection	1	EA	\$ 468,491.00	\$ 468,491
3.2.1H	1	2020	02600	bay trail lighting - torchieres - bcde	36	EA	\$ 6,500.00	\$ 234,000
<b>Subtotal - Landscaping at Bay Trail and Palm Promenade Phase 1C</b>								<b>\$ 6,626,672</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 1,259,068</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 59,143</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 7,944,883</b>
<b>Soft Costs - 20%</b>								<b>\$ 1,588,977</b>
<b>Total</b>								<b>\$ 9,533,859</b>

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

Prepared for: City of San Francisco by ROMA Design Group

FEBRUARY 22, 2011

SAN FRANCISCO BAY

OYSTER COVE MARINA

OYSTER POINT MARINA PLAZA

PHASE 2, 3 & 4  
DEVELOPMENT AREA

CRESCENT PARK  
AND BEACH

WEST MARINA BUILDINGS

OYSTER POINT MARINA

FERRY TERMINAL

OAK BARNHARTS BUILDINGS

BOAT  
SLIP

FUTURE HOTEL  
DEVELOPMENT SITE  
INTERIM BOAT STORAGE

FLEXIBLE-USE  
RECREATIONAL PLAYFIELDS

OFFICE / R&D CAMPUS  
(PHASE 1)

BAY TRAIL

TRANSFORMER  
ELECTRIC BUILDING

0 100 200  
FEET



## FEBRUARY 22, 2011



**Exhibit 3.2.2**

**Phase ID Site and Infrastructure Improvements: Description and Cost**

### **EXHIBIT 3.2.2A: Clay Cap Repair at Conveyed Property**

The eastern peninsula of Oyster Point was formerly operated as a municipal (Class III) landfill starting in the 1950s. The landfill was closed in the 1970s in accordance with the State of California Regional Water Quality Control Board (RWQCB) regulatory guidelines that governed at the time. This closure was completed prior to the adoption of California Code of Regulations Title 27, which currently regulates Class III landfill closures. In June 2000, the RWQCB issued Order No. 00-046 which states that where new development is planned of a closed Class III landfill, a cap shall be placed on the landfill that meets the applicable post-closure maintenance requirements outlined in Title 27.

In February 2009, Treadwell and Rollo issued a report entitled “Geotechnical Investigation of the Landfill Cover, Oyster Point Landfill,” which outlines modifications to the clay cap necessary to meet the requirements of Title 27. These modifications include increasing the thickness of the Landfill Cover in approximately seven areas, increasing the thickness of the Low Hydraulic Conductivity Layer (clay layer) in approximately four areas, and reducing the permeability of the Low Hydraulic Conductivity Layer in one area (this also could be accomplished by thickening the clay layer).

The prescriptive cap/cover designated in Title 27, Section 21090 for Class III landfills consists of the following layers, from top to bottom:

- Erosion-resistant layer (via vegetative layer): at least one foot of soil that contains no waste and is capable of sustaining native or other plant growth
- Low hydraulic conductivity layer: at least one foot of soil containing no waste or leachate and compacted to attain a hydraulic conductivity of  $1 \times 10^{-6}$  cm/sec
- Foundation layer: at least two feet of soil, contaminated soil, incinerator ash, or other waste materials, provided that such materials have appropriate engineering properties to be used for a foundation layer for construction of the low hydraulic conductivity layer

“Clay Cap Repair at Conveyed Property” refers to all clay cap and landfill cover necessary to be implemented on the Developer Property and as a result of refuse relocation from the Developer Property as described in Exhibit 3.2.2D. Should the area of clay cap and landfill cover necessary as a result of refuse relocation from the Developer Property overlap with the landfill cover improvements shown in Exhibit 3.2.1B and 3.2.1C, then the landfill cover improvements in those Exhibits (3.2.1B and 3.2.1C) will no longer be necessary at the overlap areas as they will be included in the scope of this Exhibit.

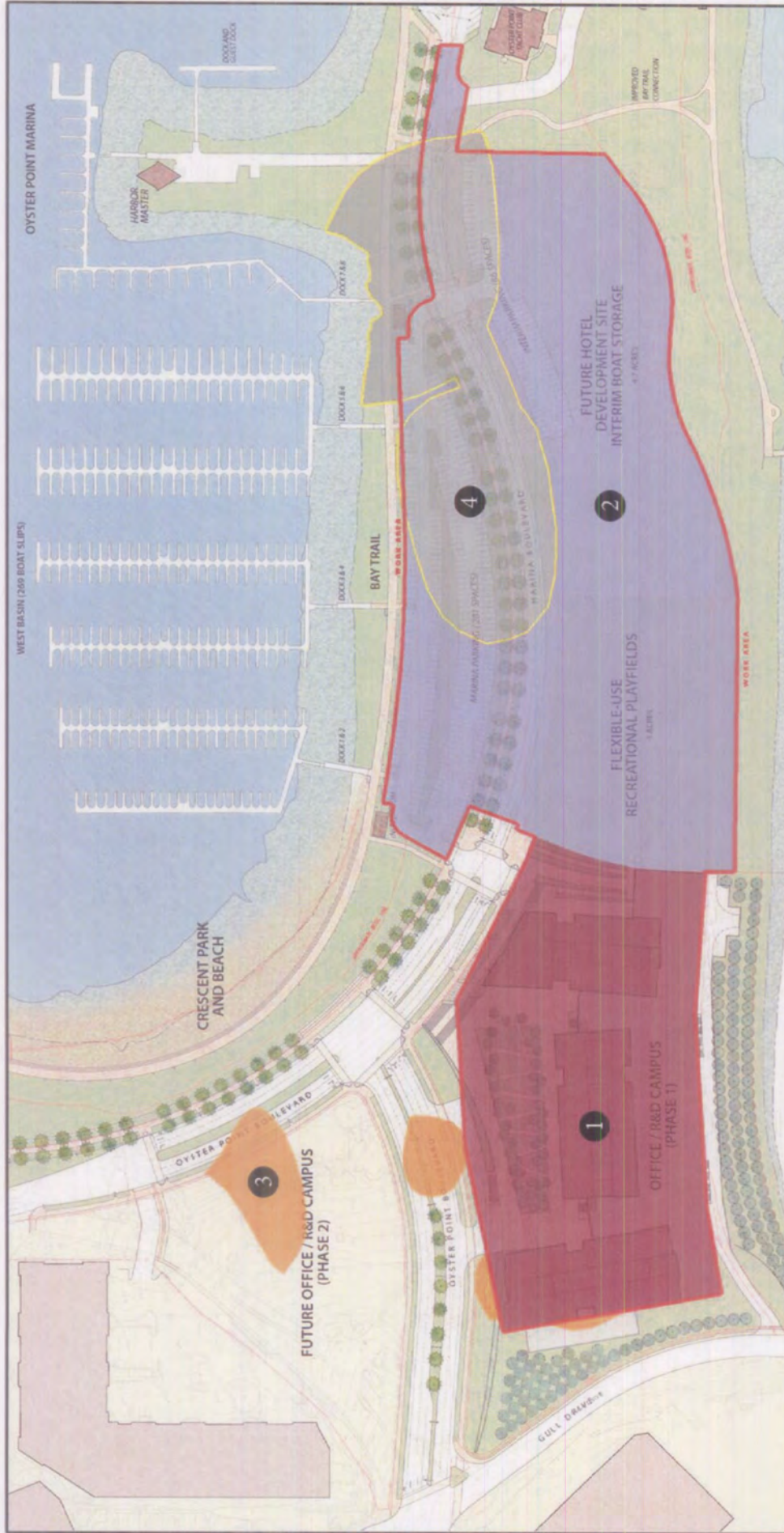
In the areas where refuse relocation from the developer’s property onto the City property is required, the developer will be responsible for restoration of clay cap and grading of the site according to final construction drawings and consistent with the conceptual plans and grading plan prepared by ROMA referenced in the Exhibit 3.2.1. This conceptual grading plan represents the maximum finish elevations as a result of the refuse relocation. Actual finish elevations as a result of refuse relocation may be lower. The final construction plans will establish the exact elevations of the finished improvements. In areas of refuse relocation required by the developer, the developer will be responsible for grading of the site to be no more than 0.2 feet elevation of

finish grades. Conformance of this requirement is to be confirmed by the City within 30 days of completing the work. The developer will not be responsible for grading of the City's property in areas where refuse relocation is not ultimately required. This grading requirement will be utilized both in areas where no top soil will be imported as well as areas where there may be an import of up to 24 inches of top soil.

At the conclusion of refuse relocation operation, the responsibility for site maintenance in its rough graded condition will be the developer's for maximum of three (3) months. It is anticipated that site improvements in Phase IC will commence shortly after site grading has been completed. In the event of site improvements have not commenced within three (3) months of completion of grading, the City shall reimburse the developer for the all ongoing costs after the initial three (3) months for maintenance on the City property.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**






#### KEY NOTES

1. Maroon shading indicates area of New clay cap under parking (up to 223,200 SF). Cross section includes 1'-0" protection layer, 1'-0" low permeability layer, and 2'-0" foundation layer.
2. Purple shading indicates area of New clay cap at refuse deposit area (up to 545,000 SF). Cross section includes 1'-0" protection layer, 1'-0" low permeability layer, and 2'-0" foundation layer.
3. Orange shading indicates areas where landfill cover is less than 4'-0". Final design grades at these areas to compensate; no clay cap repair required.
4. Grey shading indicates areas of clay cap repairs related to other work; see Exhibit 3.2.1B and 3.2.1C

#### GENERAL NOTES

1. Base map provided by ROMA Design Group, October 2010.
2. Geotechnical basis provided in "Geotechnical Investigation of the Landfill Cover Oyster Point Landfill" from Treatwell & Rollo, dated February 13, 2009.

 <b>Hathaway Dinwiddie</b> 100 YEARS OF BUILDING	<b>Oyster Point Site and Improvement</b> South San Francisco, CA	
	<b>Conceptual Design Drawing</b> Exhibit 3.2.2A: Clay Cap Repair at Conveyed Property	
	HATHAWAY DINWIDDIE CONSTRUCTION COMPANY 275 Battery Street Suite 300 San Francisco, CA 94111 Tel: 415.988.2718 Fax: 415.956.5669	2011-03-04 Exhibit <b>3.2.2A</b>

OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Clay Cap Repair at Conveyed Property								
3.2.2A	3	2000	02200	misc soil material - existing on site - see other estimates	*****			*****
3.2.2A	1 and 2	2000	02200	place foundation layer	56,910	CY	\$ 6.00	\$ 341,460
3.2.2A	1	2000	02200	place clay cap - under parking	223,200	SF	\$ 2.00	\$ 446,400
3.2.2A	2	2000	02200	place clay cap - refuse deposit area	545,000	SF	\$ 2.00	\$ 1,090,000
3.2.2A	1 and 2	2000	02200	place protection layer	28,455	CY	\$ 5.00	\$ 142,275
Subtotal - Clay Cap Repair at Conveyed Property								\$ 2,020,135
General Conditions and Markups - 19%								\$ 383,826
GC Bonds - 0.75%								\$ 18,030
Subtotal - CONSTRUCTION HARD COSTS								\$ 2,421,990
Soft Costs - 20%								\$ 484,398
Total								\$ 2,906,388

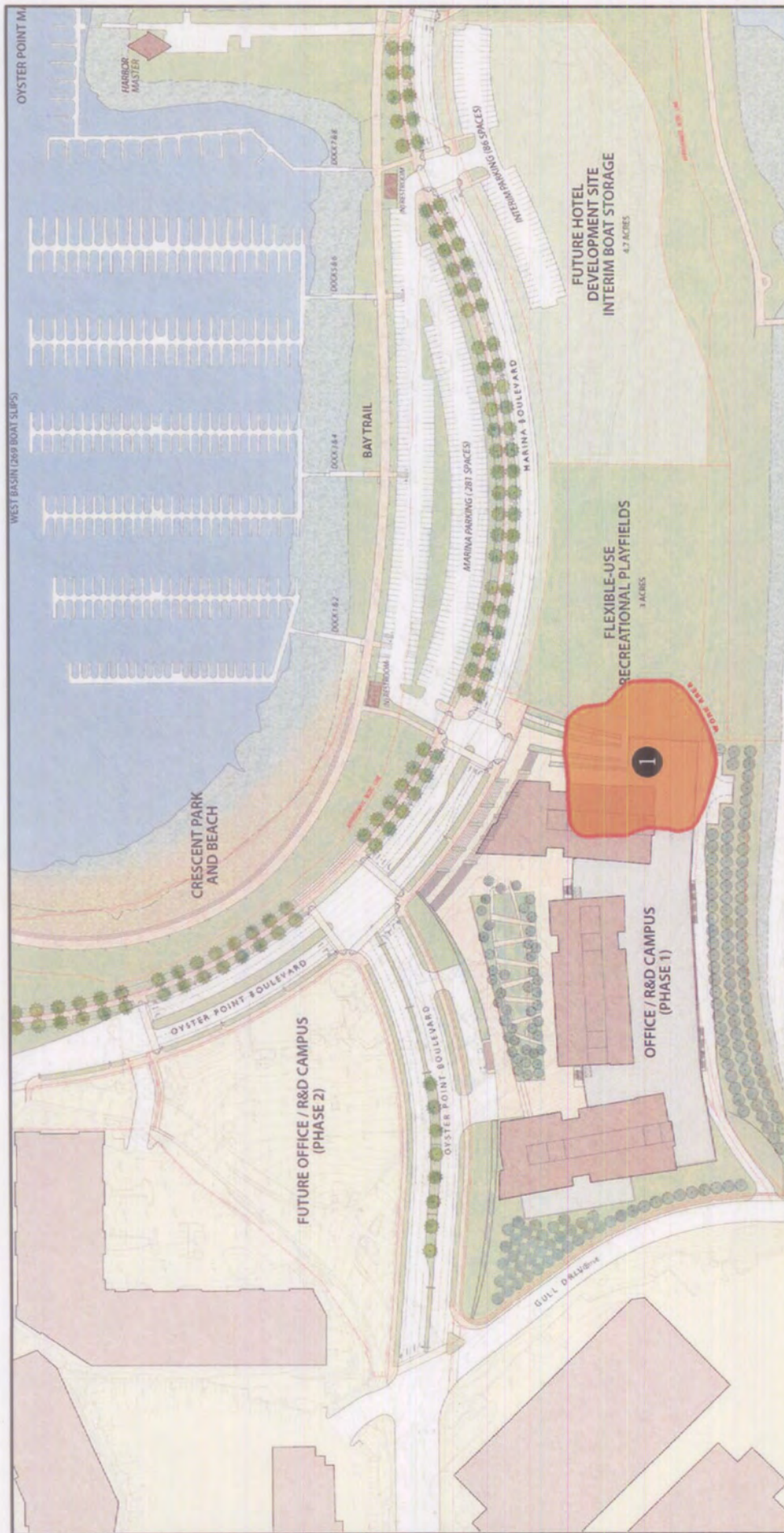
### **EXHIBIT 3.2.2B: Cleanup of Sump 1**

Available documents provide a description of historical landfill operations which included the acceptance and on-site discharge of bulk liquid wastes. Treadwell and Rollo has estimated that 225,000 gallons of these liquid wastes were discharged into a large pit, approximately 20 feet deep located within the landfill which has become identified as Sump 1. In April 2009, Treadwell and Rollo issued a report entitled “Draft Sump 1 Investigation, Former Oyster Point Landfill”, which outlines the current extent and characterization of Sump 1 based on document review and field investigation. “Cleanup of Sump 1” describes the remediation of the area identified in the Treadwell and Rollo report as “Sump 1”. The Cleanup of Sump 1 could be accomplished by either of two potential options for remediation. These two options are described in a subsequent memorandum by Treadwell and Rollo, titled “Sumps 1 and 2: Cost Estimates for Development-related Remediation”, and dated March 20, 2009, as the “In-situ Source Removal” alternative and “Excavation and Disposal” alternative. Based on the conditions found before and during construction, the preferred option for remediation will be determined by S/SKS. An estimate of the more expensive option has been used as the basis for costs identified in this Exhibit.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages.**

**These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



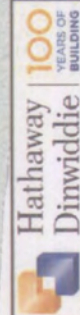


#### KEY NOTES

I. Shaded area indicates conceptual extent of Sump 1. Estimated volume = 10,000 CY.

#### GENERAL NOTES

I. Base map provided by ROHA Design Group, October 2010.



Oyster Point Site and Improvement  
South San Francisco, CA

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CONSTRUCTION COMPANY

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fax: 415.956.5669

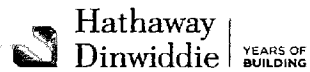
Conceptual Design Drawing  
Exhibit 3.2.2B: Cleanup of Sump 1

SKS Investments

2011-03-04

Exhibit

3.2.2B



**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**

**LINE ITEM DETAIL**

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Cleanup of Sump I								
3.2.2B		I	0001	01090 industrial sump mitigation	10,000	CY	\$ 250.00	\$ 2,500,000
Subtotal - Cleanup of Sump I								\$ 2,500,000
General Conditions and Markups - 19%								\$ 475,000
GC Bonds - 0.75%								\$ 22,313
Subtotal - CONSTRUCTION HARD COSTS								\$ 2,997,313
Soft Costs - 20%								\$ 599,463
Total								\$ 3,596,775

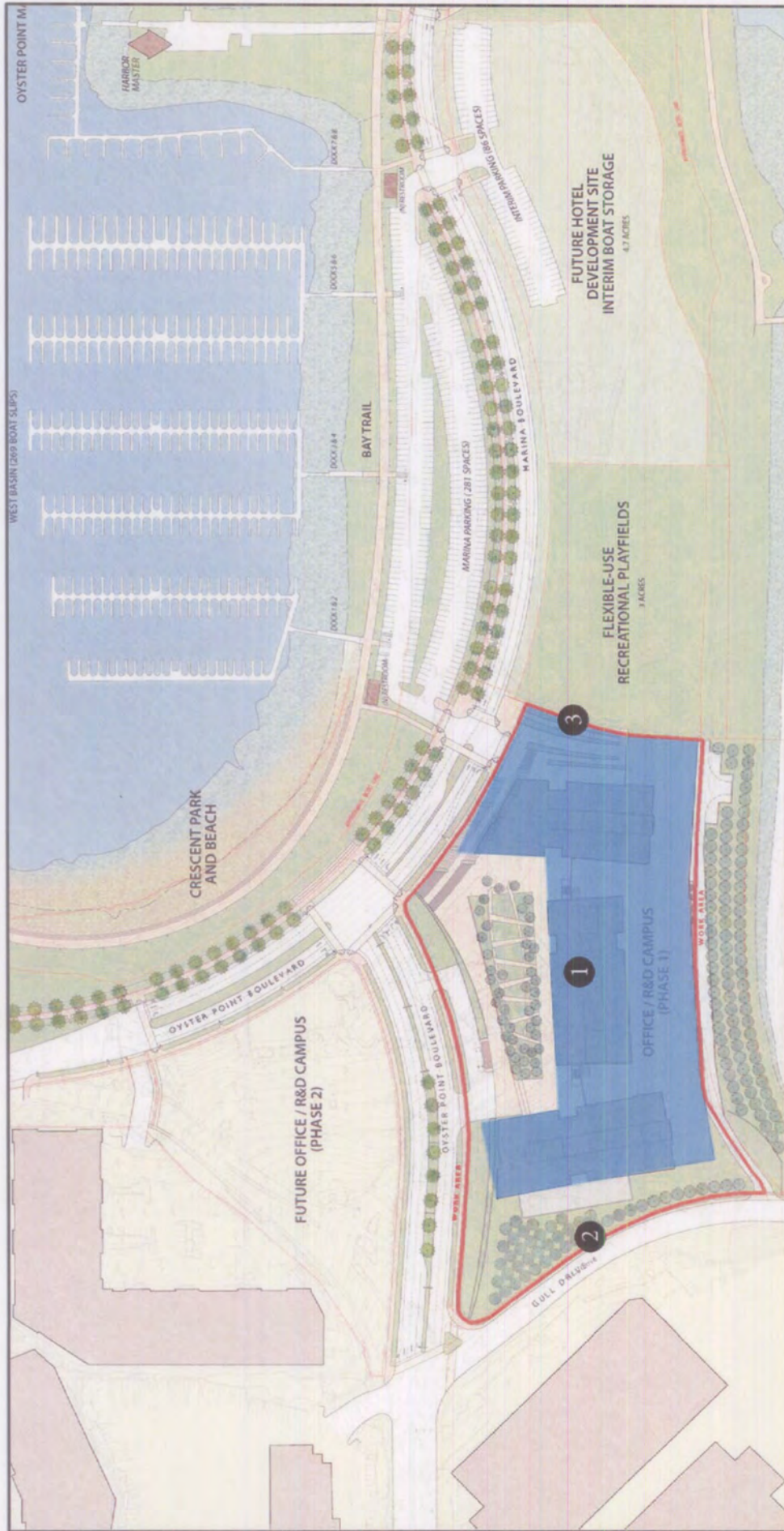
### **EXHIBIT 3.2.2C: Methane Systems at Conveyed Property**

In order for new development to be constructed on closed Class III landfills, Title 27 of the California Code of Regulations requires that appropriate action be taken to mitigate and monitor the effects of landfill gas accumulation (primarily methane) in on-site structures. Treadwell and Rollo prepared a conceptual design for a methane mitigation system at the structures in Phase I and Phase II of the Developer Project which will be constructed on the former landfill area, which is described in a memorandum titled "Methane Mitigation Systems: Description and Unit Costs, Oyster Point Landfill" dated January 29, 2009. This system consists of vapor barrier membranes beneath the structural building slabs, a horizontal collection and venting system installed below the membrane, utility trench cutoffs that will seal the locations where utilities enter the buildings, perimeter cutoff trench to mitigate offsite methane migration, and a gas detection and monitoring system.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages.**

**These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



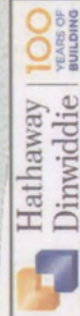


**KEY NOTES**

1. Shaded area (up to 223,200 SF) indicates methane mitigation at building. Methane rock, collection/venting, geomembrane gas barrier, and methane detection system are included.
2. Replacement of approximately 1,000 LF of methane cutoff trench with methane monitoring.
3. Existing ground water monitoring wells on site to be relocated. Quantity = 8 EA.

**GENERAL NOTES**

1. Base map provided by ROMA Design Group, October 2010.
2. Geotechnical basis provided in "Methane Mitigation System: Description and Unit Costs" by Treadwell & Rollo, dated January 29, 2009.



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**Conceptual Design Drawing  
Exhibit 3.2.2C: Methane Systems at Conveyed Property**

**SKS Investments**

2011-03-04

Exhibit

**3.2.2C**

OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
<b>Methane Systems at Conveyed Property</b>								
3.2.2C	3	2000	02920	relocate ground water monitoring wells	8	EA	\$ 12,500.00	\$ 100,000
3.2.2C	2	2000	02920	relocate methane cutoff trench	1,000	LF	\$ 250.00	\$ 250,000
3.2.2C	2	2000	02920	methane monitoring at trench	1	LS	\$ 75,000.00	\$ 75,000
3.2.2C	1	2000	02920	methane rock	19,840	TN	\$ 65.00	\$ 1,289,600
3.2.2C	1	2000	02920	methane collection and venting system	223,200	SF	\$ 2.75	\$ 613,800
3.2.2C	1	2000	02920	geomembrane gas barrier	223,200	SF	\$ 4.75	\$ 1,060,200
3.2.2C	1	2000	02920	geotextile fabric	incl			incl
3.2.2C	1	2000	02920	methane detection system	1	LS	\$ 75,000.00	\$ 75,000
<b>Subtotal - Methane Systems at Conveyed Property</b>								<b>\$ 3,463,600</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 658,084</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 30,913</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 4,152,597</b>
<b>Soft Costs - 20%</b>								<b>\$ 830,519</b>
<b>Total</b>								<b>\$ 4,983,116</b>



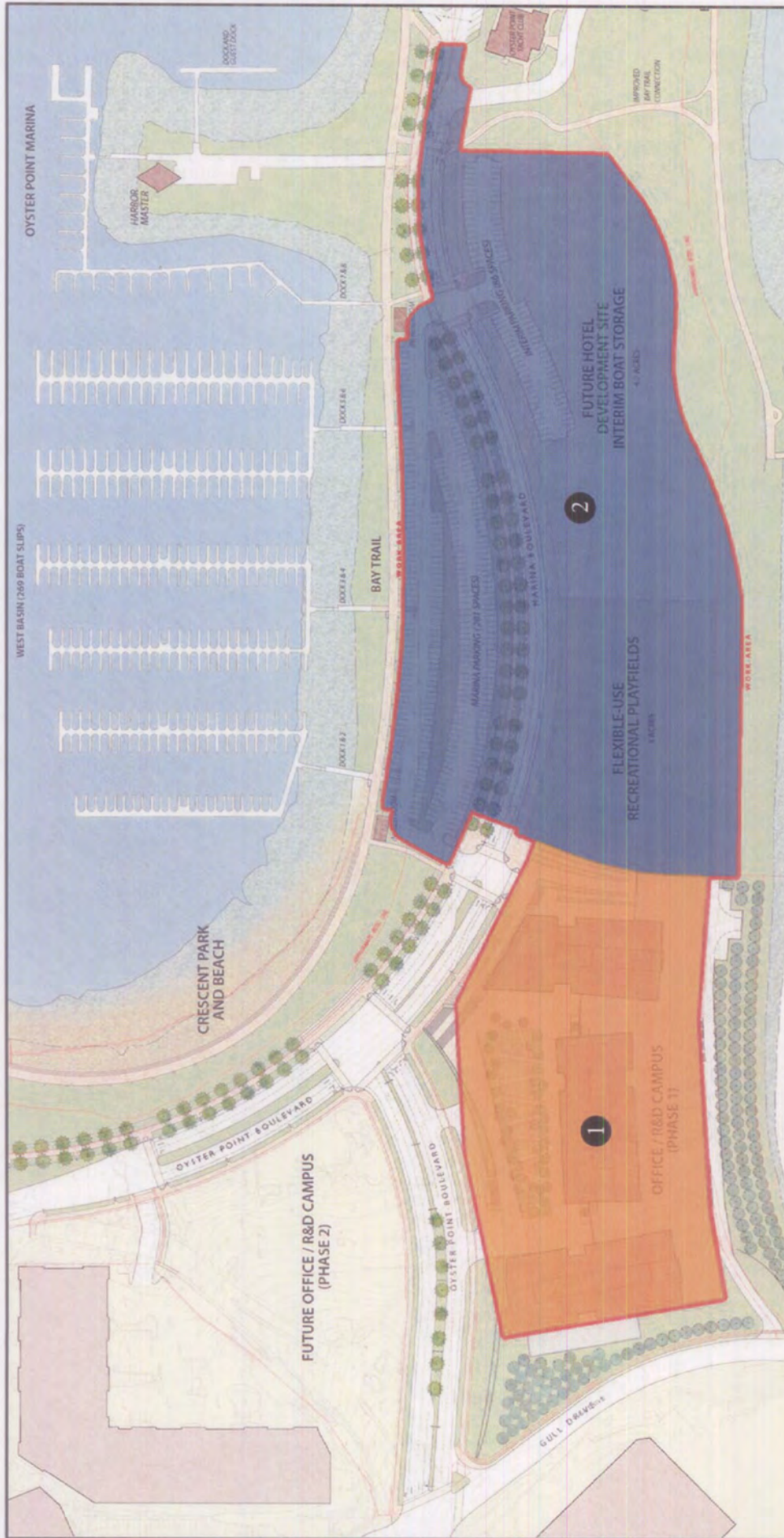
**EXHIBIT 3.2.2D: Relocation of Refuse under Buildings at Conveyed Property**

In order for structures, streets, utilities and other improvements to be located at the grades and elevations desired by both the City and the Developer, onsite grading must be completed. At certain areas of the landfill this grading requires the relocation of refuse from below planned structures and adjacent areas to other areas on site such as the recreation fields, marina parking areas and/or hotel site. This refuse relocation process will include proper excavation, transport, temporary covering, compaction and re-closure of the landfill cover. As the exact volume of relocated refuse after compaction is unknown, the assumed grading plan represents a conservative estimate of the maximum envelop for grade elevations.

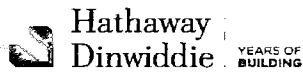
Landfill cover and grading associated with this refuse relocation is included in Exhibit 3.2.2A and all provision regarding grading shall apply to related work in this exhibit.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages.**

**These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



<b>KEY NOTES</b> 1. Refuse collected from excavation for the New building (up to 90,000 CY) is placed in the fill zone in the shaded area. The refuse relocation process requires a temporary cover operation - conducted with tarps - for in-process areas (up to 876,200 SF for the entire relocation operation). At the completion of refuse relocation, design grades in the shaded area are achieved by soil backfill (up to 60,000 CY). Clean soil to be offhauled if necessary (up to 21,600 CY) has been included.  <b>GENERAL NOTES</b> 1. Base map provided by ROMA Design Group, October 2010. 2. The fill zone represents the maximum area necessary for refuse relocation. Actual area utilized may be less. 3. Design grades are based upon "Conceptual Grading Plan" provided by Wilsey Ham Engineers, dated October 12, 2010.	<b>Hathaway   100 YEARS OF BUILDING</b> <b>Dinwiddie</b> HATHAWAY DINWIDDIE CONSTRUCTION COMPANY 275 Battery Street Suite 300 San Francisco, CA 94111 tel: 415.986.2718 fax: 415.956.5669		<b>Oyster Point Site and Improvement</b> South San Francisco, CA  <b>Conceptual Design Drawing</b> <b>Exhibit 3.2.D: Relocation of Refuse</b>  <b>SKS Investments</b>	
	2011.03.04		3.2.D	
	Exhibit		3.2.D	



**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**

**LINE ITEM DETAIL**

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Relocation of Refuse under Buildings at Conveyed Property								
3.2.2D	I	2000	02200	collect refuse - building	90,000	CY	\$ 7.50	\$ 675,000
3.2.2D	I	2000	02200	place refuse - developer parcel	90,000	CY	\$ 7.50	\$ 675,000
3.2.2D	I	2000	02200	tarping	916,200	SF	\$ 0.35	\$ 320,670
3.2.2D	I	2000	02200	mass grading - cut - collect landfill protection layer	155,000	CY	\$ 4.25	\$ 658,750
3.2.2D	I	2000	02200	export clean fill	21,600	CY	\$ 20.00	\$ 432,000
3.2.2D	I	2000	02200	fill to grade - city parcel	60,000	CY	\$ 4.25	\$ 255,000
3.2.2D	I	2000	02200	fill to grade - pad elevation - parking cut	33,000	CY	\$ 8.00	\$ 264,000
Subtotal - Relocation of Refuse under Buildings at Conveyed Property								\$ 3,280,420
General Conditions and Markups - 19%								\$ 623,280
GC Bonds - 0.75%								\$ 29,278
Subtotal - CONSTRUCTION HARD COSTS								\$ 3,932,978
Soft Costs - 20%								\$ 786,596
Total								\$ 4,719,573

**Exhibit 3.3.1**

Phase IID, IIID, and IVD Site and Infrastructure Improvements: Description and Cost

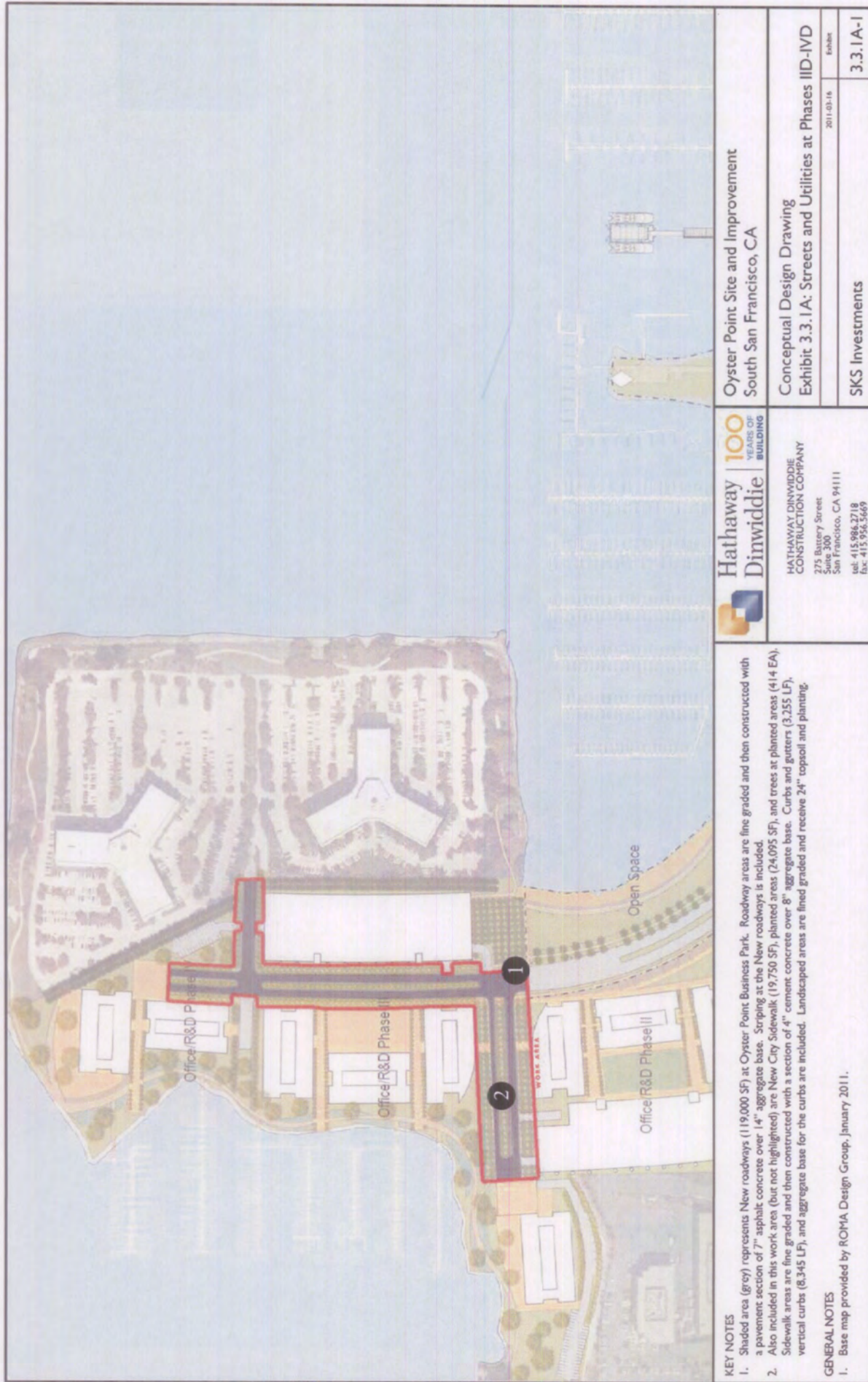
### **EXHIBIT 3.3.1A: Streets and Utilities at Phases IID - IVD**

“Streets and Utilities at Phases IID - IVD” refers to the components listed below located along the new Oyster Point Blvd. extending north through the Business Park, adjacent to Phases III and IV of the Developer Project. To allow for the desired configuration of parcels, portions of Oyster Point Blvd and Marina Blvd and related utilities will be relocated. The construction of the new streets and utilities includes the following components:

- (a) temporary roads
- (b) grinding and off haul(if necessary) of existing paving
- (c) rough grading
- (d) import/export soil
- (e) fine grading and compaction
- (f) road base
- (g) asphalt paving and striping
- (h) concrete curbs, gutters sidewalks, street trees, and landscaping on each side of roadway with aggregate base at curbs and sidewalks
- (i) islands with associated topsoil and curbs
- (j) traffic signalization and signage
- (k) electrical road and sidewalk lighting
- (l) temporary utilities
- (m) storm sewer (drain piping, catch basins, outfall interceptors, manholes and curb cuts)
- (n) sanitary sewer (piping, forced main, and manholes)
- (o) domestic water line and vaults
- (p) fire service stubs and hydrants
- (q) gas lines, and
- (r) joint utility trench with electrical prim conduits and pull boxes and telecom conduits

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





#### KEY NOTES

1. Shaded area (grey) represents New roadways (119,000 SF) at Oyster Point Business Park. Roadway areas are fine graded and then constructed with a pavement section of 7" asphalt concrete over 14" aggregate base. Striping at the New roadways is included.
2. Also included in this work area (but not highlighted) are New City Sidewalk (19,750 SF), planted areas (24,095 SF), and trees at planted areas (414 EA). Sidewalk areas are fine graded and then constructed with a section of 4" cement concrete over 8" aggregate base. Curbs and gutters (3,255 LF), vertical curbs (8,345 LF), and aggregate base for the curbs are included. Landscaped areas are fine graded and receive 24" topsoil and planting.

#### GENERAL NOTES

1. Base map provided by ROMA Design Group, January 2011.



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Conceptual Design Drawing  
Exhibit 3.3.1A: Streets and Utilities at Phases IID-IVD

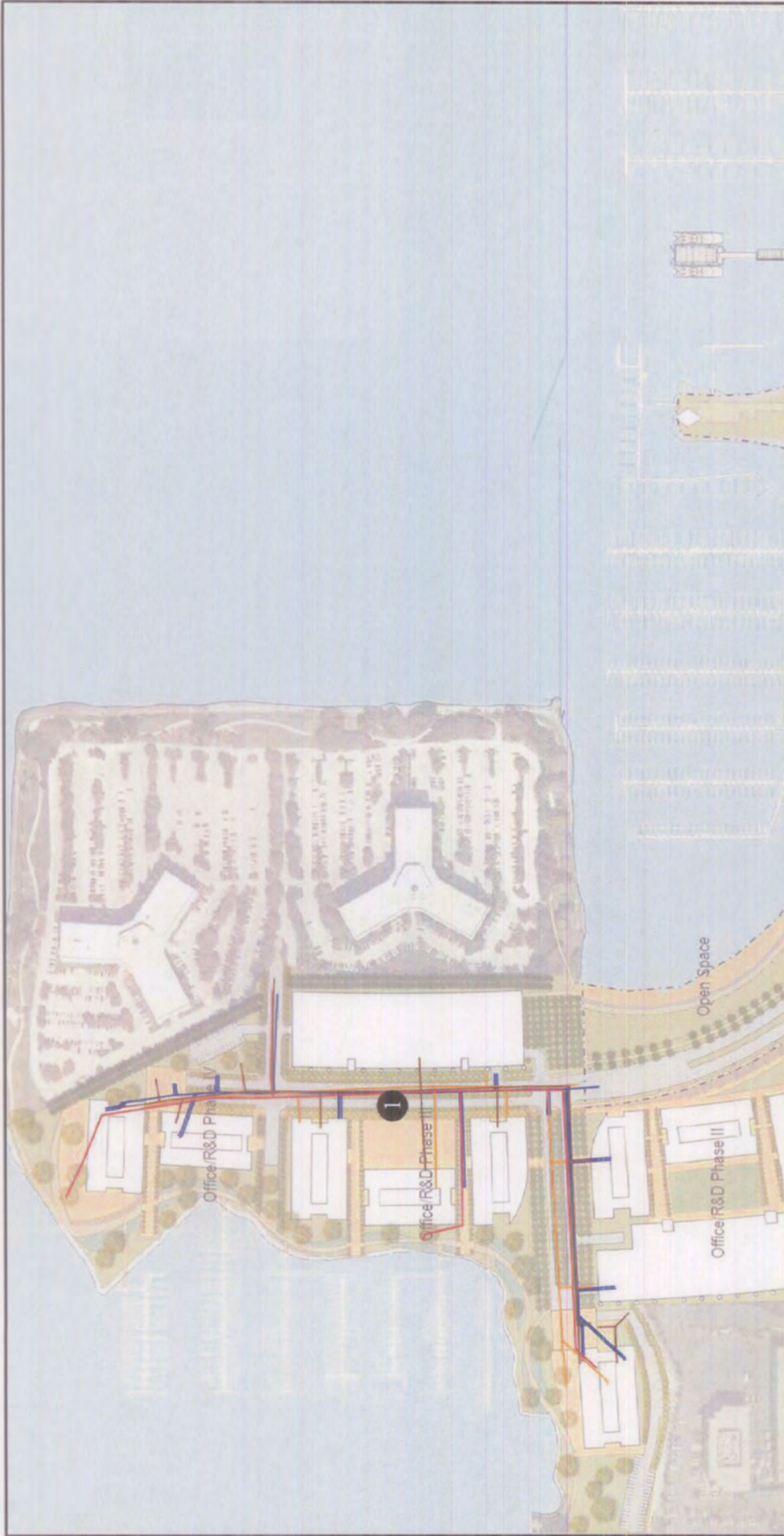
SKS Investments

2011-03-16

Exhibit

3.3.1A-I





<p><b>KEY NOTES</b></p> <p>1. Phase II/IV New utility work. Blue shading represents the domestic water system, which consists of 4,139 LF of domestic water line, 1,486 LF of fire service stubs, and 8 fire hydrants. Red shading represents the storm drain system, which consists of 2,847 LF of storm drain piping, 23 manholes, and 2 catch basins. Orange shading represents the joint trench (2,808 LF), which includes gas line, telecommunications pathways, electrical conduit, and 8 pull boxes. Green shading represents the sanitary gravity piping (2,935 LF). 21 sanitary manholes are also included.</p> <p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, January 2011.</p> <p>2. An allowance for temporary utilities while the New work is being installed is included.</p>	<p><b>Hathaway   100 YEARS OF BUILDING   Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE CONSTRUCTION COMPANY</p> <p>275 Battery Street Suite 400 San Francisco, CA 94111</p> <p>tel: 415.986.2718 fax: 415.986.3669</p>	<p>Oyster Point Site and Improvement South San Francisco, CA</p> <p>Conceptual Design Drawing Exhibit 3.3.1A: Streets and Utilities at Phases IID-IVD</p>
<p>SKS Investments</p>	<p>2011-03-16</p>	<p>Exhibit 3.3.1A-2</p>



**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**

**LINE ITEM DETAIL**

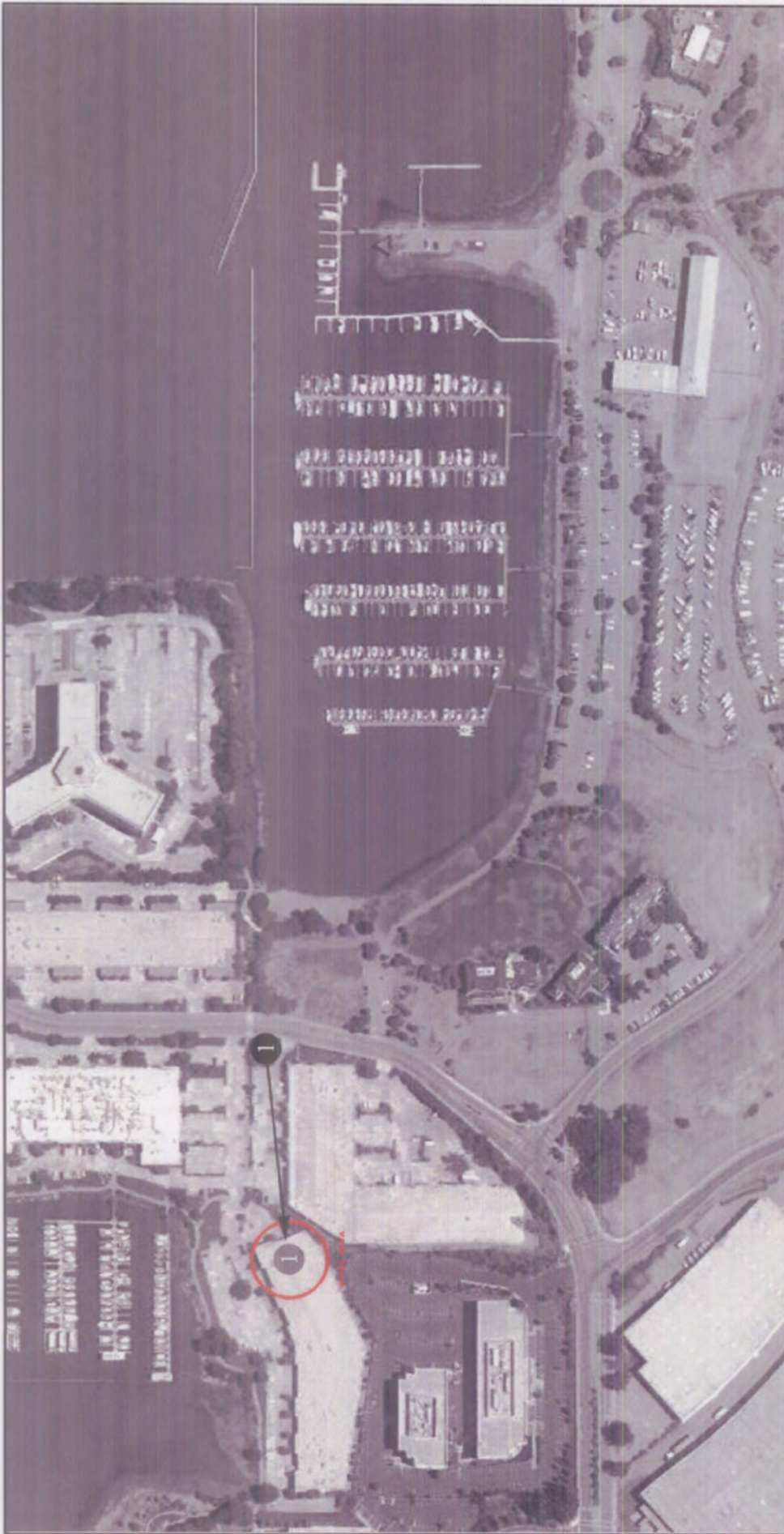
2/25/2011 (revised 3/15/2011)

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
<b>DIAGRAM NOTE</b>								
<b>Streets and Utilities at Phases IID - IVD</b>								
3.3.1A-1		1	2000 02250	paving and aggregate base - roadways and parking	119,000	SF	\$ 10.00	\$ 1,190,000
3.3.1A-1		1	2000 02250	patch paving - utility cuts	excl	SF	\$ 15.00	excl
3.3.1A-1		2	2000 02200	aggregate base - city sidewalk	19,750	SF	\$ 4.00	\$ 79,000
3.3.1A-1		2	2000 02200	aggregate base at curbs	11,600	LF	\$ 8.00	\$ 92,800
3.3.1A-1		1	2000 02270	sediment basin	excl			excl
3.3.1A-1		1	2000 02270	a.o. swppp controls - see section 02200	excl			excl
3.3.1A-1		1	2000 02270	installation of swppp controls - see section 02200	incl			incl
3.3.1A-1		1	2000 02270	silt fences	incl			incl
3.3.1A-1		1	2000 02270	straw wattles	incl			incl
3.3.1A-1		1	2000 02270	straw blankets	incl			incl
3.3.1A-1		1	2000 02270	rock wattles	incl			incl
3.3.1A-1		1	2000 02270	filter fabric	incl			incl
3.3.1A-1		1	2000 02270	rock at entrance	incl			incl
3.3.1A-1		1	2000 02270	winterization/ stabilization rock	incl			incl
3.3.1A-1		1	2000 02270	summer maintenance	incl			incl
3.3.1A-1		1	2000 02270	winter maintenance	incl			incl
3.3.1A-1		1	2000 02270	a.o. best management practices	incl			incl
3.3.1A-2		1	2020 02600	temp utilities	1	LS	\$ 150,000.00	\$ 150,000
3.3.1A-2		1	2020 02600	storm drain piping	2,847	LF	\$ 185.00	\$ 526,695
3.3.1A-2		1	2020 02600	storm catch basins	2	EA	\$ 2,500.00	\$ 5,000
3.3.1A-2		1	2020 02600	storm catch manholes	23	EA	\$ 6,500.00	\$ 149,500
3.3.1A-2		1	2020 02600	sanitary piping	2,935	LF	\$ 185.00	\$ 542,975
3.3.1A-2		1	2020 02600	forced main	572	LF	\$ 225.00	\$ 128,700
3.3.1A-2		1	2020 02600	sanitary manholes	21	EA	\$ 6,500.00	\$ 136,500
3.3.1A-2		1	2020 02600	domestic water line	4,139	LF	\$ 125.00	\$ 517,375
3.3.1A-2		1	2020 02600	fire service stubs	1,486	LF	\$ 115.00	\$ 170,890
3.3.1A-2		1	2020 02600	fire hydrants	8	EA	\$ 7,500.00	\$ 60,000
3.3.1A-2		1	2020 02600	gas line	2,808	LF	\$ 50.00	\$ 140,400
3.3.1A-2		1	2020 02600	trench and backfill for joint trench	2,808	LF	\$ 150.00	\$ 421,200
3.3.1A-2		1	2020 02600	electrical prim conduits	2,808	LF	\$ 60.00	\$ 168,480
3.3.1A-2		1	2020 02600	electrical prim pull boxes	8	EA	\$ 6,500.00	\$ 52,000
3.3.1A-1		1	2020 02600	electrical road and sidewalk lighting - marina boulevard	34	EA	\$ 8,500.00	\$ 289,000
3.3.1A-2		1	2020 02600	telecommunications - 6 ea x 4" in joint trench	2,808	LF	\$ 60.00	\$ 168,480
3.3.1A-1		1	2010 02515	road striping	1	LS	\$ 35,000.00	\$ 35,000
3.3.1A-1		2	2010 02550	city sidewalk	19,750	SF	\$ 8.00	\$ 158,000
3.3.1A-1		2	2010 02550	vertical curbs	8,345	LF	\$ 12.00	\$ 100,140
3.3.1A-1		2	2010 02550	curb and gutter	3,255	LF	\$ 16.00	\$ 52,080
3.3.1A-1		2	2010 02900	planted areas - oyster point boulevard	24,095	SF	\$ 12.00	\$ 289,140
3.3.1A-1		2	2010 02900	trees	414	EA	\$ 6,500.00	\$ 2,691,000
<b>Subtotal - Streets and Utilities at Phases IID - IVD</b>								<b>\$ 8,314,355</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 1,579,727</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 74,206</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 9,968,288</b>
<b>Soft Costs - 20%</b>								<b>\$ 1,993,658</b>
<b>Total</b>								<b>\$ 11,961,946</b>

### **EXHIBIT 3.3.1B: Sewer Pump Station 1**

To allow for the reconfigured streets and the increased sanitary sewer demand associated with Phase II, III and IV of the Developer Project, Sewer Pump Station No. 1 (currently located on the west side of Oyster Point Blvd adjacent to the existing buildings at 377 and 383 Oyster Point Blvd) will be relocated and upgraded to accommodate an increase in capacity.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



**KEY NOTES**  
 1. Existing pump station on west side of Oyster Point Boulevard to be upgraded in capacity and relocated to vicinity of ghosted key note.

**GENERAL NOTES**  
 1. Base map from Google Maps.



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Oyster Point Site and Improvement  
 South San Francisco, CA

Conceptual Design Drawing  
 Exhibit 3.3.1B: Relocation of Sewer Pump Station No. 1

2011.03.04  
 Exhibit

SKS Investments

3.3.1B

OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

2/25/2011 (revised 3/15/2011)

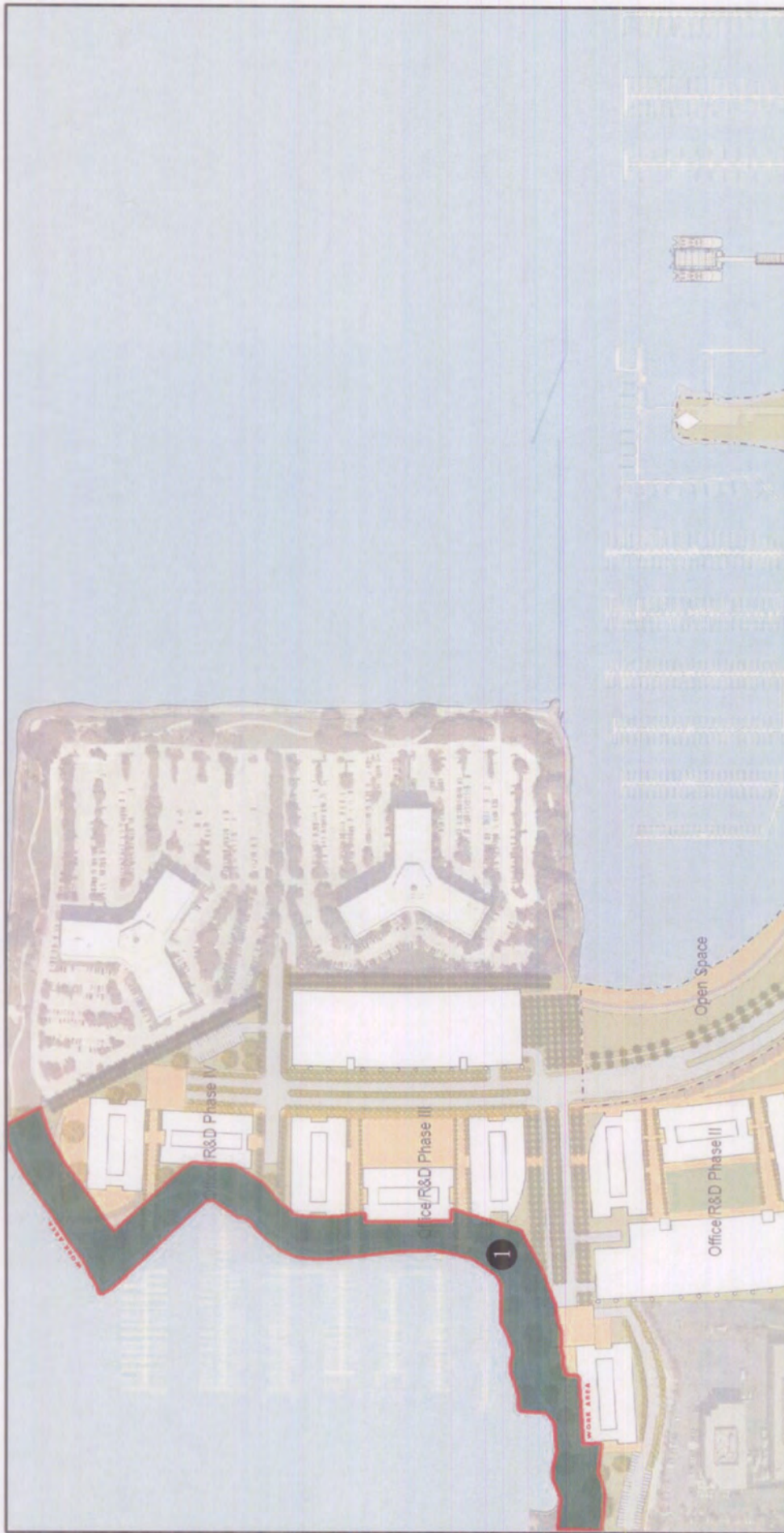
EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Relocation of Sewer Pump Station No. 1								
3.3.1B	I	2020	02600	pump station - office park		I	EA	\$ 3,400,000.00 \$ 3,400,000
Subtotal - Relocation of Sewer Pump Station No. 1								\$ 3,400,000
General Conditions and Markups - 19%								\$ 646,000
GC Bonds - 0.75%								\$ 30,345
Subtotal - CONSTRUCTION HARD COSTS								\$ 4,076,345
Soft Costs - 20%								\$ 815,269
Total								\$ 4,891,614

**EXHIBIT 3.3.1C: Landscaping at BCDC Area at Phases IID - IVD**

These improvements include an allowance for landscaping and Bay Trail construction along the BCDC area in Phases IID – IVD.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





**KEY NOTES**  
 I. Area highlighted (116,000 SF) improvements at the BCDC area at Phases II-IV. This area to be fine graded and receive 18" topsoil and planting. An allowance for additional topsoil at New trees is included.

**GENERAL NOTES**  
 I. Background image based upon ROMA Design Group plans, February 2009.

<b>Hathaway</b> 100 YEARS OF BUILDING <b>Dinwiddie</b> HATHAWAY DINWIDDIE CONSTRUCTION COMPANY 275 Battery Street Suite 300 San Francisco, CA 94111 tel: 415.986.2718 fax: 415.956.5669	Oyster Point Site and Improvement South San Francisco, CA	
	Conceptual Design Drawing Exhibit 3.3.1C: Landscaping at BCDC Area in Phases II-IV	
	SKS Investments	2011-03-16 Exhibit 3.3.1C



OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Landscaping at BCDC Area at Phases IID - IVD								
3.3.1C	I	2000	02200	finegrade and compact - bcde	116,000	SF	\$ 2.00	\$ 232,000
3.3.1C	I	2010	02230	additional topsoil - trees - bcde	4,221	CY	\$ 95.00	\$ 400,995
3.3.1C	I	2010	02230	topsoil - bcde	6,445	CY	\$ 95.00	\$ 612,275
3.3.1C	I	2010	02900	landscaping and trails - bcde	116,000	SF	\$ 12.00	\$ 1,392,000
Subtotal - Landscaping at BCDC Area in OPBP								\$ 2,637,270
General Conditions and Markups - 19%								\$ 501,081
GC Bonds - 0.75%								\$ 23,538
Subtotal - CONSTRUCTION HARD COSTS								\$ 3,161,889
Soft Costs - 20%								\$ 632,378
Total								\$ 3,794,267

### **Exhibit 3.3.2**

#### **Phase IIC Site and Infrastructure Improvements: Description and Cost**

### **EXHIBIT 3.3.2A: New Sewer Pump Station at Marina**

A new Sewer Pump Station will be required at the Marina in order to accommodate an increase in the sanitary sewer demand associated with the future hotel and retail/restaurant development at the Oyster Point Marina.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**



OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
New Sewer Pump Station at Marina								
3.3.2A	I	2020	02600	pump station - marina		EA	\$ 1,850,000.00	\$ 1,850,000
Subtotal - New Sewer Pump Station at Marina								\$ 1,850,000
General Conditions and Markups - 19%								\$ 351,500
GC Bonds - 0.75%								\$ 16,511
Subtotal - CONSTRUCTION HARD COSTS								\$ 2,218,011
Soft Costs - 20%								\$ 443,602
Total								\$ 2,661,614

### **EXHIBIT 3.3.2B: Clay Cap Repair at City Parcels IIC**

The eastern peninsula of Oyster Point was formerly operated as a municipal (Class III) landfill starting in the 1950s. The landfill was closed in the 1970s in accordance with the State of California Regional Water Quality Control Board (RWQCB) regulatory guidelines that governed at the time. This closure was completed prior to the adoption of California Code of Regulations Title 27, which currently regulates Class III landfill closures. In June 2000, the RWQCB issued Order No. 00-046 which states that where new development is planned of a closed Class III landfill, a cap shall be placed on the landfill that meets the applicable post-closure maintenance requirements outlined in Title 27.

In February 2009, Treadwell and Rollo issued a report entitled “Geotechnical Investigation of the Landfill Cover, Oyster Point Landfill,” which outlines modifications to the clay cap necessary to meet the requirements of Title 27. These modifications include increasing the thickness of the Landfill Cover in approximately seven areas, increasing the thickness of the Low Hydraulic Conductivity Layer (clay layer) in approximately four areas, and reducing the permeability of the Low Hydraulic Conductivity Layer in one area (this also could be accomplished by thickening the clay layer).

The prescriptive cap/cover designated in Title 27, Section 21090 for Class III landfills consists of the following layers, from top to bottom:

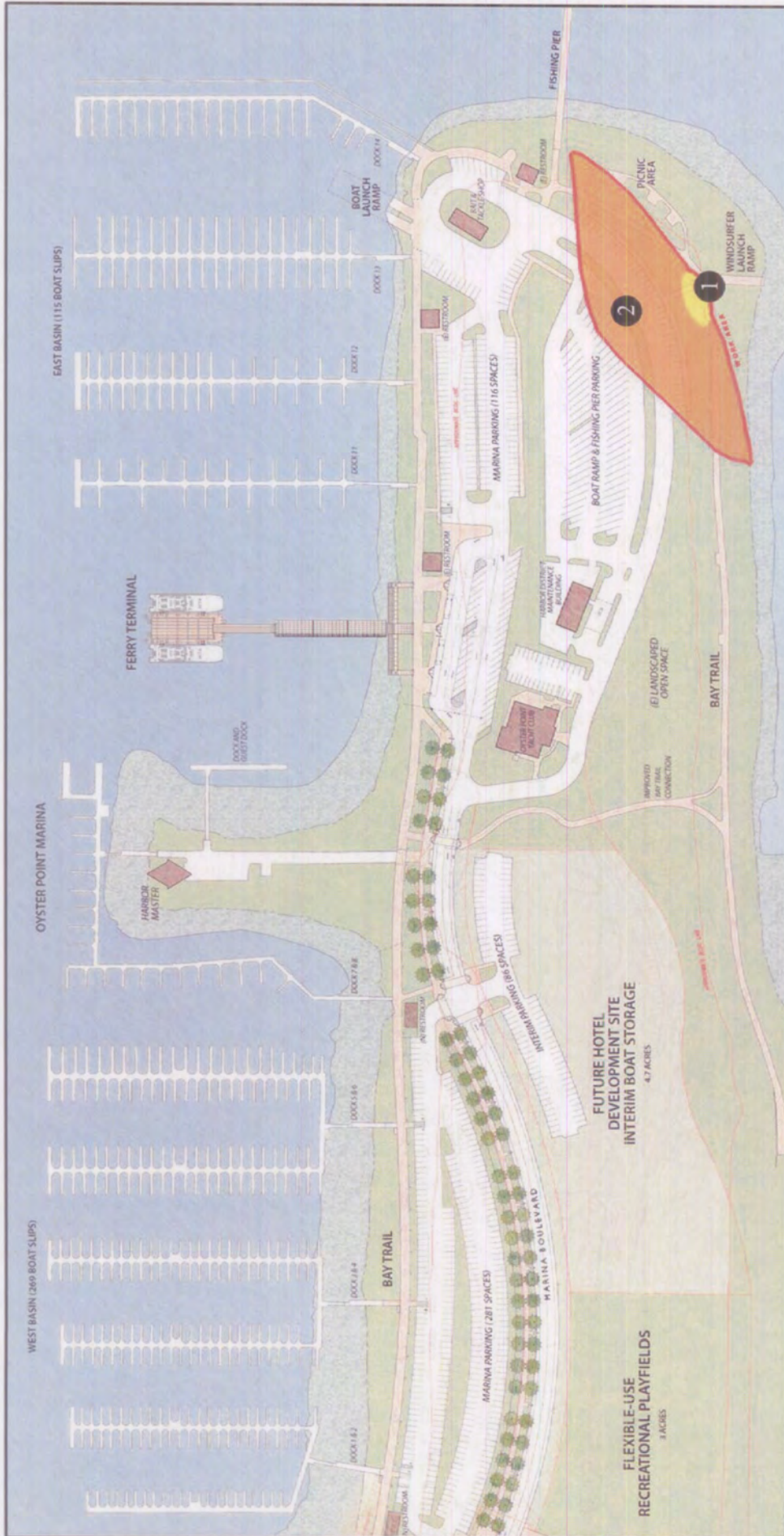
- Erosion-resistant layer (via vegetative layer): at least one foot of soil that contains no waste and is capable of sustaining native or other plant growth
- Low hydraulic conductivity layer: at least one foot of soil containing no waste or leachate and compacted to attain a hydraulic conductivity of  $1 \times 10^{-6}$  cm/sec
- Foundation layer: at least two feet of soil, contaminated soil, incinerator ash, or other waste materials, provided that such materials have appropriate engineering properties to be used for a foundation layer for construction of the low hydraulic conductivity layer

“Clay Cap Repair at City Parcels IIC” refers to the improvements described above to be implemented on the City property to the east of the Ferry Terminal.

At the time of completion of landfill cover modifications, rough grading of the top of the Erosion-resistant layer should be coordinated to no more than 2.5 inches (0.20 ft) of finish grade as outlined in the final grading plan in the construction documents.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





<p><b>KEY NOTES</b></p> <p>1. Yellow shaded area identified as potentially deficient in landfill cover in geotechnical report*. New clay cap to be installed at this area (up to 8,000 SF). Cross section consists of a 2'-0" soil foundation layer, a 1'-0" low permeability layer, and a 1'-0" soil erosion layer.</p> <p>2. Orange shading indicates areas where landfill cover is less than 4'-0". Final design grades at these areas to compensate; no clay cap repair required.</p> <p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010.</p> <p>2. Geotechnical report referenced is "Geotechnical Investigation of the Landfill Cover Oyster Point Landfill" from Treadwell &amp; Rollo, dated February 13, 2009.</p>	<p><b>Hathaway   100 YEARS OF BUILDING</b>  <b>Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE  CONSTRUCTION COMPANY  275 Battery Street  Suite 300  San Francisco, CA 94111  tel: 415.986.2718  fax: 415.956.5669</p>	
	<p>Oyster Point Site and Improvement  South San Francisco, CA</p> <p>Conceptual Design Drawing  Exhibit 3.3.2B: Clay Cap Repair</p>	
	<p>SKS Investments</p>	<p>2011.03.04  Exhibit  3.3.2B</p>

**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**
**LINE ITEM DETAIL**

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
<b>Clay Cap Repair at City Parcels Phase IIC</b>								
3.3.2B	1	2000	02070	demo - surface improvements - clay cap repair	8,000	SF	\$ 1.00	\$ 8,000
3.3.2B	1	2000	02200	collect landfill protection layer	890	CY	\$ 4.25	\$ 3,783
3.3.2B	2	2000	02200	misc grading and raising	1	LS	\$ 250,000.00	\$ 250,000
3.3.2B	1	2000	02200	place foundation layer	600	CY	\$ 6.00	\$ 3,600
3.3.2B	1	2000	02200	place clay cap - select areas	8,000	SF	\$ 2.00	\$ 16,000
3.3.2B	1	2000	02200	place protection layer	890	CY	\$ 5.00	\$ 4,450
3.3.2B	1	2000	02550	replace surface improvements - clay cap repair	8,000	SF	\$ 14.00	\$ 112,000
<b>Subtotal - Clay Cap Repair at City Parcels Phase IIC</b>								<b>\$ 397,833</b>
<b>General Conditions and Markups - 19%</b>								<b>\$ 75,588</b>
<b>GC Bonds - 0.75%</b>								<b>\$ 3,551</b>
<b>Subtotal - CONSTRUCTION HARD COSTS</b>								<b>\$ 476,971</b>
<b>Soft Costs - 20%</b>								<b>\$ 95,394</b>
<b>Total</b>								<b>\$ 572,366</b>

**EXHIBIT 3.3.2C: Repaving of Existing Parking at Phase IIC**

“Repaving of Existing Parking at Phase IIC” refers to improvements to be implemented at the parking lots to the east of the Ferry Terminal. The improvements will consist of a new asphalt paving lift at the existing parking.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





<p><b>KEY NOTES</b></p> <p>1. Paving at shaded parking areas (totaling 181,121 SF) to receive New 2" asphalt concrete lift. Re-stripping of the pavement at these areas is included.</p> <p><b>GENERAL NOTES</b></p> <p>1. Base map provided by ROMA Design Group, October 2010.</p>	<p><b>Hathaway   100 YEARS OF BUILDING</b></p> <p><b>Dinwiddie</b></p> <p>HATHAWAY DINWIDDIE CONSTRUCTION COMPANY 275 Battery Street Suite 300 San Francisco, CA 94111 tel: 415.986.2718 fax: 415.956.5669</p>	<p><b>Oyster Point Site and Improvement</b> South San Francisco, CA</p>	
		<p><b>Conceptual Design Drawing</b> Exhibit 3.3.2C: Repaving of the Existing Parking at Phase IIC</p>	
		<p>SKS Investments</p>	<p>2011.03.04 Exhibit 3.3.2C</p>

**OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS**
**LINE ITEM DETAIL**

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Repaving of the Existing Parking at Phase IIC								
3.3.2C	I	2000	02200	import balance	1,185	CY	\$ 7.50	\$ 8,889
3.3.2C	I	2000	02200	curb cuts	1,000	LF	\$ 7.00	\$ 7,000
3.3.2C	I	2010	02250	ac paving - single lift over existing	181,121	SF	\$ 3.00	\$ 543,363
3.3.2C	I	2010	02515	parking lot striping	181,121	SF	\$ 0.50	\$ 90,561
Subtotal - Repaving of the Existing Parking at Phase IIC								\$ 649,812
General Conditions and Markups - 19%								\$ 123,464
GC Bonds - 0.75%								\$ 5,800
Subtotal - CONSTRUCTION HARD COSTS								\$ 779,076
Soft Costs - 20%								\$ 155,815
Total								\$ 934,892

**EXHIBIT 3.3.2D: Landscape Tune-Up at Existing Parking at Phase IIC:**

A landscaping allowance has been included at the area around the existing parking lots to the east of the Ferry Terminal.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Landscape Tune-up at Existing Parking at Phase IIC								
3.3.2D	I	2000	02200	finegrade and compact - landscaped areas	202,020	SF	\$ 2.00	\$ 404,040
3.3.2D	I	2010	02900	landscaping - city parcel	202,020	SF	\$ 4.00	\$ 808,080
Subtotal - Landscape Tune-up at Existing Parking at Phase IIC								\$ 1,212,120
General Conditions and Markups - 19%								\$ 230,303
GC Bonds - 0.75%								\$ 10,818
Subtotal - CONSTRUCTION HARD COSTS								\$ 1,453,241
Soft Costs - 20%								\$ 290,648
Total								\$ 1,743,889

**EXHIBIT 3.3.2E: Landscaping at BCDC Area at Phase IIC**

These improvements include an allowance for landscaping and Bay Trail construction along the BCDC area in Phase IIC.

**A depiction of these improvements as well as quantities and cost estimates are included in the following pages. These quantities, scope of work, and costs estimates were prepared based on conceptual plans and will be modified when construction drawings are prepared.**





OYSTER POINT BUSINESS PARK  
SHORENSTEIN / SKS INVESTMENTS

LINE ITEM DETAIL

February 25, 2011

EXHIBIT	KEY	SYS	CSI	DESCRIPTION	Q	U	U/P	EXT
DIAGRAM NOTE								
Landscaping at BCDC Area at Phase IIC								
3.3.2E	I	2000	02200	finegrade and compact - bcde	274,200	SF	\$ 2.00	\$ 548,400
3.3.2E	I	2020	02600	bay trail lighting - torchieres - bcde	50	EA	\$ 6,500.00	\$ 325,000
3.3.2E	I	2010	02900	landscaping - bcde	274,200	SF	\$ 12.00	\$ 3,290,400
Subtotal - Landscaping at BCDC Area at Phase IIC								\$ 4,163,800
General Conditions and Markups - 19%								\$ 791,122
GC Bonds - 0.75%								\$ 37,162
Subtotal - CONSTRUCTION HARD COSTS								\$ 4,992,084
Soft Costs - 20%								\$ 998,417
Total								\$ 5,990,501

**Exhibit 3.4.1**

**Redevelopment Project Cost Allocation**



## Oyster Point Site and Infrastructure Improvements: Sources and Uses

USES		SOURCES			
Exhibit	Description	Total Costs	S/SKS Direct	S/SKS CFD	City/RDA
	Other Transaction Costs				
	King Leasehold Interest	\$ 7,500,000	\$ 7,500,000	\$ -	\$ -
	Other Transaction Costs (Required Cap Ex. Planning, Entitlements)	\$ 4,172,000	\$ 4,172,000	\$ -	\$ -
	Initial Cash Consideration	\$ 2,250,000	\$ 2,250,000	\$ -	\$ -
	Additional Cash Consideration	\$ 1,100,000	\$ 1,100,000	\$ -	\$ -
	Remaining Cash Consideration	\$ 2,250,000	\$ 2,250,000	\$ -	\$ -
	Subtotal - Pre-Land Swap Costs	\$ 17,272,000	\$ 17,272,000	\$ -	\$ -
	Phase ID Land Improvements				
3.2.2A	Clay Cap Repair at Conveyed Property and Refuse Relocation Area	\$ 2,906,388	\$ -	\$ 2,906,388	\$ -
3.2.2B	Cleanup of Sump 1	\$ 3,586,775	\$ 3,586,775	\$ -	\$ -
3.2.2C	Methane Systems at Conveyed Property	\$ 4,983,116	\$ 4,983,116	\$ -	\$ -
3.2.2D	Relocation of Refuse under Buildings on Conveyed Property	\$ 4,719,573	\$ 4,719,573	\$ -	\$ -
	Other Premiums to Build on Landfill at Conveyed Property	\$ 4,538,812	\$ 4,538,812	\$ -	\$ -
	Subtotal Phase ID	\$ 20,744,665	\$ 17,838,276	\$ 2,906,388	\$ -
	Phase IC Infrastructure and Improvements				
3.2.1A	Streets and Utilities at Hub	\$ 9,595,932	\$ -	\$ 7,676,794	\$ 1,919,138
3.2.1B	Streets and Utilities to Point	\$ 5,434,533	\$ -	\$ -	\$ 5,434,533
3.2.1C	Clay Cap Repair at City Parcels IC	\$ 539,516	\$ -	\$ -	\$ 539,516
3.2.1D	Reconfiguration of Parking at Marina	\$ 4,247,756	\$ -	\$ -	\$ 4,247,756
3.2.1E	Grading/Construction of Recreation Area	\$ 1,969,117	\$ -	\$ -	\$ 1,969,117
3.2.1F	Demo/Grading of Hotel Site	\$ 792,931	\$ -	\$ -	\$ 792,931
3.2.1G	Landscaping of Beach/Park	\$ 3,486,408	\$ -	\$ -	\$ 3,486,408
3.2.1H	Landscaping at Bay Trail and Palm Promenade Phase IC	\$ 9,533,859	\$ -	\$ 9,533,859	\$ -
	Subtotal Phase IC	\$ 35,610,113	\$ -	\$ 17,210,653	\$ 18,399,460
	Phase IIC				
3.3.2A	New Sewer Pump Station at Marina	\$ 2,651,614	\$ 839,490	\$ -	\$ 1,822,124
3.3.2B	Clay Cap Repair at City Parcels IIC	\$ 572,366	\$ -	\$ -	\$ 572,366
3.3.2C	Repaving of the Existing Parking at Phase IIC	\$ 934,892	\$ -	\$ -	\$ 934,892
3.3.2D	Landscape Tune-up at Existing Parking at Phase IIC	\$ 1,743,889	\$ -	\$ -	\$ 1,743,889
3.3.2E	Landscaping at BCDC Area at Phase IIC	\$ 5,990,501	\$ -	\$ -	\$ 5,990,501
	Subtotal Phase IIC	\$ 11,903,261	\$ 839,490	\$ -	\$ 11,063,771
	Phases IID-IVD				
3.3.1A	Streets and Utilities at Phases IID-IVD	\$ 11,961,946	\$ -	\$ 11,961,946	\$ -
3.3.1B	Relocation of Sewer Pump Station No. 1	\$ 4,891,614	\$ -	\$ -	\$ -
3.3.1C	Landscaping at BCDC Area at Phases IID-IVD	\$ 3,784,267	\$ -	\$ 3,784,267	\$ -
	Subtotal Phases IID-IVD	\$ 20,647,826	\$ -	\$ 20,647,826	\$ -
	Total - All Phases	\$ 106,177,864	\$ 35,948,766	\$ 40,764,868	\$ 29,463,230



## Responsibility Matrix Summary

<u>Process/Item</u>	<u>Description</u>
Initial Fixed Monetary Contribution:	Assigned party (or parties) is to place into an escrow account the designated amount which will be used to fund design and construction of the applicable improvement.
Amount of Initial Fixed Contribution:	The amount described shall be the initial contribution towards the design and construction of the applicable improvement. Any additional amounts, if required, are to be paid by the party responsible for cost overruns/savings defined below.
Timing of Initial Fixed Contribution:	The time of payment of the initial fixed monetary contribution.
Authorization of Changes in Scope:	Assigned party (or parties) will have final authority to approve changes in the scope.
Selection of Design Consultants:	Assigned party (or parties) will have authority to select the design consultants for the design and engineering of applicable improvements.
Final Acceptance of Design	Assigned party (or parties) will have authority to give final approval of the design drawings prior to the start of construction.
Design and Construction Management	<p>Assigned party will have responsibility to select, manage and contract with contractor. This work will be selected and performed through a typical private procurement process with a GMP or Cost Plus contract (with no 'at-risk' component for the construction manager). This contract will be paid for through escrow account funded by the Fixed Monetary Contribution above.</p> <p>The construction management fee will be a fixed fee of ____% of the contract amount and will be paid for through an escrow account funded by the Fixed Monetary Contribution above.</p>
Cost Overruns/Savings	Except as otherwise set forth in Section 3.4.3 of the Agreement, assigned party (or parties) is responsible for cost overruns/savings for any reason (including but not limited to escalation, change in scope, value engineering, etc) above/below the fixed monetary contribution.

### **Exhibit 3.4.2**

#### **Form of Escrow Holdback Agreement**

#### **ESCROW HOLDBACK AGREEMENT**

THIS ESCROW HOLDBACK AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ ("Effective Date") by and among the REDEVELOPMENT AGENCY OF THE CITY OF SOUTH SAN FRANCISCO, a public body corporate and politic ("Agency"), OYSTER POINT VENTURES, LLC, a Delaware limited liability company ("Developer"), and CHICAGO TITLE INSURANCE COMPANY ("Escrow Agent").

#### **RECITALS**

A. Agency, Developer and The City of South San Francisco, a municipal corporation ("City") have entered into that certain Disposition and Development Agreement dated \_\_\_\_\_, 2011 (the "DDA"), pursuant to which Agency and Developer each has certain responsibilities and obligations with respect to the development of certain land located in the City of South San Francisco, County of San Mateo, State of California, more particularly described on Exhibit A (the "Property"), on all of the terms and conditions set forth therein. All capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the DDA.

B. Pursuant to Section 3.4.2 of the DDA, the Agency agreed to pay Eighteen Million, Three Hundred Ninety Nine Thousand, Four Hundred Sixty Dollars (\$18,399,460) (as may be adjusted pursuant to Section 3.4.3 of the DDA) towards the Phase IC Improvement Costs ("Agency Funding Requirement"). Any portion of the Agency Funding Requirement that remains unspent upon the completion of the Phase IC Improvements shall be used towards the Agency's obligations in connection with the construction of the Phase IIC Improvements. The estimated Phase IC Improvement Costs and Phase IIC Improvement Costs and the respective Agency and Developer responsibility for payment for each component of such costs are detailed on Exhibit B attached hereto and made a part hereof.

C. To secure Agency's performance of, and ensure funds are available to pay for, the Agency's share of the cost of the Phase IC Improvement Costs, Agency desires to deposit into escrow at Closing with Escrow Agent an amount equal to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) at Closing, which amount is equal to the estimated amount of Phase IC Improvement Costs that will be incurred by the Developer in the three (3) month period following Closing. Approximately every three (3) months thereafter, Agency shall deliver funds into escrow that is equal to the estimated amount of Phase IC Improvement Costs (or Phase IIC Improvement Costs, if applicable) that will be incurred by the Developer in the following three (3) month period. Agency shall periodically deliver such funds within five (5) business days after receipt of written request from Developer, which request shall be accompanied by a description of the work to be completed during such three (3) month period. Any interest accruing on such escrowed funds shall become a part of the escrowed funds and shall be used only in connection with the construction of the Phase IC Improvements (or Phase IIC Improvement Costs, if applicable). All funds deposited into escrow pursuant to this Recital C shall be referred to herein as the "Holdback Funds."

D. The terms by which such Holdback Funds shall be released to Agency and Developer shall be as set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, effective as of the Effective Date, the parties agree as follows:

1. Agency and Developer hereby agree that the recitals set forth hereinabove are true and correct and incorporated into this Agreement.

2. Escrow Agent shall deposit the Holdback Funds into an interest bearing escrow account ("Escrow Account") at a depository acceptable to Agency and Developer ("Depository"). Any interest accruing on the Holdback Funds shall be added to and become a part of the Holdback Funds.

3. Escrow Agent hereby acknowledges receipt of the initial Holdback Funds and hereby agrees to invest said sums and disburse said sums strictly in accordance with the terms and conditions of this Agreement.

4. The Holdback Funds shall be released to the parties as follows:

(a) Developer shall be permitted to draw down on the Holdback Funds to pay for any costs and/or expenses incurred in constructing the Phase IC Improvements (or Phase IIC Improvement Costs, if applicable). Developer shall deliver a written disbursement request to both the Agency and Escrow Agent requesting that Escrow Agent release and pay to Developer or its designee from the Holdback Funds an amount equal to the costs and expenses that Developer has incurred in constructing the Phase IC Improvements (or Phase IIC Improvement Costs, if applicable). Such written statement shall include invoices or other documentation reasonably supporting the Developer's request. Provided that the Agency has not delivered to Escrow Agent and the Developer a written notice objecting to such disbursement request within five (5) business days after Agency's receipt of such request, Escrow Agent shall promptly disburse to Developer or its designee from the Holdback Funds the amount set forth in said written request.

(b) Upon the completion of the construction of the Phase IC Improvements (or Phase IIC Improvement Costs, if applicable), Developer shall present to the Escrow Agent and Agency a written statement setting forth all of the costs and expenses incurred and payable by Developer in connection with the construction of the Phase IC Improvements (or Phase IIC Improvement Costs, if applicable) which were not previously covered in the prior disbursements pursuant to Paragraph 4(a) above. Upon receipt of such written statement, Escrow Agent shall promptly disburse from the Holdback Funds to Developer the amount set forth in the said written notice. If Agency's share of the actual costs of the construction of the Phase IC Improvements exceeds the amount of the Holdback Funds, Agency shall deliver to Developer the amount of such difference within ten (10) days after receipt of written request from Developer.

5. Escrow Agent shall send any payments released to the Agency directly to the Agency's bank account pursuant to instructions received from the Agency.

6. Escrow Agent shall send any payments released to Developer directly to its bank account pursuant to instructions received from Developer.

7. Escrow Agent shall not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the Depository.

8. Escrow Agent shall not be liable for loss or damage resulting from:

(a) any good faith act or forbearance of Escrow Agent;

(b) any default, error, action or omission of any party, other than Escrow Agent and its agents;

(c) the expiration of any time limit or other delay which is not caused by the failure of Escrow Agent to proceed as required by this Agreement;

(d) the lack of authenticity of any writing delivered to Escrow Agent or of any signature thereto, or the lack of authority of the signatory to sign such writing;

(e) Escrow Agent's compliance with all attachments, writs, orders, judgments, or other legal process issued out of any court;

(f) Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding; or

(g) any loss or damage which arises after the Holdback Funds have been fully disbursed in accordance with the terms of this Agreement.

9. Except as otherwise provided herein, Agency and Developer hereby authorize and direct Escrow Agent to accept, comply with and obey any and all writs, orders, judgments or decrees entered or issued by any court with or without jurisdiction; and in the case Escrow Agent obeys or complies with any such writ, order, judgment or decree of any court, it shall not be liable to Agency or Developer or any other person by reason of such compliance, notwithstanding such writ, order, judgment or decree to be entered without jurisdiction or to be subsequently reversed, modified, annulled, set aside or vacated.

10. Any notice, consent or approval required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by Federal Express or another reputable commercial overnight courier that guarantees next day delivery and provides a receipt, or (c) by telefacsimile or telecopy, and such notices, consents or approvals shall be addressed to the addresses set forth in the DDA or such other address as either party may from time to time specify in writing to the other parties, except that notice to the Title Company shall be addressed to \_\_\_\_\_, Attn.: \_\_\_\_\_, Fax: \_\_\_\_\_. Any notice, consent or approval required or permitted to be given hereunder shall be deemed delivered when actually received by the recipient.

11. This Agreement shall not be assignable by Agency without the prior written consent of Developer, which consent may be given by Developer in its sole discretion. This Agreement shall only be assignable by Developer to the extent that the DDA is transferable or assignable pursuant to Article VIII of the DDA. Subject to the foregoing, this Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

12. If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.



13. This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement may be signed in counterparts and all counterparts so executed shall constitute one contract, binding on all parties hereto, even though all parties are not signatory to the same counterpart. The parties contemplate that they may be executing counterparts of the Agreement transmitted by facsimile and agree and intend that a signature by facsimile machine shall bind the party so signing with the same effect as though the signature were an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date and year first above written.

**AGENCY:**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Agency General Counsel

**DEVELOPER:**

**OYSTER POINT VENTURES LLC,  
a Delaware limited liability company**

By: SRI Nine Oyster Point LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: SKS Oyster Point, LLC,  
a Delaware limited liability company,  
its Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ESCROW AGENT:**

**CHICAGO TITLE INSURANCE COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit A**

**Property**

**Exhibit B**

**Estimated Costs of Phase IC Improvements**

**Exhibit 4.1**

Form of Amendment to the Joint Powers Agreement Between the San Mateo County Harbor  
District and the City of South San Francisco

**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 \_\_\_\_\_, 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. \_\_\_\_\_ 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.

**Section 3 Term.** The term of this Agreement (the "**Term**") shall commence on the Effective Date, and shall terminate on November 11, 2026 (*termination date of the JPA*), 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 shall occur pursuant to the provisions of the Disposition and Development Agreement between the Agency, City 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, or the termination of the King Leases in 2026, whichever occurs first. 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 \_\_\_\_\_, 2011, the annual payment due to the District for minimum rent would equal \_\_\_\_\_, 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 one or two new docks at the Harbor District operated harbor adjacent to the Marina Property in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) over the next four years in connection with the Project, provided that District satisfies the District's obligation in Section 6.2.

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 request, the City will consider waiving 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, City will lease to District up to 2,000 square feet [approximate current office space use, to be confirmed by District] of temporary office space in a property owned by the City until the earlier of termination of the JPA or at such time as the Permanent Office Space specified in Section 7.2 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      Permanent Office Space. Provided that Phase I of Project is completed, the Agency will aggressively market for 40,000 square feet of commercial space that is presently proposed under the Oyster Point Specific Plan. Additionally, Agency and City will reserve up to 5,000 square feet of commercial space for District office and meeting room use. The rental rate for the permanent office lease space shall be based on market rate rent for comparable space at the time the lease is approved. Provided

that the Phase IC Improvements have been completed, and the Agency has aggressively marketed for 40,000 square feet of commercial space, but no space for the District office is developed within seven (7) years, the Parties will discuss providing a parcel of land for the District's office use and related facilities through the term of the JPA. The Parties agree that any such discussion shall occur as part of discussion related to the term of the JPA. District 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 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; and/or potential revenue sharing for commercial properties. This provision does not obligate any Party to agree to any terms that may be discussed.

**Section 9      District Costs.** Provided the Agency has available funds arising for the continuation of redevelopment agency authority, the Agency will reimburse the District for its actual and reasonable costs of negotiating this Agreement in 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: \_\_\_\_\_  
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

**AGENCY**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

Exhibit List

EXHIBIT A  
MAP OF THE PROPERTY

1613418.2



EXHIBIT B

EXHIBIT C

**Exhibit 4.6A**

**Form of Grant Deed**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105  
Attn: Zane Gresham, Esq.

Documentary Transfer Tax is not of public record and is shown on a separate sheet attached to this deed.

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**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Redevelopment Agency of the City of South San Francisco, a public body corporate and politic (“**Agency**”), hereby grants to Oyster Point Ventures, LLC, a Delaware limited liability company (“**Grantee**”), the real property located in the City of South San Francisco, County of San Mateo, State of California, described on **Exhibit A** attached hereto and made a part hereof.

PROVIDED HOWEVER, that this Deed and the warranty of title contained herein is made expressly subject to real property taxes not yet due and payable.

Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

Executed as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**AGENCY**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

Exhibit A to  
Deed

Legal Property Description

\_\_\_\_\_, 201\_\_

San Mateo County Recorder

\_\_\_\_\_, California \_\_\_\_\_

Re: Request That Statement of Documentary  
Transfer Tax Not be Recorded

Dear Sir or Madam:

Request is hereby made in accordance with Section 11932 of the Revenue and Taxation Code that this statement of tax due not be recorded with the attached deed but be affixed to the deed after recordation and before return as directed on the deed.

The attached deed names, Redevelopment Agency of the City of South San Francisco, a public body corporate and politic, as grantor, and Oyster Point Ventures, LLC, a Delaware limited liability company, as grantee.

The property being transferred and described in the attached deed is located in the City of South San Francisco, County of San Mateo, State of California.

The amount of Documentary Transfer Tax due on the attached deed is \$ \_\_\_\_\_ computed on full value of the property conveyed.

**AGENCY**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Executive Director

ATTEST:

By: \_\_\_\_\_

Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Agency General Counsel



**Exhibit 4.6B**

**Form of Assignment and Assumption of the King Leases**

**ASSIGNMENT AND ASSUMPTION OF GROUND LEASES**

This Assignment and Assumption of Ground Lease ("Assignment") is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date") by and between Oyster Point Ventures, LLC, a Delaware limited liability company ("Assignor") and Redevelopment Agency of the City of South San Francisco, a public body corporate and politic ("Assignee").

**WITNESSETH:**

WHEREAS, Assignor, Assignee and The City of South San Francisco, a municipal corporation ("City") have entered into that certain Disposition and Development Agreement dated \_\_\_\_\_, 2011 (the "DDA");

WHEREAS, Assignor is the current owner and holder of certain leasehold estates (the "Leasehold Estates") covering certain ground lease parcels and the improvements thereon located as described in Exhibit A attached hereto and made a part hereof, which Leasehold Estates are created and evidenced by the documents and instruments described on Exhibit B (collectively, the "Ground Leases") attached hereto and made a part hereof; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's right, title, interest and obligations in, to and under the Ground Leases and Assignee desires to accept such assignment and assume Assignor's right, title, interest and obligations in, to and under the Ground Leases, all on the terms and conditions set forth below.

NOW, THEREFORE, IN CONSIDERATION of the foregoing, and the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Assignment. Effective as of the Effective Date, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title, interest and obligations in and to the Leasehold Estates and the Ground Leases, together with the improvements located thereon, which transfer and conveyance shall include, without limitation, the right to possession of the premises.
2. Assignor's Obligations. Assignor shall not be responsible under the Ground Leases for the discharge and performance of any and all duties and obligations to be performed and/or discharged by the lessee under the Ground Leases arising subsequent to the Effective Date. Notwithstanding the foregoing, to the extent any duties and obligations to be performed and/or discharged under the Ground Leases arose prior to the Effective Date, Assignor shall promptly perform and/or discharge such duties and/or obligations as they become due.

3. Assumption. Effective as of the Effective Date, Assignee hereby accepts the foregoing assignment and assumes all of lessee's duties and/or obligations under the Ground Leases to the extent such duties or obligations arise subsequent to the Effective Date.

4. Indemnification.

(a) Assignee shall save and defend, protect, indemnify and hold Assignor harmless from any and all claims, demands, actions, causes of actions, suits, proceedings, damages, liabilities, costs and expenses of every nature whatsoever relating to the Ground Leases or the premises demised thereunder (collectively, "Claims") arising out of matters occurring on or after the Effective Date of this Assignment regardless of whether such Claims were first made either prior to or after the Effective Date; provided, however, the foregoing indemnity shall not extend to or include any claims, demands, actions, causes of action, suits, proceedings, damages, liabilities, costs and expenses resulting from or caused by the willful or negligent act of Assignor, its agents or employees.

(b) Assignor shall save and defend, protect, indemnify and hold Assignee harmless from any and all Claims arising out of matters occurring prior to the Effective Date of this Assignment regardless of whether such Claims were first made either prior to or after the Effective Date; provided, however, the foregoing indemnity shall not extend to or include any claims, demands, actions, causes of action, suits, proceedings, damages, liabilities, costs and expenses resulting from or caused by the willful or negligent act of Assignee, its agents or employees.

5. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Governing Law. This Assignment shall in all respects be governed by, and construed in accordance with, the laws of the State of California.

7. Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any signature page of this Assignment may be detached from and added to any counterpart of this Assignment identical in form hereto.

*[Signatures continue on following page]*

IN WITNESS WHEREOF, the parties hereto have executed this Assignment effective as of the Effective Date.

"ASSIGNOR"

**OYSTER POINT VENTURES LLC,  
a Delaware limited liability company**

By: SRI Nine Oyster Point LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: SKS Oyster Point, LLC,  
a Delaware limited liability company,  
its Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

"ASSIGNEE"

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

DESCRIPTION OF GROUND LEASES

**Exhibit 4.6.1A**

**Form of Bill of Sale**

**BILL OF SALE**

For good and valuable consideration the receipt of which is hereby acknowledged, Redevelopment Agency of the City of South San Francisco, a public body corporate and politic (“**Agency**”), does hereby sell, transfer, and convey to Oyster Point Ventures, LLC, a Delaware limited liability company (“**Developer**”), all personal property owned by Agency and located on or in or used in connection with the Conveyed Property (as such term is defined in that certain Disposition and Development Agreement entered into by and among Agency, Developer and The City of South San Francisco, a municipal corporation on \_\_\_\_\_, 2011), including, without limitation, those items described in Schedule A attached hereto.

Seller does hereby represent to Buyer that Seller is the lawful owner of such personal property, that such personal property is free and clear of all encumbrances, and that Seller has good right to sell the same as aforesaid.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**AGENCY**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

Schedule A to  
Bill of Sale



**Exhibit 4.6.1B**

**Form of Assignment of Intangible Property**

**ASSIGNMENT OF SERVICE CONTRACTS, WARRANTIES, GUARANTIES  
AND OTHER INTANGIBLE PROPERTY**

THIS ASSIGNMENT ("Assignment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Redevelopment Agency of the City of South San Francisco, a public body corporate and politic ("Assignor"), to Oyster Point Ventures, LLC, a Delaware limited liability company ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers unto Assignee all of its right, title, claim and interest in and under the following:

(a) all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in Exhibit A attached hereto (the "Property") including, without limitation, those warranties and guaranties listed in Schedule 1 attached hereto (collectively, "Warranties");

(b) all of the service contracts listed in Schedule 2 attached hereto (the "Service Contracts"); and

(c) any and all licenses, permits, authorizations, certificates of occupancy and similar documents pertaining, or applicable to, or in any way connected with, the rental, maintenance and operation of the Property.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, originating prior to the Effective Date and arising out of the owner's obligations under the Service Contracts.

2. Except as otherwise set forth in that certain Disposition and Development Agreement entered into by and among Agency, Developer and The City of South San Francisco, a municipal corporation on \_\_\_\_\_, 2011 (the "DDA"), effective as of the Effective Date, Assignee hereby assumes all of the owner's obligations under the Service Contracts and agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, originating on or subsequent to the Effective Date and arising out of the owner's obligations under the Service Contracts.

3. If either party hereto fails to perform any of its obligations under this Assignment or if a dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Assignment, then the defaulting party or the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, arbitration or court costs and attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Assignment shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Assignment and to survive and not be merged into any such judgment.

4. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

5. This Assignment shall be governed by and construed and in accordance with the laws of the State of California.

6. For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the DDA).

*[Signatures continue on following page]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

"ASSIGNOR"

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

"ASSIGNEE"

**OYSTER POINT VENTURES LLC,  
a Delaware limited liability company**

By: SRI Nine Oyster Point LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: SKS Oyster Point, LLC,  
a Delaware limited liability company,  
its Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Exhibit A to  
Assignment of Service  
Contracts Warranties  
and Guaranties and  
Other Intangible Property

Schedule 1 to  
Assignment of Service  
Contracts Warranties  
and Guaranties and  
Other Intangible Property

List of Warranties

Schedule 2 to  
Assignment of Service  
Contracts Warranties  
and Guaranties and  
Other Intangible Property

List of Service Contracts

**Exhibit 4.6.1C**

**Form of FIRPTA Affidavit**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Redevelopment Agency of the City of South San Francisco, a public body corporate and politic ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);
3. Transferor's U.S. employer identification number is: \_\_\_\_\_; and
4. Transferor's office address is City of South San Francisco, 400 Grand Avenue, South San Francisco, CA 94080.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

*[Signature on following page]*



Dated: \_\_\_\_\_

**AGENCY**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency General Counsel

**Exhibit 4.8.2**  
**Service Contracts**

*[None]*

**EXHIBIT 4.8.8:**

**Pre-Existing Environmental Conditions**

The following documents identify the known existing environmental conditions at Oyster Point Marina Village:

Documents commissioned by S/SKS:

1. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Draft Sump 1 Investigation, Former Oyster Point Landfill, South San Francisco, CA." April 9, 2009.
2. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Sump 1 and 2: Cost Estimates for Development-related Remediation, Oyster Point Landfill/Oyster Point Business Park, South San Francisco, CA." March 20, 2009.
3. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Geotechnical Investigation of the Landfill Cover, Oyster Point Landfill, South San Francisco, CA" March 13, 2009.
4. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Work Plan for Investigation and Delineation of Sump 1, Oyster Point Landfill/Oyster Point Business Park, South San Francisco, CA." February 25, 2009.
5. Tom Graf, Grafcon. Letter to with confirmation from Vic Pal, Regional Water Quality Control Board and Greg Schirle, Environmental Health, LEA Section, San Mateo County: "Results of Meeting to Discuss Regulatory Requirements Shorenstein/SKS Oyster Point Landfill Development, South San Francisco, CA." February 9, 2009.
6. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Peer Review of Waste Discharge Requirements Monitoring, Oyster Point Landfill/Oyster Point Business Park, South San Francisco, CA." February 3, 2009.
7. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Methane Mitigation Systems: Description and Unit Costs, Oyster Point Landfill/Oyster Point Business Park, South San Francisco, CA." January 29, 2009.
8. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Methane Mitigation Systems: Description and Unit Costs, Oyster Point Landfill/Oyster Point Business Park, South San Francisco, CA." January 29, 2009.
9. Treadwell and Rollo, Environmental and Geotechnical Consultants. "BAAQMD Permit Exemption for Landfill and Building Methane Mitigation Systems, Oyster Point Landfill/Oyster Point Business Park, South San Francisco, CA." January 29, 2009.
10. Treadwell and Rollo, Environmental and Geotechnical Consultants. "Preliminary Foundation Design Criteria, Oyster Point Development, South San Francisco, CA." January 16, 2009.

11. McCampbell Analytical, Inc. Work Order Nos. 0812760 and 0812696, Sample Analysis and QC Report, Oyster Point. January 5, 2009.
12. MACTEC Engineering and Consulting, Inc. "Phase I Environmental Site Assessment, Oyster Point King/SKS and City Parcels, Oyster Point and Marina Boulevards, South San Francisco, CA." September 26, 2008.

Other Documents:

1. Terra Engineers, Inc. with PES Environmental, Inc. "2008 Semi-Annual Monitoring Report, Former Oyster Point Landfill, South San Francisco, CA." July 22, 2008.
2. Terra Engineers, Inc. with PES Environmental, Inc. "Annual Report 2007, Former Oyster Point Landfill, South San Francisco, CA." January 28, 2008.
3. Kleinfelder West, Inc. "Feasibility Study and Cost Estimate, Proposed Oyster Point Marina Redevelopment, South San Francisco, CA." November 12, 2007.
4. Gabewell, Inc. with PES Environmental, Inc. "Post-Closure Development Standards Report, Oyster Point Landfill South San Francisco, CA." November 2000.
5. Gabewell, Inc. with Harding Lawson Associates. "Final Closure and Post-Closure Maintenance Plan, Oyster Point Landfill, South San Francisco, CA." September 2000.
6. Regional Water Quality Control Board. "Order No. 00-046 Updated WDR and Rescission of Order No. 77-19." June 21, 2000.
7. CH2MHill, "Soil Sampling and Analysis Plan for Characterizing and Disposing of Excavated Soil at the Gull Drive Excavation, South San Francisco," July 23-24, 1996.
8. CH2MHill, "Construction Quality Assurance Report, City of South San Francisco Landfill, Gull Drive Final Cover Extension, South San Francisco, CA," October 1996.
9. CH2MHill, "Project Plans for Construction of City of South San Francisco Landfill, Gull Drive Final Cover Extension," April 1996.
10. Levine-Fricke, "Figure 4: Sump Locations" [loose page], undated.
11. CH2MHill, "Work Plan for the Gull Drive Field investigation, South San Francisco, CA," January 1996.
12. ICF Technology, "CERCLA Site Inspection, Oyster Point Marina, Oyster Point Boulevard, South San Francisco, CA 94080, San Mateo County," August 12, 1987

**Exhibit 4.9.1**

**Form of Title Policies**



# Chicago Title Company

**ISSUING OFFICE:** 2150 John Glenn Drive, Suite 300 • Concord, CA 94520  
925 288-8000 • FAX 925 521-9562

## PRELIMINARY REPORT

Title Officer: Martha Kendall

Title No.: 11-**40702883**-MK

Locate No.: CACTI7741-7741-2407-0040702883

TO: Chicago Title Company-San Francisco  
455 Market Street, Suite 2100  
San Francisco, CA 94105

ATTN: Nicole Carr

**PROPERTY ADDRESS:** Oyster Point Marina Project, South San Francisco, California

**EFFECTIVE DATE:** February 3, 2011, 07:30 A.M.

The form of policy or policies of title insurance contemplated by this report is:

ALTA Owner's Policy (6/17/06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**The City of South San Francisco, a municipal corporation**

*To be vested in Oyster Point Ventures, LLC*

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

MK\MK 02/28/2011

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

*Legals to be updated once appeared by title company.*  
THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

Parcel A, as shown on parcel map 99-005, filed December 8, 1999 in Book 72 of Parcel Maps, page 6, San Mateo County records; Parcel D-1 and a portion of Parcel D-2, as shown on parcel map 89-262, filed May 23, 1989 in Book 62 of Parcel Maps, page 25, San Mateo County records; portion of Parcel B and a portion of Remainder Parcel 1, as shown on the map filed January 9, 1985 in Book 55 of Parcel Maps, page 61, San Mateo County records, described as follows:

No description has been prepared.

**PARCEL TWO:**

Portion of Parcel B and a portion of Remainder Parcel 1, as shown on the map filed January 9, 1985 in Book 55 of Parcel Maps, page 61, San Mateo County records; the area described in the Amended Final Order of Condemnation recorded December 3, 2001, Series No. 2001-193965 Official Records, San Mateo County records described as follows:

No description has been provided.

**PARCEL THREE:**

A portion of the Remainder Parcel 1, as shown on the map filed January 9, 1985 in Book 55 of Parcel Maps, page 61, San Mateo County records, described as follows:

No description has been provided.

NOTE: THE DESCRIPTION CONTAINED HEREIN IS BASED UPON INFORMATION SUBMITTED TO THIS COMPANY FOR THE PURPOSE OF THIS REPORT; IT IS NOT BASED UPON A SURVEY. SAID DESCRIPTION DOES NOT LOCATE THE LAND BY REFERENCE TO MONUMENTS OF RECORD AND IS NOT SUFFICIENT FOR TITLE INSURANCE PURPOSES. LINES AND MONUMENTS THEREIN REFERRED TO MUST BE LOCATED BY A CORRECT SURVEY, CONSIDERATION BEING GIVEN TO DESCRIPTIONS OF ADJOINING LANDS NOT INTENDED TO BE INCLUDED WITHIN THE DEVELOPMENT AREA. ANY FINAL REPORT OR POLICY IS DEPENDENT UPON SUCH A PROPER DESCRIPTION BEING FURNISHED AND WILL BE SUBJECT TO ANY MATTERS DISCLOSED BY THE TITLE SEARCH OF ANY ADDITIONAL LAND DISCLOSED BY SUCH DESCRIPTION.

A portion of apns: 015-010-260; 015-010-270; 015-010-010-600; 015-190-170 and 015-190-190



**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2011-2012.
2. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California, *assessed as a result of events occurring subsequent to the date of the Policy.*
3. ~~Any adverse claim based upon the assertion that any portion of said land was not tideland or submerged land which was available for disposition by the State of California, or that any portion thereof has ceased to be tidelands or submerged lands by reason of erosion or by reason of having become upland by accretion.~~
4. **Rights and easements** for commerce, navigation and fishery. *(affects Parcel Three only)*
5. ~~Any adverse claim based upon the assertion that some portion of said land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.~~
6. ~~An easement for existing pipe lines and pumping station affects a portion of the premises lying within Parcel A (72 PM 6)~~
7. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.  
  
Granted to: Pacific Gas and Electric Company  
Purpose: any existing electric transmission lines and gas mains  
Recorded: March 6, 1912, Book 206, Page 487, of deeds  
Affects: The exact location and extenet of said easement is not disclosed of record.  
  
A portion of said easement has been quitclaimed by instrument recorded February 26, 1926, Book 197, page 467 Official Records.
8. ~~Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.~~  
  
~~Granted to: South San Francisco Belt Railway~~  
~~Purpose: right of way~~  
~~Recorded: December 6, 1920, Instrument No. 23920-B, Book 384, Page 289, of Official Records~~  
~~Affects: a portion of the premises lying within Parcel A (72 PM 6)~~

9. ~~Easement(s)~~ for the purpose(s) shown below and rights incidental thereto as granted in a document:

Granted to: ~~South San Francisco Land and Improvement Co~~  
 Purpose: ~~Roadway~~  
 Recorded: ~~February 19, 1948, Instrument No. 15916-11, Book 1462, Page 2, of Official Records~~  
 Affects: ~~Portion of the premises~~

10. ~~Easement(s)~~ for the purpose(s) shown below and rights incidental thereto as granted in a document:

Granted to: ~~South San Francisco Land and Improvement Co~~  
 Purpose: ~~Highway~~  
 Recorded: ~~December 19, 1950, Instrument No. 6546-J, Book 1995, Page 227, of Official Records~~  
 Affects: ~~a portion of the premises, per 55 PM 61 a Note: Portions of Roadway Easement 1995 O.R. 227 have been abandoned per City Resolution No. 29-83~~

11. ~~Matters~~ contained in that certain document entitled "Agreement Between Land Owners, and Declarations Concerning Responsibility in Connection With Improvement Work Establishing Covenants Running With the Land" dated June 25, 1965, executed by and between Cabot, Cabot and Forbes California Properties, Inc., a Delaware corporation, and The City of South San Francisco, a municipal corporation recorded September 12, 1969, Instrument No. 64897AC, Book 5688, Page 397, of Official Records.

Reference is hereby made to said document for full particulars.

12. ~~Easement(s)~~ for the purpose(s) shown below and rights incidental thereto as granted in a document:

Granted to:  
 Purpose: ~~water line~~  
 Recorded: ~~September 26, 1969, Book 5694, Page 539, of Official Records~~  
 Affects: ~~a portion of Parcel Two~~

13. ~~Easement(s)~~ for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Pacific Gas and Electric Company  
 Purpose: pipe line  
 Recorded: October 16, 1969, Book 5702, Page 385, of Official Records  
 Affects: a portion of Parcel Two

14. ~~Easement(s)~~ for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: ~~South San Francisco Recreation and Park District~~  
 Purpose: ~~slope~~  
 Recorded: ~~July 31, 1973, Book 6441, Page 422, of Official Records~~  
 Affects: ~~a portion of the premises~~

15. ~~Easement(s)~~ for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: ~~California Water Service Company, a California corporation~~  
 Purpose: ~~water line purposes~~  
 Recorded: ~~November 5, 1982, Instrument No. 82096482, of Official Records~~  
 Affects: ~~portions of the premises~~

16. ~~Matters~~ contained in that certain document entitled "~~Joint Powers Agreement San Mateo County Harbor District and City of South San Francisco~~" dated ~~October 21, 1977~~, executed by and between ~~San Mateo County Harbor District, and City of South San Francisco, a municipal corporation~~ recorded ~~October 15, 1984, Instrument No. 84111706, of Official Records~~, which document, among other things, contains or provides for ~~Terms and Conditions contained therein~~.

~~Reference is hereby made to said document for full particulars.~~

~~Addendum to Joint Powers Agreement, dated October 23, 1985, by and between San Mateo County Harbor District, and City of South San Francisco, a municipal corporation, and South San Francisco Park and Recreation District, which recorded December 27, 1985 as Instrument No's. 85138850, 85138851, 85138853, of Official Records, upon the terms and conditions contained therein.~~

17. ~~An unrecorded lease~~ with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document.

Entitled: ~~Abstract of Lease~~  
 Lessor: ~~San Mateo County Harbor District~~  
 Lessee: ~~Oyster Point Village Associates, Inc.~~  
 Recorded: ~~January 9, 1985, Instrument No. 85-2685, of Official Records~~

~~The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.~~

**18. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Pacific Gas and Electric Company, a California corporation and Pacific Bell, a California corporation  
 Purpose: Underground conduits, pipes, manholes, service boxes, wires, cables and electrical conductors; aboveground marker posts, risers and service pedestals; underground and aboveground switches, fuses, terminals, and transformers with associated concrete pads  
 Recorded: December 4, 1985, Instrument No. 85130034, of Official Records  
 Affects: 10 foot strip over the westerly portion as described therein

**19. ~~An unrecorded lease~~** with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: ~~Site Locations Lease Assignment~~  
 Lessor: ~~Oyster Point Village, LTD by Oyster Point Village Assoc., Inc.~~  
 Lessee: ~~Jaime B. and Cynthia G. Ferrer, III~~  
 Recorded: ~~May 19, 1986, Instrument No. 86054025, of Official Records~~

~~The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.~~

**20. ~~An unrecorded lease~~** with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: ~~Abstract of Lease Parcel B (Oyster Point Marina/Park)~~  
 Lessor: ~~San Mateo County Harbor District~~  
 Lessee: ~~Oyster Point Village, Ltd., a California limited partnership~~  
 Recorded: ~~April 10, 1987, Instrument No. 87052593, of Official Records~~

~~Amendment to Leasehold Agreements for Parcels B and D at Oyster Point Marina/Park (Building Restrictions), as set forth in the document executed by and between San Mateo County Harbor District, City of South San Francisco, South San Francisco Park and Recreation District, and Oyster Point Village, Ltd, which recorded December 27, 1985, Instrument/File No. 85138852, 85138854, & 85138855, of Official Records~~

~~The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.~~

**21. ~~Easement(s)~~** for the purpose(s) shown below and rights incidental thereto as granted in a document

Granted to: ~~California Water Service Company, a corporation~~  
 Purpose: ~~Water line~~  
 Recorded: ~~November 14, 1980, Instrument No. 88155501, of Official Records~~  
 Affects: ~~A portion of premises~~

22. ~~An unrecorded lease~~ with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: ~~Memorandum of Lease~~  
 Lessor: ~~San Mateo County Harbor District~~  
 Lessee: ~~Inn Development, Inc.~~  
 Recorded: ~~October 13, 1989, Instrument No. 89-137949, of Official Records~~

~~The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.~~

23. ~~Matters~~ contained in that certain document entitled "~~License Agreement~~" dated August 16, 1989, executed by and between Chin Investment Company of San Francisco, a California corporation, and Inn Development, Inc., a California corporation recorded December 28, 1989, Instrument No. 89175363, of Official Records, which document, among other things, contains or provides for: Terms and conditions contained therein.

~~Reference is hereby made to said document for full particulars.~~

24. ~~Easement(s)~~ for the purpose(s) shown below and rights incidental thereto as granted in a document:

Granted to: ~~Tamco Investment and Development, Inc.~~  
 Purpose: ~~Landscaping, slope protection, public access and open space~~  
 Recorded: ~~August 14, 1990, Instrument No. 90108872, of Official Records~~  
 Affects: ~~A portion of premises~~

25. ~~Matters~~ contained in that certain document entitled "~~Assignment of Ground Lessor~~" dated April 25, 1997, executed by and between San Mateo County Harbor District, The City of South San Francisco, Allied Capital Commercial Corp. and Oyster Point Marina Inn recorded April 29, 1997, Instrument No. 97-49865, of Official Records.

~~Reference is hereby made to said document for full particulars.~~

26. ~~Matters~~ contained in that certain document entitled "~~Agreement of Ground Lessor~~" dated April 25, 1997, executed by and between San Mateo County Harbor District, and City of South San Francisco, a municipal corporation, for the benefit of Allied Capital Commercial Corporation, a Maryland corporation, and for the benefit of Oyster Point Village, a California corporation recorded May 14, 1997, Instrument No. 97057043, of Official Records, which document, among other things, contains or provides for: Terms and conditions contained therein.

~~Reference is hereby made to said document for full particulars.~~

27. ~~An unrecorded lease~~ with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: ~~Memorandum of Ground Lease~~  
 Lessor: ~~San Mateo County Harbor District~~  
 Lessee: ~~Raiser Resources, LLC~~  
 Recorded: ~~January 3, 2000, Instrument No. 2000-329, of Official Records~~

~~The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.~~

28. ~~An assignment of all moneys due, or to become due as rental or otherwise from said land, to secure payment of an indebtedness, shown below and upon the terms and conditions therein~~

Amount: ~~\$1,500,000.00~~  
 Assigned to: ~~The State of California, Department of Boating and Waterways, a public agency~~  
 By: ~~San Mateo County Harbor District, a political subdivision~~  
 Recorded: ~~June 13, 2005, Instrument No. 2005-096842, of Official Records~~

29. **The fact** that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment

Agency: The South San Francisco Downtown/Central Redevelopment Project  
 Recorded: June 24, 2005, Instrument No. 2005-106176, of Official Records

Revised Statement of Institution of Redevelopment Proceedings recorded November 26, 2007, Instrument No. 2007-165903, of Official Records.

30. ~~An unrecorded lease~~ with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: ~~Memorandum of Lease~~  
 Lessor: ~~San Mateo County Harbor District and the City of South San Francisco~~  
 Lessee: ~~San Francisco Bay Area Water Emergency Transportation Authority~~  
 Recorded: ~~August 31, 2009, Instrument No. 2009-117086, of Official Records~~

~~The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.~~

31. **Matters** which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said land that is satisfactory to this Company, and/or by inquiry of the parties in possession thereof.

*To be deleted upon receipt of an updated survey of the new parcels.*

32. ~~Any rights of the parties in possession~~ of a portion of, or all of, said land, which rights are not disclosed by the public record.

~~This Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage. The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.~~

33. ~~This Company will require an Owner's Affidavit to be completed by the party(ies) named below before any title insurance requested under this application will be issued.~~

~~Party(ies): The City of South San Francisco, a municipal corporation.~~

~~The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.~~

34. ~~The application for title insurance was placed by reference to only a street address or tax identification number.~~

~~Based on our records, we believe that the description in this report covers the parcel requested, however, if the legal description is incorrect a new report must be prepared.~~

~~If the legal description is incorrect, in order to prevent delays, the seller/buyer/borrower must provide the Company and/or the settlement agent with the correct legal description intended to be the subject of this transaction.~~

#### END OF ITEMS

- Note 1.** There are NO deeds affecting said land, recorded within twenty-four (24) months of the date of this report.
- Note 2.** If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.
- Note 3.** Please contact Escrow Office for Wire Instructions.
- Note 4.** Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.



END OF NOTES

Required Endorsements:

- Comprehensive
- Cax Parcel
- Subdivision
- Access

**Exhibit 6.10.1**

**Form of Certificate of Completion**

**FORM OF CERTIFICATE OF COMPLETION**

WHEREAS, the Redevelopment Agency of the City of South San Francisco ("Agency"), the City of South San Francisco ("City"), and Oyster Point Ventures, LLC, a Delaware limited liability company ("Developer") entered into a Disposition and Development Agreement dated as of \_\_\_\_\_, 2011 (the "Agreement"), a memorandum of which was recorded on \_\_\_\_\_, 2011 in the Office of the County Recorder of San Mateo County, at \_\_\_\_\_ of the Official Records setting forth the terms and conditions under which the Agency would convey certain real property to Developer, which property is particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), and setting forth certain obligations of the Developer to construct certain Improvements (as defined in the Agreement) on the Property;

WHEREAS, by Grant Deed dated \_\_\_\_\_ 20\_\_ (the "Deed"), which was recorded on \_\_\_\_\_ 20\_\_, in the Office of the County Recorder of San Mateo County, at \_\_\_\_\_ of the Official Records, the Agency did convey to the Developer fee simple title to the Property;

WHEREAS, the Agency has conclusively determined that the construction obligations of the Developer as to [\_\_\_\_\_] as specified in the Agreement have been fully performed and the Improvements (as defined in the Agreement) completed in accordance therewith; and

WHEREAS, as stated in the Agreement, this Certificate of Completion does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Redevelopment Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall this Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of the Agreement;

NOW THEREFORE, as provided in the Agreement, with respect to the Property, and subject to the foregoing provisions hereof, the Agency does hereby certify that such obligations and Improvements have been fully performed and completed as aforesaid and that the Agreement shall be deemed terminated and of no further force or effect, except as provided therein.

*[Signature on following page]*

IN WITNESS WHEREOF, the Agency has duly executed this instrument this day  
of \_\_\_\_\_, 20\_\_\_\_.

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

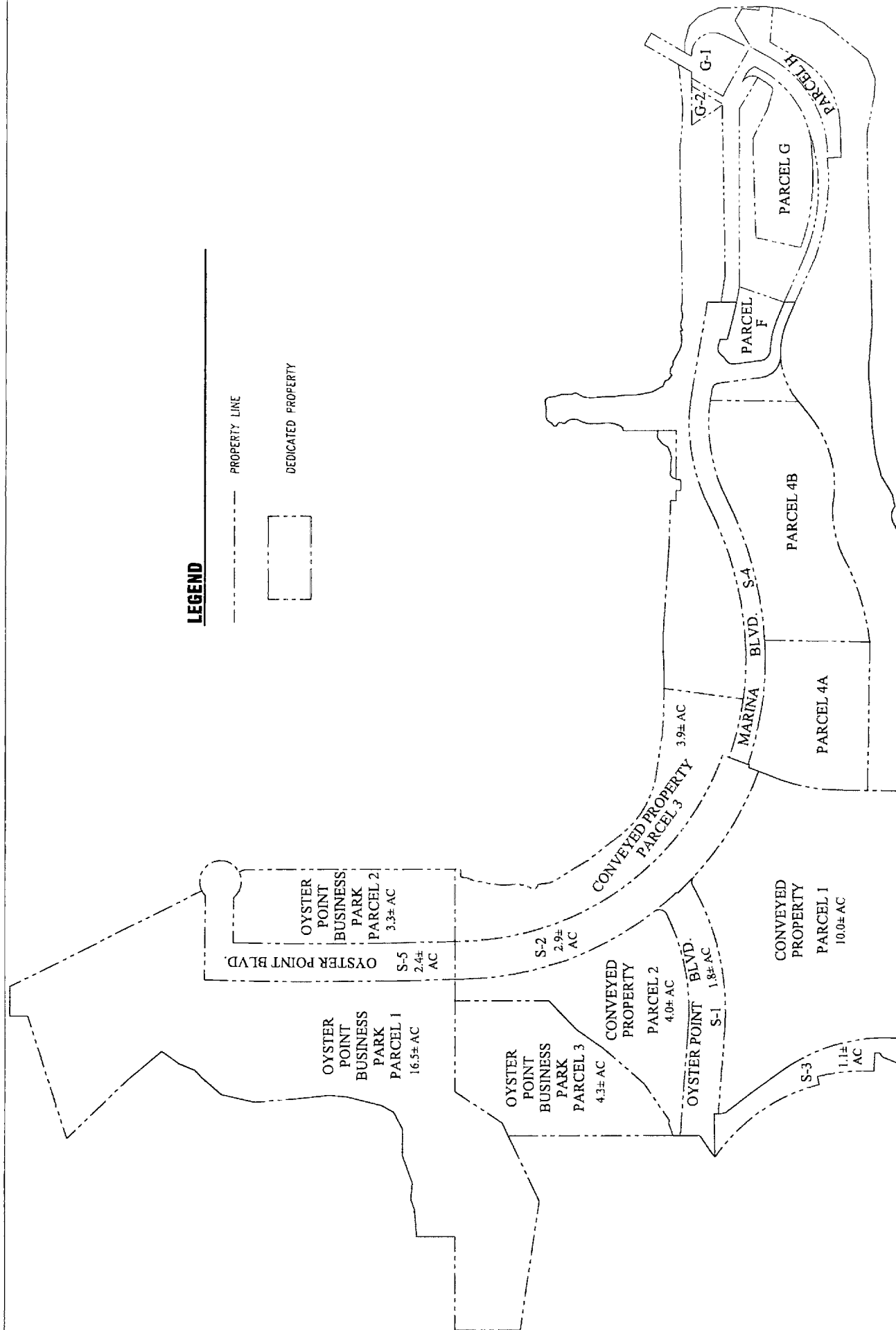
**Exhibit 6.11.1**

**Legal Description and Depiction of Dedicated Property**

## PROPERTY LINE

PROPERTY LINE

DEDICATED PROPERTY



### **DEDICATED PROPERTY**

ALL THAT REAL PROPERTY LOCATED IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA. THE BELOW DESCRIBED PARCEL BEING A PORTION OF PARCEL C AND A PORTION OF THE REMAINDER PARCEL AS SHOWN ON THE PARCEL MAP RECORDED AT BOOK 55 AT PAGES 61 THROUGH 64 IN THE RECORDS OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA. .

SAID PARCEL MORE PARTICULAR DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE SOUTH EAST CORNER OF PARCEL 4 AS SHOWN ON THE PARCEL MAP RECORDED IN BOOK 52 AT PAGE 59 OF THE RECORDS OF SAN MATEO COUNTY, CALIFORNIA

- 1) THENCE S00° 00' 55"E FOR 16.61 FEET;
- 2) THENCE S89° 59' 05"W FOR 18.77 FEET;
- 3) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 5.00 FEET AND A CENTRAL ANGLE OF 87° 02' 04" FROM WHICH THE RADIUS POINT BEARS N87° 03' 01"W, THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 7.60 FEET, SAID CURVE HAVING A CHORD BEARING OF S46° 28' 01"W FOR 6.89 FEET;
- 4) THENCE S02° 57' 02"W FOR 12.14 FEET;
- 5) THENCE S22° 32' 46"W FOR 26.79 FEET;
- 6) THENCE S05° 17' 28"W FOR 16.62 FEET;
- 7) THENCE S14° 33' 22"W FOR 18.66 FEET;
- 8) THENCE S07° 07' 20"W FOR 46.52 FEET;
- 9) THENCE S02° 39' 54"E FOR 26.13 FEET;
- 10) THENCE S11° 27' 55"E FOR 9.33 FEET;
- 11) THENCE S03° 55' 51"W FOR 16.94 FEET;
- 12) THENCE S15° 09' 09"W FOR 13.90 FEET;
- 13) THENCE S07° 33' 30"W FOR 7.72 FEET;
- 14) THENCE S31° 12' 57"W FOR 14.75 FEET;

15) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 12.00 FEET AND A CENTRAL ANGLE OF  $99^{\circ} 15' 11''$  FROM WHICH THE RADIUS POINT BEARS  $S58^{\circ} 47' 02''E$ , THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 20.79 FEET, SAID CURVE HAVING A CHORD BEARING OF  $S18^{\circ} 24' 37''E$  FOR 18.28 FEET;

16) THENCE  $S68^{\circ} 02' 11''E$  FOR 4.44 FEET;

17) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 6.73 FEET AND A CENTRAL ANGLE OF  $57^{\circ} 05' 06''$  FROM WHICH THE RADIUS POINT BEARS  $S33^{\circ} 25' 31''W$ , THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 6.71 FEET, SAID CURVE HAVING A CHORD BEARING OF  $S28^{\circ} 01' 56''E$  FOR 6.43 FEET;

18) THENCE  $S10^{\circ} 34' 28''E$  FOR 6.58 FEET;

19) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 89.35 FEET AND A CENTRAL ANGLE OF  $34^{\circ} 25' 13''$  FROM WHICH THE RADIUS POINT BEARS  $N89^{\circ} 41' 32''E$ , THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 53.68 FEET, SAID CURVE HAVING A CHORD BEARING OF  $S17^{\circ} 31' 04''E$  FOR 52.87 FEET;

20) THENCE  $S33^{\circ} 05' 28''E$  FOR 51.02 FEET;

21) THENCE  $S30^{\circ} 08' 44''E$  FOR 51.48 FEET;

22) THENCE  $S39^{\circ} 10' 44''E$  FOR 68.51 FEET;

23) THENCE  $S36^{\circ} 43' 24''E$  FOR 31.32 FEET;

24) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 290.17 FEET AND A CENTRAL ANGLE OF  $44^{\circ} 11' 01''$  FROM WHICH THE RADIUS POINT BEARS  $N56^{\circ} 01' 39''E$ , THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 223.76 FEET, SAID CURVE HAVING A CHORD BEARING OF  $S56^{\circ} 03' 52''E$  FOR 218.26 FEET;

25) THENCE  $S81^{\circ} 27' 48''E$  FOR 127.43 FEET;

26) THENCE TO THE BEGINNING POINT OF A CURVE TO THE LEFT HAVING A RADIUS OF 1550.60 FEET AND A CENTRAL ANGLE OF  $05^{\circ} 19' 25''$  FROM WHICH THE RADIUS POINT BEARS  $N05^{\circ} 19' 30''E$ , THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 144.08 FEET, SAID CURVE HAVING A CHORD BEARING OF  $S87^{\circ} 20' 13''E$  FOR 144.02 FEET;

27) THENCE  $S07^{\circ} 36' 22''W$  FOR 236.51 FEET;

28) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 856.00 FEET AND A CENTRAL ANGLE OF  $12^{\circ} 03' 11''$  FROM WHICH THE RADIUS POINT BEARS  $N07^{\circ} 36' 22''E$ , THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 180.07 FEET, SAID CURVE HAVING A CHORD BEARING OF  $N76^{\circ} 22' 03''W$  FOR 179.74 FEET;

29) THENCE  $N20^{\circ} 13' 04''E$  FOR 20.00 FEET;

30) THENCE TO THE BEGINNING POINT OF A CURVE TO THE RIGHT HAVING A RADIUS OF 836.00 FEET AND A CENTRAL ANGLE OF  $68^{\circ} 56' 49''$  FROM WHICH THE RADIUS POINT BEARS  $N19^{\circ} 38' 45''E$ , THENCE RIGHT ALONG SAID CURVE FOR AN ARC LENGTH OF 1006.00 FEET, SAID CURVE HAVING A CHORD BEARING OF  $N35^{\circ} 52' 51''W$  FOR 946.39 FEET;

31) THENCE  $N01^{\circ} 24' 25''W$  FOR 25.81 FEET; to a point on the south side of said parcel 4



32) THENCE N89° 59' 36"E FOR 214.69 FEET, TO A POINT AT THE SOUTH EAST CORNER OF SAID PARCEL 4 AND THE TRUE POINT OF BEGINNING,


THE AREA BEING 3.932 ACRES.

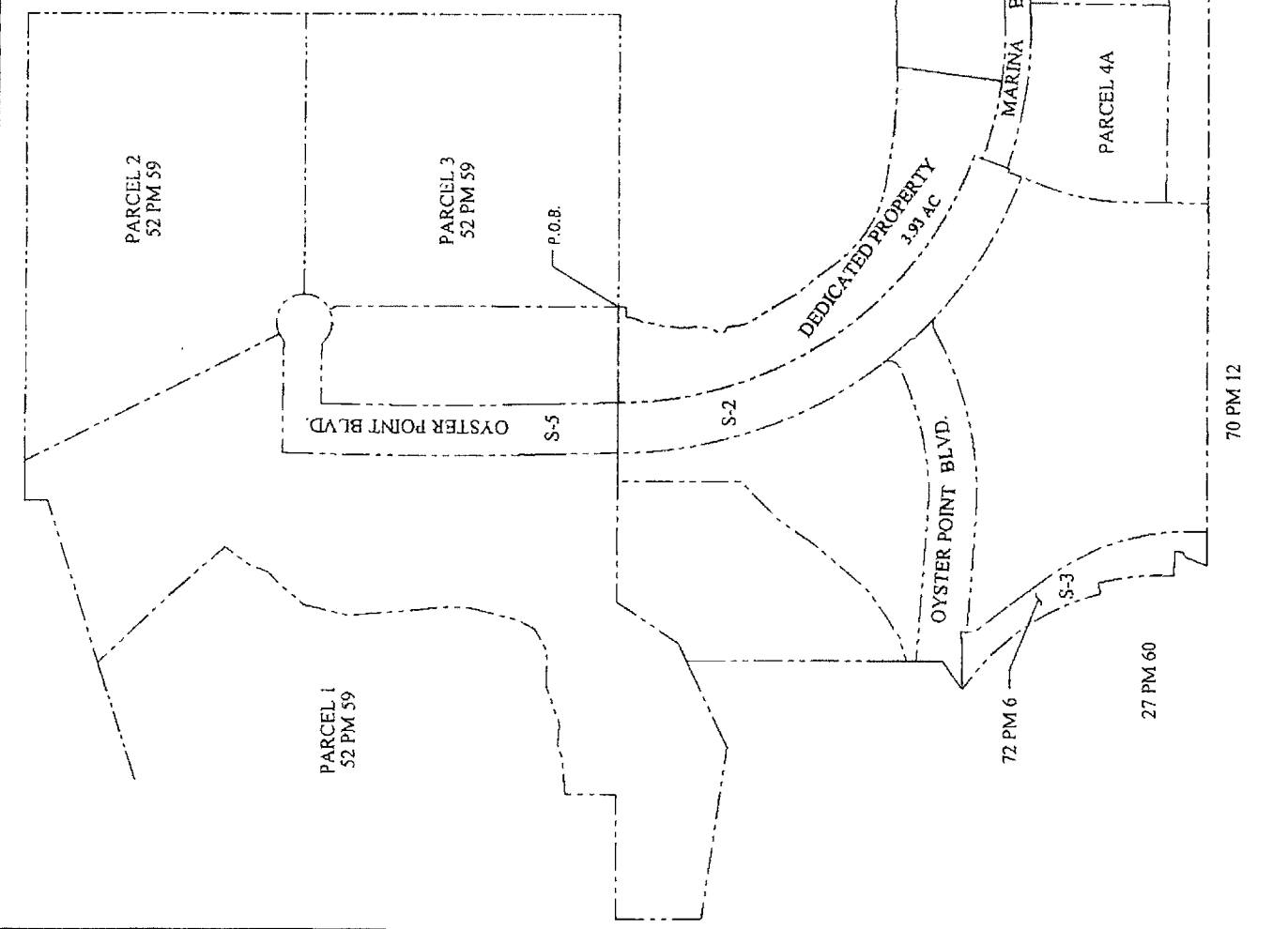
LEGAL DESCRIPTION PREPARED BY \_\_\_\_\_

KENNETH P. MOORE PLS 4918

EXPIRES 12-31-12

DATE 3-10-11

	WILSEY HAM 3130 LA SELVA STREET, SUITE 100, SAN MATEO, CA 94403 (650)349-2151		JOB NO. 869-005
	PLAT TO ACCOMPANY LEGAL DESCRIPTION DEDICATED PROPERTY		
	SOUTH SAN FRANCISCO	SAN MATEO COUNTY	CALIFORNIA
		SCALE: N.T.S.	DATE: 03-11-11



**Exhibit 9.3**

**Assumption Agreement**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

\_\_\_\_\_  
(Space above this line for Recorder's use only)

**CONSENT AND ASSUMPTION AGREEMENT**

This Consent and Assumption Agreement ("Assignment"), dated as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Redevelopment Agency of the City of South San Francisco, a public body corporate and politic ("RDA") and \_\_\_\_\_ ("Assignee").

**W I T N E S S E T H**

A. Assignee desires to acquire certain property located in the City of South San Francisco, County of San Mateo, State of California, as more particularly described on Exhibit A attached hereto and made a part hereof.

B. The Property is subject to the terms and conditions of that certain Disposition and Development Agreement (this "Agreement") dated \_\_\_\_\_, 2011 by and among the RDA, Oyster Point Ventures, LLC, a Delaware limited liability company, and the City of South San Francisco, a municipal corporation.

C. The RDA desires to consent to Assignee's assumption of all of the obligations of the "Developer" under the Agreement to the extent such obligations relate to the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RDA and Assignee hereby agree as follows:

1. Acceptance and Assumption. From and after the Effective Date hereof, Assignee, for itself and its successors, assigns and legal representatives, hereby expressly assumes all of the rights, interests, obligations and liabilities, fixed and contingent, of the obligations of the "Developer" under the Agreement to the extent they relate to the Property (the "Assigned Interests").

2. RDA's Consent. RDA hereby consents to the assumption by the Assignee of all of the Assigned Interests and agrees to look solely to the Assignee and its successors and assigns for any and all liabilities and obligations of the "Developer" under the Agreement arising from and after the Effective Date.

3. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

4. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

5. Further Assurances. RDA and Assignee agree to take all such further actions and execute such further documents as may be necessary or desirable to carry out the purposes of the Assignment.

IN WITNESS WHEREOF, RDA and Assignee have duly executed this Assignment as of the day and year first above written.

**ASSIGNEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**RDA:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Agency General Counsel

Exhibit A

Property

## **Exhibit 10.15.1**

### **Expedited Arbitration Procedures**

1. Initiation of Arbitration; Description of Dispute. The complaining Party (the "Complaining Party") shall initiate arbitration by written notice to the other with a description of the dispute or alleged breach. This description shall explain the nature of the complaint and the provisions of the Agreement on which the complaint is based. The date that such notice is effective pursuant to the notice provision of the Agreement shall be the "Initiation Date." Except as expressly modified herein, the arbitration proceedings shall be administered by and in accordance with the then existing JAMS Streamlined Arbitration Rules and Procedures (or the expedited procedures of the American Arbitration Association ("AAA") if JAMS is no longer in existence at the time of the Initiation Date) notwithstanding the nature or the amount in controversy of the dispute. If the resolution of the dispute or determination of the alleged breach involves the acts, omissions or claims of any third person, the arbitration shall not proceed unless and until all such persons have agreed to join in and be bound by the arbitration. Except as provided by this paragraph, no person other than the Parties shall have a right or obligation to join in any arbitration without the express written consent of both Parties.

2. Appointment of Arbitrator. The arbitration proceedings shall be conducted by a single neutral arbitrator (the "Arbitrator") qualified by education and experience in the subject matter of the submitted dispute, and shall be selected by mutual agreement of the Parties from a panel selected by the San Francisco office of JAMS (or AAA if JAMS is no longer in existence), and if the Parties fail to agree within five (5) business days after the Initiation Date, or if JAMS (or AAA) does not offer a selection of potential arbitrators having the requisite qualifications, either party may apply to the Superior Court of San Mateo County, California for the appointment of the Arbitrator. The date on which the Arbitrator is selected or appointed is referred to as the "Selection Date."

3. Powers of Arbitrator. Subject to the terms and limitations in this Exhibit and the Agreement, the Arbitrator shall have full power to give such directions and to make such orders in the matters so referred as the Arbitrator shall deem just. The Arbitrator may grant any remedy or relief consistent with applicable law, the terms of the Agreement, and the evidence presented.

4. Discovery. As between the parties, the parties shall be entitled to discover all documents and other information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration. They may use all methods of discovery customary under federal law, including but not limited to depositions, requests for admission, and requests for production of documents. With respect to third parties, the Arbitrator shall have the power to issue subpoenas for the attendance of witnesses and the production of documents. The time periods for compliance shall be set by the Arbitrator, who may also set limits on the scope of such discovery, in view of the desire of the parties to expedite the resolution of disputes.

5. The Hearing. The Arbitrator shall set the matter for hearing within twenty (20) business days after the Selection Date. The hearing shall be conducted as follows:

(a) The Parties shall file briefs with the Arbitrator at least three (3) business days before the hearing, specifying the facts each intends to prove and analyzing the applicable law.

(b) The Arbitrator will conduct the hearing as if it were an informal court trial. The Arbitrator may adjourn the proceedings from time to time, shall preside at the hearing, and rule on the admission and exclusion of evidence, as well as questions of procedure, and may exercise all other powers reasonably necessary for the efficient and expeditious administration of the proceedings.

(c) The Arbitrator may issue subpoenas for the attendance of witnesses and the production of documents for the hearing.

(d) The order of proof will generally follow that of a typical court trial, including the opportunity to make opening and closing statements.

(e) Within reasonable limitations, both sides at the hearing may call and examine witnesses for relevant testimony, introduce relevant exhibits or other documents, cross-examine or impeach witnesses who shall have testified orally on any matter relevant to the issues and otherwise rebut evidence.

6. Evidence. The Arbitrator shall be guided in its determination of evidentiary issues by the Federal Rules of Evidence or by any other applicable judicial rules of evidence; however, strict conformity to such rules of evidence is not required, except that the Arbitrator will apply the law relating to privilege and work product.

7. Substantive Law. The Arbitrator shall follow and be bound by the substantive law of the State of California.

8. Decision; Judicial Review. The Arbitrator shall try all issues of law or fact that are the subject of the arbitration, and, within ten (10) business days after the conclusion of the hearing, issue a statement of decision explaining the reasons for the decision and containing a full statement of the facts as found and the rules of law applied in reaching a decision. The award will be deemed to have been made in San Francisco, California. An order or judgment upon that decision may be obtained by either party only in the Superior Court of San Mateo County, California.

9. Confidentiality. All papers, documents, or evidence, whether written or oral, that are clearly marked as confidential and that are filed with or presented to the Arbitrator shall be deemed by the Parties and the arbitrator to be confidential information. No party, expert, or the Arbitrator shall disclose in whole or in part to any other person any confidential information submitted by any other person in connection with arbitration proceedings, except to the extent

(a) required by law, regulation, subpoena, or a final order of a court of competent jurisdiction; provided that the party being compelled to disclose the confidential information promptly notifies the other of any such required disclosure and provides copies of all legal process and other papers that evidence the demand for disclosure, affording the other Party an opportunity to seek a protective order, quash the subpoena or pursue any other remedy



available to it. Whether or not either Party seeks or obtains a protective order or other relief, the party being compelled to disclose confidential information shall disclose only so much of the confidential information as it is legally obligated to disclose;

(b) reasonably necessary to assist counsel in the arbitration or preparation for arbitration of the dispute; or

(c) that such "confidential" information was previously or subsequently becomes known to the disclosing party without restrictions on disclosure, was independently developed by such disclosing party, or becomes publicly known through no fault of the disclosing party.

In any event, confidential information may only be disclosed to Parties, the attorneys for the Parties, and witnesses who are expected to testify concerning such information, provided such witnesses sign a confidentiality agreement (in a form and substance reasonably acceptable to the Party or Parties the confidential information of which is to be disclosed to the witness).

10. Costs and Fees. All attorneys' fees and costs shall be paid as provided pursuant to the Agreement, except that each Party shall pay fifty percent (50%) of the fees and expenses of the Arbitrator.

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