

**MEMORANDUM OF UNDERSTANDING
(Harbor District – Oyster Point Marina)**



THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated and made effective as of May 27, 2009 (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 has entered into certain long-term leases with King Ventures for certain portions of the Marina Property ("**King Leases**"), as shown generally on **Exhibit A**. The King Leases require King Ventures to develop, construct, and maintain a hotel and a commercial, village-style complex, but to date, King Ventures has not accomplished the goals and obligations pursuant to the King Leases. Districts 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. In light of discussions with City regarding redevelopment of the Marina Property, Developer proposed a collaborative process to plan and carry out an integrated development of the Marina Property and the Business Park.

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 the Marina Property ("**Project**"). Developer has an option to acquire King Ventures' interests in the Marina Property.

E. The Parties anticipate that the Project will require one or more agreements with Developer to exchange interests in the King Leases and portions of the Marina Property ("**Conveyance Agreement**"), an Owner Participation Agreement or similar agreement ("**OPA**") to establish financing terms for development of portions of the Marina Property, and 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. In conjunction with the Project and negotiation of the Developer Binding Agreements, the Parties desire to provide for an assignment of the King Leases to Developer and a collaborative process

regarding future capital improvements, development and management at the Marina Property. The Parties anticipate that the operations at the Marina will benefit from the Project and the future proximity to Developer's life sciences campus, but that the Project may have fiscal impacts on District's operations at the Marina Property.

G. As a result, the Parties wish to enter into this MOU to (i) detail the conceptual understanding upon which the District is consenting to the assignment of the leases to Developer and will consent to further changes affecting the leases necessary for the Project; (ii) establish a framework for analyzing the effects of the Project on the JPA and existing leases; and (iii) identify issues for resolution in one or more binding agreements among the District, the City and the Agency (collectively, the "District Binding Agreements") to be concluded on roughly the same timetable as the Developer Binding Agreements.

H. This MOU does not authorize the proposed construction of the Project or any other improvements and will not result in either a direct or reasonably foreseeable indirect physical change in the environment; rather, this MOU only commits the Parties to certain obligations related to the planning and negotiation of improvements to and management of the Marina Property as described herein. 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**"), will prepare an EIR to evaluate the potential environmental impacts of the proposed Project. No construction will be authorized until (i) City, in conjunction with Agency, has prepared, certified as adequate and approved an 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.

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 of this MOU. This MOU is intended as an expression of preliminary points of agreement among the Parties. The Parties expressly acknowledge and agree that: (i) the terms and conditions set forth in this MOU are subject to the approval of, or modification by, the governing bodies of City, Agency and District; and (ii) following approval of this MOU by City, Agency and District, the Parties intend to execute the District Binding Agreements that incorporate the terms and conditions of this MOU after preparation of a program level EIR for the Project as required by CEQA and Section 8 below.

Section 2 Preliminary Terms; No Obligation to Proceed. Nothing in this MOU creates a binding obligation, and no binding agreement will exist unless the Parties sign the District Binding Agreements. Each Party expressly acknowledges and agrees that this MOU creates no obligation on the part of any Party to: (i) enter into a binding agreement related to the terms and conditions set forth in this MOU; (ii) grant any approvals or authorizations required for the Project; (iii) agree to any specific terms or obligations; (iv) provide financing for improvements to the Marina Property or the Project, or (v) proceed with the development of the Marina Property. All of the terms set forth in this MOU are preliminary in nature and subject to approval by the City, Agency and District and memorialization in the District Binding Agreements among the Parties. The Parties acknowledge that the Project and any proposed improvements to the Marina Property may be revised as the environmental, financial and planning processes proceed and,

provided that the Parties approve of such revisions, that the terms and conditions of this MOU may be modified.

Section 3 Good Faith Efforts to Negotiate. This MOU only binds the Parties to negotiate in good faith for the purposes specified herein. City, Agency and District shall use reasonable efforts to complete negotiations for and preparation of the District Binding Agreements. Furthermore, the Parties shall use reasonable efforts to obtain any third-party consent, authorization, or approval required in connection with the transactions contemplated hereby. In addition, City and Agency shall negotiate in good faith with Developer on the Developer Binding Agreements for the Project.

Section 4 Term. The term of this MOU (the "**Term**") shall commence on the Effective Date, and shall terminate five hundred forty (540) days thereafter, unless extended or earlier terminated as provided herein. The Term may be extended for up to a maximum of three (3) thirty (30) additional calendar day terms upon the mutual written agreement of District acting through and in the discretion of its General Manager, the Agency acting through and in the discretion of its Executive Director and the City acting through and in the discretion of its City Manager.

Section 5 District Binding Agreements; Marina Operations.

5.1 Contemplated Provisions. Provided that City, Agency and Developer enter into Developer Binding Agreements, City and/or Agency will agree to incorporate the following terms into the District Binding Agreement to mitigate anticipated fiscal impacts to District:

5.1.1 Lease Revenue. For the purpose of commencing development of the Project, in the event the King Leases are terminated prior to District's repayment of the DBW loan, 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 currently contemplated termination of the King Leases in 2026, unless the parties reach a mutually acceptable alternative agreement on providing the District such revenue. To that end, the parties will discuss in good faith alternatives, including but not limited to the possibility of discontinuing direct payments after debt service to DBW is retired in 2019 or later and instead provide financing for Marina public improvements, set forth in Section 5.1.2, in an amount no less than the amount of the King Lease Rent that would otherwise be payable. Agency will prorate any funds provided to DBW if the King Leases are terminated during a portion of a year. For purposes of this Section 5.1.1, Termination of the King Leases shall not include any assignment, amendment or any other transfer of the King Leases to Developer or any other third-party that does not include the City.

5.1.2 Marina Improvements. City and/or Agency shall make good faith efforts to allocate funds or arrange financing for the replacement of one dock on the Marina Property in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) in connection with the Project. To the extent financially feasible, it is the intent of the parties to replace two docks when necessary to maintain the functioning and quality of the marina as the Project is being implemented. In addition and independent of the understanding in the prior sentences, City and District have previously agreed that the City will reimburse the District One Million Three Hundred Forty Thousand Dollars (\$1,340,000) for dredging and breakwater improvements to the Marina Property previously undertaken by City out of the City's share of Measure A sales tax funds.

5.2 District Office Space. In order to assist District reduce its operating costs, City will cooperate with District to identify approximately 5,000 square feet of temporary office space to District for the District use located within the City. Provided that a hotel and/or commercial space is developed on the Marina Property retained by City, City and/or Agency will provide District with office space to District within such proposed commercial building. City's goal is to provide such space without cost to District if financially feasible. If no appropriate space for the District office is developed, the Parties will discuss the possibility of providing a portion of the Marina Property on which District may develop its own headquarters and a small commercial development to provide the District with ongoing revenue.

5.3 District Obligations.

5.3.1 Consent to Lease Assignment. Upon written request by Developer, District will consent by resolution, to an assignment of the King Leases from King Ventures to Developer. District will cooperate with Developer to obtain consent of such assignment from DBW.

5.3.2 Capital Improvement and Management Plan. Not later than 12 months after the Effective Date, District will provide the City with a draft capital improvement plan until the end of the JPA (2026) and a management plan to increase berth occupancy and direct revenue. The Parties agree to cooperate and collaborate to refine such capital improvement plan and work to integrate its implementation as part of the Project, including the mutually supportive use of financing mechanisms available to the respective parties.

Section 6 Development of the Project.

6.1 Consultation with District. City and Agency shall confer with and provide reasonable and timely opportunities for District to comment on the development of plans for the Project and to cooperatively work with District to address potential impacts of the Project (including both its construction and implementation phases) on District operations on or near the Marina Property.

6.2. Public Improvements. Agency anticipates providing tax increment funding for infrastructure improvements to the Marina Property consistent with the Preliminary Site Plan previously prepared by Developer, including reconfigured streets and utilities, recreation fields, environmental remediation, landscaping, grading for new commercial/hotel use, and repavement of parking (collectively, "**Public Improvements**"). City and/or Agency will consult in good faith with District regarding the Public Improvements related to the Marina Property, provided that the Public Improvements affect the District's capital program and marina operations.

6.3 Transfer of Marina Property. District will agree to conveyance of portions of the Marina Property to King Ventures/Developer, provided that (i) mutually acceptable District Binding Agreements are executed by the Parties, and (ii) City and/or Agency consults with District on the planning and development of the Project as required by this MOU.

6.4 JPA Amendment. Provided that mutually acceptable District Binding Agreements are executed, City and District will amend the JPA in order to: (i) facilitate the development of the Project by Developer; (ii) address the ongoing roles and responsibilities of the Parties as they may be modified as a consequence of the Project; and (iii) facilitate improvements by District of the harbor and marina related to

the capital improvement program. In addition, the Parties will discuss in good faith the extension of the JPA beyond 2026 if that would facilitate the Project and the mutual interests of the Parties.

Section 7 Revenue Participation. The parties contemplate that if City and/or Agency undertake or cause the development of a hotel and/or commercial space on the Marina Property, the District would receive a share of financial participation in order to compensate the District for the reasonable value of lost opportunities under the JPA (as determined mutually and in good faith) and, if the JPA is extended, to facilitate future public improvements to the harbor and marina.

Section 8 CEQA Compliance. Any approval of by City and/or Agency related to the Public Improvements contemplated by this MOU or the Project shall be subject to and in full compliance with CEQA. No construction or binding agreements among the Parties will be authorized until (i) City, in conjunction with Agency, has prepared, certified as adequate and in full compliance with CEQA, and approved an EIR and related findings; (ii) City has approved the Project Entitlements over which it has jurisdiction; and (iii) any agreements or regulatory permits required by any other applicable regulatory agencies have been obtained. The Parties anticipate undertaking and completing a program level EIR under CEQA for the entire Project, including the Public Improvements, and a project level EIR under CEQA for each phase of the Project. The Parties further contemplate that Developer will pay all funds necessary for preparation of an EIR.

Section 9 Execution of District Binding Agreements. Provided that City and Agency have completed a program level EIR for the Project and City, Agency and Developer successfully complete negotiations for and preparation of an OPA, Conveyance Agreement and any other agreements related to the City Approvals, the Parties intend to incorporate the terms and conditions of this MOU into the District Binding Agreements. The Parties shall have no legal obligation to grant any approvals or authorizations related to this MOU unless and until their respective governing bodies have authorized execution of the District Binding Agreements.

Section 10 Expenses. The Parties understand that Developer may reimburse District for District's legal costs related to the Project as well as any other consulting costs incurred in connection with this MOU and the activities contemplated by the Parties, including but not limited to the preparation of a draft capital improvement plan. If Developer does not do so or the amount Developer pays to District does not reimburse all such District costs, the Parties shall make good faith efforts to cover such District costs from other Project sources.

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 Termination; Effect of Termination. This MOU may be terminated for cause at any time by any Party. Upon thirty (30) calendar days prior written notice and upon a showing of cause, each Party shall have the right to terminate this MOU in its sole discretion. Upon termination as provided herein, or upon the expiration of the Term and any extensions thereof without the Parties having successfully

negotiated the District Binding Agreements, this MOU shall forthwith be void, and there shall be no further liability or obligation on the part of each Party or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 10 (Expenses) and Section 11 (Marina Property Access), shall survive such termination.

Section 13 Notices. Except as otherwise specified in this MOU, all notices to be sent pursuant to this MOU 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 14 Severability. If any term or provision of this MOU 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 MOU 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 MOU would be defeated by loss of the invalid or unenforceable provision.

Section 15 **Entire Agreement; Amendments in Writing; Counterparts.** This MOU 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 MOU may be amended only by a written instrument executed by the Parties or their successors in interest. This MOU may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

Section 16 **Successors and Assigns; No Third-Party Beneficiaries.** This MOU 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 MOU 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 17 **Governing Law.** This MOU shall be governed by and construed in accordance with the laws of the State of California.

Section 18 **Relationship of Parties.** The Parties agree that nothing in this MOU 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.

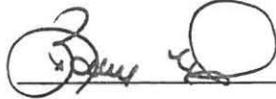
Section 19 **Captions.** The captions used in this MOU are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

SIGNATURES ON THE NEXT PAGE

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

CITY

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

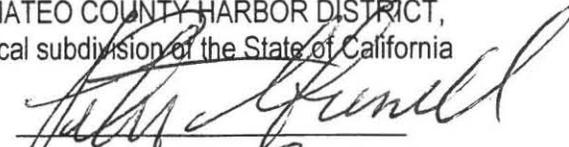
By: 
Name: Barry M. Nagel
City Manager

ATTEST:
By: 
City Clerk Deputy City Clerk

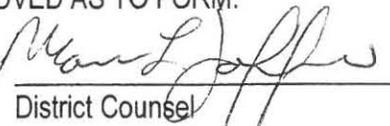
APPROVED AS TO FORM:
By: 
City Attorney *for Steve Mattas*

DISTRICT

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

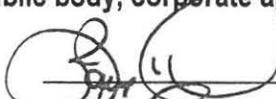
By: 
Name: Peter Grenier
General Manager

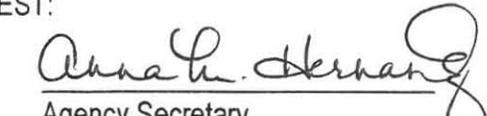
ATTEST:
By: 
District Secretary

APPROVED AS TO FORM:
By: 
District Counsel

AGENCY

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

By: 
Name: Barry M. Nagel
Executive Director

ATTEST:
By: 
Agency Secretary

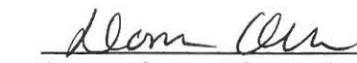
APPROVED AS TO FORM:
By: 
Agency General Counsel *for Steve Mattas*

Exhibit List

EXHIBIT A
MAP OF THE PROPERTY

Oyster Point
 Business Park &
 Marina Village

SHORENSTEIN/
 SKS

Oyster Point Business Park &
 Oyster Cove Marina
 375-385 Oyster Point Boulevard
 South San Francisco, CA 94080

WILSEY
 HAM

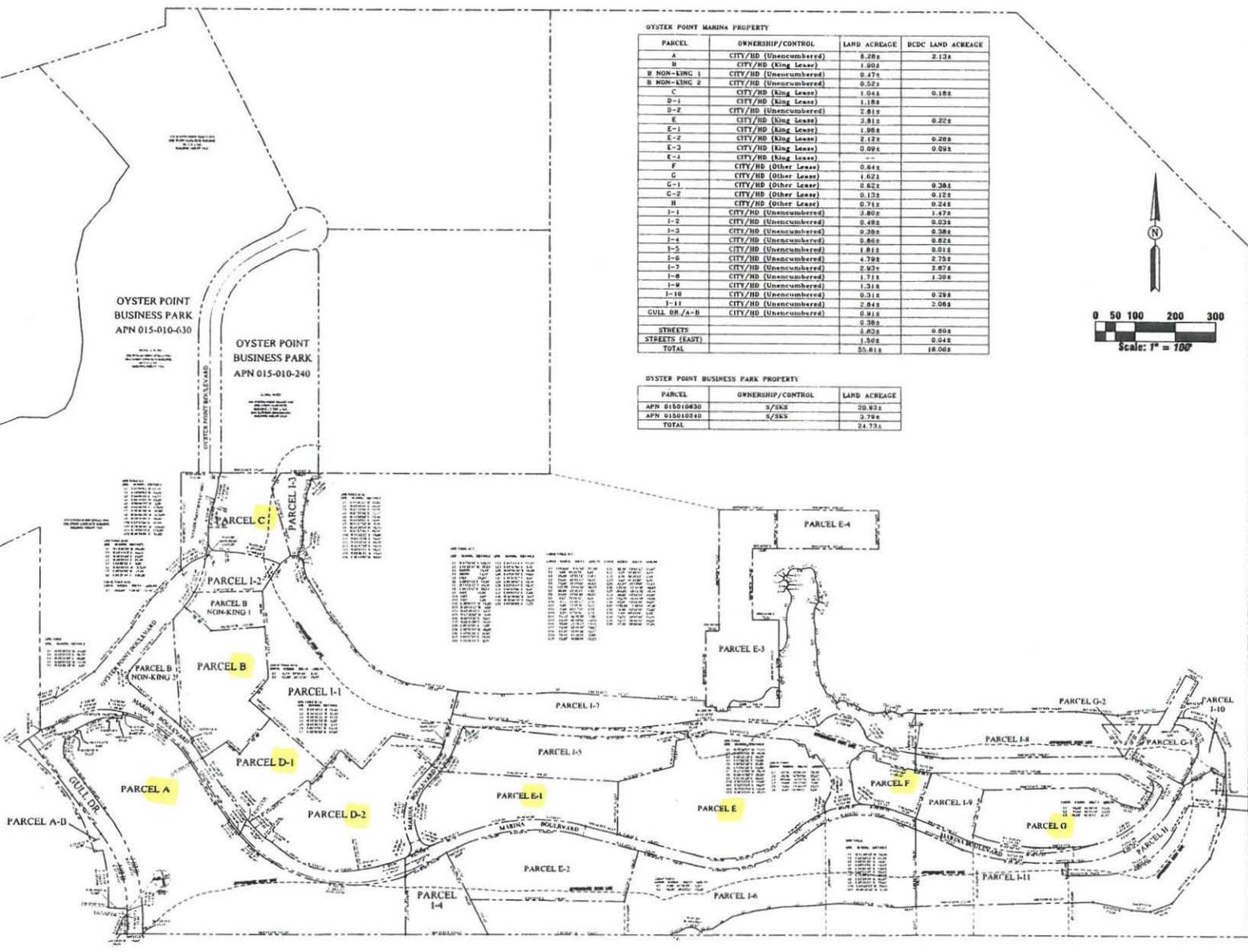
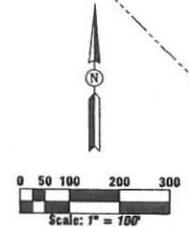
ENGINEERING & PLANNING & SURVEYING
 322 WILSON AVENUE, SUITE 100
 FOLSOM, CA 95630
 916.437.1000

OYSTER POINT MARINA PROPERTY

PARCEL	OWNERSHIP/CONTROL	LAND ACREAGE	BECD LAND ACREAGE
A	CITY/HD (Unencumbered)	8.282	2.132
B	CITY/HD (King Lease)	1.902	
B NON-KING 1	CITY/HD (Unencumbered)	0.472	
B NON-KING 2	CITY/HD (Unencumbered)	0.522	
C	CITY/HD (King Lease)	1.042	0.182
D-1	CITY/HD (King Lease)	1.182	
D-2	CITY/HD (Unencumbered)	2.812	
E	CITY/HD (King Lease)	3.812	0.222
E-1	CITY/HD (King Lease)	1.882	
E-2	CITY/HD (King Lease)	2.122	0.282
E-3	CITY/HD (King Lease)	0.092	0.092
E-4	CITY/HD (King Lease)	---	---
F	CITY/HD (Other Lease)	0.642	
G	CITY/HD (Other Lease)	1.622	
G-1	CITY/HD (Other Lease)	0.822	0.202
G-2	CITY/HD (Other Lease)	0.122	0.122
H	CITY/HD (Other Lease)	0.712	0.242
I-1	CITY/HD (Unencumbered)	3.802	1.472
I-2	CITY/HD (Unencumbered)	0.492	0.322
I-3	CITY/HD (Unencumbered)	0.282	0.282
I-4	CITY/HD (Unencumbered)	0.862	0.822
I-5	CITY/HD (Unencumbered)	1.812	0.812
I-6	CITY/HD (Unencumbered)	4.782	2.782
I-7	CITY/HD (Unencumbered)	2.922	2.872
I-8	CITY/HD (Unencumbered)	1.712	1.202
I-9	CITY/HD (Unencumbered)	1.312	
I-10	CITY/HD (Unencumbered)	0.212	0.292
I-11	CITY/HD (Unencumbered)	2.042	2.062
CULA DR./A-H	CITY/HD (Unencumbered)	0.912	
STREETS		0.622	0.602
STREETS (EAST)		1.582	0.042
TOTAL		55.612	18.082

OYSTER POINT BUSINESS PARK PROPERTY

PARCEL	OWNERSHIP/CONTROL	LAND ACREAGE
APN 015010430	S/SKS	20.932
APN 015010240	S/SKS	3.782
TOTAL		24.712



NO. VALUE DATE

Sheet Information
 Date: APR 26, 2010
 File Name: 104002
 Project: 104
 Drawing: 104
 Author: AP
 File

CURRENT
 PARCEL MAP

