

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

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

RECITALS

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

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

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

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

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

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

G. City, in conjunction with Agency, pursuant to the California Environmental Quality Act (Section 21000 *et seq.* of the Public Resources Code, and the Guidelines set forth at 14 California Code of Regulations section 15000 *et seq.*, "CEQA"), has prepared and circulated for public comment a Draft EIR to evaluate the potential environmental impacts of the proposed Project. No construction will be authorized until (i) City, in conjunction with Agency, has certified as adequate and approved a Final EIR; (ii) City has approved the land use entitlements required for the Project; and (iii) any agreements or regulatory permits required by any other applicable regulatory agencies have been obtained. The City, by Resolution No. 46-2011 certified the Oyster Point Specific Plan Environmental Impact Report ("EIR") for the Project and all related improvements.

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

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

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

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

Section 4 JPA Amendment. Upon point of conveyance of any portion of the Marina Property to Developer, Section 2 and Section 3 of the JPA, and those incorporated exhibits (Exhibit 1 and Exhibit 2), are hereby amended to remove from the terms of the JPA those conveyed portions of the Marina Property, as more particularly described in **Exhibit C**, attached hereto and incorporated by reference. Agency and District hereby consent to this amendment of the JPA, and no further approval by the governing bodies of the City, Agency and District is required. The timing of the property conveyance and JPA amendment 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 which the parties agree is not later than December 31, 2019. Agency will prorate any funds provided to DBW if the King Leases are terminated during a portion of a year. For purposes of example only if the King Leases were terminated on February 28, 2011, the annual payment due to the District for minimum rent would equal \$211.656, which is the same amount Developer presently pays for lease payments.

Section 6 Marina Operations.

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

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

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

Section 7 District Office Space.

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

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

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

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

Section 9 District Costs. Upon submission of an invoice with reasonable supporting information the Agency will reimburse the District for its actual and reasonable costs of negotiating this Agreement 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.

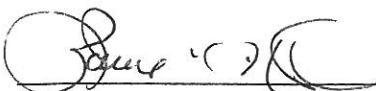
Section 18 Captions. The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

SIGNATURES ON THE NEXT PAGE

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

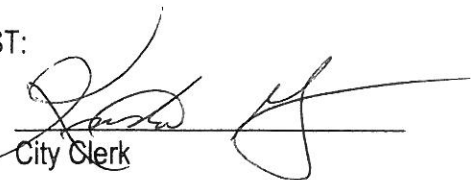
CITY

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: 

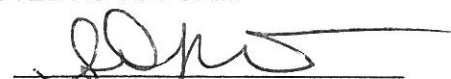
Name: Barry M. Nagel
City Manager

ATTEST:

By: 

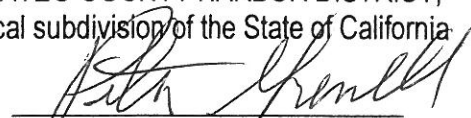
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney


DISTRICT

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

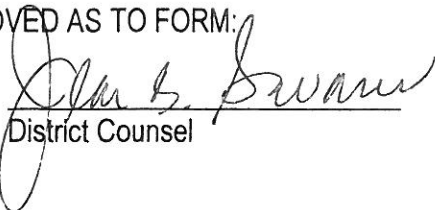
By: 

Name: Peter Grenell
General Manager

ATTEST:

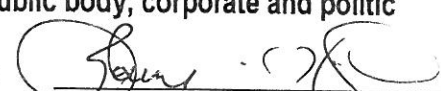
By: 
District Secretary

APPROVED AS TO FORM:

By: 
District Counsel

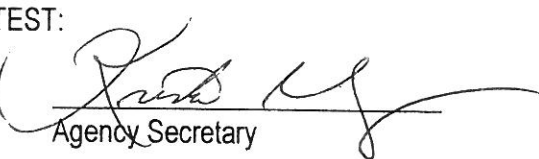
AGENCY

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

By: 


Name: Barry M. Nagel
Executive Director

ATTEST:

By: 

Agency Secretary

APPROVED AS TO FORM:

By: 
Agency General Counsel

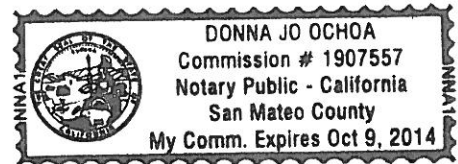
State of California)
)
County of San Mateo)

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

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

WITNESS my hand and official seal.

Signature Donna Jo Ochoa (Seal)



Re:

RE: _____

Property Address or Name: _____

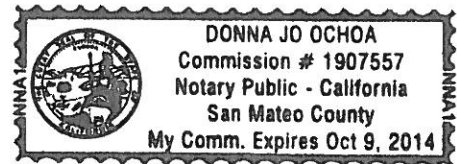
State of California)
)
County of San Mateo)

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

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

WITNESS my hand and official seal.

Signature Donna Jo Ochoa (Seal)



Re:

RE: _____

Property Address or Name: _____

ACKNOWLEDGMENT

State of California
County of San Mateo

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

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

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

WITNESS my hand and official seal.

Signature Deborah Nixon (Seal)

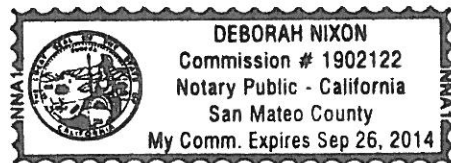


Exhibit List

EXHIBIT A

MAP OF THE PROPERTY

1613418.3

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	0.64±
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

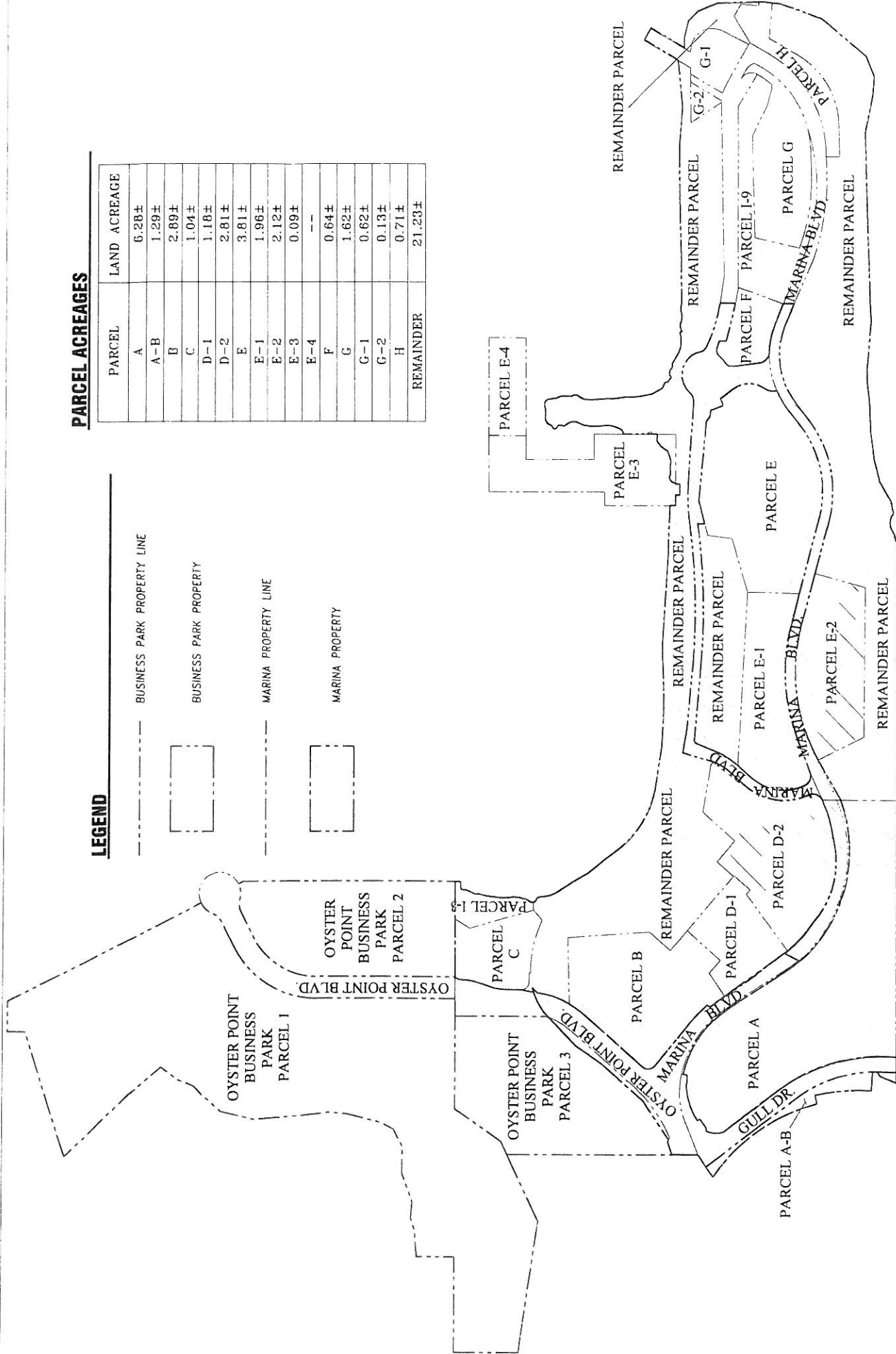


EXHIBIT B

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

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

FEBRUARY 22, 2011

SAN FRANCISCO BAY

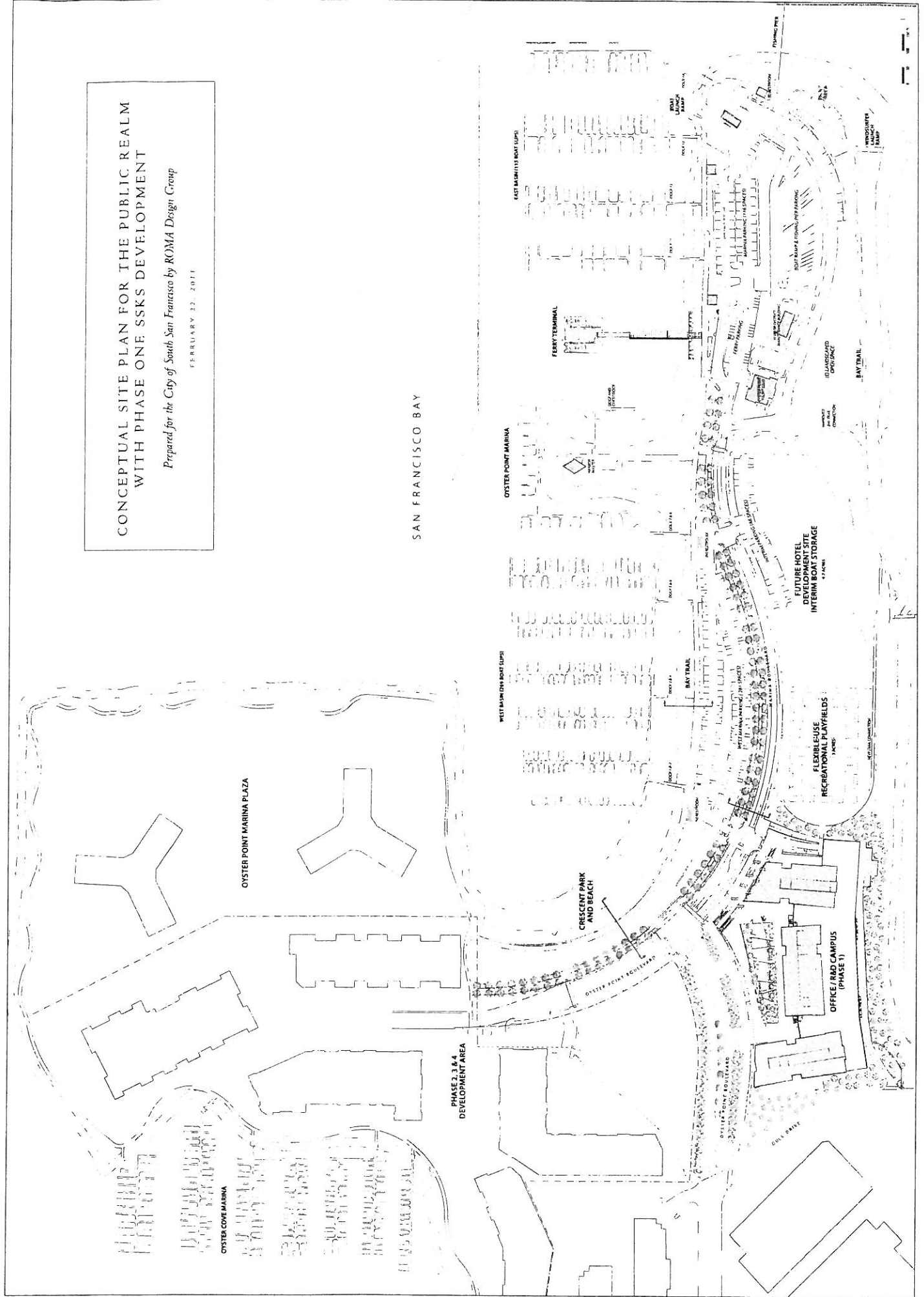


EXHIBIT C

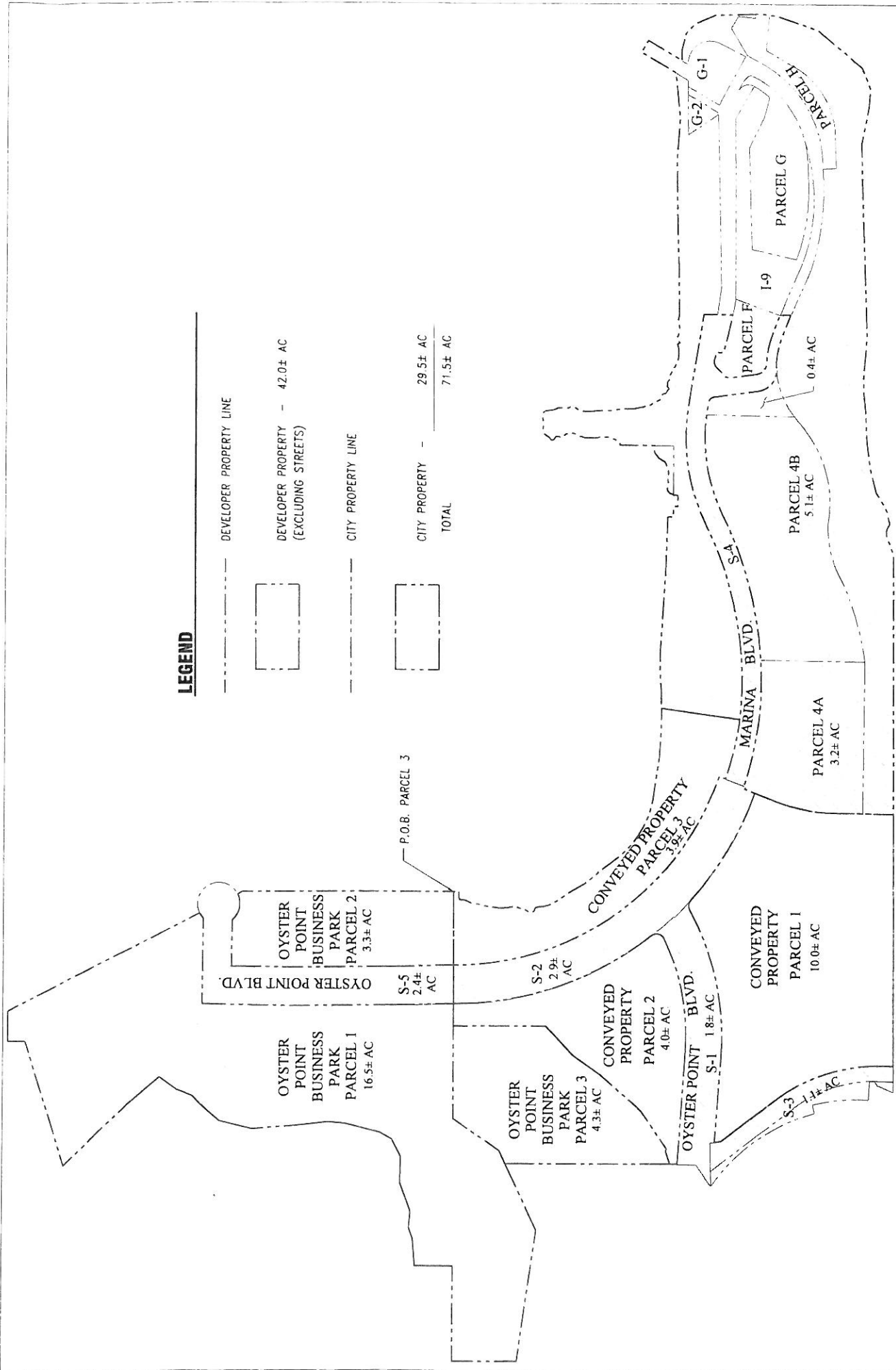


EXHIBIT D

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

Prepared for the City of San Francisco by ROMA Design Group

FEBRUARY 22, 2011

POTENTIAL
LEASEABLE AREA



SAN FRANCISCO BAY

