

AGREEMENT AMENDING
JOINT POWERS AGREEMENT

THIS AGREEMENT by and between the SAN MATEO COUNTY HARBOR DISTRICT, a Political Subdivision of the State of California, hereinafter referred to herein as "District," and the CITY OF SOUTH SAN FRANCISCO, a Municipal Corporation, hereinafter called "City"

WITNESSETH:

RECITALS:

1. The parties hereto entered into a Joint Powers Agreement effective as of 12:01 a.m., November 11, 1977, and executed on October 21, 1977, by the City of South San Francisco and on October 24, 1977, by the San Mateo County Harbor District, wherein District was to maintain and operate the Oyster Point Marina Park and perform other acts as said Joint Powers Agreement provided.
2. Said Agreement required the District to advance sums in the amount of \$700,000.00, to be repaid from revenues from the project, as described in said Agreement, and further required repayment to the City of \$215,000.00 (with adjustments) which had been advanced by the City; said repayment to be pursuant to a schedule to be developed by the Policy Board.
3. The project cost far exceeded the estimates of engineers and the District has advanced sums in excess of \$700,000.00, and may be required to advance additional sums in order to complete said project.
4. The parties hereto desire to amend said Agreement.

NOW, THEREFORE, said Joint Powers Agreement is hereby amended to provide as follows:

1. District shall be repaid all monies advanced by it including those sums in excess of \$700,000.00 without interest. If revenues in any year hereafter exceed the amount for servicing loans from the State of California, Department of Boating and Waterways (formerly Department of Navigation and Ocean Development), the amounts necessary for reasonable depreciation, as determined in accordance with the terms and provisions of the Joint Powers Agreement, and operating expenses, said excess revenues shall be paid to the District for deposit in the Harbor District's Capital Outlay Fund until the amount advanced by the District has been paid, at which time any such excess funds remaining shall be divided equally among the parties hereto as provided in the Joint Powers Agreement.

2. Provisions for repayment of monies to the City of South San Francisco and the sum of \$700,000.00 to the District as provided in the Joint Powers Agreement, are hereby reaffirmed.

3. Sums to be repaid to the City pursuant to the terms of said Joint Powers Agreement shall be paid from operating revenues from lands, improvements, leaseholds and other revenue generating sources for which the State Lands Commission of the State of California does not require or regulate apportionment or distribution thereof. If there are no such lands, improvements, leaseholds or other revenue generating sources, then said sum shall be repaid to the City pursuant to the Joint Powers Agreement in a manner determined by the Oyster Point Marina/Park Policy Board. It is the intent of the parties hereto that said funds shall be repaid to the General Fund of the City.

4. Paragraph 9 of the Joint Powers Agreement, authorizing the District to lease lands to private developers, is hereby amended to provide that the District may lease lands within the project site to private developers and/or public agencies.

5. Except as amended hereby, the terms and provisions of said Joint Powers Agreement is hereby reaffirmed.

6. This amendment to the said Joint Powers Agreement shall be retroactive and considered effective from the date said Joint Powers Agreement was executed, except as herein expressly provided.

SIGNED: October 11, 1979

CITY OF SOUTH SAN FRANCISCO

By: C. Walter Binkley
City Manager

ATTEST:

Barbara A. Battaglia

SIGNED: October 11, 1979

SAN MATEO COUTH HARBOR DISTRICT

By: Frank Lee
FRANK Lee, PRESIDENT

RESOLUTION NO. 119-79

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO, STATE OF CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
AMENDING THE JOINT POWERS AGREEMENT BETWEEN THE
SAN MATEO COUNTY HARBOR DISTRICT AND THE CITY OF
SOUTH SAN FRANCISCO - OYSTER POINT MARINA

WHEREAS, the San Mateo County Harbor District, a political subdivision of the State of California, and the City of South San Francisco, a municipal corporation, entered into an agreement effective as of 12:01 a.m. on November 11, 1977, and executed on October 21, 1977 by the City of South San Francisco and on October 24, 1977 by the San Mateo County Harbor District, providing as therein set forth for the development, operation and maintenance of the Oyster Point Marina; and

WHEREAS, the parties desire to amend said Joint Powers Agreement as set forth in the document entitled "Agreement Amending Joint Powers Agreement", a copy of which is attached hereto as Exhibit "A".

NOW THEREFORE BE IT RESOLVED by the City Council of the City of South San Francisco that:

1. Execution.

The City Council authorizes execution of the agreement amending the Joint Powers Agreement, a copy of which attached hereto as Exhibit "A".

2. Signatures.

The City Manager of the City of South San Francisco is authorized to execute said agreement on behalf of the City, and the City Clerk attest his signature thereto.

* * * *

I hereby certify that the foregoing Resolution was regularly introduced and adopted by the City Council of the City of South San Francisco at a regular meeting held on the 3rd day of October, 1979, by the following vote:

AYES: Councilmembers Ronald G. Acosta, Emanuele N. Danonte, Terry J. Mirri, and Roberta Cerri Tenlia

NOES: Councilman William A. Borba

ABSENT: None

ATTEST: /s/ Barbara A. Battaya
City Clerk

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

I, Barbara A. Battaya, City Clerk of the City of South San Francisco, County of San Mateo, State of California, do hereby certify that the foregoing Resolution, introduced and adopted by the City Council of the City of South San Francisco, is a true and correct copy of the original as the same appears in the files of the City Clerk.

Resolution No. 119-79

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the City of South San Francisco this 11th day of Oct. 1979

BARBARA A. BATTAYA
City Clerk and Ex-officio Clerk of the City Council of the City of South San Francisco

By Barbara A. Battaya
City Clerk

By _____
Deputy City Clerk

EXHIBIT "A" TO RESOLUTION NOS. 247-85 & RPD-7

ADOPTED November 27, 19 85.

SECOND AGREEMENT AMENDING JOINT POWERS AGREEMENT

THIS SECOND AGREEMENT amending the Joint Powers Agreement by and between the SAN MATEO COUNTY HARBOR DISTRICT (hereinafter referred to as "DISTRICT") and the CITY OF SOUTH SAN FRANCISCO, a municipal corporation (hereinafter referred to as "CITY") is made and entered into as of this 27th day of November, 19 85.

WITNESSETH:

WHEREAS, on October 24, 1977, the parties hereto entered into a Joint Powers Agreement (hereinafter "Agreement") for the purpose of repairing and/or replacing the existing Marina facilities at Oyster Point and expanding said facilities as described therein, and for the purpose of permitting the DISTRICT to rehabilitate, manage, maintain and operate said existing Marina and construct, manage, maintain and operate the future Marina Development at Oyster Point; and

WHEREAS, said Agreement was amended on October 11, 1979; and

WHEREAS, said Agreement and amendment thereto required the establishment of a POLICY BOARD consisting of five (5) members and charged said Board with the responsibility for making recommendations to the CITY and DISTRICT on all matters of policy relating to the construction, operation, management and maintenance of OYSTER POINT MARINA/PARK and required said Board to exercise certain other powers specifically delegated to it; and

WHEREAS, the parties hereto desire to again amend said Agreement to restructure the POLICY BOARD and exercise its delegated powers;

NOW, THEREFORE, it is agreed:

1. Paragraph 4 amended.

Paragraph 4 of the Agreement is hereby amended to read as follows:

"4. LIAISON GROUP

To facilitate the accomplishment of the purposes of this Agreement, discussions shall be regularly held between the DISTRICT and the CITY by appointment by each body of representatives to a LIAISON GROUP, consisting of two (2) members who shall be Council Members from the City of South San Francisco, appointed by said Council and two (2) members who shall be HARBOR COMMISSIONERS, appointed by the BOARD OF HARBOR COMMISSIONERS, each to serve at the pleasure of his or her respective agency.

Each member of said LIAISON GROUP shall serve without compensation, but shall be reimbursed actual and necessary expenses from the revenues from said OYSTER POINT MARINA/PARK. Said GROUP shall have responsibility for reporting to the CITY COUNCIL and HARBOR COMMISSION on all matters of policy relating to the construction, operation, management, and maintenance of the OYSTER POINT MARINA/PARK, and such other powers, if any, as are specifically delegated to the GROUP by the DISTRICT and the CITY. The primary purpose of said GROUP is not to be an advisory body, nor is it to present recommendations to either party. It is constituted solely as a means for direct communications, exchange of ideas and reports of plans between the DISTRICT and the CITY. The chief administrative officer, the attorney and engineer of the DISTRICT shall serve as staff to the LIAISON GROUP on all matters involving the

DISTRICT'S responsibility and the chief administrative officer, the attorney and engineer of the CITY shall serve as staff to the GROUP on all matters involving the CITY'S responsibility. Compensation for each staff person shall be the responsibility of the primary employer of said person, but said salary shall be considered as part of the expenses of the OYSTER PARK MARINA/PARK incurred for the maintenance and operation to be reimbursed from operating revenues, pursuant to Paragraph 12 hereof."

2. Paragraph 5 amended.

The last sentence of Paragraph 5 of the Agreement is hereby amended to read as follows:

"However, pursuant to this Agreement, ultimate financial responsibility rests with the HARBOR DISTRICT and for this reason, if there is disagreement between the CITY and the DISTRICT as to the manner in which the project will be constructed, managed, maintained or operated, the final decision as to said matters shall be made by the BOARD OF HARBOR COMMISSIONERS of the SAN MATEO COUNTY HARBOR DISTRICT."

3. Paragraph 6 amended.

Paragraph 6 of the Agreement is hereby amended to read as follows:

"6. METHOD BY WHICH CONSTRUCTION PHASES OF THE PROJECT WILL BE ACCOMPLISHED

(a) Plans and Specifications: The project may be constructed in three initial phases as set forth in the Agreement between CITY and the former State of California Department of Navigation and Ocean Development ("DNOD") dated September 8, 1975, the proposed Master Plan (as amended), and the OYSTER POINT MARINA/PARK Specific Plan adopted by the CITY on September 21, 1983, and as said Specific Plan may be amended from time to time. The DISTRICT has already contracted with engineers

for the preparation of proposed project plans and specifications. Plans and specifications for the proposed project have been prepared under the supervision and direction of the DISTRICT and paid for by the DISTRICT from DISTRICT funds or loan funds received from DNOD'S successor, the State of California Department of Boating and Waterways ("CAL-BOATING"). Upon completion of said plans and specifications, and for any future plans and specifications, the same shall be reviewed and approved by the BOARD OF HARBOR COMMISSIONERS of the HARBOR DISTRICT and the CITY COUNCIL of the City of South San Francisco.

(b) Award of Contract: Upon review and approval of said plans and specifications by the DISTRICT and CITY staffs and the governing bodies of each of said agencies, subject to Paragraph 6 (a) above, the DISTRICT shall call for competitive bids. The contract shall be awarded by the DISTRICT to the lowest responsive and responsible bidder.

(c) Construction. Construction of said work of improvement shall be under the supervision and direction of the DISTRICT. The engineers of the DISTRICT shall consult with engineers for the CITY during the construction process. The engineers of the CITY shall have access to the construction site, the power to inspect the same during the course of construction, and upon request shall be furnished all plans and specifications prepared by the DISTRICT for their review and comment.

(d) Project Site: The said project shall be constructed partially on lands owned in fee by the CITY and partially on tidelands and submerged lands and nothing set forth herein shall be construed as vesting any ownership in any of said lands in the HARBOR DISTRICT."

4. Paragraph 7 (b) amended.

The last sentence of Paragraph 7 (b) of the Agreement is hereby amended to read as follows:

"In the event that said employees fail to perform their services and duties adequately and in accord with personnel requirements of the CITY, said employees may be discharged in accordance with the personnel rules and procedures of the CITY at the request of the DISTRICT."

5. Paragraph 9 amended.

Paragraph 9 of the Agreement is hereby amended to read as follows:

"9. LEASES

DISTRICT may lease all or any portion of the existing marina, the lands within the project site or the project as completed, to private developers and/or public agencies subject to the approval of CAL-BOATING and the CITY. The revenues from any such lease or leases shall be considered as operating revenues."

6. Paragraph 10 amended.

Paragraph 10 of the Agreement is hereby amended to read as follows:

"10. ACCOUNTING RECORDS

(a) DISTRICT shall maintain account books and financial records to show the revenues and expenses of the OYSTER POINT MARINA/PARK. Said records shall prorate expenses of the DISTRICT where said expenses are attributable in part to other DISTRICT functions. Said prorations shall be subject to review by the CITY.

(b) CITY shall maintain account books and records to show the expenses to the CITY for providing municipal services to said project. Said records shall prorate expenses where said expenses are attributable in part to other CITY functions. Said prorations shall be subject to review by the DISTRICT.

(c) DISTRICT shall render a semi-annual report concerning the financial affairs of the OYSTER POINT MARINA/PARK."

7. Paragraph 11 amended.

The first sentence of Paragraph 11 of said Agreement is hereby amended to read as follows:

"DISTRICT shall maintain minimum insurance required by CAL-BOATING in accord with the Agreement with said Agency and such other insurance and in such amount as may be considered necessary by the DISTRICT and the CITY."

8. Paragraph 12 amended.

Paragraph 12 of said Agreement is hereby amended to read as follows:

"12. DIVISION OF REVENUE

(a) Operating revenues received from the OYSTER POINT MARINA/PARK shall be used to repay loans from CAL-BOATING (formerly DNOD) including the existing loans, if any, to the CITY and the expenses and costs of management, operation and maintenance of the project.

(b) Operating revenues in excess of those required for debt service and operating costs and expenses as provided above shall be held in a reserve account subject to the terms and provisions of the loan agreement with CAL-BOATING. After satisfaction of the yearly requirements under the loan agreement with CAL-BOATING, and during the term of said agreement, with CAL-BOATING'S consent, said excess funds shall be held or disbursed as follows:

(1) The CITY and the DISTRICT shall establish a reasonable depreciation schedule for the various elements of the project and a portion of such excess funds shall be deposited in an account with a financial institution or invested in approved and authorized investments to be used as needed to meet the cost and replacement in accordance with the said depreciation schedule. Any income or profits from said fund or investments shall be added thereto. The maximum reserve to be so maintained shall be determined by the parties hereto.

(2) The CITY shall be paid the sum of TWO HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000.00) (the amount of the CITY'S investment in the existing MARINA from the CITY'S General Fund) less the amount to be paid CITY for personal property pursuant to to Paragraph 15. The DISTRICT shall be paid:

(i) The amount of the DISTRICT'S capital investment in the completed project,

(ii) TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) which was advanced to the CITY for planning purposes,

(iii) The amount paid to CITY for personal property pursuant to Paragraph 15, and

(iv) Sums advanced by the DISTRICT during the term of this agreement from its General Fund for loan service fees or maintenance and operation.

A schedule for repayment of said items shall be developed by the parties hereto subject to modification from time to time.