



Staff Report

TO: Board of Harbor Commissioners

FROM: Steve McGrath, General Manager

DATE: August 16, 2017

SUBJECT: Oyster Point Marina: Joint District and South San Francisco Implementation Agreement between the Harbor District and the City of South San Francisco related to the 2011 Agreement between the City and the District

Recommendation/Motion:

Motion: Approve the Implementation Agreement as drafted, authorize the General Manager to approve non-material changes to the text as may arise between this approval and that of the City, and sign the agreement, conditioned on approval by the City, and City and developer consent to formation of the CFD.

Policy Implications:

This clarifies the intent of a 2011 agreement by the District, and leaves broader policy decisions regarding the future of the District's relationship with South San Francisco, and operation of the Marina, to future discussions regarding amending or replacing the current Joint Powers Agreement (JPA).

Fiscal Implications/Budget Status:

Expenses related to preparation of the agreement: City will reimburse the District up to \$35,000.

Immediate and necessary repairs to Fuel Dock: City will reimburse the District \$90,000.

Replacement of fuel system: City to form Communities Facilities District (CFD), that will generate revenue to pay for the estimated \$2.5 million needed for replacement in two phases:

1. Initial Improvements, from shore out to dispenser, including the dock and dispensers, \$1,250,000. If initial improvements exceed this amount, District and City will discuss reallocating funds without increasing the total.
2. Landside Improvements (tanks and lines), \$1,250,000, by 2025.

Total of \$2.5 million increases by 2% annually. Staff believes, based on independent research, the funds available will be sufficient for the work proposed.

Background/Discussion:

A. Existing JPA

The City of South San Francisco (City) and the San Mateo County Harbor District (District) have been partners in the Oyster Point Marina and Park (OPM) since 1977, with the relationship being governed by a Joint Powers Agreement (JPA.) The JPA has a 49-year term and will expire on November 11, 2026.

B. Oyster Point Development

In March 2011, the City and the former Redevelopment Agency of the City of South San Francisco (RDA) entered into a Development Agreement (DA) and Disposition and Development Agreement (DDA), respectively, with Oyster Point Ventures, LLC to form a public/private partnership to redevelop approximately 80+ acres at Oyster Point. This included approximately 40+ acres of the city-owned land managed by the Harbor District under the JPA. Due to the recession and other factors, the fully approved project did not immediately move forward to construction.

In 2016, Oyster Point Ventures, LLC (OPV) sold its interest to a new development group, Oyster Point Development, LLC. (OPD) This transfer was approved by the City Council in 2016, and the transfer of the associated leases from OPV to OPD was approved by this Commission on June 29, 2016. The DA/DDA commits OPD (Developer) to first implement Phase I, consisting of a minimum of 508,000 square feet of research and development (R&D) and/or office space with associated infrastructure, and to make extensive public infrastructure improvements (described below) on property within and adjacent to the city-owned property covered by the JPA. The Developer is planning to start construction of Phase I in October 2017.

Much of the infrastructure work in Phase I required of OPD will take place on city-owned land currently under the management of the District pursuant to the JPA, portions of which are subject to the leases between the District and OPD; these leases were formerly referred to as the King leases. The infrastructure work, specifically known as Phase IC work, includes new streets and utilities, improvements to the clay cap over the landfill, parking, open space recreation, beach and park areas, Bay Trail improvements, and grading at the prospective hotel site. The cost of the improvements on the city-owned land is borne jointly by the Developer and the Successor Agency to the Redevelopment Agency. The 2017 updated total cost of Phase IC improvements is approximately \$44,141,000.

Additional work, known as Phase IIC work, will take place on another portion of city-owned land managed by the District, namely a new pump station, repairs to the landfill clay cap, parking areas and landscaping. The cost of the improvements for Phase IIC work is borne mostly by the Successor Agency to the Redevelopment Authority, although the Developer will perform some of the work and contribute funds towards the new pump station. The 2017 updated cost of the landfill clay repair, which will be advanced ahead of the other IIC improvements, is approximately \$843,000.

At the conclusion of Phase IC and Phase IIC work, Oyster Point will emerge with new roads and parking lots, along with improved public spaces.

C. Current City-Harbor District Memorandum of Understanding (MOU)

Coincident with execution of the DA and DDA between the City, Redevelopment Agency and the developer in 2011, the City, Redevelopment Agency and the Harbor District entered into an agreement (the MOU) to facilitate the development of the Phase IC and IIC improvements. Attachment A is a copy of the MOU. The MOU was clear that when certain city-owned parcels were transferred to the developer pursuant to the DDA that those now-developer-owned parcels were automatically removed from the JPA.

The MOU also anticipated that the City and the RDA intended to complete additional public and private improvements on a portion of the remaining city-owned land, making reference to a map attached to the MOU as Exhibit B. This map showed a portion of land redeveloped as “flexible space - recreational playfields” and a portion as “future hotel development - interim boat storage.” These same land use designations were also shown on Exhibit D to the MOU. These contiguous parcels collectively referred to as the “open space-hotel site” are contained within the scope of work for Phase IC construction and include having the developer prepare the open space for recreational use, and prepare all groundwork required for later construction of a hotel.

D. Proposed Implementation Agreement

The proposed Implementation Agreement is intended to assist the City and Harbor District in implementing the 2011 MOU and the proposed Oyster Point development including the Phase IC and Phase IIC infrastructure work. The Draft Implementation Agreement, a copy of which is attached hereto as Attachment B, includes the following primary terms:

1. Access to Marina Property during and for Construction of Phase IC/IIC Improvements.
 - a. Authorizes access to Marina Property covered by the JPA during Phase IC and IIC developments.

The Implementation Agreement authorizes the City’s and Developer’s contractors to access portions of the Marina Property subject to the JPA to construct the Phase IC and IIC improvements. The Implementation Agreement also requires all contractors to keep

vehicular and pedestrian access open at all times during construction for District operations, including but not limited to the docks, fueling facilities, boat ramps, parking lots, bathrooms, ferry terminal, harbor master's office and the yacht club. It also authorizes the contractors to install fences as needed to close off construction sites on the property during the Phase IC and IIC developments, subject to providing the access to District facilities as previously noted.

- b. Requires Contractors to indemnify and defend the City and the District for the contractors' actions on the construction sites.

The Implementation Agreement also requires that contractors provide insurance for their acts and specially naming the District, Successor Agency and the City as additional insured. The clause also requires that contractors hold harmless, defend and indemnify the City, Successor Agency and the District from liability that arises from any willful misconduct, negligence or omissions committed by the contractors or their subcontractors and employees.

2. E, E-1, E-2, E-3 and E-4 Parcel King Leases.

Pursuant to the DDA, the City/Successor Agency and OPD are exchanging property interests in certain portions of the Marina Property and in the OPD (formerly King) leases applicable to the Marina Property covered by the JPA. The 2011 MOU did not address all aspects of the District's interests in the King leases and the Implementation Agreement clarifies those issues. Pursuant to the Implementation Agreement, the E leases will terminate, with the following specific results.

- a. Removal of the proposed recreation and hotel parcels from the land covered by the JPA.

The proposed recreation and hotels parcels, as shown on Exhibit 3 of the Agreement (parcels E, E-1, and E-2), will be removed from the lands included within the JPA. Thereafter, the City shall be responsible for maintenance of those parcels and the JPA will no longer apply to those parcels.

b. Fuel Dock and Fuel Line Repair/Replacement

The Fuel Dock (parcels E-3 and E-4) will remain in the JPA, subject to District control. The Implementation Agreement provides that the City will consider formation of a community facilities district ("CFD") not later than April 30, 2018 for the purpose of funding necessary repairs to the Fuel Dock, and associated infrastructure.

In the event the CFD is formed, the City agrees to reimburse the District from CFD funds for an amount not to exceed \$2,500,000 (increased annually by 2%) for appropriate repair and replacement of the fueling infrastructure system.

The fueling infrastructure improvements would be constructed in two phases identified as the "Initial Improvements" and the "Landslide Improvements" with the Initial

Improvements anticipated to be complete not later than December 31, 2020 and the Landside Improvements anticipated to be completed not later than December 31, 2025.

In addition, the City will reimburse the District \$90,000 to be used for repairs that the City and District agree are necessary for operation of the current fueling infrastructure system. The repairs apply to the existing facility only.

If the City does not create a CFD, the District may:

- (1) continue to operate and maintain the current fueling and infrastructure system, and
 - (2) elect to fund the Initial Improvements and the Landside Improvements itself,
- or
- (3) elect to cease operation and maintenance of the fueling system. In the event that the District elects to cease operation and maintenance of the fueling system, the City will assume responsibility for the fueling system, and will have the option of shutting down the fueling infrastructure system in a manner that complies with applicable law.

3. Fueling Infrastructure Operation and License Agreement.

The District will take over operation and maintenance of the fueling infrastructure system, subject to specified rights to elect not to operate and maintain the fueling infrastructure if the anticipated repair and replacement of the fueling infrastructure does not occur.

4. Reimbursement of District Expenses Related to Preparation of the Implementation Agreement.

The City will reimburse the District for actual and reasonable costs of negotiating this Implementation Agreement, up to \$35,000. The District must submit an invoice with reasonable supporting information.

E. Schedule

- 2011 MOU between District and South San Francisco regarding proposed development
- 2018 April, formation of CFD
- 2018 December 31, City funding for design and engineering of initial improvements (from shore to dock)
- 2020 December 31, City funding for completion of initial improvements
- 2020 December 31, District will 'make best efforts' to complete initial improvements

2025 December 31, City will provide funding to complete landside improvements (tank and lines)

2026 End of term of JPA and Implementation Agreement

F. Liability/Indemnity

1. Course of construction: District indemnified by contractor.
2. Fuel system:
 - a. If the CFD is formed, District will improve/replace the system and be responsible.
 - b. District will seek to transfer liability to operator's insurance under either short term Commercial Activity Permit or longer term agreement after Request for Proposals.
 - c. If the CFD is not formed, and the District elects not to continue operation of the system, District indemnified by City.
 - d. If the CFD is not formed, and the District elects not to continue operation of the system, City responsible for decommissioning system.

G. Risk/Reward

Risks and associated mitigation under the Implementation Agreement:

Costs: If the CFD is formed, the risk to the District is in fuel system cost over-run beyond the \$2.5 million committed (as adjusted, per the terms of the Agreement). Staff believes the Anchor QEA estimate to be reasonable. If the CFD is not formed, the District does not have to bear the cost of replacing the fuel system.

Environmental: Risk to the District from the fuel system is mitigated by (1) insurance provisions in the current OPD lease, (2) funds for immediate repairs from the City, (3) funds for complete replacement of the system from the City, and (4) City obligation to decommission the system if not operated by District.

Safety: Funds for immediate repairs from the City. (City Fire Department has inspected the facility and reportedly has found no immediate threat to public health, safety and welfare.)

Service: If the CFD is not formed, and the District so chooses, fuel service will cease: reduced service to boating public, and reduced perceived value of marina

Reward:

New fuel system funded by others, managed by District and operated by either District or concessionaire, with potential for District revenue.

Increased service to the boating public.

H. The Future

This Implementation Agreement is both short term and narrowly focused: short term, in clarifying the intent of the 2011 agreement in order to facilitate the commencement of the development project; narrowly focused in addressing only the fuel system.

Should the Implementation Agreement be approved, staff anticipates that, short term, the fuel system may be operated by a licensee with a Commercial Activity Permit, and that a Request for Proposals will be issued for a longer-term agreement. As an alternative, District staff will be trained in proper operation and management of the fuel system, although staff does not recommend this as a long-term goal or plan.

Longer term and more broadly focused issues will be addressed in future discussion of the revision/amendment/replacement of the JPA.

I. Recommendation

Staff believes that the Agreement as drafted clarifies the intent of both parties to the 2011 MOU, suitably protects the District, provides sufficient funds for replacement of the fuel system in the event of the formation of the CFD, improves service to the boating community, and provides an exit path for the District should the CFD not be formed. Consequently, staff recommends that this Commission approve the Implementation Agreement as drafted, authorize the General Manager to approve non-material changes to the text as may arise between this approval and that of the City, and sign the agreement, conditioned on approval by the City, and developer consent to formation of the CFD.

Attachments:

- A. [City and District 2011 MOU](#)
- B. [Draft Implementation Agreement](#)