

FIRST AMENDMENT TO PREDEVELOPMENT AGREEMENT

This First Amendment to Predevelopment Agreement dated for reference purposes only as of May 29, 2024 (this “**Amendment**”), is by and between the City and County of San Francisco (“**City**”), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency (“**SFMTA**”), and Potrero Neighborhood Collective LLC, a limited liability company organized under the laws of the State of Delaware (“**Lead Developer**”). City and Lead Developer are also each referred to as a “**Party**” and together referred to as the “**Parties**” below.

RECITALS

A. City and Lead Developer are parties to a Predevelopment Agreement dated for reference purposes only as of November 2, 2022 (the “**Original Agreement**”) for the predevelopment of the Project (as defined in the Original Agreement). All undefined, initially-capitalized terms used in this Amendment shall have the meanings given to them in the Original Agreement, and the Original Agreement, as modified by this Amendment, shall be referred to below as the “**Modified Agreement**”.

B. The Parties wish to modify the Original Agreement on the terms and conditions below.

AGREEMENT

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, the agreements set forth in this Amendment and other good and valuable consideration, the receipt and adequacy of which are acknowledged, City and Lead Developer agree as follows:

1. Changed Definitions. The following definitions in Section 1 of the Original Agreement are modified as follows:

(a) Affordable Housing Developer. Section 1.6 of the Original Agreement is amended in its entirety to read as follows:

“1.6. “Affordable Housing Developer” means, together, Mission Economic Development Agency and Tabernacle Community Development Corp.”

(b) Affordable Units. Section 1.7 of the Original Agreement is amended in its entirety to read as follows:

“1.7. “Affordable Units” means the affordable units in the Proposed HCC, which are comprised of two low income projects (a family housing project facing Bryant Street and a family housing project along the southwestern corner of the Facility, with each containing between 110-191 units), and one moderate income project (containing approximately 218 units), subject to any modification pursuant to Section 9.2 (HCC Change) or Section 9.3 (Changes Proposed by City).”

(c) Facility. Section 1.77 of the Original Agreement is amended in its entirety to read as follows:

“1.77. “Facility” collectively means the Bus Yard Component, Housing and Commercial Component, Common Infrastructure, and at City’s election, an alternative podium paratransit component.”

(d) Housing Developer. Section 1.107 of the Original Agreement is amended in its entirety to read as follows:

“1.107. “Housing Developer” means Plenary Potrero Housing LLC, a California limited liability company.”

(e) Outside Delivery Date. Section 1.153 of the Original Agreement is amended in its entirety to read as follows:

“1.153. “Outside Delivery Date” means November 30, 2029.

(f) Predevelopment Period. Section 1.171 of the Original Agreement is amended in its entirety to read as follows:

“1.171. “Predevelopment Period” means the period between the Commencement Date and October 18, 2024, as may be extended by in accordance with Section 3.1 of the Original Agreement.”

2. Infrastructure Facility.

(a) Timing for IF Financial Close. All references in the Original Agreement requiring IF Financial Close no later than November 30, 2024, are amended to require IF Financial Close no later than May 30, 2025.

(b) Timing for Substantial Completion of Infrastructure Facility. All references in Appendix D to the Original Agreement to November 30, 2027, are amended to be November 30, 2029.

3. Housing and Commercial Component.

(a) Timing for Substantial Completion. All references in the Original Agreement that require Substantial Completion of the Housing and Commercial Component no later than one year after Substantial Completion of the Infrastructure Facility are amended to require that (i) construction of any Housing and Commercial Component housing project to be built on the completed Infrastructure Facility roof deck (a “Podium Housing Project”) commence no later than three years after Substantial Completion of the Infrastructure Facility, as may be extended by City in its sole discretion, and (ii) construction of any Housing and Commercial Component project to be located adjacent to the Bus Yard Component and along Bryant Street commence no later than five years after IF Financial Close, as may be extended by City in its sole discretion.

(b) Changes to HCC Interface Requirements.

(i) Section 6.9(a)(iv)(A)(4) is deleted in its entirety; provided, however, that Podium Housing Project construction activities occurring above the completed Infrastructure Facility roof deck must not negatively impact the roof deck or the SFMTA operations being performed within the Infrastructure Facility.

(ii) Section 6.9(a)(iv)(B) of the Original Agreement is amended in its entirety to read as follows:

“B. To ensure that Podium Housing construction activities will not negatively impact the roof deck or SFMTA operations within the Infrastructure Facility, on

or before the sixtieth (60th) day immediately following City's issuance (if any) of Notice to Proceed #3, Lead Developer shall deliver the following draft materials (collectively, the "Podium Housing Pre-Construction Materials") to City:

1. Structural analysis and designs that address potential impact loads from accidental loading on the completed Infrastructure Facility roof deck;
2. A Podium Housing Project podium housing permitting plan and construction plan (together, the "Podium Permitting and Construction Plans") that address the nature of phased vertical delivery (including the proposed laydown and staging areas, crane use, phasing, delivery of materials, hoisting) and demonstrate how the Podium Housing Projects will be constructed on the completed Infrastructure Facility roof deck in a manner that avoids damage to the Infrastructure Facility and interference with Infrastructure Facility operations.
3. Mitigation and monitoring measures (the "Podium Mitigation and Monitoring Measures") that will objectively track any impact from the construction of the Podium Housing Projects to the Infrastructure Facility or on Infrastructure Facility operations and describe the temporary and permanent sensors that will be used within and throughout the Infrastructure to track vibration and noise impacts from construction of the Podium Housing Projects."

(C) City shall provide Lead Developer with its comments to the Podium Housing Pre-Construction Materials within fifteen (15) Business Days of receiving all of the draft Podium Housing Pre-Construction Materials from Lead Developer. Lead Developer shall further develop the Podium Housing Pre-Construction Materials to incorporate City's comments and finalize them in a form approved by City. Lead Developer must obtain City's approval to the final form of the Podium Housing Pre-Construction Materials on or before the ninetieth (90th) day immediately following City's issuance (if any) of Notice to Proceed #3. The HCC Agreement shall require that all Podium Housing Project construction on the completed roof deck of the Infrastructure Facility be performed in conformity and compliance with the approved Podium Permitting and Construction Plans and Podium Mitigation and Monitoring Measures."

(d) California Surplus Land Act Requirements. All references in the Original Agreement to California Government Code Section 54221(f)(1)(F)(i) and Section 54221(f)(1)(F)(ii) are amended to, respectively, California Government Code Section 54221(f)(1)(F) and Section 54221(f)(1)(G).

4. Work for Paratransit Component Alternative. Section 3.2.1 of Appendix B-2 to the Original Agreement is amended to include the requirement:

"27. Alternative paratransit component schematic design that integrates a paratransit component on the completed Infrastructure Facility roof deck and includes the spaces needed for City's paratransit operation and maintenance activities at the Facility, with access and egress from vehicular ramps extending from the Bus Yard Component onto the Infrastructure Facility roof deck, and meet the paratransit criteria in Division 3 of the Technical Requirements. The Parties anticipate that any paratransit component would be delivered pursuant to a Project Agreement change order and developed as a "Joint Development Alternative 2 (Paratransit Component)"."

5. Continuation Notice. The first sentence of Section 4.2(d)(i) of the Original Agreement is amended in its entirety to read as follows:

“If the Floating Milestone Date occurs, then Lead Developer’s obligation and authorization to perform the Work shall automatically be suspended as of the Floating Milestone Date unless City elects, in its sole discretion, to issue a Notice to Proceed for the continuation of the Work (a “Continuation Notice”).”

6. Final Price Adjustment for Reprocurement Due to Unavoidable Delay or a Regulatory Appeal. Section 6.15(e)(i) of the Original Agreement is amended in its entirety to read as follows:

“If the Parties mutually agree to extend the Predevelopment Period beyond May 30, 2025, as result of an Unavoidable Delay or a Regulatory Appeal Delay, the Parties will adjust the Final Price and modify the escalation amount set forth in FS Form A8 delivered at Performance Milestone 27A by adding the Reprocurement Amount (defined as follows), if applicable, and modifying the escalation amount given in the modified FS Form D submitted at Performance Milestone 32 to extend the assumed mid-point of construction by the number of days between May 30, 2025 and the extended date of Commercial Close. E.g., if Commercial Close occurs on June 1, 2025, the assumed mid-point of construction will be September 1, 2027. If an Unavoidable Delay or a Regulatory Appeal Delay occurs after Performance Milestone 32 and is not resolved until after the bid validity period for the Design-Build Contract for the Infrastructure Facility or the IFM Contract, the “Reprocurement Amount” shall be Lead Developer’s actual costs to reprocure the Design-Build Contract for the Infrastructure Facility or IFM Contract, as applicable.”

7. Change in LD Project Manager and City Project Director. Section 7.3 of the Original Agreement is amended to identify Chris Jauregui as the LD Project Manager and Chris Lazaro as the City Project Director.

8. Notices. Section 23 of the Original Agreement is amended in its entirety to read as follows:

“Any notice given under the Agreement must be in writing. Unless otherwise indicated in the Agreement, all written communications sent by the Parties may be by U.S. first class mail or email, and shall be addressed as follows:

City: San Francisco Municipal Transportation Agency
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Chris Lazaro
Email: Chris.lazaro@sfmta.com

With a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Group
Re: Potrero Yard Modernization Project
Email: Carol.R.Wong@sfcityatty.org

Lead Developer: Potrero Neighborhood Collective LLC
633 West Fifth Street, Suite 4975
Los Angeles, CA 90013
Attn: Stuart Marks
Re: Potrero Modernization Project
Email: Stuart.Marks@plenarygroup.com

With a copy to: Chris Jauregui
Potrero Neighborhood Collective LLC
633 West Fifth Street, Suite 4975
Los Angeles, CA 90013
Email: Chris.Jauregui@plenarygroup.com

Any notice of a City Event of Default or an LD Event of Default must be sent by (a) personal delivery, commercial courier (next business day delivery requested), or by registered, certified mail or express mail (return receipt requested, with postage prepaid) to the mailing addresses above, and (b) email to the e-mail addresses above, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If that address change is sent by email, the sender must specify a receipt notice.”

9. No Joint Venture. Nothing in this Amendment shall be construed to place the Parties in the relationship of partners or joint ventures or to create any third-party beneficiary rights in any third party. City is not a fiduciary and has no special responsibilities to Lead Developer beyond the obligations expressly set forth in the Agreement.

10. Governing Law. This Amendment will be construed and enforced in accordance with the laws of the State of California and City’s Charter.

11. Party Drafter; Captions. The provisions of this Amendment will be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purposes of the Parties. Any caption preceding the text of any Section, paragraph or subsection or in the table of contents is included only for convenience of reference and will be disregarded in the construction and interpretation of this Amendment.

12. Counterpart Signatures and Electronic Delivery. This Amendment may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. A signature delivered on any counterpart by DocuSign, using multifactor authentication, shall for all purposes be deemed to be an original signature to this Amendment.

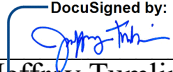
13. Legal Effect; Effective Date. Except as expressly modified by this Amendment, all of the terms and conditions of the Original Agreement shall remain unchanged and in full force and effect. This Amendment shall be effective as of the date it is fully executed by the Parties.

[SIGNATURES ON FOLLOWING PAGE]

Lead Developer and City have executed this Amendment as of the last date written below.

CITY:

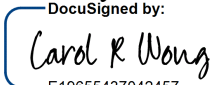
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the San Francisco Municipal Transportation Agency

By: 
Jeffrey Tumlin
Director of Transportation

Date: 5/29/2024 | 3:41 PM PDT


APPROVED AS TO FORM:

David Chiu, City Attorney

By: 
Carol Wong
Deputy City Attorney

LEAD DEVELOPER:

POTRERO NEIGHBORHOOD COLLECTIVE
LLC, a limited liability company organized under
the laws of the State of Delaware.

By: 
Stuart Marks
Vice President

Date: 5/28/2024 | 7:31 PM PDT