

SECOND AMENDMENT TO PREDEVELOPMENT AGREEMENT

This Second Amendment to Predevelopment Agreement dated for reference purposes only as of October 1, 2024 (this “**Second 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 executed 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), as amended by a First Amendment to Predevelopment Agreement dated for reference purposes only as of May 29, 2024 (“**First Amendment**”). All undefined, initially-capitalized terms used in this Second Amendment shall have the meanings given to them in the Original Agreement, as modified by the First Amendment (the “**Modified Agreement**”).

B. The Parties wish to amend the Modified 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 Second Amendment and other good and valuable consideration, the receipt and adequacy of which are acknowledged, City and Lead Developer agree as follows:

1. Extended Dates for Predevelopment Period and IF Financial Close.
 - (a) 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 July 31, 2025, as may be extended by in accordance with Section 3.1 of the Original Agreement.”
 - (b) All references in the Modified Agreement requiring IF Financial Close no later than May 31, 2025, are amended to be July 31, 2025.
2. Increase in Termination Payment. The Modified Agreement requires Lead Developer to perform the predevelopment work specified in the Modified Agreement, as well as all other predevelopment activities required to allow for Substantial Completion of the Infrastructure Facility within the Fixed Budget Limit no later than the Outside Delivery Date. Extending the Predevelopment Period will increase the Lead Developer’s costs to perform this work and these activities. Lead Developer also incurred additional costs to incorporate all City Proposed Changes, including the City Proposed Change described in a letter dated as of August 23, 2024, which increased the number of buses that would be stored and maintained at the Infrastructure Facility in the designs Lead Developer is required to submit to the SFMTA, and to assist the SFMTA in seeking federal funding for the Project. Accordingly, the Parties agree to modify the financial terms in the Original Agreement as follows.

(a) The first paragraph of Section 16.3 of the Original Agreement is amended in its entirety to read as follows:

“16.3. Termination Payments. If this Agreement terminates before Commercial Close for any reason, City will have no obligation to reimburse or otherwise pay Lead Developer for any of Lead Developer’s Project costs or expenses. Notwithstanding anything to the contrary in the foregoing sentence, City shall, in exchange for an executed release from Lead Developer satisfactory in form and substance to City, make the following payments (each, a “Termination Payment”), as applicable, to Lead Developer if this Agreement terminates before Commercial Close for any reason other than an LD Event of Default and Lead Developer has performed its obligations under Section 16.6(a). The executed release from Lead Developer shall release, waive, and discharge City and City Agents of and from all liabilities, obligations, claims, and demands whatsoever arising out of or under this Agreement. City’s liability to Lead Developer with respect to any claims or Disputes arising from this Agreement shall not exceed Fifteen Million Five Hundred Forty-Six Thousand Five Hundred Sixty-Six Dollars (\$15,546,566) plus the amount of the Continuation Payment, if paid. City’s payment of any Termination Payment shall not affect any of City’s rights under this Agreement, as amended, with respect to completed Work, or relieve Lead Developer or any Guarantor from its respective obligations with respect thereto.”

(b) Section 16.3(c) of the Original Agreement is amended in its entirety to read as follows:

“(c) PDA Phase 2. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 16 and Lead Developer has timely delivered the materials described as Performance Milestone 27, and those materials comply with all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Proposal Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs and Lead Developer’s Qualified Out-of-Pocket Costs to provide those PDA Phase 2 materials (“PDA Phase 2 Costs”) and (B) Thirteen Million One Hundred Ninety-Six Thousand Five Hundred Sixty-Six Dollars (\$13,196,566). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs and its PDA Phase 2 Costs to City before City is obligated to make any payment under this subsection (c).”

(c) Section 16.3(d) of the Original Agreement is amended in its entirety to read as follows:

“(d) PDA Phase 3. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 28 and after Lead Developer has timely delivered the materials and evidence described as Performance Milestones 32 and 33, and those materials comply with all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Proposal Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs, the PDA Phase 2 Costs and Lead Developer’s Qualified Out-of-Pocket Costs to provide those PDA Phase 3 materials and perform those PDA Phase 3 activities (“PDA Phase 3 Costs”) and (B) Fourteen Million One Hundred Ninety-Six Thousand Five Hundred Sixty-Six Dollars (\$14,196,566). Lead Developer must submit

commercially reasonable evidence of its PDA Phase 1 Costs, its PDA Phase 2 Costs, and its PDA Phase 3 Costs to City before City is obligated to make any payment under this subsection (d).”

(d) Section 21.3(a) of the Original Agreement is amended in its entirety to read as follows:

“(a) Except as provided in Section 21.3(b), Lead Developer’s liability to City for damages, including direct, indirect and consequential damages, arising out of Lead Developer’s performance of this Agreement, as amended (or failure to perform hereunder) shall be limited to Fifteen Million Five Hundred Forty-Six Thousand Five Hundred Sixty-Six Dollars (\$15,546,566) plus the amount of the Continuation Payment if paid.”

3. Site Permit for the Infrastructure Facility. Lead Developer acknowledges it is necessary to obtain a site permit for the construction of the Infrastructure Facility (“Site Permit”) from City’s Department of Building Inspections (“DBI”) before the Outside Performance Date to facilitate Substantial Completion of the Infrastructure Facility by November 30, 2029. Accordingly, Lead Developer agrees to submit the Site Permit application and pay the related application fee at its sole cost on or before November 30, 2024, and to take all commercially reasonable efforts to pursue the issuance of the Site Permit (including the submission of any information or materials required by DBI) before the Outside Performance Date. For the avoidance of doubt, the Site Permit application fee and the costs incurred by Lead Developer for work associated with advancing the Site Permit will be Qualified Out-of-Pocket Costs.

4. Additional Environmental Review. The SFMTA is seeking potential federal funding for the Project, which would require environmental compliance under federal law, including the National Environmental Policy Act (“NEPA”) under 42 U.S.C. Section 4321 *et seq* and Section 106 of the National Historic Preservation Act. The SFMTA will take the lead in pursuing the needed review for Project environmental compliance under federal law (“Federal Environmental Review”), directing consultants work on the Federal Environmental Review and in facilitating conversations with the United States Department of Transportation Federal Transit Administration (“FTA”), provided that Lead Developer must procure and pay the consultants for the Federal Environmental Review and timely collaborate with the SFMTA with respect to all SFMTA and FTA comments and requests with respect to the Federal Environmental Review. Lead Developer must also provide the SFMTA with all supporting materials needed for the Federal Environmental Review (including but not limited to drawings, analyses, data points, and project features, and revisions of the requested materials) within two (two) business days of the SFMTA’s request for those comments or materials; provided, however, that if those comments or materials cannot be reasonably provided within that two (2) business day period, Lead Developer must provide them to the SFMTA as soon as reasonably possible.

5. No Joint Venture. Nothing in this Second 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 Modified Agreement, as amended by this Second Amendment.

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

7. Party Drafter; Captions. The provisions of this Second Amendment will be construed as a whole according to their common meaning and not strictly for or against either 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 Second Amendment.

8. Counterpart Signatures and Electronic Delivery. This Second 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 Second Amendment.

9. Legal Effect; Effective Date. Except as expressly modified by this Second Amendment, all of the terms and conditions of the Original Agreement shall remain unchanged and in full force and effect. Once fully executed, this Second Amendment shall be effective as of October 17, 2024.

Lead Developer and City have executed this Second 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: _____

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*

Stuart Marks
Vice President

Date: September 20, 2024
