

## MEMORANDUM OF UNDERSTANDING

### **425-439 Washington Street, 530 Sansome Street and 447 Battery Street**

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") dated as of August 30, 2024 is made by and between the City and County of San Francisco, a municipal corporation ("**City**") acting through its Office of Economic and Workforce Development ("**OEWD**"), and EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company ("**Developer**"), in connection with Developer's proposed development project in San Francisco. The City and Developer are individually referred to herein sometimes as a "**Party**" and are collectively referred to herein sometimes as the "**Parties**."

### RECITALS

This MOU is made with regard to the following facts, intentions, and understandings:

A. Developer is the owner of two parcels that, together, are approximately 8,714 square feet in size and located at 425-439 Washington Street (APNs 0206-013 and 0206-014) (together, the "**Original Developer Parcels**"), and is party to an agreement with BATTERY STREET HOLDINGS LLC, owner of a parcel that is approximately 7,178 square feet in size and located at 447 Battery Street (APN 0206-002), pursuant to which Developer, among other rights and obligations, is authorized to submit land use entitlements and permits for the development of the parcel (the "**New Developer Parcel**").

B. City owns a parcel ("**City Parcel**") at 530 Sansome Street (APN 0206-017), which is improved with City's Fire Station 13, and Developer has the conditional right to acquire the City Parcel pursuant to a Conditional Property Exchange Agreement dated as of July 30, 2020 (as amended, the "**Exchange Agreement**"), in exchange for building a new fire station on a portion of the Original Developer Parcels and conveying the new fire station and the underlying real property to City on the terms of the Exchange Agreement.

C. Developer originally pursued approvals to develop a mixed-use development ("**Project**") with a hotel, office uses, and a replacement fire station on the Original Developer Parcels and the City Parcel (collectively, the "**Original Site**"). Those approvals included, among others, a conditional use authorization that was approved by the City's Planning Commission on July 29, 2021 (Motion No. 20957), and a related final mitigated negative declaration under the California Environmental Quality Act ("**CEQA**"). The Project approvals for the Original Site are available in Planning Department Case No. 2019-017481.

D. Developer now seeks to modify and enlarge the Project (the "**Modified Project**"), which would be constructed on the Original Developer Parcels, the New Developer Parcel, and the City Parcel (collectively, the "**Modified Site**"). The Modified Project will require additional planning approvals and environmental review. Developer and OEWD understand and agree that the Modified Project may be further refined and modified through the community and stakeholder review, environmental review, and planning processes.

E. Developer also intends to apply for the approval of entitlements for the Modified Project (including a conditional use authorization, large cap office allocation, and a zoning map

amendment), and to negotiate for other City agreements related to public benefits, including a development agreement. These agreements will require review and approval by the City's Planning Commission and Board of Supervisors, and may require approval of other City agencies.

F. OEWD is currently working with Developer, as well as the City Attorney's Office and other City agencies, to determine the appropriate scope of all of the Modified Project transaction and entitlement documents. This MOU is to provide a payment mechanism for Developer to reimburse OEWD and other City agencies (including the City Attorney's Office) for staff time and materials expended on any component of the Modified Project.

## AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OEWD and Developer agree to the following:

1. Negotiations and Entitlement Process. OEWD, working in close consultation with the Planning Department and other affected City agencies such as, without limitation, the SFPUC, Public Works, MOHCD, SFFD, City Attorney's Office, and SFMTA ("City Agencies"), shall act as the lead representative of the City in negotiating the substance of the proposed entitlement package and any other transaction or approval documents directly related to the Modified Project (such documents shall be referred to as the "**Project Documents**"). OEWD shall consult with staff from affected City Agencies, and such City Agencies shall contribute personnel and staff time as may be directed by their respective directors or department heads. Following negotiations, all Project Documents shall be subject to review and approval of the Planning Commission, applicable City Agencies, and the Board of Supervisors, each in their sole discretion.

2. Reimbursement of City Costs.

(a) Developer shall reimburse OEWD for the actual costs incurred by the City for all work associated with the preparing, adopting or negotiating the Project Documents for the Modified Project ("**Eligible Costs**"). Eligible Costs shall include, without limitation, the (1) fees and expenses of the City Attorney's Office staff at the rates charged by the City Attorney's Office to third party outside developers from time to time, (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers), (3) actual costs related to public outreach and information customarily conducted by the City for a private project in San Francisco or otherwise authorized by Developer, and (4) costs of staff time for City Agencies consulted to prepare, adopt or negotiate the Project Documents. Eligible Costs shall not include costs that are paid or reimbursed through Planning Department or other project applications. Before engaging any outside counsel or consultants, OEWD shall obtain Developer's approval regarding the proposed engagement, which approval shall not be unreasonably withheld. OEWD shall be responsible for coordinating the billing of all City Agencies as described in this section. OEWD will make good faith efforts to discuss any new work by City staff for the Project Documents with Developer before that work commences, and reasonably consider Developer proposals for the efficient preparation, adoption and negotiation of the Project Documents.

(b) Upon receipt of invoices from any applicable City Agency, OEWD shall review such invoices for accuracy to confirm that such invoices pertain only to Eligible Costs, and notify such applicable City Agency if the invoice requires correction. After completing such review, OEWD will provide Developer with quarterly invoices of Eligible Costs. These invoices shall indicate the hourly rate for each OEWD or City staff member at that time, the total number of hours spent by each City staff member on the tasks during the invoice period, any additional costs (including third party costs) incurred by the City and a brief non-confidential description of the work completed. Developer understands that the detailed billing reports from the City Attorney's Office are confidential. As a result, OEWD will review them for reasonableness and accuracy, but will provide to Developer only a summation of the hours billed per attorney during the invoiced period together with the applicable billing rates. Appendix A attached hereto sets forth the current billing rates for OEWD staff anticipated to work on this project. OEWD may add to or change the staff working on this project at any time, potentially resulting in a different billing rate. The billing rates are subject to change and generally change on July 1 of each year. OEWD shall make best faith efforts to provide at least thirty (30) days advance notice of any changes that do not take effect on July 1 of any given year.

(c) The Parties anticipate that Eligible Costs to be reimbursed under Section 2(a) (excluding costs incurred by the City Attorney's Office) shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) per fiscal year based on up to 30% of the OEWD Project Manager's time and other City Agency staff time as needed. If invoicing exceeds this amount, the Parties shall meet and confer to discuss measures to reduce future invoices to an amount equal to or less than Two Hundred Fifty Thousand Dollars (\$250,000) per fiscal year. City shall make reasonable efforts to implement any measures mutually agreed upon by the Parties.

(d) Developer shall pay the invoiced amount of Eligible Costs within forty-five (45) calendar days of receipt from OEWD, and City shall have the right to suspend additional work on the Modified Project until undisputed past due payments are made unless the Parties reach agreement on the timing of additional payments to be made by Developer.

(e) If Developer in good faith disputes any portion of an invoice, then within forty-five (45) calendar days of receipt of the invoice, Developer shall provide written notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold payment of Eligible Costs incurred before any termination of this MOU. Developer shall have no obligation to reimburse City for any cost that is not invoiced to Developer within twenty-four (24) months from the date the cost was incurred.

(f) If Developer submits an application for a development agreement, the Parties may terminate this MOU and revise the payment mechanisms for the reimbursement of all Eligible Costs consistent with San Francisco Administrative Code Chapter 56.

3. City Limitation. Nothing in this MOU shall obligate OEWD or any other City Agency to expend funds or resources, nor shall anything in this MOU be construed as a limitation on either Party's authority to contribute staff, funds or other resources to the processing, review and consideration of the Modified Project. Nothing in this MOU shall limit the discretion to be exercised by City staff and City officials in connection with the Modified Project.

4. No Liability; Termination. The Parties are entering into this MOU in order to cooperate in negotiating the substance of an entitlement package with respect to the Modified Project. The Parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that Developer believes that the City has violated any of the terms of this MOU, Developer's sole remedy arising from this MOU shall be to terminate this MOU. Developer shall be responsible for the Eligible Costs incurred by any of the City Agencies before the termination notification. Notwithstanding anything to the contrary in this MOU, either Party shall have the right to terminate this MOU at any time and for any reason without cost or liability by providing notice of termination to the other Party, provided any such termination shall not relieve Developer of its reimbursement obligations for Eligible Costs incurred with respect to work performed before the date of termination.

5. City Discretion. Developer acknowledges and agrees that by entering into this MOU, OEWD is not committing itself or agreeing to approve any land use entitlements, including a "Proposition M" allocation, or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Planning Commission, the Board of Supervisors, the Mayor, or any other City Agency, commission or department, and that the Project Documents and approvals are subject to the prior approval of the Planning Commission, the Board of Supervisors, and the Mayor (and perhaps other City Agencies, as applicable), each in their sole and absolute discretion.

6. Assignment. Developer shall not assign its rights or obligations under this MOU without prior written consent of OEWD; provided, however, that Developer may assign its rights and obligations under this MOU to: (i) an affiliate or subsidiary of Developer; or (ii) any successor fee owner of the Original Developer Parcels and the New Developer Parcel; at any time with notice to but without the consent of OEWD. By accepting an assignment of this MOU, each assignee represents to OEWD that it has been authorized to work on the Modified Project and perform its obligations under this MOU. In the event of any permitted assignment of this MOU, Developer shall remain liable for amounts due for Eligible Costs to the City hereunder before the date of assignment unless the assignee pays such amounts.

7. Environmental Review. The final project ultimately proposed by OEWD and Developer shall be subject to a process of thorough public review and input and all necessary and appropriate approvals. Such process must include environmental review under CEQA before a City department, commission, or any other City decision-maker may consider approving a project, and the Modified Project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or shall be deemed to commit, the City or a City official to approve or implement any project, and they may not do so until environmental review of the Modified Project as required under CEQA has been completed. Accordingly, all references to the "Modified Project" in this MOU shall mean the proposed project as revised and subject to any necessary future environmental review and consideration by the City. When considering approval of the Modified Project following completion of environmental review, City and any other public agency with jurisdiction over any part of the Modified Project shall have the absolute discretion to (i) make such modifications to the Modified Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially

reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the Modified Project; (iv) balance the benefits of the Modified Project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the Modified Project.

8. Notices. Unless otherwise indicated elsewhere in this MOU, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To OEWD: Anne Taupier  
Director of Development  
c/o Jonathan Cherry, Project Manager  
Office of Economic and Workforce Development  
City Hall, Room 448  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Phone: (415) 554-6614  
Email: [anne.taupier@sfgov.com](mailto:anne.taupier@sfgov.com) and [jonathan.cherry@sfgov.org](mailto:jonathan.cherry@sfgov.org)

To Developer: EQX Jackson SQ Holdco LLC  
c/o Related California  
44 Montgomery Street, Suite 1300  
San Francisco, CA 94104  
Email: [matthew.witte@related.com](mailto:matthew.witte@related.com)

With a copy to: Jim Abrams, Esq.  
J. Abrams Law, P.C.  
538 Hayes Street  
San Francisco, CA 94102  
Email: [jabrams@jabramslaw.com](mailto:jabrams@jabramslaw.com)

Any notice of default must be sent by registered mail or overnight delivery through a nationally recognized overnight delivery service.

9. California Political Reform Act. The Parties acknowledge that payments pursuant to this MOU from Developer to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, *et seq.*

10. Notification of Prohibition on Contributions. Developer acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such

individual, or (3) a committee controlled by such individual or a candidate for that office, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Developer further acknowledges that (i) the prohibition on contributions applies to each prospective party to the contract; any person with an ownership interest of more than 10 percent (10%) in Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Developer; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Developer is contracting is obligated to submit to the Ethics Commission the Parties to the contract and any subcontractors. Additionally, Developer certifies that it will have, by the time it submitted a proposal for the contract, informed each such person of the limitation on contributions imposed by such Section 1.126 and provided the names of the persons required to be informed to the City department with whom it is contracting.

11. No Conflict of Interest. Developer acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Developer becomes aware of any such fact during the term of this MOU, Developer shall immediately notify City.

12. No Joint Liability. Nothing in this MOU shall be construed as giving either Party the right or ability to bind the other Party and nothing in this MOU shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the Parties, their employees, officers and/or agents. All employees, officers and/or agents of a Party shall remain employees, officers and/or agents of that Party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

13. Sunshine Ordinance. Developer understands and agrees that the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 et seq.) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.

14. Miscellaneous.

(a) This MOU may be modified only in writing and by mutual consent of the Parties.

(b) This MOU shall become effective when signed by both Parties. It shall remain in effect until terminated in writing by either Party.

(c) There are no intended third-party beneficiaries of this MOU. The Parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party.

(d) This MOU shall be governed by the applicable laws of California.

(e) This MOU contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this MOU on the date set forth herein.

City:


**City and County of San Francisco**, a  
municipal corporation, acting by and through its  
Office of Economic and Workforce Development

By:   
Sarah Dennis Phillips, Executive Director


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Developer:

EQX JACKSON SQ HOLDCO LLC,  
a Delaware limited liability company

By:   
Jonathan Shum, Vice President

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By:   
Carol Wong, Deputy City Attorney

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**Appendix A**  
OEWD / Other City Staff – Billing Rates

OEWD

Jonathan Cherry, Project Manager: \$197/hour

These are rates effective June 2024. All rates are subject to change; provided however, such changes will be consistent with what the OEWD charges other developers in the ordinary course of the OEWD's operations for projects within the jurisdiction of the OEWD.