

## THIRD AMENDMENT TO PREDEVELOPMENT AGREEMENT

This Third Amendment to Predevelopment Agreement dated for reference purposes only as of July 31, 2025 (this “**Third 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**”), and a Second Amendment to Predevelopment Agreement dated for reference purposes only as of October 1, 2024 (“**Second Amendment**”). All undefined, initially-capitalized terms used in this Third Amendment shall have the meanings given to them in the Original Agreement, as modified by the First Amendment and the Second 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 Third 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, IF Financial Close, and Substantial Completion of Infrastructure Facility.

(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 March 31, 2026, 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 July 31, 2025, are amended to be March 31, 2026.

(c) All references in Appendix D to the Original Agreement to November 30, 2029, are amended to be November 30, 2030.

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. Accordingly, the Parties agree to modify the financial terms in the Original Agreement as follows to increase the Termination Payment by Five Hundred Thousand Dollars (\$500,000).

(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 Sixteen Million Forty-Six Thousand Five Hundred Sixty-Six Dollars (\$16,046,566) 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(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 Six Hundred Ninety-Six Thousand Five Hundred Sixty-Six Dollars (\$14,696,566). 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).”

(c) 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 Sixteen Million Forty-Six Thousand Five Hundred Sixty-Six Dollars (\$16,046,566) plus the amount of the Continuation Payment if paid.”

3. Substantial Completion Fee. Lead Developer and City agree that the Project Agreement may be amended to include a fee to be paid to Principal Project Company conditioned on Substantial Completion being achieved (the “SC Fee”) instead of an Equity Investment, otherwise Equity Member of Lead Developer will continue to be required to invest equity capital into the project as described in the Financial Management Plan

4. Increase in LD Predevelopment Costs. The initial pricing provided by Lead Developer to SFMTA during the Design-Build RFP process showed increased pricing to the design-build scope of the Infrastructure Facility compared to the total amount set forth in FS Form A8 delivered at Performance Milestone 27A. In advance of Lead Developer receiving a Design-Build RFP proposal, the Parties elected to engage in good faith negotiations to identify and agree to changes to bring down costs. The Parties have identified potential Infrastructure Facility design changes that would cause Lead Developer to incur additional Qualified Out-of-Pocket Costs that exceed the Termination Payment increase described above. If City submits any City Proposed Change to modify the Infrastructure Facility design to bring down costs, the Parties agree (a) the City Proposed Change will be issued no later than August 8, 2025, and (b) the LD Predevelopment Cost described in Form A5-PR, submitted by Lead Developer at Performance Milestone 27A, will be increased by an amount equal to the lower of (i) Lead Developer’s additional Qualified Out-of-Pocket design costs for the Infrastructure Facility due to that City Proposed Change and (ii) \$5,500,000. The Parties further agree there shall be no further increases to the LD Predevelopment Cost notwithstanding anything to the contrary in the Modified Agreement.

5. No Joint Venture. Nothing in this Third 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 Third Amendment.

6. Governing Law. This Third 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 Third 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 Third Amendment.

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

9. Legal Effect; Effective Date. Except as expressly modified by this Third Amendment, all of the terms and conditions of the Original Agreement shall remain unchanged and in full force and effect. Once fully executed, this Third 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 Third 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:   
for Julie Kirschbaum  
Director of Transportation

Date: August 1, 2025

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: July 31, 2025