

MEMORANDUM OF UNDERSTANDING # STONESTOWN

Stonestown Mixed Use Project

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") dated as of April 1, 2020, is made by and between the City and County of San Francisco, acting through its Office of Economic and Workforce Development ("**OEWD**"), and Stonestown Galleria JV LLC ("**Developer**") in connection with Developer's proposed Stonestown development project in San Francisco.

RECITALS

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

A. Stonestown Shopping Center, L.P. ("**Owner**") is the owner of a 40-acre parcel of land in the Lakeside Neighborhood of San Francisco, located at 3251 20th Ave (the "**Site**"). The Site is currently used as a 1.3 million square foot retail shopping mall (the "**Existing Mall**") surrounded by approximately 3,000 surface parking spaces.

B. Developer is the limited partner and majority owner of Owner.

C. Developer now seeks to reuse the Site through a mixed-use development project ("**Project**") of new residential buildings, associated parking, and a network of open spaces connecting such buildings and parking areas and the Existing Mall. Developer has not yet filed for an environmental evaluation application with the Planning Department, which will contain a more specific basic project description. Developer and OEWD understand and agree that the Project may be refined and modified through the community and stakeholder review, environmental review, and planning processes.

D. Developer intends to apply for the approval of a special use district and planning code and zoning map amendments, and to negotiate for other City agreements related to workforce and other 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.

E. The parties anticipate that a special use district ordinance and supplementary planning and design standards documents will establish the review and design guidelines and requirements for the Project, including the process by which the design of individual phases of the Project are approved by the City.

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 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 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, shall act as the lead representative of the City in negotiating the substance of the proposed entitlement package (with design guidelines and requirements, project phasing, workforce requirements, transportation improvements, and other appendices) and any other transaction or approval documents (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 and work with Developer and such City agencies on planning processes for the Project and the Project Documents. 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 preparing, adopting or negotiating the Project Documents for the Project. 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, and (4) costs of staff time for the City agencies consulted in communication with the Project Documents, and may include costs incurred before the date of this MOU that have not been otherwise reimbursed. Eligible costs shall not include costs to the extent that those costs are paid or reimbursed through planning department or other project application fees. 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.

(b) OEWD will provide Developer with quarterly invoices, and OEWD will endeavor to provide those invoices within sixty (60) days of the expiration of each quarter. 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 incurred by the City and a brief non-confidential description of the work completed. OEWD will meet with Developer quarterly to discuss Project expenses. 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.

(c) The parties anticipate that OEWD and other City staff time to be reimbursed under subsection (a)(1)-(4) above, excluding the City Attorney's Office, shall not exceed \$250,000 per fiscal year based on following staffing (under a 40-hour work week): up to 30% of the OEWD Project Manager or Managers' time and the time of staff at other departments. See Appendix A for current billing rates. These rates are subject to change, provided however, OEWD will endeavor to provide at least thirty (30) days advance notice of any changes. Planning department costs incurred after the submission of an application for Environmental Evaluation, EIR, and Project Application will be billed to those application fees. Should those fees be exhausted, planning department costs will continue to be billed through associated cost recovery mechanisms, not this MOU, and are not limited by this MOU.

(d) Developer shall pay the invoiced amount within 45 calendar days after receipt from OEWD, and City shall have the right to suspend additional work on the 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 60 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 the disputed amount. If any dispute is not resolved within 90 days of Developer's notice to City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount. 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 City costs consistent with San Francisco Administrative Code Chapter 56.

3. City Limitation. Nothing in this MOU shall obligate OEWD or any other City department to expend funds or resources, nor shall anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the Project. Nothing in this MOU shall limit the discretion to be exercised by City staff and City officials in connection with the 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 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 entity to which Developer transfers its fee interest in the Site; or (ii) to Owner, 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 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; that 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 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 Project as required under CEQA has been completed. Accordingly, all references to the "Project" in this MOU shall mean the proposed project as revised and subject to future environmental review and consideration by the City. When considering approval of the Project following completion of environmental review, City and any other public agency with jurisdiction over any part of the Project shall have the absolute discretion (within Constitutional limits) to (i) make such modifications to the 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 Project; (iv) balance the benefits of the 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 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 Theodore Conrad, Project Manager

Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: (415) 554-6614
Email: anne.taupier@sfgov.org and theodore.conrad@sfgov.org

To Developer: Courtney Pash
Senior Development Director
Brookfield Properties
875 Howard St, Suite 330
San Francisco, CA 94103
Phone: 415.593.4243
Fax: 415.836.5988
Email: Courtney.pash@brookfieldpropertiesdevelopment.com

With a copy to: Brookfield Properties
127 Public Square, Suite 3200
Cleveland, Ohio 44114
Attention: General Counsel

Brookfield Properties
350 N Orleans St., Suite 300
Chicago, IL 60654
Attention: General Counsel

And to: Mary Murphy
Gibson, Dunn & Crutcher LLP
555 Mission St
San Francisco, CA 94105
MGMurphy@gibsondunn.com

Any notice of default must be sent by electronic mail with a copy sent the same day by registered mail or overnight delivery through a nationally recognized overnight delivery service. All other notices may be sent by only electronic mail.

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 (each, an “**Affected Person**”); 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 agrees to inform each such Affected Person of the requirements of this Section, and will provide the names of the Affected Persons to OEWD, the Planning Department, and the Clerk of the Board of Supervisors upon request.

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 a party the right or ability to bind other parties 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. Developer understands and agrees that under 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, unless an applicable exemption applies under the terms of such laws.

14. Miscellaneous. (a) This MOU may be modified only in writing and by mutual consent of all parties. (b) This MOU shall become effective when signed by all OEWD and Developer. 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 without regard to provisions regarding conflicts of laws. Exclusive jurisdiction over and venue of any suit arising out of or relating to this Agreement will be in the Superior Court of San Francisco. (e) This MOU contains all of the representations and

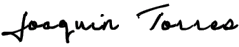
the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU. (f) This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed to be one original. The parties agree to accept facsimile (including by means of “DocuSign” or similar e-signature programs) or “pdf” signatures as originals.

[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

DocuSigned by:

1A8C561620854D6...

By: _____
Joaquin Torres, Director

Developer:

Stonestown Galleria JV LLC, a Delaware limited liability company
By: Brookfield Properties Development LLC, its agent


DocuSigned by:

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By: _____
Jack Sylvan, Senior Vice President

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

DocuSigned by:

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By: _____
Eileen K. Chauvet, Deputy City Attorney

Appendix A

OEWD / Other City Staff – Billing Rates

OEWD Project Manager - \$158/hour

Deputy City Attorney – actual rates charged to developers, currently between \$500 and \$600/hour, depending on the attorney

These are rates effective October 2020. 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.