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November 19, 2024

The Honorable Members of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton Goodlett Place, Room 244  
San Francisco, CA 94102

*Subject: Request for Approval* – Resolution authorizing conditional approval of the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement (Project Agreement) for the SFMTA Potrero Yard Modernization Project

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve a resolution conditionally approving the design, build, finance, operate, and maintain agreement (Project Agreement) for the SFMTA Potrero Yard Modernization Project's Infrastructure Facility. The facility is comprised of the project's Bus Yard Component and Common Infrastructure, subject to final pricing. We are also requesting delegation of authority under Charter, Section 9.118(a) for the SFMTA Board of Directors to approve entering into the final Project Agreement with Potrero Neighborhood Collective, LLC, or their affiliate.

The final pricing for the Project Agreement shall not exceed an initial milestone payment of \$75,000,000 due at Financial Close, payment of \$500,000 payable within 60 days of completing temporary relocation of the Potrero Yard's operations, a milestone payment of \$200,000,000 payable no later than 2033, and an initial maximum annual availability payment of \$42,200,000 payable during the Infrastructure Facility's maintenance period, not to exceed 30 years after Substantial Completion.

The initial maximum annual availability payment (in 2030 dollars) shall be subject to adjustment between the Commercial Close and Financial Close based on movements in interest rates and credit spreads during this period pursuant to the terms of the Project Agreement, and a portion of the annual availability payment shall be adjusted pursuant to the Project Agreement based on annual movements in the CPI over the course of the 30-year maintenance period.

The terms of the Project Agreement will require the SFMTA to make the \$200,000,000 milestone payment no later than 2033 and will provide the flexibility to make such payment as early as 2027. In the event SFMTA makes the milestone payment in 2027, its maximum availability payment obligations could be reduced in excess of \$10 million per annum for the first four years of operations, though the actual amount of such reduction will be dependent on interest rates at the time that the milestone payment is made.



## **Background**

Originally built in 1915, the existing Potrero Yard is situated on 4.4 acres bounded by Bryant, 17th, Hampshire and Mariposa Streets (Project Site). It is the first site scheduled for modernization under the Program due to the age of the current facility, and because rapidly changing innovations in bus fleet technology make it obsolete. The existing two-story building originally operated as a streetcar facility housing 100 streetcars. It has since been expanded to house and maintain approximately 138 40-foot and 60-foot trolley buses, although it remains functionally obsolete.

The Project would replace the existing two-story building and bus yard with the Bus Yard Component, a modern, four-story, efficiently designed bus maintenance and storage facility. The Bus Yard Component would support the SFMTA's growing fleet as it transitions to battery electric vehicles and serve as a consolidated site for Muni Operator Training and Muni Street Operations. It would provide open, naturally lit, and well-ventilated working conditions for employees, ensure resiliency to climate change and natural disasters, and improve transit service by reducing vehicle breakdowns, increasing on-time performance, and reducing passenger overcrowding. The Bus Yard Component would increase the maintenance and storage capacity at the Project Site by approximately 68 percent. When completed, the Bus Yard Component will become a beacon of the SFMTA's commitment to workspace improvements for its employees.

A key objective of the Program is to maximize the use of SFMTA properties through a joint development model. Joint development supports major City policies and enables the SFMTA to generate sustainable revenue for transit and other transportation services, while supporting the City's Public Land for Housing initiative. As part of this effort the SFMTA is facilitating a Housing Component at the Project Site, if feasible. The Lead Developer has proposed approximately 465 housing units as part of the Housing Component. Construction of the Housing Component would not begin until after construction commences on the Infrastructure Facility. Agreements related to the Housing Component will be brought to the Board of Directors at a future meeting.

## **The Developer Partner and Predevelopment Agreement (PDA)**

On November 2, 2022, the SFMTA and the Lead Developer entered into a Predevelopment Agreement (PDA), under which the Lead Developer must perform certain predevelopment activities for the Project that are required to achieve substantial completion of Infrastructure Facility by November 30, 2029. These predevelopment activities include, among others, preparing and obtaining design documents, due diligence materials, and other development materials and analyses, developing the commercial and financing structure for the Project, procuring contracts for the design, construction, and long-term maintenance for certain elements, of the Infrastructure Facility, and negotiating with the SFMTA separate agreements to deliver different Project components (Transaction Documents).



Under the PDA, the Lead Developer must perform these predevelopment activities at their own expense. Compensation to the Lead Developer is contingent on the parties achieving certain milestones, such as securing Project entitlements and reaching financial close for the Project Agreement. However, if the City terminates the PDA without cause, or the PDA term expires (July 31, 2025) without the parties executing the Project Agreement, the City must make a termination payment to the Lead Developer, capped at \$15,546,566, so long as the Lead Developer is not at fault. This termination payment would be in addition to the \$4.35 million continuation payment approved on March 15, 2024.

To date, SFMTA staff and the Lead Developer have collaborated extensively to negotiate and develop the Project's Transaction Documents, including the Project Agreement, to transition the Project from the predevelopment phase into the delivery phase.

### **Project Agreement**

The Project Agreement would be the primary contract between the SFMTA (acting on behalf of the City) and a principal project company to be established by the Lead Developer (Principal Project Company). The Principal Project Company is responsible for the design, construction, financing, and operation and maintenance of the Infrastructure Facility for 30 years after substantial completion, with some elements turned over to SFMTA for maintenance.

As compensation to the Principal Project Company, the SFMTA will make milestone payments at specified times prior to substantial completion and quarterly availability payments for 30 years after substantial completion, subject to deductions for failing to meet performance or maintenance standards specified in the Project Agreement. No progress payments are paid during construction. The availability payment is a unitary payment which includes payment on account of debt, performance and equity return. (See section on Payment Mechanism, below.)

Summarized below are some of the key provisions from the Project Agreement.

#### Project Agreement Contractual Structure and Financial Structure

The Project Agreement would be entered into between the City and the Principal Project Company, a special purpose vehicle established by the Lead Developer, with Plenary Americas as the sole equity member. The Project Agreement obligates the Principal Project Company to design, build, and finance the Infrastructure Facility, and operate and maintain certain elements of it for 30 years after substantial completion.

Following execution of the Project Agreement, the Principal Project Company is required to deliver certain key subcontracts, including the design and construction contract and long-term maintenance contract (unless the Principal Project Company self-performs the maintenance work), and deliver financing documents to achieve financial close. These financing documents include Principal Project Company's financial model, loan/bond documents, and equity contribution agreements. These



financing documents will define the Principal Project Company's debt and equity funding sources, certificates, and representations and warranties. The Project Agreement also includes Principal Project Company's lenders' rights and how any potential refinancing or equity transfer is addressed.

The Project Agreement requires the City to (i) provide SFMTA's most recent audited financial statements, together with economic information with respect to the SFMTA; (ii) agree to customary financial and securities disclosures; and (iii) provide customary documents, certificates or undertakings that Principal Project Company may reasonably request in connection with its financing.

#### Pricing and Term

The Project Agreement obligates the Principal Project Company to complete design and construction of the Infrastructure Facility on a fixed price basis and reach substantial completion by a date certain milestone no later than November 30, 2029. This fixed price and date certain completion is subject to relief provisions described in the agreement that may increase cost or extend the completion date, should conditions of the relief events be satisfied.

Following substantial completion, the Principal Project Company is required to perform long-term maintenance of the Infrastructure Facility in accordance with technical and commercial requirements for a period of 30 years. At the end of this period, the Principal Project Company must "hand back" the Infrastructure Facility in a condition that meets certain requirements set forth in the Project Agreement.

#### Delivery Methodology

The Project Agreement includes performance-based technical requirements that govern how the Principal Project Company's design-build contractor must design and build the Infrastructure Facility. These technical requirements include general provisions for project and construction management, performance-based design criteria for the Bus Yard Component and Common Infrastructure, environmental compliance requirements, and general requirements for construction.

The Project Agreement requires the Principal Project Company to operate and maintain certain elements of the Infrastructure Facility, including major building systems such as the outer envelope waterproofing, main structural systems, and capital renewal of major mechanical systems serving the Bus Yard Component and Common Infrastructure over a 30-year term following substantial completion. The Project Agreement includes performance-based technical requirements that govern such operations and maintenance.

The operations and maintenance work would be performed under a regime that assesses performance and requires compliance in order for the Principal Project Company to receive the full availability payment. As an example, the performance measures include requirements for availability of various functional units spanning the entire Infrastructure Facility that are measured by key performance indicators.



Failure by the Principal Project Company to meet the functional unit requirements results in pre-determined deductions to the availability payments for that period of time of non-performance (and those deductions may continue to accrue if the event is not rectified within certain time frames). Higher priority functional units are prescribed a higher deduction amount which escalates based on the duration of unavailability of that functional unit.

#### Payment Mechanism

The Project Agreement requires City to make various milestone payments and availability payments to compensate the Principal Project Company for its design, construction, financing, and operation and maintenance of the Infrastructure Facility. The availability payment is a unitary payment that comprises payment for all of these functions. The payments are comprised of (i) two milestone payments, for \$75,000,000 at Financial Close and \$200,000,000 no later than 2033; and (ii) annual availability payments, paid on a quarterly basis.

The availability payments are subject to deductions for non-compliance with performance standards. Deductions are calculated based on the criticality and duration of any performance lapse, incentivizing timely and high-quality service.

#### Other Obligations

The Project Agreement requires Principal Project Company to be responsible for obtaining regulatory approvals (other than CEQA and NEPA, which are the City's responsibility to obtain) and for complying with all regulatory approvals and processes; and to comply with all applicable laws, including environmental compliance with respect to the certified EIR under CEQA.

The Project Agreement requires City to review submittals in a timely manner and in accordance with its technical requirements, and to provide reasonable assistance to Principal Project Company for obtaining regulatory approvals.

#### Termination

Consistent with typical City contract provisions, the SFMTA maintains the right to terminate the Project Agreement for convenience at any time.

If the Project Agreement terminates for any reason including a default by the Principal Project Company, the City must pay termination compensation as described in the Project Agreement. The amount of the compensation, including deductions for things like City damages and losses in the event of a Principal Project Company default, will be determined at the time of termination pursuant to specific formulas included in the Project Agreement. The formulas vary based on the cause of the termination, but these formulas largely protect debt in most scenarios (except debt would likely take a hit in a PPC default scenario), and sometimes protect equity in varying degrees (or not at all) depending on the cause of the termination.



If there is any termination of the Project Agreement, the Project Agreement describes the termination procedures and duties which include a collaborative approach to developing a transition plan for the orderly transition of work, whereby the Principal Project Company relinquishes control of the Project and City may elect to continue any Key Contracts.

### Lender Oversight

The Project Agreement includes step-in rights for lenders (for them to protect the Project Agreement, which is their only means for repayment), which generally leads to considerable lender involvement and oversight of Principal Project Company. This oversight structure can provide added protection for the SFMTA.

### Key Risks

The Project Agreement allocates a number of project risks as between the parties. Among them:

- Financial close risk – generally borne by Principal Project Company unless reason falls under an exception (e.g., major adverse market issue, City fault, etc.).
- Financing risk – generally borne by Principal Project Company.
- Interest rate/spread risk – interest rate risk is borne by City; spread risk is shared.
- Refinancing gain – split 50-50.
- Design and construction risks – generally borne by Principal Project Company, but there are exceptions for various site conditions risks and relief events.
- Site condition risks – depends on the risk, but significant risk transfer to City. Current unresolved issues relate to permits, geotechnical, utilities, utility coordination/delays
- Interface risks with housing – largely borne by Principal Project Company (which has led them to require a facility interface agreement with the housing developers/contractors)
- Infrastructure Facility Maintenance risks – generally borne by Principal Project Company and supported through the performance deduction regime, but there are exceptions or certain relief events

### **Community and Stakeholder Engagement**

Since December 2017, the Project team has led an extensive, inclusive, and transparent stakeholder engagement process to develop and design the new Potrero Yard. Community engagement has guided the Project through initial planning, the lead developer procurement process, and the launch of the City's first public-private partnership that produced the 100 percent schematic designs we have today. Community and stakeholder engagement continues as the Project enters the final phase of the PDA. Since November 2022, the SFMTA and PNC have worked with the community and other stakeholders to further develop project design. Stakeholders were engaged on open decision points, such as the look and feel of the new building, ideas for the Project's community and commercial spaces, the streetscape on 17th Street, landscaping, and public art.



Bilingual English-Spanish communications have been part of the engagement from the start. Major outreach activities to educate the community about the Project and solicit feedback have included 18 community events and open houses, 44 public tours of Potrero Yard, 46 meetings of the Potrero Yard Neighborhood Working Group, and 50+ meetings and listening sessions with community organizations. The Project team has also participated in annual community-sponsored events, including Carnaval SF; District 9 Neighborhood Beautification Day; Fiesta de las Americas; Friends of Franklin Square Park Cleanups; KQED Fest; Phoenix Day; Potrero Hill Festival; Sunday Streets - Valencia Street; and Transit Month.

In addition, the Project has been presented in a variety of public hearing settings to date, where formal public comment has been received and documented. Recently this has included the EIR certification process and entitlements approvals, including the Recreation and Parks Commission (December 21, 2023), the Planning Commission (January 11, 2024), Board of Supervisors Land Use and Transportation Committee (February 26, 2024), Board of Supervisors Budget and Finance Committee (February 28, 2024) and the full Board of Supervisors (March 5 and March 12, 2024). Additionally, the second extension to the Predevelopment Agreement was also approved at recent hearings, including the SFMTA Board of Directors (October 1, 2024), Board of Supervisors Budget and Finance Committee (October 9, 2024) and the full Board of Supervisors (October 22, 2024).

Paralleling the community outreach effort has been an extensive in-reach effort to frontline staff at Potrero Yard, including maintenance, operations, and administrative employees. Since November 2022, six in-reach meetings were held to update and solicit input from frontline staff, in addition to involving leadership at the Potrero Yard in the design of interior spaces in the Bus Facility. The SFMTA is working to establish a workforce housing preference for SFMTA employees at the site. A staff survey was developed with feedback from labor partners and targeted input from transit operators, maintenance, and other frontline staff. The survey was completed on January 10, 2024, and assessed SFMTA employees' housing needs and interest in the proposed workforce housing.

### **Authority for the Project Agreement**

The SFMTA respectfully requests that the San Francisco Board of Supervisors approve the resolution conditionally approving the Project Agreement and delegate authority under Charter, Section 9.118(a) for the SFMTA Board of Directors to approve entering into the final Project Agreement with Potrero Neighborhood Collective, LLC, or their affiliate, within the pricing limits established herein.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey P. Tumlin'.

Jeffrey P. Tumlin  
Director of Transportation