

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a Predevelopment Agreement with Potrero Neighborhood Collective, LLC, for the Potrero Yard Modernization Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,350,000.

SUMMARY:

- The Potrero Yard Modernization Project (Project) will replace the existing Potrero Yard with a new facility (Facility) comprised of a modern bus storage and maintenance component (Bus Yard Component) and, if feasible, a multi-family housing and commercial component (Housing Component).
- On April 9, 2021, a Request for Proposals for the Project (RFP) was released to three teams that were short-listed through an earlier Request for Qualifications. After receiving timely proposals from all three by December 30, 2021, the SFMTA determined that two of the short-listed teams were responsive to the RFP requirements and passed (Qualified Proposers).
- On March 1, 2022, the SFMTA Board of Directors adopted Resolution 220301-017 to approve the form of predevelopment agreement (Form Agreement) for the Project, with a term that would not exceed 568 days, a potential termination payment that would not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,000,000.
- On May 26, 2022, the SFMTA exercised its RFP right to request proposal revisions (Proposal Revisions) from the Qualified Proposers to ultimately receive proposals that provided the best value for the Project and the City. As part of the Proposal Revisions process, the SFMTA increased the Form Agreement continuation payment to \$4,350,000.
- On July 26, 2022, a single Proposal Revision was received from the Potrero Neighborhood Collective (PNC), with Plenary Americas US Holdings Inc. (Plenary) as its controlling equity member. After extensive evaluation of the submitted Proposal Revision, PNC was named the selected preferred proposer.
- As permitted in the RFP, PNC formed the Potrero Neighborhood Collective, LLC (Lead Developer) to enter into the Form Agreement, modified to include the PNC proposal details and commitments and a \$4,350,000 contribution payment (Final PDA). Plenary is the sole member of the Lead Developer and will guaranty the Lead Developer's performance under the Final PDA.

ENCLOSURES:

1. SFMTAB Resolution
2. Potrero Yard Modernization Project Predevelopment Agreement

APPROVALS:

DIRECTOR



DATE

October 27, 2022

SECRETARY



October 27, 2022

ASSIGNED SFMTAB CALENDAR DATE: November 1, 2022

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PURPOSE

Authorizing the Director of Transportation to execute a Predevelopment Agreement (PDA) with Potrero Neighborhood Collective, LLC (Lead Developer) for the Potrero Yard Modernization Project (Project), with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,350,000.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action is consistent with the following goals in the San Francisco Municipal Transportation Agency (SFMTA) Strategic Plan, by efficiently providing the SFMTA with a new electric bus maintenance facility and modernizing maintenance technologies. Specifically, this action will deliver on the following goals:

- Goal 5: Deliver reliable and equitable transportation services.
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling.
- Goal 8: Deliver quality projects on-time and on-budget.
- Goal 9: Fix things before they break and modernize systems and infrastructure.
- Goal 10: Position the agency for financial success.

The SFMTA will further the following Transit First Policy Principles by initiating the delivery of a major new bus maintenance and storage facility:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

Project Background

The SFMTA's Building Progress Program (Program), \$1.2 billion multi-year effort, to repair, renovate, and modernize the SFMTA's aging facilities to facilitate improvement of the overall transportation service delivery system in San Francisco, begins with the Project. Potrero Yard was built in 1915 and is situated on 4.4 acres bounded by Bryant, 17th, Hampshire and Mariposa Streets (Project Site). It is the first site scheduled under the Program that the SFMTA will modernize and improve due to the age of the current facility, and because of rapidly changing innovations in bus fleet technology which makes 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 will replace the existing two-story building and bus yard with a facility (Facility) that includes a modern, three-story, efficiently designed bus maintenance and storage facility, equipped to serve the SFMTA's growing fleet as it transitions to battery electric vehicles (Bus Yard Component). The SFMTA would use the Bus Yard Component to store and perform routine maintenance on trolley buses and future zero-emission electric busses, serve as a new consolidated site for Muni Operator Training and Muni Street Operations, and provide open, naturally lit, and well-ventilated working conditions for employees. It will 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 new Bus Yard Component will increase the maintenance and storage capacity of at the Project Site by approximately 50 percent. When completed, the Bus Yard Component will become a beacon of the SFMTA's commitment to workspace improvements for its employees.

A key component of the Building Progress Program is to maximize the use of SFMTA properties through a joint development model. Joint development allows the SFMTA to support major City policy initiatives and provide the SFMTA opportunities for sustainable revenue generation for transit and other transportation services. Consistent with the City's Public Land for Housing initiative, the SFMTA is pursuing housing as a complementary joint development at the Project site if proven feasible. Successful coordination is a key component to delivering such a complex project and program successfully. As part of the Building Progress Program, a multi-departmental Memorandum of Understanding (MOU) was signed in May of 2020, creating a complete citywide team led by the SFMTA in partnership with the San Francisco Planning Department, the Mayor's Office of Housing and Community Development, the Office of Economic and Workforce Development and Department of Public Works. Based on internal analyses and an extensive public outreach program, those City departments and the SFMTA have determined that housing may be a feasible and compatible use at the Project Site and proposes that multi-family housing with commercial space be a principal component of the Project (Housing Component). The SFMTA's preliminary Project analysis includes a Housing Component with up to 575 residential units (50% of which would be affordable) on the Project Site.

The SFMTA is incurring various predevelopment costs to facilitate the Housing Component, such as staff time, City Attorney's Office time, Planning Department time, and outside consultant and outside

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counsel time and studies. If the Housing Component successfully receives all funding needed to commence construction of the entire Housing Component, which is to be funded with non-SFMTA funds, the SFMTA will be reimbursed for those costs. If the Housing Component does not receive all the needed funding, the SFMTA will not be reimbursed for all those costs.

The SFMTA's expenditures in connection with the Housing Component are consistent with the City's Transit First Policy because the Housing Component would be integrated with the Bus Yard Component (a transit facility), would have no private parking for residents, and would therefore encourage future residents to use public transit, bicycles, and walking as alternatives to travel by private automobile. If successful, this type of joint development could serve as a model for future transportation investments that generate demand for public transit within the City and further the SFMTA's Charter mandate to manage the City's transportation system to help the City meet its goals for quality of life, environmental sustainability, and economic growth.

Joint Development Delivery Method

Due to the Project's multiple components and objectives, the SFMTA brought legislation to the SFMTA Board of Directors (SFMTA Board) and Board of Supervisors to utilize a joint development procurement method for the Project. On April 7, 2020, the SFMTA Board of Directors approved Resolution 200407-035, authorizing the use of a joint development procurement method for the Project and authorizing the Director of Transportation to seek approval from the Board of Supervisors for a Project-specific ordinance to implement that procurement method for the Project. On March 16, 2021, the Board of Supervisors adopted Ordinance 38-21 to approve a joint development delivery method and a best-value selection of the developer for the Project and exempt various Project agreements from certain San Francisco Administrative Code requirements that are inconsistent with the joint development delivery method. Ordinance No. 38-21 was signed by the Mayor and became effective on April 25, 2021.

Using this joint development delivery method, the Lead Developer will have the full responsibility and financial liability for performing Project predevelopment work during the term of the PDA (PDA Term). During the PDA Term, the Lead Developer and the SFMTA will negotiate the terms of the agreements for the delivery of the Project (Project Agreements). The Project Agreements would cover the final design and construction of the Facility, the operation of the Housing Component, and the maintenance of the infrastructure shared by the Bus Facility Component and the Housing Component (Common Infrastructure), and any other Facility infrastructure identified by the SFMTA (Additional Infrastructure).

The Project Agreements would be long-term contractual arrangements, with the Lead Developer responsible for managing contractors (e.g., design-build contractors and maintenance contractors), successfully delivering the Project, maintaining the Common Infrastructure and the Additional Infrastructure (Infrastructure Facility Maintenance), and coordinating the delivery of the Housing Component. There would be subcontracts for the construction and operation of the Housing Component for financing purposes, but the Lead Developer will be required to ensure that the SFMTA bear no risk arising from multiple parties delivering the Project. The SFMTA would continue to own the Project Site

and the Bus Yard Component, while the Lead Developer would have the right to deliver, operate and own the Housing Component during the term of the applicable agreement (e.g., an air rights lease). The Lead Developer would be responsible for ensuring the adequate integration and joint operation of the Bus Yard Component and Housing Component and the quality and durability of construction methods and equipment design related to the Facility's building structure and major building systems.

Project Procurement Process

A Request for Qualifications (RFQ) was issued on August 21, 2020; three teams were short-listed and invited to participate in a Request for Proposals for the Project (RFP), which was released on April 9, 2021 (RFP). The three short-listed teams were Potrero Mission Community Partners (led by John Laing Group and Edgemoor Infrastructure & Real Estate), Potrero Neighborhood Collective (led by Plenary), Potrero Yard Community Partners (led by Fengate Asset Management, Emerald Fund, and American Triple I Partners). During the initial nine-month RFP process, the three teams worked on their technical conceptual drawings and met regularly with the SFMTA in a series of one-on-one meetings. Each meeting session was divided into technical and a commercial-financial segments. During the technical meetings, the three teams discussed their land use plan and design approach for the Bus Yard Component, among other topics. In the commercial-financial meetings, the three teams and the SFMTA discussed the terms of the PDA and the teams' approaches for financing and structuring the Project. Through these three-way discussions, the SFMTA aimed to leverage the competitive tension of the procurement to ensure that the City's interests were preserved in the form of the PDA.

The RFP proposals were due December 30, 2021, and all three short-listed teams submitted timely proposals. After completing the RFP evaluation of the submitted proposals, the SFMTA determined that the following two short-listed teams (Qualified Proposers) were responsive to the RFP requirements and passed all administrative pass-fail requirements: Potrero Mission Community Partners (led by John Laing Group and Edgemoor Infrastructure & Real Estate) and Potrero Neighborhood Collective (PNC), led by Plenary Americas US Holdings Inc. (Plenary). However, the SFMTA determined it was in the best interest of the Project and the City to exercise the SFMTA's authority under the RFP to request proposal revisions (Proposal Revisions) from the Qualified Proposers. The proposal revision process allowed the SFMTA to have further discussions with the Qualified Proposers so they could better align their proposals with the SFMTA's stated Project goals and offer the best value to the SFMTA and City with respect to the Project.

On May 26, 2022, the SFMTA issued an RFP addendum for Proposal Revisions from the Qualified Proposers. On July 26, 2022, a single Proposal Revision was received. After extensive evaluation of the submitted Proposal Revision through the RFP process, PNC was selected as the preferred proposer.

The RFP addendum for Proposal Revisions included the form of the PDA, which was modified from the version approved by the SFMTA Board of Directors through Resolution 220301-017 on March 1, 2022. Those modifications included adjustments in the Project structure and a \$350,000 increase in the continuation payment. After PNC was selected as the preferred proposer, the form of the PDA was

completed to include Project details and commitments in PNC's RFP proposal (Selected Proposal) to create the final version of the PDA (Final PDA), which is included as Enclosure 2. As permitted under the RFP, PNC formed the Lead Developer to enter into and perform under the Final PDA. The Lead Developer has executed the Final PDA, and the SFMTA seeks authorization to execute the Final PDA soon as possible to meet the November 30, 2027, deadline for substantial completion of the Bus Yard Component and the Common Infrastructure.

Predevelopment Agreement

The PDA will govern the Project's predevelopment phase, with the Lead Developer performing predevelopment activities that must occur for construction to begin in the fall of 2024. The Lead Developer would fund its predevelopment activities during the PDA Term. It is customary industry practice to have a predevelopment agreement for this type of joint development delivery method. The list below summarizes some of the major PDA provisions that may be of particular interest.

1. Predevelopment Approach

During the PDA Term, the City and Lead Developer will work collaboratively to develop the Project so construction of the Facility can begin by the fall of 2024. The PDA governs the Lead Developer's development of schematic designs, financing plans, Infrastructure Facility Maintenance plans, the pursuit of Project entitlements, and the procurement of contractors to design and build the Bus Yard Component and Common Infrastructure and perform the Infrastructure Facility Maintenance. It also governs the parties' negotiations to develop the terms of the Project Agreements. The SFMTA will not bear any integration risk between the physical and operational components of the Facility. Unless otherwise agreed to by the SFMTA, the Project must conform to certain technical requirements included in the Final PDA and the Selected Proposal.

2. Fixed Budget Limit

The Project budget is capped by a limit of \$391,567,596 (Fixed Budget Limit), which was the amount given in the Selected Proposal. The Fixed Budget Limit is the maximum anticipated sum of (i) the design and construction costs for the Bus Yard Component, (ii) the SFMTA's pro rata share of the design and construction costs for the Common Infrastructure, (iii) the SFMTA's pro rata share of the Infrastructure Facility Maintenance costs, and (iv) the SFMTA's pro rata share of the Lead Developer's predevelopment costs. The PDA sets forth the circumstances in which the Fixed Budget Limit can be adjusted, including for SFMTA changes to the Project (including changes to its technical requirements), unknown conditions, and certain changes to applicable law.

The PDA also includes guidelines for the budget allowances included in the Selected Proposal for escalation, insurance costs, and certain items requiring further design or development, emerging technology, or iterative designs. These budget allowances and their pricing will be refined during the PDA Term. The updated cost of construction escalation and the insurance will be permitted modifications to the Fixed Budget Limit. If City elects to include the other allowance items in the Project, the Fixed Budget Limit will be increased to reflect their additional cost. Adherence to the Fixed

Budget Limit is expected throughout the PDA Term, with incentives and requirements to that effect.

3. Term and Performance Milestones

Unless terminated earlier, the PDA Term will expire 568 days after its commencement or the earlier execution of the Project Agreements. Appendix B-1 to the PDA lists three PDA phases of work, with certain performance milestones (Performance Milestones) and dates for completing those Performance Milestones. If those predevelopment activities are successfully and timely completed, construction of the Bus Yard Component would commence in the fall of 2024 and be substantially completed by November 30, 2027. Each PDA phase can only proceed after City issues, in its sole discretion, a Notice to Proceed (NTP) for that phase. If City issues NTP 1 for Phase 1, it will occur after the PDA is signed and Lead Developer satisfies certain administrative requirements. If City issues NTP 2 for Phase 2, it will occur after City approves the 50% schematic design drawings and Project plans submitted by Lead Developer. If City issues NTP 3, it will occur after City approves the 100% schematic design drawings, design-build contractor procurement short-listing, and form of design-build contractor and facility maintenance contractor requests for proposals submitted by Lead Developer.

In addition, Appendix B-1 outlines a floating Performance Milestone for Phase 2 (Phase 2 Floating Milestone). The Phase 2 Floating Milestone occurs if there is final certification of the environmental impact report for the Project under CEQA and final adoption of the special use district, conditional use authorization, General Plan Referral, and related General Plan amendments needed for the Project. If the Phase 2 Floating Milestone occurs, Lead Developer's PDA obligations will suspend unless the SFMTA elects, in its sole discretion, to issue a notice for the Lead Developer to continue the PDA work (Continuation Notice). Issuing the Continuation Notice would require the SFMTA to pay the Lead Developer \$4,350,000 (Continuation Payment) in recognition of achieving this important milestone. The SFMTA Board originally approved the form of PDA with a \$4,000,000 Continuation Payment, but the SFMTA agreed to increase it to \$4,350,000 during the RFP's process for Proposal Revisions.

Achieving the Phase 2 Floating Milestone increases the value of the Project Site, as the SFMTA would have key entitlements for the Bus Yard Component and the Housing Component, which are critical to the timely completion of the Project. The Lead Developer will also incur substantial predevelopment costs by the Phase 2 Floating Milestone, some of which would be borne by the SFMTA if it had to perform the Lead Developer's work in achieving the Phase 2 Floating Milestone. The SFMTA obtained an appraisal for the future Housing Component on September 24, 2021, which includes the value of the Housing Component if (i) the Project has received all entitlements and (ii) there are no lawsuits challenging those entitlements or any such lawsuits have been finally resolved in the City's favor. After reviewing the appraisal and analyzing the stage of entitlements and potential for lawsuits at the Phase 2 Floating Milestone, SFMTA staff have determined that the amount of the Continuation Payment is commercially reasonable.

Under Section 9.118 of the San Francisco Charter, the SFMTA cannot make the Continuation Payment without the prior approval from the Board of Supervisors, so it will not issue the Continuation Notice without first obtaining that approval from the Board of Supervisors. If the SFMTA issues the Continuation Notice, the Lead Developer's PDA obligations would resume under the same terms and

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structure. If the SFMTA does not elect to issue the Continuation Notice and the Lead Developer does not agree to remove the SFMTA's obligation to make the Continuation Payment, the PDA would terminate and the SFMTA would make the termination payment described below.

4. Site Due Diligence and Design Development

The PDA requires that Lead Developer conduct its own due diligence investigations of the Project site to assess its physical, geological, and environmental conditions, subject to an access agreement between the Lead Developer and the SFMTA. The form of the access agreement is Appendix L to the PDA.

The PDA also requires Lead Developer to commence schematic design and engineering of the Project once it completes its Project site due diligence. As required in PDA Appendix B-1, the Lead Developer must complete 100% schematic design drawings during the PDA Term. PDA Appendix B-2 sets forth the requirements for all design deliverables to be produced by the Lead Developer during the PDA Term.

5. Asset Management Program and Infrastructure Facility Maintenance

The Project would include the joint development partner performing the Infrastructure Facility Maintenance after the Bus Yard Component is substantially completed. During the PDA Term, the Lead Developer must submit to the SFMTA its Asset Management Program and finalize the scope of work and performance requirements for the Infrastructure Facility Maintenance and the Housing Component property management. The Asset Management Program must be completed before the Lead Developer procures the Project's design-build contractor and Infrastructure Facility Maintenance contractor. It will define the interface among (i) the SFMTA's operations and maintenance activities within the Bus Yard Component, (ii) Infrastructure Facility Maintenance, and (iii) the Housing Component property management.

6. Housing Component, Feasibility, Financing, and Changes

The RFP outlined the SFMTA's requirements for the Housing Component, with no less than 50% of the residential units to be affordable (no more than 120% area median income (AMI), as published by the Mayor's Office of Housing and Community Development). The Housing Component proposed in the Selected Proposal (Proposed Housing) would have 575 affordable housing units (divided among one senior low-income housing project; two family low-income housing projects, and one workforce housing project) including space for community-based organizations and/or small businesses. Two hundred and ninety-one (291) of the housing units would be for households that make no more than 80% AMI, with the remainder of the two hundred and eighty-four (284) units for households that make no more than 120% AMI, all of which will be contingent on the Lead Developer obtaining the necessary financing and entitlements. The Lead Developer will be responsible for pursuing the financing and entitlements, verifying the feasibility of the Proposed Housing, and performing all other predevelopment activities for the Proposed Housing. These activities will be pursued under a Housing Component development plan submitted by the Lead Developer for the SFMTA's review early in the PDA Term. The PDA includes a process for Proposed Housing changes by the SFMTA or the Lead Developer, eligible reasons for considering those changes, and assigning the risk of design cost increases needed for

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the Bus Yard Component and Common Infrastructure due to those changes. The SFMTA is incurring various predevelopment costs to facilitate the Housing Component, such as staff time, City Attorney's Office time, Planning Department time, and outside consultant and outside counsel time and studies.

7. Contractor Procurement and Final Price

During Phase 2 of the PDA, the Lead Developer must issue a request for qualification for the Bus Yard Component and Common Infrastructure design-build and Infrastructure Facility Maintenance contracts. During PDA Phase 3, the Lead Developer must issue a request for proposals for those contracts and present the pricing of the submitted bids to the SFMTA once received. This pricing will then be compared to the anticipated costs of those contracts given in the Fixed Budget Limit (as adjusted under the PDA, e.g., for insurance and escalation). If the pricing for those contracts is lower than as anticipated in the Fixed Budget Limit, then the SFMTA will receive 70% of the value of that reduced pricing. If the contract pricing is higher than as anticipated in the Fixed Budget Limit, the Lead Developer and the SFMTA will negotiate in good faith on how to bring the contract pricing down to the amounts anticipated in the Fixed Budget Limit. If those negotiations are not successful, the SFMTA can elect to terminate the PDA, accept the higher contract price, or reprocure the contracts. If accepted by the SFMTA, the Bus Yard Component and Common Infrastructure design-build and Infrastructure Facility Maintenance contract pricing will be used to calculate the SFMTA's final price for the Infrastructure Facility Maintenance and the design and construction of the Bus Yard Component and its share of the Common Infrastructure.

8. Project Agreements and Approvals

As stated above, the parties will negotiate the terms of the Project Agreements and other agreements needed for the delivery of the Project during the PDA Term. The applicable Project Agreements must include the terms of a preliminary term sheet, the form of which was included in the Project RFP and submitted with the Selected Proposal (Preliminary Term Sheet), and the terms of a Housing Component term sheet developed during the PDA Term. Given the cost and length of the Project Agreements, they must be approved by both the SFMTA Board and Board of Supervisors. The SFMTA will seek approval of the Project Agreements from the SFMTA Board at the end of the PDA Term if the negotiations and other predevelopment activities are successfully completed.

9. Termination Provisions and City's Right to Work Product

Consistent with typical City contract provisions, the SFMTA maintains the right to terminate the PDA for convenience at any time. If the PDA terminates for any reason other than a Lead Developer default or the parties' execution of a Project Agreements, the SFMTA must make the termination payment described in the PDA. The termination payment amount increases in each PDA Phase and is subject to the Lead Developer's qualified costs for performing the PDA work required for that PDA Phase. At no time will the termination payment exceed \$9,990,000.

If there is any termination of the PDA, the Lead Developer must deliver all the materials it prepared under the PDA to the SFMTA and assign the right to use those materials to the SFMTA. Any

termination payment made to the Lead Developer under the PDA will be less than the value of the work materials the Lead Developer delivers to the SFMTA under the PDA.

10. Guaranty and Default

Plenary will provide a third-party guaranty for the performance of Lead Developer's PDA obligations. That guaranty must remain in effect, or replaced with another guaranty approved by the SFMTA, throughout the PDA Term. The PDA describes various events of default by the parties. Lead Developer defaults include a failure to timely achieve any of the Performance Milestones or perform its other PDA obligations (subject to applicable cure procedures), changes to the Lead Developer's team without prior City consent, material misrepresentations, willful misconduct, fraud, and failure to comply or perform under associated agreements. SFMTA defaults include failure to timely perform its PDA obligations (subject to applicable cure procedures), insolvency, or material misrepresentations.

STAKEHOLDER ENGAGEMENT

Since the launch of the Building Progress Program in 2017, the SFMTA has led an extensive community outreach effort for the Project. Major outreach activities have included numerous community events and open houses, tours of Potrero Yard, regular meetings of the Potrero Yard Working Group, and grassroots outreach to individual residents and community organizations.

Five major public events were held 2018-2021, including the SFMTA hosting a major community workshop in the summer of 2020 that allowed the community to weigh in on the values and principles to be memorialized in the RFQ and RFP to communicate to potential joint development partners the SFMTA's expectations for the Project and to align those expectations, to the extent feasible, with the community's expectations for the Project.

The SFMTA received extensive feedback from the community on numerous aspects of the Project, and this feedback was reflected in the project application submitted to the Planning Department in November 2019 to initiate environmental review, to develop the RFQ and RFP, including the development of local business enterprises (LBE) goals. Outreach activities focused on the conceptual design of the Project (e.g., the size of the bus facility, number, and affordability of the housing units). A virtual meeting in July of 2021 provided feedback to developer questions. Outreach tabling events were at the Potrero Hill Festival on October 15, 2022, and at Sunday Streets/Phoenix Day on October 17, 2021, and on July 10, and October 16, 2022. More than ten public facility tours have been conducted at the Project Site since December 8, 2021, and they will continue throughout the fall 2022. The tours have been well received and successful.

Paralleling the community outreach effort has been a continued, extensive in-reach effort. The SFMTA continues to coordinate closely with elected officials and partner City agencies (Planning, Public Works, Office of Economic and Workforce Development, Mayor's Office of Housing and Community Development) as the Project shifts towards PDA implementation. The SFMTA will continue dialog with staff at Potrero Yard and with labor to answer questions about the project and solicit feedback to inform

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the PDA process. During the week of Aug. 15, 2022, Project staff provided updates on the project for frontline staff at the yard, including maintenance, operations, and administrative employees. Team members met staff at early morning meetings and throughout the day over the course of the week to answer questions about the Project and show renderings for both the Muni Metro East Bus Yard and 1399 Marin Street facilities. These two sites will become relocation facilities when Potrero Yards is taken offline for construction starting in 2024.

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. This includes a February 29, 2021, meeting of the San Francisco County Transportation Authority (SFCTA) to allocate \$5,773,403 in funding for the Project, and an informational hearing at the Planning Commission on May 13, 2021, in addition to the other public hearings described elsewhere in this Calendar Item.

ALTERNATIVES CONSIDERED

An alternative to the PDA is the SFMTA going directly to the Project Agreements. That would require the SFMTA to develop the Project to the level needed to issue an RFQ and RFP for the Project Agreements at its own cost and without input from the developer team that would deliver the Project. That input is key in addressing design, schedule, financing, and funding issues such as, but not limited to, the cost-efficient design of the Bus Yard Component, the market and financial feasibility of the Housing Component (including the number and type of housing units), and the functional integration of the Housing Component with the Bus Yard Component. Without the Lead Developer team's input on these critical aspects, an RFQ and RFP for the Project might not generate sufficient bids from qualified development teams. It could also increase the SFMTA's costs for the Project.

FUNDING IMPACT

The PDA includes two provisions that would result in direct payments to the Lead Developer:

1. **Termination Payment:** If the PDA terminates for any reason other than a Lead Developer default or execution of a Project Agreements, the SFMTA must make a termination payment to the Lead Developer. The termination payment amount is determined by the PDA Phase in which the PDA terminates and the Lead Developer's costs to provide the deliverables required for that PDA Phase, but in no event will the amount exceed \$9,990,000.
2. **Continuation Payment:** If the Phase 2 Floating Milestone occurs and the SFMTA elects, in its sole discretion, to issue the Continuation Notice, the SFMTA must make the Continuation Payment (\$4,350,000). The SFMTA cannot make the Continuation Payment without the prior approval of the Board of Supervisors under City Charter Section 9.118. Accordingly, the SFMTA will not issue a Continuation Notice without first receiving that approval for the Continuation Payment. SFMTA staff will notify the SFMTA Board if they request approval for the Continuation Payment from the Board of Supervisors.

In addition to the potential for direct payments to the Lead Developer, the SFMTA will also be incurring significant internal costs for staff, Planning and City Attorney's Office time and outside counsel's and

consultants' costs to advance the Project during the PDA Term. Current project activities (including any termination or continuation payments that may be payable to the Lead Developer) are currently funded through a mix of transportation sales taxes and SFMTA revenues appropriated by the SFMTA Board of Directors for facility capital projects. The funding for this overall project takes a "pay-go" approach, in which only immediate project phases are funded with the limited resources available for facility capital projects, while concurrent advocacy for additional capital funds occurs for future phases.

ENVIRONMENTAL REVIEW

Environmental review for implementation of the Project is underway. On June 30, 2021, the Project's Draft Environmental Impact Report (DEIR) was published by the Planning Department. The DEIR was reviewed by the Historic Preservation Commission on August 4, 2021, and by the Planning Commission on August 26, 2021. The DEIR public comment period closed on August 31, 2021. The SFMTA anticipates bringing the Environmental Impact Report to the Planning Commission for approval in 2023 for certification, after integrating details from the Selected Proposal.

On October 6, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Potrero Yard Modernization Project Predevelopment Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends authorizing the Director of Transportation to execute a Predevelopment Agreement (PDA) with Potrero Neighborhood Collective, LLC (Lead Developer) for the Potrero Yard Modernization Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,350,000.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Potrero Yard Modernization Project (Project) includes the simultaneous development and construction of a facility (Facility) with a modern bus storage and maintenance component (Bus Yard Component) and, if feasible, a multi-family housing and commercial component (Housing Component); and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) will deliver the Bus Yard Component under its Building Progress Program and, if feasible, pursue the Housing Component consistent with the citywide Public Land for Housing initiative, which encourages joint development opportunities for housing on public sites; and,

WHEREAS, Based on the Project's public and private features, staff have determined it is appropriate and in the City's best interest to deliver the Project utilizing a joint development procurement method; and,

WHEREAS, The joint development solution provides for a single point-of-responsibility for managing project complexity and contractors (e.g., design-build contractors, maintenance contactors for private housing development), financing, and successfully delivering the Project; and,

WHEREAS, The SFMTA and San Francisco Public Works (SFPW) partnered to procure a developer to design, build, and finance the Facility, operate the Housing Component, and maintain certain Facility infrastructure elements; and,

WHEREAS, In November 2019, the SFMTA submitted a project application for the Project to the San Francisco Planning Department (Planning Department) to initiate environmental review of the Project under the California Environmental Quality Act (CEQA); and,

WHEREAS, A Request for Qualifications for the Project was issued on August 21, 2020, and three of the responding teams (Potrero Mission Community Partners, Potrero Neighborhood Collective, and Potrero Yard Community Partners) were short-listed; and,

WHEREAS, On April 7, 2020, the SFMTA Board approved Resolution 200407-035, authorizing the SFMTA to use a joint development procurement method to deliver the Project and seek approval from the Board of Supervisors (BOS) for that method; and,

WHEREAS, On March 16, 2021, the BOS adopted Ordinance 38-21 to approve a joint development delivery method and a best-value selection of the developer for the Project and exempted various Project agreements from certain San Francisco Administrative Code requirements that are inconsistent with the joint development delivery method, with the ordinance being signed by the Mayor and effective on April 25, 2021; and,

WHEREAS, A Request for Proposals for the Project (RFP) was released to the three short-listed teams on April 9, 2021 (RFP), with proposals due December 30, 2021, and all three short-listed teams submitting timely proposals; and,

WHEREAS, The Project's Draft Environmental Impact Report (DEIR) was published by the Planning Department on June 30, 2021, reviewed by the Historic Preservation Commission on August 4, 2021, and reviewed by the Planning Commission on August 26, 2021, and the public comment period closed on August 31, 2021, and the SFMTA anticipates bringing the Environmental Impact Report to the Planning Commission for approval in 2023, after including updated Project details, responding to all comments received to the DEIR, and otherwise complying with all relevant CEQA Guidelines; and,

WHEREAS, On March 1, 2022, the SFMTA Board adopted Resolution 220301-017 to approve the form of Predevelopment Agreement (Form PDA) for the Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,000,000; and,

WHEREAS, In March of 2022, the SFMTA completed its evaluation of the submitted RFP proposals and determined that two proposers (Qualified Proposers) submitted responsive proposals that passed all administrative pass-fail criteria, and those Qualified Proposers were Potrero Mission Community Partners, led by John Laing Group and Edgemoor Infrastructure & Real Estate, and Potrero Neighborhood Collective (PNC), led by Plenary Americas US Holdings Inc. (Plenary); and,

WHEREAS, On May 26, 2022, the SFMTA exercised its RFP right to request proposal revisions ("Proposal Revisions") from the Qualified Proposers so they could better align their proposals with the SFMTA's stated Project goals and offer the best value to the SFMTA and City with respect to the Project; and,

WHEREAS, The Form PDA was modified in the request for Proposal Revisions to increase a continuation payment from \$4,000,000 to \$4,350,000; and,

WHEREAS, The SFMTA received a timely Proposal Revision from PNC on July 20, 2022, and based on evaluation of the submitted Proposal Revision, the SFMTA selected PNC as the preferred proposer to enter into the PDA on September 12, 2022, and after selecting PNC as the preferred proposer, the SFMTA further modified the Form PDA to include details and commitments from PNC's RFP proposal (Final PDA) and PNC submitted the required post-selection deliverables; and,

WHEREAS, On October 17, 2022, the SFMTA issued a notification of intent to award the Final PDA and issued a public announcement naming the PNC as the preferred proposer and as permitted in the RFP, PNC created Potrero Neighborhood Collective, LLC (Lead Developer), which has Plenary as its sole member, to be the developer under the Final PDA; and,

WHEREAS, The SFMTA is requesting the SFMTA Board of Directors to authorize the Director of Transportation to execute the Final PDA with the Lead Developer; and,

WHEREAS, The Final PDA sets the terms for the parties' negotiation of the future agreements for the delivery of the Project and outlines the Project predevelopment activities to be performed by the Lead Developer; and,

WHEREAS, The SFMTA can terminate the PDA at any time for convenience, and if the PDA terminates for any reason other than the Lead Developer's default or the parties' execution of the agreements for the delivery of the Project, the PDA includes a termination payment to the Lead Developer in the amount described in the form of PDA presented to the SFMTA Board, which shall not exceed \$9,990,000; and,

WHEREAS, If there is final certification of the environmental impact report for the Project under CEQA and final adoption of the special use district, conditional use authorization, General Plan Referral, and related General Plan amendments needed for the Project, the Lead Developer's PDA obligations will suspend unless the SFMTA elects, in its sole discretion, to issue a notice for the Lead Developer to continue the PDA work (Continuation Notice); and,

WHEREAS, If the SFMTA issues the Continuation Notice, it must pay the Lead Developer a continuation payment of \$4,350,000 (Continuation Payment) and the SFMTA cannot make the Continuation Payment without the prior approval from the Board of Supervisors under Section 9.118 of the San Francisco Charter, so the SFMTA will not issue the Continuation Notice without first obtaining the prior approval for the Continuation Payment from the Board of Supervisors; and,

WHEREAS, The PDA should be executed as soon as possible to meet the November 30, 2027, deadline for substantial completion of the Bus Yard Component and the infrastructure it shares with the Housing Component; and,

WHEREAS, On October 6, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Potrero Yard Modernization Project Predevelopment Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Predevelopment Agreement with Potrero Neighborhood Collective, LLC for the Potrero Yard Modernization Project, with a term that will not exceed 568 days, a potential termination payment that will not exceed \$9,990,000, and if approved by the Board of Supervisors, a potential continuation payment of \$4,350,000.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 1, 2022.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency