

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Chief Strategy Officer

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to request from the Board of Supervisors conditional approval of an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement for the SFMTA Potrero Yard Modernization Project, subject to final pricing; delegation of authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing within the following not-to-exceed pricing limits: (1) an initial milestone payment of up to \$75,000,000 at financial close, (2) a relocation payment of up to \$500,000 within 60 days of completing temporary relocation of Potrero Yard operations, (3) a milestone payment of \$200,000,000 by no later than 2033, and (4) an initial maximum annual availability payment of up to \$42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with SFMTA’s existing debt service obligations; and authorization for the Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to substantially include the terms of a Draft Small Business Enterprise/ Disadvantaged Business Enterprise Plan, with Potrero Neighborhood Collective, LLC or its affiliate.

**SUMMARY:**

- On November 2, 2022, the SFMTA and Potrero Neighborhood Collective LLC (Lead Developer) entered into a Predevelopment Agreement for the Potrero Yard Modernization Project (Project).
- The Project involves joint development of a modern bus storage and maintenance facility (Bus Yard Component), affordable and moderate-income housing with limited commercial space if financially feasible (Housing Component), and the Common Infrastructure shared between these components; the Bus Yard Component and Common Infrastructure are, collectively, the Infrastructure Facility.
- Under the Predevelopment Agreement, the Lead Developer has conducted predevelopment work and is negotiating transaction documents with the SFMTA to deliver the Project, including an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement (Project Agreement), for which final pricing and related milestones are still pending.
- To maintain the project schedule, staff recommends seeking from the Board of Supervisors (1) conditional approval of the form of the Project Agreement (Form Project Agreement), subject to final pricing, (2) delegation of Charter Section 9.118(b) authority for the SFMTA Board of Directors to approve the final pricing within specified not-to-exceed limits, and (3) authorization for Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to include a final DBE/SBE Plan.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement

**APPROVALS:**

DIRECTOR



**DATE**

November 26, 2024

SECRETARY



November 26, 2024

**ASSIGNED SFMTAB CALENDAR DATE:** December 3, 2024

## **PURPOSE**

Authorizing the Director of Transportation to request from the Board of Supervisors conditional approval of an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement for the SFMTA Potrero Yard Modernization Project, subject to final pricing; delegation of authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing within the following not-to-exceed pricing limits: (1) an initial milestone payment of up to \$75,000,000 at financial close, (2) a relocation payment of up to \$500,000 within 60 days of completing temporary relocation of Potrero Yard operations, (3) a milestone payment of \$200,000,000 by no later than 2033, and (4) an initial maximum annual availability payment of up to \$42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with SFMTA's existing debt service obligations; and authorization for the Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to substantially include the terms of a Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan, with Potrero Neighborhood Collective, LLC or its affiliate.

## **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This action is consistent with the following SFMTA Strategic Plan 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.

This action is consistent the following Transit First Policy Principles:

- 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.
- 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.
- New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
- 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.
- 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**

### **Introduction**

The SFMTA's Building Progress Program (Program) is a multi-year \$2+ billion initiative to repair, renovate, and modernize the SFMTA's aging facilities to improve the overall transportation service delivery system in San

Francisco. One of the projects in the program is Potrero Yard Modernization Project (Project), a joint development located at the Potrero Yard's current site in the Mission District.

The Project includes three primary components: (1) a state-of-the-art bus maintenance and storage facility (Bus Yard Component); (2) affordable and moderate-income housing projects with limited ground floor commercial space, if financially feasible (Housing Component); and (3) the common infrastructure shared by these components (Common Infrastructure). Together, the Bus Yard Component and Common Infrastructure make up the Project's Infrastructure Facility. If sufficient financing is not obtained within specified periods after substantial completion of the Infrastructure Facility, the SFMTA may pursue a paratransit facility as an alternative to housing above the Bus Yard Component.

The SFMTA is delivering the Project in partnership with Potrero Neighborhood Collective LLC (Lead Developer), a developer selected through a competitive procurement process. The Lead Developer, solely owned and managed by Plenary Americas US Holdings Inc., is a leading long-term investor, developer, and manager of public infrastructure projects across the United States and Canada. The Lead Developer bears the interface risk involved with delivering the Project's components by different parties at different times. In turn, the Lead Developer will require indemnities and sufficient insurance coverage from the various parties delivering the different components.

### **Project 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.

### **Predevelopment Agreement**

On November 2, 2022, the SFMTA and the Lead Developer entered into a Predevelopment Agreement, under which the Lead Developer must perform certain predevelopment work for the Project that is required to achieve substantial completion of the Infrastructure Facility by November 30, 2029.

This predevelopment work includes, 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 the Project. These agreements include housing agreements for the Housing Component and the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement (Project Agreement) for the Infrastructure Facility.

Under the Predevelopment Agreement, the Lead Developer must perform the predevelopment work at its 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. Financial close under the Project Agreement is the milestone when all financing agreements and key project documents are finalized, necessary approvals and deliverables completed, and funds are formally secured, enabling the project to proceed to the construction phase. However, if the City terminates the Predevelopment Agreement without cause, or the Predevelopment Agreement 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 \$4,350,000 continuation payment, authorized as a one-time payment on March 15, 2024, per the terms of the Predevelopment Agreement.

If the Predevelopment Agreement is terminated, the Lead Developer must transfer all prepared materials and assign usage rights to SFMTA. Notably, any termination payment made to the Lead Developer under the Predevelopment Agreement will be less than the total value of the work materials provided to SFMTA. To date, SFMTA staff and the Lead Developer have collaborated extensively to negotiate and develop the Project's transaction documents, including the Form Project Agreement, to transition the Project from the predevelopment phase into the delivery phase.

### **Project Agreement**

The final Project Agreement would be the primary contract between the SFMTA (acting on behalf of the City) and a special purpose vehicle to be established by the Lead Developer (Principal Project Company). The Principal Project Company would be responsible for the design, construction, and financing of the Infrastructure Facility, and the operation and maintenance of certain elements over a 30-year period after the scheduled substantial completion date, anticipated in 2029. Some elements would be turned over to SFMTA for maintenance.

As compensation to the Principal Project Company and subject to approval of relevant milestones, the SFMTA would make milestone payments at various times, up to no later than 2033, and quarterly availability payments for 30 years after the later of the scheduled substantial completion date and substantial completion, subject to deductions for failing to meet performance or maintenance standards specified in the Project Agreement. No progress payments would be paid during construction. The quarterly availability payments are unitary payments that include 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 final 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 Form 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 Form 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.

Design, Construction, Maintenance, and Handback Obligations

The Form 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 Form 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 Form Project Agreement requires the Principal Project Company to 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 maintenance work must 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 milestone or 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 Form Project Agreement requires the City to make one milestone payment and availability payments to compensate the Principal Project Company for its design, construction, financing, and operation and maintenance of the Infrastructure Facility. The availability payments are unitary payments that comprise payment for all of these functions.

The structure of payment mechanism in the final Project Agreement will be determined based, in part, on the Lead Developer's selection of a design-build contractor, completion of operations and maintenance pricing, and completion of the structure, terms, and pricing of the Infrastructure Facility's debt financing. Subject to the approval of the SFMTA Board of Directors, the Form Project Agreement, including its payment mechanism, would be modified within the following parameters: (i) one milestone payment for up to \$75,000,000, payable at financial close; (ii) a relocation payment of up to \$500,000, payable within 60 days of completing temporary relocation of the Potrero Yard operations; (iii) one milestone payment of up to \$200,000,000, payable up to no later than 2033; and (iv) an annual availability payment of up to \$42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years, paid on a quarterly basis.

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

#### Other Obligations

The Form Project Agreement requires the 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 Form 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 will maintain the right to terminate the Project Agreement for a default by the Principal Project Company and, at any time, for convenience.

If the Project Agreement terminates for any reason including a default by the Principal Project Company, the City must pay termination compensation in accordance with the terms in the Project Agreement. The specific 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. These formulas vary based on the cause of the termination and generally

protect debt in most scenarios, though a Principal Project Company default may result in reduced debt protection. Equity protections also vary depending on the cause of the termination.

If the SFMTA terminates for convenience before financial close, the Principal Project Company would be entitled to compensation capped at \$9,990,000 for substantiated costs incurred during the Predevelopment Agreement and any additional costs after the Project Agreement's effective date until termination, including work performed and reasonable demobilization expenses.

In contrast, a termination for convenience after financial close would result in significantly higher compensation reflecting the substantial financial commitments made at this stage. This would include reimbursement for equity investments, lenders' liabilities, employee and contractor breakage costs, and other costs net of deductions like account balances and insurance proceeds. The actual amount increases the closer termination occurs to substantial completion due to the escalating value of work performed, materials procured, and financing drawn down. During the early years of the 30-year maintenance period, the amount remains high because of the long-term financial agreements and operational obligations already underway.

For example, if the SFMTA terminates for convenience at or near substantial completion, or in the early years of the maintenance term, termination compensation could reach hundreds of millions of dollars, reflecting the completed or nearly completed Infrastructure Facility and the financial obligations tied to its development and operation. However, the SFMTA would not be fully exposed, as it would retain ownership of the Infrastructure Facility. This valuable asset could serve as collateral for financing mechanisms such as certificates of participation (COPs), lease-leaseback agreements, or other tools, allowing the SFMTA to spread the cost of the termination compensation over time rather than requiring payment in full from existing accounts.

In all termination scenarios, the compensation structure reflects the nature of the Project Agreement as a public-private partnership (P3) availability payment transaction. Aside from a milestone payment at financial close, payments do not occur until substantial completion, with the capital cost paid, in part, over a 30-year term. Termination without compensation, even in the case of a default by the Principal Project Company, could result in the City effectively acquiring an asset that is either unpaid for or underpaid, creating a windfall scenario for the City.

Some of the potential termination scenarios include:

- PPC default: If Principal Project Company fails to meet key obligations and cannot timely correct the issue, the City may terminate the Project Agreement, with compensation adjusted accordingly.
- City default: Principal Project Company can terminate if the City defaults on its obligations and does not timely resolve the issue, with compensation owed by the City.
- Termination for convenience: The City may terminate at its discretion, with compensation due to Principal Project Company as specified in the agreement.
- Extended force majeure: If a prolonged unforeseen event prevents progress, either party may terminate the agreement, with compensation calculated based on incurred costs.
- Insurance unavailability: If essential insurance cannot be obtained and no solution is reached, the City may terminate, with Principal Project Company compensated for costs under the agreement terms.
- For failure to reach financial close: If financing is not secured by the deadline, either party may terminate, with compensation determined by financial commitments made up to that point.

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.
- 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 – Principal Project Company is generally responsible for site condition risks, other than certain unknown/unforeseen conditions which remain the risk of the City.
- 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.
- Refinancing gain – split 50-50.

## **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 design we have today.

Feedback from stakeholders substantially informed the SFMTA's solicitation documents, including a public benefit vision for the Project. This document, entitled Public Benefit Principles, was appended to the solicitation documents, and described the essential public benefit concepts that the proposers should incorporate, depicted them through examples, and allowed the proposers flexibility and interpretation to present how they would be achieved in their submitted proposals.

Stakeholders also provided significant feedback on the overall program for the Housing Component and the Design Guidelines. 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 location 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 Rhythm & Blues 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. Most recently this has included the CEQA certification and entitlements approvals, including the Recreation and Parks Commission (Dec. 21, 2023), the Planning Commission (Jan. 11, 2024), Board of Supervisors Land Use and Transportation Committee (Feb. 26, 2024), Board of Supervisors Budget and Finance Committee (Feb. 28, 2024) and the full Board of Supervisors (Mar. 5 and Mar. 12, 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 as part of the Housing Component. 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.

## **ALTERNATIVES CONSIDERED**

An alternative to the conditional approval of the Project Agreement is to delay action, which could delay the project by one to two years. Delay could result in increased project costs by \$200,000,000 or more due to (a) design-build and operations and maintenance cost escalation, (b) requiring an amendment to the Predevelopment Agreement that accounts for the delay, (c) the likely need to replace tax-exempt financing with taxable project debt, and (d) the likely need to develop a swing bus facility as bus ridership continues its return to pre-pandemic levels. This increased project cost would likely make the Project Infrastructure Facility unaffordable. Delay might also result in the loss of the design-build contractor, jeopardizing project delivery as intended. Furthermore, such delays could lead to expiration of the Predevelopment Agreement, which would trigger termination provisions and obligate SFMTA to pay the Lead Developer for qualified project costs up to \$15,546,566 (the maximum amount of the Termination Payment). All ongoing workstreams related to the Project would cease, severely impacting any future efforts to continue. Additionally, delaying action could undermine market interest in future projects under SFMTA's Building Progress Program, reducing competition and increasing costs for subsequent projects.

## **FUNDING IMPACT**

Final approval of the Project Agreement, contingent on achieving financial close, would obligate the City to the following:

1. An amount not to exceed \$75,000,000 to be paid on financial close.
2. An amount not to exceed \$500,000 for related relocation costs, payable within 60 days of completing the temporary relocation of the Potrero Yard operations.

Funding to pay for the \$75,000,000 initial payment and \$500,000 for the relocation payment is identified and secured.

Source	Amount (\$)
CalTrans -SB 1 State of Good Repair (FY23-FY26)	14,420,253
SFCTA - Prop K/ L Sales Tax	12,309,786
FTA - Section 5337 (FY19)	350,000
MTC - Regional Measure (RM3)	20,895,747
City General Fund (2014 Prop B - Transit)	8,587,401
FTA - Section 5307 (FY22-FY24)	18,936,813
	75,500,000

3. A milestone payment in an amount not to exceed \$200,000,000. The SFMTA anticipates that the final Project Agreement will require the SFMTA to make the \$200,000,000 milestone payment no later than 2033 and will provide SFMTA with the flexibility to make such payment as early as 2027. In the event the SFMTA makes the milestone payment in 2027, its maximum availability payment obligations could be reduced in excess of \$10,000,000 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. This \$200,000,000 milestone payment is anticipated to be paid from future General Obligation (GO) Bonds to be approved by the voters between 2026 and 2032. Funding Potrero with the GO Bond would utilize 67% of the \$300,000,000 authorized, leaving limited funding for other necessary capital projects. Should a GO Bond not be approved, the SFMTA would explore other revenue or financing options, such as the FTA TIFIA program for eligible project costs as well as joint-development on other SFMTA-owned properties that would generate revenue to offset Project costs.
  
4. An initial maximum annual availability payment of up to \$42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the later of the scheduled substantial completion date, anticipated in 2029, and substantial completion, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with the SFMTA’s existing debt service obligations. The annual payments are expected to be paid from future revenues anticipated to be programmed to the Facilities Program in future Capital Improvement Programs (CIPs). This increases the operating budget deficit through 2059, unless other revenues are identified and secured.

**ENVIRONMENTAL REVIEW**

The Project’s Final Environmental Impact Report (FEIR) was approved by the SF Planning Commission on January 11, 2024. The CEQA appeal period ended on February 12, 2024, with no appeals submitted. A subsequent Note to File (NTF) for the FEIR was completed on October 25, 2024. Authorizing the Director of Transportation to request conditional approval of the Project Agreement from the Board of Supervisors and delegation of authority for the Director of Transportation to enter into the Project Agreement with Potrero Neighborhood Collective, LLC, or their affiliate, would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the FEIR and NTF.

The National Environmental Policy Act (NEPA) process is currently in progress and anticipated to be completed November 2024. Authorizing the Director of Transportation to request conditional approval of the Project Agreement from the Board of Supervisors and delegation of authority for the Director of Transportation to enter into the Project Agreement with Potrero Neighborhood Collective, LLC, or their affiliate, does not commit the City to any proposed project or any project alternative, modification, or mitigation regarding the Potrero Yard

Modernization Project until, unless and before the NEPA Approval is obtained and City approves the Project, alternative, modification or mitigation.

Copies of the NEPA and CEQA determinations are on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Project Agreement will require approval of the Board of Supervisors under Section 9.118(a) of the San Francisco Charter. Staff anticipates seeking their conditional approval on December 10, 2024.

The City Attorney's Office has reviewed the report.

### **RECOMMENDATION**

Staff recommends authorizing the Director of Transportation to request from the Board of Supervisors conditional approval of an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement for the SFMTA Potrero Yard Modernization Project, subject to final pricing; delegation of authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing within the following not-to-exceed pricing limits: (1) an initial milestone payment of up to \$75,000,000 at financial close, (2) a relocation payment of up to \$500,000 within 60 days of completing temporary relocation of Potrero Yard operations, (3) a milestone payment of \$200,000,000 by no later than 2033, and (4) an initial maximum annual availability payment of up to \$42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with SFMTA's existing debt service obligations; and authorization for the Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to substantially include the terms of a Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan, with Potrero Neighborhood Collective, LLC or its affiliate.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, On November 1, 2022, the SFMTA Board of Directors adopted Resolution No. 221101-105, authorizing the Director of Transportation to execute the Predevelopment Agreement for the Potrero Yard Modernization Project (Project) with Potrero Neighborhood Collective LLC (Lead Developer), wholly owned by Plenary Americas US Holdings (Plenary), a leading long-term investor, developer, and manager of public infrastructure; the Predevelopment Agreement was so executed on November 2, 2022; and,

WHEREAS, The Project involves the joint development of a modern bus storage and maintenance facility (Bus Yard Component), affordable and moderate-income housing with limited commercial space, if financially feasible (Housing Component), and shared infrastructure supporting both the Bus Yard and Housing Components (Common Infrastructure), with a potential paratransit facility as an alternative if constructing housing above the Bus Yard Component is not financially feasible; together, the Bus Yard Component and Common Infrastructure are referred to as the Infrastructure Facility; and,

WHEREAS, The SFMTA plans to deliver the Infrastructure Facility through its Building Progress Program, and facilitate the Housing Component, as feasible, under the citywide Public Land for Housing initiative; and,

WHEREAS, Under the Predevelopment Agreement, the Lead Developer is responsible for conducting predevelopment work and negotiating specific transaction documents with the SFMTA to deliver the Project, including the Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement (Project Agreement) for the Infrastructure Facility and housing agreements for the Housing Component; and,

WHEREAS, Construction of the Infrastructure Facility would commence before construction of the Housing Component, and the SFMTA anticipates submitting forms of housing agreements for the Housing Component to the SFMTA Board of Directors and the Board of Supervisors in spring 2025; and,

WHEREAS, The Project Agreement would serve as the primary contract between the City, acting through the SFMTA, and a to-be-established entity (“Principal Project Company”) that would be an affiliate of the Lead Developer, covering the design, construction, and financing of the Infrastructure Facility, as well as the operation and maintenance of certain elements for a 30-year period following the scheduled substantial completion date, anticipated in 2029; and,

WHEREAS, The SFMTA and the Lead Developer have negotiated the form of the Project Agreement (“Form Project Agreement”), which will be modified to include final pricing, including related milestones, and substantially incorporate the Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan (SBE/DBE) Plan; and,

WHEREAS, The Form Project Agreement establishes risk allocation, technical, regulatory, and insurance requirements, performance standards, and a payment mechanism; and,

WHEREAS, Under this payment mechanism, the SFMTA would make a milestone payment and annual availability payments, paid on a quarterly basis, during the 30-year maintenance term; the availability payments would be structured as single, combined payments covering project debt, performance, and equity return, subject to deductions for non-compliance with specified performance standards; and,

WHEREAS, Finalizing the pricing for the Form Project Agreement depends on the Lead Developer's selection of a design-build contractor, completion of operations and maintenance pricing, and completion of the structure, terms, and pricing of the Project's debt financing, all of which require additional time and coordination; and,

WHEREAS, The SFMTA has determined that obtaining approval of the Form Project Agreement from the Board of Supervisors, subject to finalizing pricing, is necessary to demonstrate the City's commitment to the Infrastructure Facility, strengthen the ability to secure favorable financing terms, and avoid delays that could increase costs or disrupt the project schedule; and,

WHEREAS, In accordance with Charter Section 9.118(b), which requires Board of Supervisors approval for agreements involving anticipated expenditures of \$10 million or more or a term of 10 years or more, the SFMTA would request that the Board of Supervisors: (1) conditionally approve the Form Project Agreement, subject to final pricing; (2) delegate authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing for the Form Project Agreement, provided final pricing falls within the following not-to-exceed limits: (i) an initial milestone payment of up to \$75,000,000 at financial close, (ii) a relocation payment of up to \$500,000 within 60 days of completing temporary relocation of Potrero Yard operations, (iii) a milestone payment of \$200,000,000 by no later than 2033, and (iv) an initial maximum annual availability payment of up to \$42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with SFMTA's existing debt service obligations; and (3) authorize the Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to substantially include the terms of a Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan, with Potrero Neighborhood Collective, LLC or its affiliate; and,

WHEREAS, On January 11, 2024, the San Francisco Planning Commission certified the Project's Final Environmental Impact Report (FEIR) in Motion No. 21482 and adopted findings under CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code and a Mitigation Monitoring and Reporting Program (MMRP) in Motion No. 21483; a subsequent Note to File (NTF) for the FEIR was completed on October 25, 2024; and,

WHEREAS, Authorizing the Director of Transportation to request that the Board of Supervisors conditionally approve the Form Project Agreement subject to final pricing, delegate authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing within the not-to-exceed limits described herein, and authorize the Director of Transportation to execute the Form Project Agreement as described herein would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the FEIR and NTF; and,

WHEREAS, The National Environmental Policy Act (NEPA) process for the Project is currently in progress and anticipated to be completed November 2024; authorizing the Director of Transportation to request that the Board of Supervisors conditionally approve the Form Project Agreement subject to final pricing, delegate authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing within the not-to-exceed limits described herein, and authorize the Director of Transportation to execute the Form Project Agreement as described herein does not commit the City to any proposed project or any project alternative, modification, or mitigation regarding the Potrero Yard Modernization Project until, unless and before NEPA approval is obtained and City approves the Project, alternative, modification or mitigation; and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Supervisors authorizes the Director of Transportation to request from the Board of Supervisors conditional approval of an Infrastructure Facility Design-Build-Finance-Operate-Maintain Agreement for the SFMTA Potrero Yard Modernization Project, subject to final pricing; delegation of authority under Charter Section 9.118(b) for the SFMTA Board of Directors to approve the final pricing within the following not-to-exceed pricing limits: (1) an initial milestone payment of up to \$75,000,000 at financial close, (2) a relocation payment of up to \$500,000 within 60 days of completing temporary relocation of Potrero Yard operations, (3) a milestone payment of \$200,000,000 by no later than 2033, and (4) an initial maximum annual availability payment of up to \$42,200,000 (in Fiscal Year 2030 dollars) over a maintenance term not to exceed 30 years after the scheduled substantial completion date, anticipated in 2029, subject to interest rate and credit spread fluctuations between commercial close and financial close and annual CPI adjustments, with the part of the payment covering capital costs increasing 1% per year and sculpted to align with SFMTA's existing debt service obligations; and authorization for the Director of Transportation to execute the Form Project Agreement, as modified with the final pricing and to substantially include the terms of a Draft Small Business Enterprise/Disadvantaged Business Enterprise Plan, with Potrero Neighborhood Collective, LLC or its affiliate.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 3, 2024.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency