

THIS PRINT COVERS CALENDAR ITEM NO.: 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Chief Strategy Office

BRIEF DESCRIPTION:

Authorize the Director of Transportation to execute the Second Amendment to Predevelopment Agreement with Potrero Neighborhood Collective, LLC, for the Potrero Yard Modernization Project, if approved by the Board of Supervisors, to increase the potential termination payment by \$5,556,566 for a total combined proposal and termination payment that will not exceed \$15,546,566, increase the scope of work, and extend the term to no later than July 31, 2025, and authorize the Director of Transportation to seek approval of the Second Amendment from the Board of Supervisors.

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) and the common infrastructure that would be shared by the Bus Yard Component and Housing Component (Common Infrastructure).
- After a competitive process, Potrero Neighborhood Collective (PNC), with Plenary Americas US Holdings Inc. (Plenary) as its controlling equity member, was named the selected preferred proposer.
- On November 1, 2022, the SFMTA Board of Directors adopted Resolution No. 221101-105 to authorize the Director of Transportation to execute a Predevelopment Agreement (PDA) with PNC's affiliate, Potrero Neighborhood Collective, LLC (Lead Developer), with a term not exceeding 568 days, potential combined proposal and termination payments of up to \$9,990,000 and, if approved by the Board of Supervisors, a continuation payment of \$4,350,000.
- The Board of Supervisors authorized the SFMTA to make the \$4,350,000 continuation payment on the terms of the PDA by Resolution No. 107-24, which was approved by the Mayor on March 15, 2024.
- On May 29, 2024, the SFMTA executed the First Amendment to the PDA, which extended the term to be no later than October 18, 2024.
- The Second Amendment to Predevelopment Agreement (Second Amendment) would increase the potential combined proposal and termination payments by \$5,556,566, for a total of up to \$15,546,566, expanding the scope to further the Project and extend the PDA term to be no later than July 31, 2025.
- The Second Amendment requires approval of the Board of Supervisors under Section 9.118 because it increases the potential SFMTA payment amount by more than \$500,000, which the Board of Supervisors would retroactively approve to make the Second Amendment effective as of October 17, 2024.


ENCLOSURES:

1. SFMTAB Resolution
2. Second Amendment to Predevelopment Agreement

APPROVALS:

DATE

DIRECTOR  September 26, 2024

SECRETARY  September 26, 2024

ASSIGNED SFMTAB CALENDAR DATE: October 1, 2024

PURPOSE

Authorize the Director of Transportation to execute the Second Amendment to Predevelopment Agreement with Potrero Neighborhood Collective, LLC, for the Potrero Yard Modernization Project, if approved by the Board of Supervisors, to increase the potential termination payment by \$5,556,566 for a total combined proposal and termination payment amount that will not exceed \$15,546,566, increase the scope of work, and extend the term to no later than July 31, 2025, and authorize the Director of Transportation to seek approval of the Second Amendment from the Board of Supervisors.

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:

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), a \$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 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 will replace the existing two-story building and bus yard with a modern, four-story, efficiently designed bus maintenance and storage facility (Bus Yard Component), equipped to serve the SFMTA's growing fleet as it transitions to battery electric vehicles. 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 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 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 provides 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 facilitating housing (Housing Component) as a complementary joint development at the Project Site if feasible. PNC proposes to develop the Housing Component with up to 465 housing units, all of which are planned to be affordable. Housing Component construction would occur after construction commences on the Bus Yard Component and the infrastructure (Common Infrastructure) that would be shared by the Bus Yard Component and Housing Component. Agreement(s) related to the Housing Component will be brought to the Board of Directors at a future meeting.

Predevelopment Agreement

The PDA governs the Project's predevelopment phase, with the Lead Developer performing predevelopment activities that must occur for substantial completion of the Bus Yard Component and Common Infrastructure (together, Infrastructure Facility) by November 30, 2029. The Lead Developer is obligated to fund its predevelopment activities during the term of the PDA (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 PDA requires City and Lead Developer to work collaboratively to develop the Project so all developer financing documents needed for construction of the Infrastructure Facility are executed by May 30, 2025 (Financial Close) and Infrastructure Facility substantial completion is achieved by November 30, 2029. The PDA governs the Lead Developer's development of schematic designs, financing plans, Infrastructure Facility maintenance plans, pursuit of Project entitlements, and procurement of contractors to design and build the Bus Yard Component and Common Infrastructure and maintain the Infrastructure Facility. It also governs the parties' negotiations to develop the terms of the agreements to deliver the Infrastructure Facility and the Housing Component (collectively, Project Agreements). The SFMTA will not bear any integration risk between the physical and operational components of the Infrastructure Facility and the Housing Component. Unless otherwise agreed to by the SFMTA, the Project must conform to certain technical requirements included in the PDA.

2. Term and Performance Milestones

Unless amended by the Second Amendment, the PDA will expire on October 18, 2024. 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.

Notice to Proceed (NTP) for Phase 1 was issued on November 8, 2022, followed by NTP 2 and 3 on August 29, 2024. In addition, after reaching 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 on April 22, 2024, SFMTA issued a required notice for the Lead Developer to continue the PDA work and made the required \$4,350,000 continuation payment. The continuation payment was approved by Board of Supervisors and Mayor on March 15, 2024, under Resolution No. 107-24.

On May 29, 2024, the SFMTA, through authority delegated to the Director of Transportation, executed the First Amendment to Predevelopment Agreement that extended the PDA term to October 18, 2024, which was the maximum extent allowed under that delegated authority. The First Amendment also revised key delivery dates for the Project, including timing for Financial Close (amended to May 30, 2025) and Infrastructure Facility substantial completion (amended to November 30, 2029).

The Second Amendment would extend the PDA Term to the earlier to occur of the execution of the Project Agreements (Commercial Close) and July 31, 2025, extend the delivery date for Financial Close to July 31, 2025, and expand the scope of work by requiring the Lead Developer to procure consultants needed to review analysis Project compliance with federal environmental laws (Federal Environmental Review) and to provide supporting materials and collaborate on

that Federal Environmental Review. It would also require the Lead Developer to pursue a site permit for the Project and pay the related application fee by November 30, 2024. Those changes are needed to seek potential federal funding for the Project, ensure timely performance of the Project, and allow for Commercial Close and Financial Close by July 31, 2025.

3. Project Agreements and Approvals

As required in the PDA, the parties have been negotiating the terms of the Project Agreements and other agreements needed for the delivery of the Project. The SFMTA will seek approval of the Project Agreements from the SFMTA Board before the end of the extended PDA term if the negotiations and other predevelopment activities are successfully completed.

4. 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 the Project Agreements, the SFMTA must make the proposal and termination payments (together, 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. Under current terms of the PDA, the Termination Payment cannot 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.

The Second Amendment would increase the Termination Payment by \$5,556,566, for a total combined proposal and termination payment amount that would not exceed \$15,546,566. The increased Termination Payment is needed to pay for certain City changes to the Project terms and the expanded scope of work for the Federal Environmental Review, and the payment of the Project site permit fee to ensure timely performance of the Project and allow for Commercial Close and Financial Close by July 31, 2025.

STAKEHOLDER ENGAGEMENT

Since December 2017, the Project team has led an extensive, inclusive, and transparent stakeholder engagement process to develop and design the new Potrero Yard. Community engagement has guided the Project through initial planning, the lead developer procurement process, and the launch of the City's first public-private partnership that produced the 100 percent schematic designs we have today.

Feedback from stakeholders substantially informed the Project's developer procurement documents, including a public benefit vision for the Project. This document, entitled Public Benefit Principles, was appended to the RFP, and described the essential public benefit concepts that the Project 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 public art.

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

In addition, the Project has been presented in a variety of public hearing settings to date, where formal public comment has been received and documented. 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 at the site. A staff survey was developed with feedback from labor partners and targeted input from transit operators, maintenance, and other frontline staff. The survey was completed on January 10, 2024, and assessed SFMTA employees' housing needs and interest in the proposed workforce housing.

ALTERNATIVES CONSIDERED

An alternative to the Second Amendment is to allow the PDA to expire on October 18, 2024. Expiration of the PDA would trigger termination provisions in the PDA and would obligate SFMTA to pay the Lead Developer for its qualified project costs up to \$9,990,000 (the current amount of the Termination Payment). All current workstreams related to the Project would cease, which would jeopardize any future efforts to continue the Project.

FUNDING IMPACT

The PDA includes one provision that would result in direct payment to the Lead Developer.

1. If the PDA terminates for any reason other than a Lead Developer default or execution of the Project Agreements, the SFMTA must make the 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 qualified costs to provide the deliverables required for that PDA Phase. Under the terms of this Second Amendment, the maximum amount of the Termination Payment will increase by \$5,556,566 for a total combined proposal and termination payment not to exceed \$15,546,566.

Should the PDA be terminated and MTA be required to pay the Termination Payment, the funding for such payment would come from available project funds sufficient to pay, which are sourced from Proposition B, Proposition K/L, and Regional Measure 3 funds.

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.

On September 13, 2024, the Planning Department and the SFMTA, under authority delegated by the Planning Department, determined that the Second Amendment 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) because the action would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the FEIR.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Because the Second Amendment would increase the SFMTA's potential payment obligation by more than \$500,000, it will require approval of the Board of Supervisors under Section 9.118 of the San Francisco Charter. The Board of Supervisors would retroactively approve the Second Amendment to be effective as of October 17, 2024.

The City Attorney's Office has reviewed the report.

RECOMMENDATION

Staff recommends authorizing the Director of Transportation to execute the Second Amendment to the Predevelopment Agreement (Second Amendment) with Potrero Neighborhood Collective, LLC, for the Potrero Yard Modernization Project, if approved by the Board of Supervisors, to increase the potential termination payment by \$5,556,566 for a total combined proposal and termination payment amount that will not exceed \$15,546,566, increase the scope of work, and extend the term of the Predevelopment Agreement to July 31, 2025, and authorize the Director of Transportation to seek approval of the Second Amendment from the Board of Supervisors.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Potrero Yard Modernization Project (Project) includes the development and construction of a modern bus storage and maintenance component (Bus Yard Component) and, if feasible, a multi-family housing and commercial component (Housing Component) and the common infrastructure (Common Infrastructure) that would be shared by the Bus Yard Component and Housing Component; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) will deliver the Bus Yard Component and Common Infrastructure (together, Infrastructure Facility) 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 through substantial completion for managing project complexity and contractors (e.g., design-build contractors, maintenance contractors 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 Infrastructure Facility and Housing Component, operate the Housing Component, and maintain certain Facility infrastructure elements; and,

WHEREAS, On April 7, 2020, the SFMTA Board of Directors approved Resolution No. 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 to enter into a predevelopment agreement (PDA) for the Project (RFP) was released to the three short-listed teams on April 9, 2021, with proposals due December 30, 2021, and all three short-listed teams submitting timely proposals; and,

WHEREAS, On November 1, 2022, the SFMTA Board of Directors adopted Resolution No. 221101-105 to authorize the Director of Transportation to execute the PDA with Lead Developer, Potrero Neighborhood Collective, LLC (Lead Developer), which has Plenary Americas US Holdings Inc. (Plenary) as its sole member, with a term not exceeding 568 days, potential proposal and termination payments not exceeding \$9,990,000 and, if approved by the Board of Supervisors, a continuation payment of \$4,350,000; and,

WHEREAS, On January 11, 2024, final certification of the environmental impact report (Final EIR) for the Project under CEQA was approved by the SF Planning Commission by Motion No. 21482 and a copy of that motion is on file with the Secretary to the SFMTA Board of Directors; and,

WHEREAS, On March 5, 2024, the Board of Supervisors adopted Resolution No. 107-24, approving the continuation payment of \$4,350,000 to the Lead Developer; and,

WHEREAS, On May 29, 2024, under authority delegated to the Director of Transportation, the SFMTA executed the First Amendment to Predevelopment Agreement that extended the PDA term to be no later than October 18, 2024; and,

WHEREAS, SFMTA project staff and Lead Developer mutually agree that additional time and scope are necessary to seek potential federal and other funding and address City changes to the Project terms; and,

WHEREAS, The Second Amendment to Predevelopment Agreement (Second Amendment) would extend the term of the PDA to July 31, 2025, increase the scope of PDA work, and increase the potential termination payment by \$5,556,566 to reflect that extended term and increased scope; and,

WHEREAS, On September 13, 2024, the Planning Department and the SFMTA, under authority delegated by the Planning Department, determined that the Second Amendment 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) because the action would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the Final EIR; 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 San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the Second Amendment to Predevelopment Agreement with Potrero Neighborhood Collective, LLC for the Potrero Yard Modernization Project, if approved by the Board of Supervisors, to increase the potential combined termination payment by \$5,556,566 for a total combined proposal and termination payment amount that will not exceed \$15,546,566, increase the scope of work, and extend the term to no later than July 31, 2025, and authorizes the Director of Transportation to seek approval of the Second Amendment from the Board of Supervisors, which the Board of

Supervisors would retroactively approve to make the Second Amendment effective as of October 17, 2024; and, be it further

RESOLVED, That the Director of Transportation is authorized to enter into any amendments or other modifications to the PDA that the Director of Transportation determines are in the best interests of the SFMTA and that do not materially increase the obligations or liabilities of the SFMTA or materially decrease the benefits to the SFMTA and to take all actions reasonably necessary or prudent to perform the SFMTA's obligations under the PDA, as amended by the Second Amendment.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 1, 2024.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SECOND AMENDMENT TO PREDEVELOPMENT AGREEMENT

This Second Amendment to Predevelopment Agreement dated for reference purposes only as of October 1, 2024 (this “**Second Amendment**”), is by and between the City and County of San Francisco (“**City**”), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency (“**SFMTA**”), and Potrero Neighborhood Collective LLC, a limited liability company organized under the laws of the State of Delaware (“**Lead Developer**”). City and Lead Developer are also each referred to as a “**Party**” and together referred to as the “**Parties**” below.

RECITALS

A. City and Lead Developer executed a Predevelopment Agreement dated for reference purposes only as of November 2, 2022 (the “**Original Agreement**”) for the predevelopment of the Project (as defined in the Original Agreement), as amended by a First Amendment to Predevelopment Agreement dated for reference purposes only as of May 29, 2024 (“**First Amendment**”). All undefined, initially-capitalized terms used in this Second Amendment shall have the meanings given to them in the Original Agreement, as modified by the First Amendment (the “**Modified Agreement**”).

B. The Parties wish to amend the Modified Agreement on the terms and conditions below.

AGREEMENT

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, the agreements set forth in this Second Amendment and other good and valuable consideration, the receipt and adequacy of which are acknowledged, City and Lead Developer agree as follows:

1. Extended Dates for Predevelopment Period and IF Financial Close.

(a) Section 1.171 of the Original Agreement is amended in its entirety to read as follows:

“1.171. “Predevelopment Period” means the period between the Commencement Date and July 31, 2025, as may be extended by in accordance with Section 3.1 of the Original Agreement.”

(b) All references in the Modified Agreement requiring IF Financial Close no later than May 31, 2025, are amended to be July 31, 2025.

2. Increase in Termination Payment. The Modified Agreement requires Lead Developer to perform the predevelopment work specified in the Modified Agreement, as well as all other predevelopment activities required to allow for Substantial Completion of the Infrastructure Facility within the Fixed Budget Limit no later than the Outside Delivery Date. Extending the Predevelopment Period will increase the Lead Developer’s costs to perform this work and these activities. Lead Developer also incurred additional costs to incorporate all City Proposed Changes, including the City Proposed Change described in a letter dated as of August 23, 2024, which increased the number of buses that would be stored and maintained at the Infrastructure Facility in the designs Lead Developer is required to submit to the SFMTA, and to assist the SFMTA in seeking federal funding for the Project. Accordingly, the Parties agree to modify the financial terms in the Original Agreement as follows.

(a) The first paragraph of Section 16.3 of the Original Agreement is amended in its entirety to read as follows:

“16.3. Termination Payments. If this Agreement terminates before Commercial Close for any reason, City will have no obligation to reimburse or otherwise pay Lead Developer for any of Lead Developer’s Project costs or expenses. Notwithstanding anything to the contrary in the foregoing sentence, City shall, in exchange for an executed release from Lead Developer satisfactory in form and substance to City, make the following payments (each, a “Termination Payment”), as applicable, to Lead Developer if this Agreement terminates before Commercial Close for any reason other than an LD Event of Default and Lead Developer has performed its obligations under Section 16.6(a). The executed release from Lead Developer shall release, waive, and discharge City and City Agents of and from all liabilities, obligations, claims, and demands whatsoever arising out of or under this Agreement. City’s liability to Lead Developer with respect to any claims or Disputes arising from this Agreement shall not exceed Fifteen Million Five Hundred Forty-Six Thousand Five Hundred Sixty-Six Dollars (\$15,546,566) plus the amount of the Continuation Payment, if paid. City’s payment of any Termination Payment shall not affect any of City’s rights under this Agreement, as amended, with respect to completed Work, or relieve Lead Developer or any Guarantor from its respective obligations with respect thereto.”

(b) Section 16.3(c) of the Original Agreement is amended in its entirety to read as follows:

“(c) PDA Phase 2. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 16 and Lead Developer has timely delivered the materials described as Performance Milestone 27, and those materials comply with all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Proposal Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs and Lead Developer’s Qualified Out-of-Pocket Costs to provide those PDA Phase 2 materials (“PDA Phase 2 Costs”) and (B) Thirteen Million One Hundred Ninety-Six Thousand Five Hundred Sixty-Six Dollars (\$13,196,566). Lead Developer must submit commercially reasonable evidence of its PDA Phase 1 Costs and its PDA Phase 2 Costs to City before City is obligated to make any payment under this subsection (c).”

(c) Section 16.3(d) of the Original Agreement is amended in its entirety to read as follows:

“(d) PDA Phase 3. If this Agreement terminates for any reason other than an LD Event of Default after Performance Milestone 28 and after Lead Developer has timely delivered the materials and evidence described as Performance Milestones 32 and 33, and those materials comply with all the applicable requirements for them in the attached Appendix B-2, then, in addition to the Proposal Payment, City will pay Lead Developer an amount equal to the lesser of (A) the PDA Phase 1 Costs, the PDA Phase 2 Costs and Lead Developer’s Qualified Out-of-Pocket Costs to provide those PDA Phase 3 materials and perform those PDA Phase 3 activities (“PDA Phase 3 Costs”) and (B) Fourteen Million One Hundred Ninety-Six Thousand Five Hundred Sixty-Six Dollars (\$14,196,566). Lead Developer must submit

commercially reasonable evidence of its PDA Phase 1 Costs, its PDA Phase 2 Costs, and its PDA Phase 3 Costs to City before City is obligated to make any payment under this subsection (d).”

(d) Section 21.3(a) of the Original Agreement is amended in its entirety to read as follows:

“(a) Except as provided in Section 21.3(b), Lead Developer’s liability to City for damages, including direct, indirect and consequential damages, arising out of Lead Developer’s performance of this Agreement, as amended (or failure to perform hereunder) shall be limited to Fifteen Million Five Hundred Forty-Six Thousand Five Hundred Sixty-Six Dollars (\$15,546,566) plus the amount of the Continuation Payment if paid.”

3. Site Permit for the Infrastructure Facility. Lead Developer acknowledges it is necessary to obtain a site permit for the construction of the Infrastructure Facility (“Site Permit”) from City’s Department of Building Inspections (“DBI”) before the Outside Performance Date to facilitate Substantial Completion of the Infrastructure Facility by November 30, 2029. Accordingly, Lead Developer agrees to submit the Site Permit application and pay the related application fee at its sole cost on or before November 30, 2024, and to take all commercially reasonable efforts to pursue the issuance of the Site Permit (including the submission of any information or materials required by DBI) before the Outside Performance Date. For the avoidance of doubt, the Site Permit application fee and the costs incurred by Lead Developer for work associated with advancing the Site Permit will be Qualified Out-of-Pocket Costs.

4. Additional Environmental Review. The SFMTA is seeking potential federal funding for the Project, which would require environmental compliance under federal law, including the National Environmental Policy Act (“NEPA”) under 42 U.S.C. Section 4321 *et seq* and Section 106 of the National Historic Preservation Act. The SFMTA will take the lead in pursuing the needed review for Project environmental compliance under federal law (“Federal Environmental Review”), directing consultants work on the Federal Environmental Review and in facilitating conversations with the United States Department of Transportation Federal Transit Administration (“FTA”), provided that Lead Developer must procure and pay the consultants for the Federal Environmental Review and timely collaborate with the SFMTA with respect to all SFMTA and FTA comments and requests with respect to the Federal Environmental Review. Lead Developer must also provide the SFMTA with all supporting materials needed for the Federal Environmental Review (including but not limited to drawings, analyses, data points, and project features, and revisions of the requested materials) within two (two) business days of the SFMTA’s request for those comments or materials; provided, however, that if those comments or materials cannot be reasonably provided within that two (2) business day period, Lead Developer must provide them to the SFMTA as soon as reasonably possible.

5. No Joint Venture. Nothing in this Second Amendment shall be construed to place the Parties in the relationship of partners or joint ventures or to create any third-party beneficiary rights in any third party. City is not a fiduciary and has no special responsibilities to Lead Developer beyond the obligations expressly set forth in the Modified Agreement, as amended by this Second Amendment.

6. Governing Law. This Second Amendment will be construed and enforced in accordance with the laws of the State of California and City’s Charter.

7. Party Drafter; Captions. The provisions of this Second Amendment will be construed as a whole according to their common meaning and not strictly for or against either Party in order to achieve the objectives and purposes of the Parties. Any caption preceding the text of any Section, paragraph or subsection or in the table of contents is included only for convenience of

reference and will be disregarded in the construction and interpretation of this Second Amendment.

8. Counterpart Signatures and Electronic Delivery. This Second Amendment may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. A signature delivered on any counterpart by DocuSign, using multifactor authentication, shall for all purposes be deemed to be an original signature to this Second Amendment.

9. Legal Effect; Effective Date. Except as expressly modified by this Second Amendment, all of the terms and conditions of the Original Agreement shall remain unchanged and in full force and effect. Once fully executed, this Second Amendment shall be effective as of October 17, 2024.

Lead Developer and City have executed this Second Amendment as of the last date written below.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the San Francisco Municipal Transportation Agency

By: _____
Jeffrey Tumlin
Director of Transportation

Date: _____

APPROVED AS TO FORM:

David Chiu, City Attorney

By: _____
Carol Wong
Deputy City Attorney

LEAD DEVELOPER:

POTRERO NEIGHBORHOOD COLLECTIVE
LLC, a limited liability company organized under
the laws of the State of Delaware.

By: _____
Stuart Marks
Vice President

Date: _____