

**CITY OF SAN MATEO
DRAFT ORDINANCE**

Approving the First Amendment to the Development Agreement Between the City of San Mateo and Bay Meadows Main Track Investors, LLC in Order to Extend the Development Agreement by Three Years for the Bay Meadows Phase II Project (PA-2023-050)

WHEREAS, the ordinance approving the Bay Meadows Phase II Development Agreement was adopted by the City Council on November 7, 2005, and became effective on December 21, 2005; and

WHEREAS, Bay Meadows Main Track Investors, LLC (“Owner”) submitted an application on August 17, 2023 (PA-2023-050) requesting a three-year extension of the Development Agreement, citing the COVID-19 pandemic and its adverse impact on the ability of the Owner to complete the envisioned development on the Property within the allotted timeframe; and

WHEREAS, Section 11.1 of the Development Agreement provides that the parties may amend the Development Agreement by mutual consent in writing, and in the manner provided for in Government Code Section 65868 and Section 8 of the Development Agreement Resolution; and

WHEREAS, the City and Bay Meadows wish to amend the Development Agreement to add three (3) years to the term to facilitate the beneficial development of the Property; and

WHEREAS, the Development Agreement has not been amended or modified except as otherwise indicated in the First Amendment to the Development Agreement, and neither the Owner nor the City is in default in the performance of their respective obligations under the Development Agreement; and

WHEREAS, on October 10, 2023, the Planning Commission held a duly noticed public hearing at which all public comments were considered and recommended that the City Council approve the extension request; and

WHEREAS, on November 6, 2023, the City Council held a duly noticed public hearing at which all public comments were considered.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAN MATEO ORDAINS AS FOLLOWS:

Section 1. In accordance with Government Code section 65867.5, the First Amendment to the Development Agreement is consistent with the City’s General Plan, the Rail Corridor Transit Oriented Development Plan, and the Bay Meadows Phase II Specific Plan Amendment in that the extension request provides for the orderly implementation of the Development Agreement in accordance with the San Mateo Rail Corridor Transit-Oriented Development Plan and the Bay Meadows Phase II Specific Plan. The extension provides sufficient time for the Owner to complete construction of the final two development blocks, including public improvements, consistent with the approved Site Plan and Architectural Review Modification (PA-2020-053). With the development of the final two development blocks, the

overall Bay Meadows Phase II development will be within the allowable range of office uses and residential density as permitted in the Bay Meadows Phase II Specific Plan.

Section 2. For the reasons set forth in the Administrative Report accompanying the original project approval, the Development Agreement provides substantial public benefits to persons residing or owning property outside the boundaries of the development project, beyond the exactions for public benefits required in the normal development review process under federal, state, or local law.

Section 3. The City Council approves and authorizes the City Manager to execute the First Amendment to the Development Agreement in substantially the form attached as Exhibit A to this Ordinance. Section 1.5 of the Development Agreement is amended to extend the term to December 20, 2026.

Section 4. Environmental Determination. On April 18, 2005, a Supplemental Environmental Impact Report to the Rail Corridor Plan Environmental Impact Report was prepared for this Project and the City Council approved the Bay Meadows Specific Plan Amendment and re-certified the Final EIR for that project and adopted the findings and statement of overriding considerations on November 7, 2005 in accordance with Public Resources Code section 21061. Because there are no substantial changes to the project and no new information has become available since the time of the EIR, no further environmental analysis is required.

Section 5. Severability. In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 6. Publication. This ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

Section 7. Legislative History and Effective Date. This ordinance was introduced on Clerk to complete., and adopted on Clerk to complete., and shall be effective 30 days after its adoption.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Gibson, Dunn & Crutcher LLP
333 S. Grand Avenue, Suite 4900
Los Angeles, California 90071
Attention: Benjamin Saltsman, Esq.

With a copy to:

Office of the City Attorney
City of San Mateo
330 West 20th Avenue
San Mateo, California 94403

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SAN MATEO AND BAY MEADOWS MAIN TRACK
INVESTORS, LLC**

SEPARATE PAGE PURSUANT TO CAL. GOV'T CODE § 27361.6

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SAN MATEO AND BAY MEADOWS MAIN TRACK
INVESTORS, LLC

This FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN MATEO AND BAY MEADOWS MAIN TRACK INVESTORS, LLC ("First Amendment") is dated December ____, 2023, and is by and between the City of San Mateo, a municipal corporation of the State of California ("City"), and Bay Meadows Main Track Investors, LLC, a Delaware limited liability company ("Bay Meadows").

WHEREAS, City and Bay Meadows are parties to that certain Bay Meadows Phase II Development Agreement dated November 21, 2005 and recorded in the Official Records of San Mateo County, California ("Official Records") on January 24, 2006 as Instrument Number 2006-011071, as modified by (1) that certain Memorandum of Technical Corrections to the Bay Meadows Phase II Development Agreement (the "Memorandum of Corrections") dated July 21, 2008 and recorded in the Official Records on July 22, 2008 as Instrument Number 2008-084562 and (2) that certain Minor Modification to the Development Agreement between The City of San Mateo and Bay Meadows Main Track Investors, LLC dated November 21, 2011 and recorded in the Official Records on March 26, 2012 as Instrument Number 2012-039872 (collectively, the "Development Agreement"), pertaining to the redevelopment of the "Property" described therein and on Exhibit "A" attached hereto (the "Property"), commonly known as Bay Meadows Phase II, located in the City of San Mateo, State of California; and

WHEREAS, Section 11.1 of the Development Agreement provides that the parties may amend the Development Agreement by mutual consent in writing, and in the manner provided for in Government Code Section 65868 and Section 8 of the Development Agreement Resolution; and

WHEREAS, the Effective Date of the Development Agreement was December 21, 2005, and the Term therefore expires on December 20, 2023; and

WHEREAS, the COVID-19 pandemic adversely impacted Bay Meadows' ability to complete the envisioned development on the Property; and

WHEREAS, the City and Bay Meadows wish to amend the Development Agreement to add three (3) years to the Term to facilitate the beneficial development of the Property; and

WHEREAS, after conducting a duly noticed public hearing on [October 10, 2023], by a vote of 5-0, the Planning Commission recommended that the City Council approve this First Amendment; and

WHEREAS, On [November 6, 2023], the City Council held a duly noticed public hearing on this First Amendment and after independent review and consideration, approved this First Amendment by first reading of Ordinance No. _____. On [November 20, 2023], the City Council approved this First Amendment by second reading of Ordinance _____. Ordinance No. _____ became effective on [December 20, 2023].

NOW, THEREFORE, the parties agree as follows:

1. Section 1.51 of the Development Agreement, "Term," is modified to read as follows (with the deletion shown in strike-out form, and additions underlined):

"The term of this Agreement, commencing on the later to occur of (i) the Effective Date or (ii) if a legal proceeding is initiated challenging the validity of the Enacting Ordinance, the MMRP, the EIR, the General Plan Amendment, the Specific Plan Amendment or other Project Approval, this Agreement, or the Master Tentative Map Approval, the date such legal proceeding is finally concluded upholding the Enacting Ordinance or other relevant approval, and terminating ~~eighteen (18)~~ twenty-one (21) years thereafter, unless sooner Terminated as provided in this Agreement. For purposes hereof, a legal proceeding shall be deemed "finally concluded" upon the date of the entry of a final, non-appealable order or judgment in such proceeding upholding the validity of the Enacting Ordinance or other Project Approval. Notwithstanding anything to the contrary contained herein, the term of this Agreement ends on December 20, 202336."

2. The parties intend hereby to modify the Development Agreement only as set forth in this First Amendment, and the parties hereby agree that, except as expressly modified hereby, the remaining terms of the Development Agreement are hereby confirmed and remain in full force and effect and a binding obligation.

3. The Development Agreement has not been amended or modified either orally or in writing except as indicated in this First Amendment, and neither Owner nor City is in default in the performance of their respective obligations under the Development Agreement.

4. This First Amendment may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original, and all of which shall be deemed to be one and the same instrument. Electronically transmitted signatures shall be deemed originals.

[SIGNATURES FOLLOW ON NEXT PAGE]

CITY OF SAN MATEO

**BAY MEADOWS MAIN TRACK
INVESTORS, LLC**

A Delaware
limited liability company

Alex Khojikian
City Manager

Date

<Insert Name>
<Insert Title>

Date

ATTEST:

APPROVED AS TO FORM:

Patrice Olds
City Clerk

Date

Prasanna W. Rasiah
City Attorney

Date

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, 2023, before me,
_____, a Notary Public, personally
appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, 2023, before me,
_____, a Notary Public, personally
appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**EXHIBIT A TO FIRST AMENDMENT
TO DEVELOPMENT AGREEMENT)**

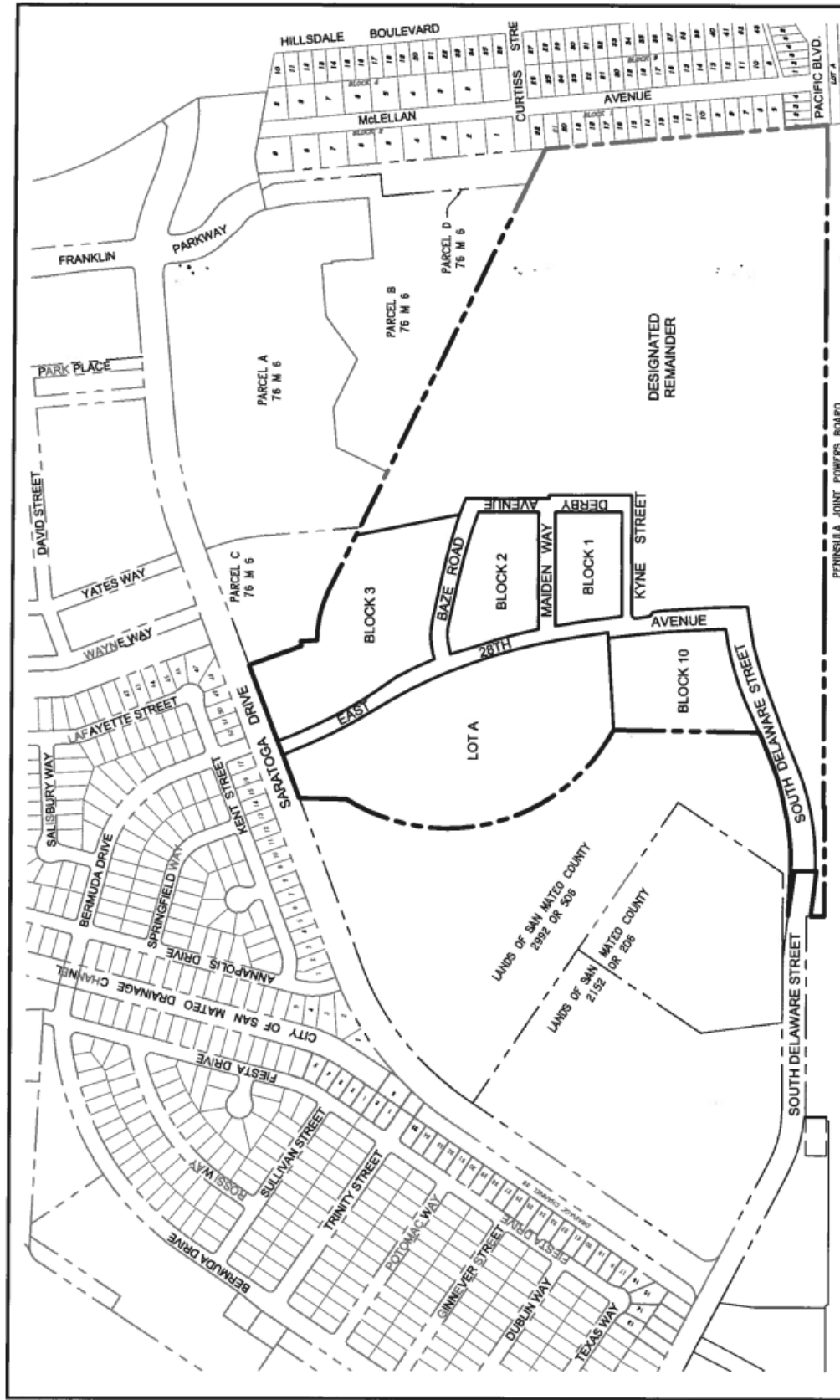
The Property

All that real property situated in the City and County of San Mateo, State of California being described as follows:

Blocks 1, 2, 3 and 10, Lot A and that Designated Remainder, as shown on the Final Map entitled "Bay Meadows Phase II, No. 1", as said map was filed for record on August 25, 2010 in Book 137 of Maps, at Pages 37 through 46, in the Office of the Recorder of San Mateo County, State of California.

The Property is also described as Parcel 1, as shown on that certain map entitled "Bay Meadows No. 1, City of San Mateo, San Mateo County, California", filed in the Office of the County Recorder of San Mateo County, State of California, on June 8, 1999 in Book 129 of Maps at page (s) 47 through 57, inclusive.

Attached hereto is a plat labeled "Exhibit A – Bay Meadows Project Boundary" and by this reference is made a part hereof.



PENINSULA JOINT POWERS BOARD

EXHIBIT 'A'
BAY MEADOWS PHASE II
PROJECT BOUNDARY

JMH WEISS, INC.
Civil Engineering - Surveying - Land Planning
150 S. Alameda Boulevard, Suite 700
San Jose, CA 95113
(408) 286-4555 FAX (408) 286-4558
www.jmw.com



SHEET	SCALE	DATE	JOB
2 of 2	AS SHOWN	08/19/10	4542