

**CITY OF SAN MATEO  
DRAFT ORDINANCE**

**Approve a Development Agreement Extension for Bay Meadows Phase II Project (PA-2023-050)**

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

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 adversely impacted ability to complete the envisioned development on the Property within the allotted timeframe;

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;

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

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

WHEREAS, the City Council held a public hearing on \_\_\_\_\_, duly noticed, 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 Amendment to the Development Agreement is consistent with the City’s General Plan and the Rail Corridor Transit Oriented Development Plan and Bay Meadows Phase II Specific Plan Amendment for the reasons set forth in the Findings for Approval in the Administrative Report accompanying this Ordinance; and

**Section 2.** The Amendment is compatible with the requirements of the City’s General Plan and Zoning Ordinance as outlined in the original project approval, and

**Section 3.** 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.; and

**Section 4.** The Council approves the following amendments to the Agreement in substantially the form attached as Exhibit A to this Ordinance and authorizes the City Manager to execute the amended Development Agreement as follows:

Section 1.15 of the Development Agreement, “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 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, 2026.”

**Section 5. Environmental Determination.** 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 in accordance with Public Resources Code section, section 21061.

**Section 6. 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 7. 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 8. 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.

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;

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

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

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;

WHEREAS, after conducting a duly noticed public hearing on [October 10, 2023], by a vote of [\_\_\_], 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 Agreement 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

\_\_\_\_\_  
\_\_\_\_\_[Print name] \_\_\_\_\_[print name]

Date: \_\_\_\_\_ Date: \_\_\_\_\_

ATTEST:

Approved as to Form:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk \_\_\_\_\_, City Attorney

**NEED TO CONFIRM JURAT FORMAT AND LOCATION OF SIGNING PARTIES**

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)

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

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