

FIRST AMENDMENT TO SOUTHTOWN DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2024, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and South Town by 4M LLC (“Developer”), a Michigan limited liability company, with principal address at 2082 S State St, Ann Arbor, Michigan 48104, hereinafter called the DEVELOPER, amends the development agreement between the City and the DEVELOPER dated _____ (“Development Agreement”).

WHEREAS, the DEVELOPER has received site plan approval for certain land in the City of Ann Arbor, commonly known as Southtown;

WHEREAS, the DEVELOPER requests amendment to the Development Agreement to address compliance with the Southtown Conditional Zoning Statement of Conditions requirement to operate a carbon-efficient continuous microgrid;

THEREFORE, the City and the DEVELOPER agree to the following:

Paragraphs shall be added to the Development Agreement as follows:

(P-21) For Period 1, the DEVELOPER will power and operate its fuel cells first with renewable natural gas (RNG) produced specifically from agricultural emissions or via biodigestion, if commercially available, or with RNG commercially available through DTE if not, and second using carbon capture technology as soon as it is available, with end-use of captured CO₂ either permanent sequestration or as offtake in the food-grade CO₂ market.

(P-22) For Period 2, the DEVELOPER will power and operate its fuel cells first with green hydrogen if commercially available or with blue hydrogen if commercially available, then with renewable natural gas (RNG) produced specifically from agricultural emissions or via biodigestion if commercially available, then with RNG commercial available through DTE, and second using carbon capture technology as soon as it is available, with end-use of captured CO₂ either permanent sequestration or as offtake in the food-grade CO₂ market.

(P-23) Notwithstanding paragraphs 21 and 22 above, the DEVELOPER will power, operate and plan MEA overhaul of its fuel cells such that it uses hydrogen fuel as soon as it becomes commercially available, and that it employs carbon capture technology (with end use

captured CO₂ either permanent sequestration or as offtake in the food-grade CO₂ market) as soon as it is commercially available.

(P-24) Within 30 days of each calendar year-end, DEVELOPER will issue an annual sustainability performance report containing:

- a. A description of operations related to fuel type and carbon capture activity for the preceding year.
- b. Carbon Intensity (CI) calculations for the entirety of the preceding year. These calculations shall include evidence of green energy resources and the business-as-usual (BAU) CI of electricity incumbent DTE, which will be the point of comparison for DEVELOPER'S microgrid performance.
- c. Evidence that DEVELOPER has procured any carbon credits offsets necessary to maintain Carbon Intensity (CI) 60% lower than electricity incumbent DTE.

Once the DEVELOPER'S microgrid is being fueled by hydrogen (whether green or blue) and is operating with carbon capture, the requirement to offset with carbon credits will cease but performance reporting shall continue on an annual basis.

(P-25) Failure to comply with paragraphs 21, 22, 23, and 24 above shall be fines in the amount required for the City to purchase offsetting carbon credits.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Milton Dohoney Jr., City Administrator

Approved as to Form:

Atleen Kaur, City Attorney

STATE OF _____)
County of _____) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

NOTARY PUBLIC
County of _____, State of _____
My Commission Expires: _____
Acting in the County of _____

South Town by 4M LLC

By: _____
Margaret Poscher, Sole Member

STATE OF _____)
County of _____) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Margaret Poscher, Sole Member of South Town by 4M LLC, a Michigan limited liability company, on behalf of the company.

NOTARY PUBLIC
County of _____, State of _____
My Commission Expires: _____
Acting in the County of _____

DRAFTED BY AND AFTER RECORDING RETURN TO:
Kevin McDonald (P-61761)
City Attorney's Office
City of Ann Arbor
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6183