

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, on _____, 2024, City Council approved DEVELOPER’s request to amend the conditional zoning for the Property, described in Exhibit A, to operate a carbon-efficient continuous microgrid;

WHEREAS, this amendment addresses compliance and reporting with the approved Conditional Zoning Statement of Conditions for the Property, dated _____;

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

The following paragraphs shall be added to the Development Agreement:

(P-21) To install fuel cells on the Property, and from the first date of service of the fuel cells to January 1, 2035, the DEVELOPER shall power and operate the fuel cells with Renewable Natural Gas (“RNG”) produced specifically from biodigestion sourced from human or food waste, if commercially available, or if not commercially available, DEVELOPER shall power and operate the fuel cells with RNG commercially available through DTE. ,

(P-22) After January 1, 2035, the DEVELOPER shall power and operate the fuel cells on the Property with green hydrogen if commercially available, or if not commercially available with blue hydrogen if commercially available. If blue hydrogen is not commercially available DEVELOPER shall power and operate the fuel cells with renewable natural gas (RNG) produced specifically from biodigestion sourced from human or food waste. If none of these sources is commercially available, then DEVELOPER shall power and operate the fuel cells with RNG commercial available through DTE.

(P-23) DEVELOPER shall incorporate carbon capture technology as soon as it is available, with end-use of captured carbon dioxide through either permanent sequestration or as offtake in the food-grade CO₂ market.

(P-24) Notwithstanding paragraphs 21 and 22 above, the DEVELOPER shall plan for conversion of its fuel cells to use hydrogen power, and shall operate and plan the overhaul of its fuel cells such that it uses hydrogen fuel as soon as it becomes commercially available, and that DEVELOPER shall incorporate carbon capture technology (with end use captured carbon dioxide either permanent sequestration or as offtake in the food-grade C)₂ market) as soon as it is commercially available.

(P-25) By January 31st of each year, DEVELOPER shall provide the CITY with an annual sustainability performance report for the previous calendar year that provides evidence of compliance with the microgrid and fuel cell requirements containing:

- a. A description of operations related to fuel type and carbon capture activity for the preceding year for all energy sources used at the site.
- b. The MMBtu of energy used on-site, by fuel type and source, for the preceding year.
- c. Carbon Intensity (“CI”) calculations for the preceding year, including greenhouse gas emissions factors used, and energy usage by fuel type. These calculations shall include evidence of green energy resources and the business-as-usual (“BAU”) CI of the franchise provider of electricity for the CITY, which will be the point of comparison for DEVELOPER’S microgrid performance. The BAU calculations shall include updated emissions factors reflecting any changes in the franchise provider’s generation fleet. All calculations and inputs to calculations included in reporting must be provided for transparency.
- d. Proof of purchase of green hydrogen or renewable natural gas, inclusive of details on the type and source of material purchased, the location of the purchase, and the amount purchased.
- e. If applicable, evidence that the DEVELOPER has purchased carbon credits necessary to maintain CI a minimum of at least 60% less CI than the franchise provider of electricity. All carbon offsets must be new, additional, and from Michigan sources. Offsets must be verified by a third-party verification firm to be considered eligible.

Once the DEVELOPER’S microgrid is being fueled by green hydrogen 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-26) If DEVELOPER does not comply with paragraphs 21, 22, 23, 24 or 25 above, then DEVELOPER shall pay the CITY, within 30 days of request, the total amount required for the CITY to purchase new, additional, and Michigan-specific carbon credits equivalent to the gap in achieving at least a 60% less than the BAU CI of the franchise provider of electricity for the CITY.

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 _____)

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

Exhibit A
Legal Description

In the City of Ann Arbor, Washtenaw County:

Lots 1, 2, 3, and 4, Stimson Subdivision, as recorded in Liber 5, Page 30, Washtenaw County Records, and Lots 9, 10, 19, 20 and part of Lots 8 and 18, and the vacated alley adjacent to said Lots 9, 10, 19, and 20, and the vacated alley adjacent to said parts of Lots 8 and 18, Block 3, Hamilton, Rose and Sheehan's Addition, as recorded in Liber 1, Page 24, being part of the Southwest 1/4 of Section 33, Town 2 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan, described as: Commencing at the Southwest corner of said Lot 1 and the Point of Beginning; thence N01°17'27"W 273.32 feet along the East right-of-way line of South State Street; thence N87°04'31"E 263.92 feet along the South right-of-way line of Henry Street; thence S01°21'25"E 273.31 feet along the West right-of-way line of White Street; thence S87°04'31"W 264.23 feet along the North line of Stimson Street to the Point of Beginning. Contains 1.66 acres.

Tax ID#: