

**Memorandum of Understanding between the Treasure Island Development Authority (TIDA) and  
the San Francisco Public Utilities Commission (SFPUC)  
Regarding Construction of New Wastewater Treatment Facilities to Serve  
Treasure Island and Yerba Buena Island**

**THIS MEMORANDUM OF UNDERSTANDING** (this "MOU") is entered into as of April \_\_\_\_, 2017, by and between the **CITY AND COUNTY OF SAN FRANCISCO** ("City"), a municipal corporation acting by and through the San Francisco Public Utilities Commission ("SFPUC"), and the **TREASURE ISLAND DEVELOPMENT AUTHORITY**, a California non-profit public benefit corporation ("TIDA"), collectively, the "parties", upon the following facts, intentions and understandings of the parties:

**RECITALS**

A. In 1993, Naval Station Treasure Island ("NSTI"), consisting of both Treasure Island and portions of Yerba Buena Island, was designated for closure and disposition by the Base Realignment and Closure Commission acting under Public Law 101-510 and its subsequent amendments. The Department of Defense subsequently designated the City and County of San Francisco ("City"), and later TIDA, as the Local Reuse Authority ("LRA") responsible for the conversion of NSTI under the federal disposition process.

B. TIDA was created in 1997 to serve as a single-purpose entity responsible for the redevelopment of NSTI. Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (1) designated TIDA as a redevelopment agency under the California Community Redevelopment Law with authority over NSTI, and (2) with respect to those portions of NSTI that are subject to the public trust for commerce, navigation and fisheries (the "Tidelands Trust" or "Trust"), vested in TIDA the authority to administer the Tidelands Trust as to such property in accordance with the terms of the Act.

C. In January 2012 in response to California Assembly Bill 26, the San Francisco Board of Supervisors rescinded its designation of the TIDA as the redevelopment agency under California Community Redevelopment Law, but preserved TIDA's status as the LRA for NSTI and all other powers and authority that the City had granted to TIDA or that TIDA otherwise had.

D. The City and the Navy entered into the Base Caretaker Cooperative Agreement executed March 12, 1997, as amended from time to time (collectively, the "Cooperative Agreement"), for the interim management and operation of NSTI during the disposition process. Under the Cooperative Agreement, the City assumed responsibility for certain caretaker duties at NSTI including the operation, maintenance and repair of the Navy's utility systems that service NSTI. These caretaker responsibilities were later assumed by TIDA in 1998.

E. On July 2, 2014, TIDA and the Navy entered into an Economic Development Conveyance Memorandum of Agreement (the "EDC MOA") to convey all of NSTI other than the portions that the Navy previously conveyed to the United States Department of Labor Job Corps, the United States Coast Guard, and the Federal Highway Administration through federal-to-federal transfers. The portions of NSTI that are to be transferred to TIDA under the EDC MOA are collectively referred to in this MOU as the "Property". In May 2015, the Navy transferred approximately sixty percent (60%) of the Property to TIDA in accordance with the conditions set forth in the EDC MOA. In September 2016, the Navy transferred the second portion of the property, known as Clipper Cove and Building 3/Site 21, and the parties anticipate continued transfers in phases over approximately the next 6 years as land is remediated and prepared for transfer.

F. Under the EDC MOA, the Navy must remediate environmental conditions arising out of its operation of NSTI to levels appropriate for the land uses set forth in the development plan for Treasure Island before land can be transferred to TIDA. Land transferred from the Navy to TIDA will also include appropriate Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) covenants and warranties, including callback provisions requiring Navy remediation should previously unidentified contamination resulting from Navy use of the property be identified at a later date.

G. The EDC MOA further addresses the obligations of the Navy and TIDA with respect to maintenance, operation, and replacement of utility systems during the course of this transfer process through a utilities agreement between TIDA and the Navy that was entered into as Exhibit E to the EDC MOA, Form of Utilities Agreement (the “Utilities Agreement”). At the time of each land transfer, all utility infrastructure located in the transferred land is transferred with the land – although the Navy retained certain easements across the transferred lands to ensure that the Coast Guard facilities could maintain access to key infrastructure until their property could be served directly by a public utility. The Cooperative Agreement terminates as to land transferred to TIDA, but remains in place for the land retained by the Navy. Under the EDC MOA, TIDA agreed to spend all utility revenues on utility operations on NSTI, and further agreed to seek additional appropriations, as required, to continue to operate utility systems consistent with past practices.

H. The SFPUC has provided utility services on NSTI on behalf of TIDA from the time that TIDA initially assumed those and other responsibilities from the Navy under the Cooperative Agreement, including the operation and maintenance of the active NSTI utility systems and the delivery of utilities to the occupants and users of NSTI. SFPUC activities include delivery of electricity, natural gas, water, stormwater management, and the operation and maintenance of the existing wastewater treatment plant and related facilities and pipe network on NSTI.

I. The SFPUC has performed these utility services for TIDA under an annually renewed “Utility Services MOU”. The Utility Services MOU documents the parties’ agreement that all utility services rendered by the SFPUC to TIDA are performed as a contractor, not as a public utility provider, and the SFPUC’s expenditure authority in providing the services is limited to the extent it can be reimbursed by NSTI utility revenues imposed or collected by TIDA or other TIDA revenues. The current Utility Services MOU executed in October 2016 memorializes the terms and conditions of continued performance of certain defined utility services for both utility infrastructure on the Property that has not yet been transferred from the Navy to TIDA (“Pre-transfer Infrastructure”) and utility infrastructure on Property that has been transferred to TIDA (“Post-transfer Infrastructure”). Pre- and Post-transfer Infrastructure do not include infrastructure on lands owned by the United States Coast Guard, the Department of Labor, or TICD.

J. The parties acknowledge that the existing infrastructure on NSTI does not meet current SFPUC standards. Given the state of the existing infrastructure, the SFPUC may not be able to provide utility services at NSTI equivalent to the services that SFPUC provides in the other areas of San Francisco, pending construction, dedication and acceptance of new utility systems. SFPUC has worked with TIDA to identify critical capital improvements to the infrastructure necessary to sustain the systems through the redevelopment of NSTI.

K. In October 2013, TIDA secured Board of Supervisors approval of capital funding in the amount of ten million dollars (\$10,000,000) to address critical near term repairs to the existing infrastructure that may be necessary prior to redevelopment and replacement of these assets. SFPUC is coordinating with TIDA in implementing capital repair and rehabilitation projects (“R&R Projects”) utilizing these funds.

L. In 2011, the City, TIDA and Treasure Island Community Development, LLC (“TICD”), entered into three related agreements: a Disposition and Development Agreement (the “DDA”) between TIDA and TICD; a Development Agreement (the “DA”) between the City and TICD; and an Interagency Cooperation Agreement (the “ICA”) between the City and TIDA (for reference purposes, all of these

agreements are dated as of June 28, 2011). The DDA details a phased program for the development of NSTI including an Infrastructure Plan, Exhibit FF to the DDA, which describes the future utilities to be constructed by TICD as part of the development project.

On June 7, 2011, the Board of Supervisors, by Resolution No. 246-11, adopted the CEQA Findings, the Mitigation and Monitoring Reporting Program (MMRP) and a Statement of Overriding Considerations for the Treasure Island-Yerba Buena Island Redevelopment Project and approved the Project, which includes the WWTP Project. Therefore, CEQA review for the WWTP Project as proposed and analyzed in the FEIR is complete, with two exceptions. The FEIR states that since no specific processes or equipment were identified for the WWTP Project at the time the document was prepared, an additional CEQA review will be conducted at the time that such processes and equipment are specified. This review will also include any proposed changes to related facilities, such as the existing outfall. If necessary, the appropriate CEQA document will be prepared for the WWTP Project and/or any related facilities. In addition, TIDA has agreed to convey an additional parcel of 4-6 acres to the SFPUC for its use ("Additional Parcel"), and the FEIR did not include an analysis of detailed plans for this parcel as they were not proposed at the time of document preparation. Therefore, CEQA review will be conducted prior to approval of a development plan for the SFPUC's use of the Additional Parcel.

If preparation of CEQA documents is required for the WWTP Project or for the Additional Parcel, the individual documents shall be prepared, reviewed and considered prior to WWTP Project approval and issuance of construction contracts for the WWTP Project including related facilities such as the outfall, and prior to approval of a development plan for the Additional Parcel. In addition, required Resource Agency permits shall be obtained prior to issuance of any construction contracts.

M. The Infrastructure Plan provided that: "Subject to future negotiation and agreement between the Authority and the SFPUC on the provisions and terms upon which the SFPUC will provide such services it is intended that the SFPUC may finance, design, build, own and operate a new Wastewater Treatment Facility (WWTF) on Treasure Island or provide for other improvements and/or agreements as necessary to provide wastewater treatment services to the Project."

N. In Resolution 11-0068, adopted May 10, 2011, the SFPUC gave conditioned approval of the ICA and the acceptance, operation and maintenance of SFPUC-related Infrastructure, "provided the SFPUC retains full discretion to negotiate the elements of the wastewater/recycled project."

It is the intent of this MOU to record the parties' understanding as to: the SFPUC's development of a new Wastewater Treatment Plant Project ("WWTP") on Treasure Island as contemplated in the Infrastructure Plan and the ICA; the necessary real property improvements to the WWTP site prior to construction; TIDA's transfers to the SFPUC of fee and easement interests for the WWTP Project construction and operation, including discharge facilities; SFPUC's right to continued use of existing or comparable property to support existing contracted utility services, or future public utility operations; the relative responsibilities of the parties and others during the phased development of TI/YBI; and the transfer of an Additional Parcel contiguous to the Wastewater Treatment Facility ("WWTF") site.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

**AGREEMENT**

**1. Recitals**

The foregoing recitals are true and correct and are incorporated herein by this reference.

## 2. Definitions

Abbreviations and technical terms used in this MOU are defined as follows:

WWTP Project – The SFPUC capital improvement project that includes design and construction of the WWTF and RWTF on Treasure Island.

WWTF– The Wastewater Treatment Facilities to be constructed by the SFPUC, consisting of facilities necessary for the treatment of sanitary sewage and discharge of effluent to San Francisco Bay.

RWTF – The Recycled Water Treatment Facilities to be constructed by the SFPUC necessary for the treatment of recycled water.

WWTP – Collectively, the WWTF and RWTF that will be constructed on the WWTP Site to provide services to Treasure Island and Yerba Buena Island.

WWTP Site – A site of 4–6 acres to be provided in fee to the SFPUC by TIDA suitable for the construction and operation of the WWTP, located within the area shown in Exhibit A and. The WWTP Site also includes the recycled water storage and distribution pumping facilities to be provided by TICD, as required by the Development Agreement, in accordance with SFPUC specifications).

Additional Parcel – A 4 – 6 acre site contiguous to the WWTP Site to be conveyed to the SFPUC by TIDA.

Discharge Easement(s) – An easement or easements to be conveyed to the SFPUC by TIDA for the lands occupied by the existing outfall or any replacement outfall or alternative discharge facilities required to be constructed as part of the WWTP Project.

Legacy Infrastructure – Existing wastewater utility infrastructure serving facilities on NSTI whether on lands owned by the Navy, (the Pre-transfer Infrastructure), or TIDA, (the Post-transfer Infrastructure).

Temporary Infrastructure – Sanitary sewer infrastructure constructed by TICD that is integral to day-to-day utility operation and provision of wastewater services that will not be dedicated to, and accepted by the SFPUC, prior to construction of Permanent Infrastructure.

Permanent Infrastructure – Sanitary sewer infrastructure constructed by TICD to SFPUC standards, intended for acceptance by the City, whether accepted or anticipated to be accepted in the future.

## 3. Effective Date; Term

The term of this MOU shall commence on the date of execution, following final approval by the TIDA Board, the SFPUC Commission, and the Board of Supervisors, and shall terminate on the date the parties' obligations hereunder have been satisfied.

## 4. Utility Operations

Since 1997, TIDA has operated Navy facilities on the island, including the utilities, under the Cooperative Agreement between TIDA and the Navy. With the initial property transfer in 2015, TIDA became the owner of portions of the utility systems, the Post-transfer Infrastructure. The SFPUC has, in turn, served as a contract operator to TIDA under the Utilities Services MOU for both Navy and TIDA owned utilities on NSTI including the sanitary sewer collection system and the existing wastewater treatment plant.

The Cooperative Agreement will expire upon completion of the transfer of Navy lands to TIDA. The SFPUC and TIDA renewed the existing Utility Services MOU in October 2016, which expires in September 2017, subject to annual renewal with the approval of the parties.

As development progresses TIDCD will be constructing new wastewater collection mains that are intended to be dedicated to and accepted by the SFPUC. Until SFPUC's completion of the new WWTF, and acceptance of related infrastructure as may be required by the City, placed under the jurisdiction of the SFPUC, TIDA will continue to be the sanitary sewer collection and treatment service provider on TI/YBI for new and existing service connections. New service connections must enter into an agreement with TIDA to obtain sanitary sewage collection and treatment service for the subdivision, subject to possible transfer of service to SFPUC in the future on terms consistent with SFPUC's rules, regulations, rates, fees and charges. TIDA will continue to be the service provider for any customers whose flows are conveyed to the WWTF in whole or in part by legacy infrastructure.

## **5. Planning, Site Preparation, Design and Construction of New Wastewater Treatment Plant**

SFPUC shall be responsible for planning, designing, and constructing the new WWTF to replace the functions of the existing plant and serve future development on NSTI. TIDA is responsible for preparing the site for construction of the new WWTF.

- a) Project Management – The SFPUC will assign a project manager to manage the WWTP Project. This project manager will convene a steering committee consisting of the SFPUC Assistant General Manager (“AGM”) of Wastewater, the SFPUC AGM of Infrastructure, the SFPUC AGM of Water, SFPUC AGM of Power, and the TIDA Director, on an as-needed basis, to review the status of and seek input on the Project.
- b) Costs – Subject to appropriation and certification of funds, the SFPUC will fund all activities related to permitting, designing, constructing, operating and maintaining the new WWTP. All other costs, including costs related to TIDA activities outlined in this section, are the responsibility of TIDA.
- c) Schedule – SFPUC and TIDA agree that construction of the new WWTP should be completed as soon as is reasonably possible, and that successful completion requires coordinated and sequenced actions by each party. Exhibit B depicts the preliminary working schedule for delivery of the WWTP, subject to the terms and conditions of this MOU. From the start of design until completion of construction of the WWTP Project, the SFPUC and TIDA shall review and monitor the Project Schedule, including, during construction, the Contractor’s Construction Schedule, for critical path items.

As development occurs on YBI and TI, Legacy, Temporary, and Permanent infrastructure will convey wastewater flow to the WWTF. The TIDA and SFPUC’s intent is for the SFPUC to construct the new WWTF with enough capacity initially, at a minimum, to treat the existing sanitary sewage influent flow at that time. The SFPUC retains in its sole discretion the right to decide when to complete all of the buildout capacity, shown below in subsection (d). TIDA will provide regular forecasted demand schedules to the SFPUC covering all planned development. Based on these schedules the SFPUC will ensure enough wastewater treatment capacity exists from the WWTF following Initial WWTF Completion.

Delivery of recycled water to non-potable uses will begin no later than the completion of Major Subphase 2. Delivery at this time and prior to completion of development may require the use of temporary facilities.

d) Capacity Requirements

i) The current influent flows at the existing wastewater treatment plant are:

Average Dry Weather Flow:	0.292 MGD
Peak Dry Weather Flow:	0.545 MGD
Peak Wet Weather Flow:	1.260 MGD

ii) The projected influent flow at full buildout of the development are projected to be:

Average Dry Weather Flow:	1.3 MGD
Peak Dry Weather Flow:	2.3 MGD
Peak Wet Weather Flow:	2.9 MGD

iii) The projected recycled water demand at full buildout of the development are projected to be:

Average Recycled Water Flow:	0.43 MGD
Peak Recycled Water Flow:	0.98 MGD

e) Design and other Supporting Documentation – The SFPUC retains in its sole discretion the authority to determine the design, construction and operating parameters for the WWTP.

f) The production of recycled water for use includes treatment, storage, distribution and pumping facilities. SFPUC shall be responsible for treatment of flows to recycled water standards under the WWTP Project. Recycled water storage and distribution pumping facilities shall be designed and constructed by TICD within the WWTP Site. The recycled water storage, pumping and distribution system constructed by TICD shall be dedicated to the SFPUC for acceptance, ownership and operation.

g) Conditions Precedent to Construction – The following conditions must be satisfied prior to the SFPUC assuming the obligation to initiate construction of the new WWTP. The SFPUC will complete the design phases of the WWTP Project including any required additional environmental review, and the preparation of construction bid packages, concurrent with the completion of TIDA responsibilities under this Section 6(f). The SFPUC will not initiate construction until all SFPUC and TIDA responsibilities under this Section 6(f) are complete.

i) The SFPUC must designate the WWTP site footprint, within the SFPUC WWTP Placement Study Area as shown on Exhibit A, and submit it to TIDA.

ii) TIDA shall ensure timely demolition of existing structures on the WWTP Site and site preparation to specifications provided by the SFPUC for compaction, elevation/final grading, and any remediation.

iii) TIDA will transfer fee simple title to the WWTP Site to the SFPUC for the purpose of constructing the WWTP Project. The WWTP Site will also accommodate the storage and pumping facilities to be provided by TICD, as required by the Development Agreement, per SFPUC specifications.

iv) TIDA will convey to the SFPUC any temporary access easements or Discharge Easements necessary for construction and operation of the WWTP.

- v) Construction contracts will not be awarded until any required additional CEQA documents are certified or adopted and construction will not begin until all resource agency permits have been obtained by the SFPUC.
- h) Conditions Precedent to Operation – The following conditions must be satisfied before construction of the WWTF is completed and the SFPUC will commission operation of the new WWTP. TIDA will coordinate with TICD to ensure that its responsibilities under Section 5(h) are met prior to or concurrent with the completion of the WWTP construction. The SFPUC will not initiate operation of the WWTF until all responsibilities under this Section 5(h) have been fulfilled.
  - i) TIDA and TICD will be responsible for new utility connections to the WWTP Site including re-routing the collection system outside of the parcel area to ensure flow to the new WWTP, as well as delivering new potable water and electrical services to the parcel boundary.
  - ii) In the event that Temporary Infrastructure connects SFPUC customers or Permanent Infrastructure to the new WWTF, TIDA will ensure that TICD provides adequate security to replace or improve to SFPUC standards any such Temporary Infrastructure, including providing property for new alignments and all construction and related costs to provide Permanent Infrastructure in-lieu of the designated Temporary Infrastructure.
  - iii) All final regulatory and permit approvals, including the new NPDES permit, required prior to operation have been secured by SFPUC.

Operation and Maintenance – Upon completion, the SFPUC will operate and maintain the WWTP.

Prior to declaring substantial completion, and in consultation with the Regional Water Quality Control Board (“RWQCB”), the SFPUC will require its contractor perform a 7-day performance test with dry-weather flow to the new WWTP. Following successful completion of this test, as confirmed by SFPUC and TIDA, the SFPUC will declare substantial completion and begin operating the new WWTP on a permanent basis effectively taking the existing plant permanently offline. This event is referred to as Initial WWTF Completion. All wastewater will be treated at the new WWTP including dry weather and wet weather flows, as well as production of recycled water.

- i) Decommissioning and demolition of the existing wastewater treatment plant – Following successful performance testing of dry and wet weather capacity, the SFPUC, assuming that it continues in its capacity as contract operator of the existing plant and at TIDA’s expense, will support the decommissioning of the plant. Decommissioning of the existing WWTP plant includes, the transfer of residual flows to the new WWTP for processing or the disposal of solids and other treatment bi-products from the existing plant, cleaning of the plant, and the removal of any existing equipment with reuse value to the SFPUC. TICD will be responsible for demolition of the existing plant including all structures and above- and below-grade equipment and appurtenances and for preparing the existing plant site for its future use whether as the SFPUC Additional Parcel, open space, or other use. The SFPUC is not responsible for removing the existing wastewater outfall, if abandoned, and/or any related remediation associated with the existing outfall.

- j) Permit Responsibilities – The SFPUC will be responsible for securing approvals of any required CEQA documents and for obtaining resource agency and operational permits relating to the construction and operation of the new WWTP.
  - i) Construction– The SFPUC will be responsible for all construction-related permits and regulatory approvals related to the WWTP Project, including, if required, any approvals relating to rehabilitation or replacement of the outfall.
  - ii) Operation– As described in Table 1, the SFPUC will hold the NPDES permit for the new WWTP. In this capacity, the SFPUC will directly communicate with the RWQCB on matters related to the new WWTP after coordination with TIDA and will copy TIDA on communications with the RWQCB as TIDA will continue to be responsible for the operation of the existing wastewater treatment plant. Consultation with RWQCB will be required during the planning phase to determine the anticipated permit requirements for the new WWTP.

## 6. Real Property

- a) Permitted Access – During the term of this MOU, SFPUC staff shall have the right, without materially interfering with the existing operations, to enter upon the WWTP Site and surrounding areas as needed in order to perform due diligence investigations and studies and take such additional actions as may be required in connection with the WWTP Project. SFPUC staff shall coordinate such activities with the TIDA project manager and keep the TIDA project manager apprised of such activities. SFPUC shall not construct improvements or make alterations on the WWTP Site without the prior approval of TIDA.
- b) WWTP Site – TIDA shall convey to SFPUC a site for construction of the WWTP Project to be located within the area shown in Exhibit A. The final dimensions of the site will dependent on the preliminary design process and communicated from the SFPUC to TIDA. TIDA will ensure that the site is not subject to the Tidelands Trust and will convey the site to the SFPUC in fee at no cost to the SFPUC.
- c) Additional Parcel – TIDA shall also convey in fee to the SFPUC at no cost to the SFPUC a site contiguous to the WWTP Site of 4-6 acres for SFPUC purposes. TIDA will ensure the Additional Parcel is free of all existing structures and improvements, remediated, compacted, and additional soil will be imported to achieve the desired final grade and elevation, as requested by SFPUC. Improvements to the Additional Parcel to support SFPUC use of the site will be made by the SFPUC at its cost. The Additional Parcel will be conveyed to SFPUC within one year of completion of Major Phase 4 of the TI/YBI development project.
- d) Existing Leased Areas – The SFPUC presently leases from TIDA two areas shown in Exhibit C at no cost to the SFPUC. These areas shall remain available to the SFPUC through the initial development phase (Phase 1).
- e) Interim Leased Area – Because of the sequencing of development activities, it will not be possible to prepare the Additional Parcel prior to the commencement of operations of the new WWTP, but TIDA will provide to the SFPUC an area suitable to SFPUC for SFPUC's use, at no cost to the SFPUC, if areas in addition to, or as an alternative to, the Existing Leased Areas are needed, as a temporary corporation yard in proximity to the new WWTP Site until the Additional Parcel can be delivered.
- f) Discharge Facilities – TIDA will convey to the SFPUC appropriate easements to accommodate discharge facilities of the WWTP. If the WWTP is served by the existing or replacement outfall,



TIDA will provide a permanent easement for the outfall structure including onshore and offshore facilities. If the WWTP discharges to the bay via a wetland, TIDA may provide a temporary, permanent, or combination of temporary and permanent easements depending upon the extent and configuration of the wetland.

## 7. Notices

Any notice given under this MOU shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by regular mail, with postage prepaid, to the mailing address listed below or other address when notice of which has been given. For the convenience of the parties, copies of notices may also be given by facsimile to the facsimile number listed below or other facsimile number when notice of which has been given.

Address for SFPUC: 525 Golden Gate Ave, 13<sup>th</sup> Floor  
San Francisco, CA 94102  
Attn: Harlan L. Kelly Jr., General Manager  
Fax: (415) 554-3161

Address for the Authority: 1 Avenue of the Palms, Suite 241  
Treasure Island, San Francisco, CA 94130  
Attn: Robert Beck, Treasure Island Director  
Fax: (415) 274-0229

## 8. Miscellaneous Provisions

- a. California Law. This MOU shall be construed and interpreted in accordance with the laws of the State of California and the City, including the City's Charter.
- b. Entire Agreement. Subject to any subsequent agreements authorized pursuant to this MOU, this MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. No prior drafts of this MOU or changes from those drafts to the executed version of this MOU shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this MOU.
- c. Amendments. This MOU may be amended or modified only by a writing signed by the General Manager of SFPUC and the TIDA Director, following any necessary approvals.
- d. No Waiver. No waiver by any party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver.
- e. No Party Drafter; Captions. The provisions of this MOU shall be construed as a whole according to their common meaning and not strictly for or against any 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 shall be disregarded in the construction and interpretation of this MOU.
- f. Further Assurances. The parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual intent of the parties as expressed in this MOU.
- g. Necessary Approvals. This MOU and subsequent amendments must be approved by the San

Francisco Public Utilities Commission, the Treasure Island Development Authority, and the Board of Supervisors, each in its sole and absolute discretion. Following approval of this Agreement by the TIDA and SFPUC, the respective resolutions indicating such approval shall be attached hereto as, respectively, Exhibit X and Exhibit Y.

## **9. Insurance**

SFPUC shall cause any contractors retained by SFPUC to design and construct any improvements covered by this MOU, to maintain at all times such insurance consistent with SFPUC policy and otherwise as the City Risk Manager recommends. TIDA, including its Board members, officers, agents and employees, shall be named as additional insureds with respect to any such insurance.

## **10. Indemnification; Release**

- a. SFPUC shall require that any contractors retained by SFPUC to design and construct any improvements covered by this MOU include TIDA, including its Board, officers, agents and employees as an indemnified party in any indemnification provision between SFPUC and such contractor.
- b. Neither the SFPUC nor any of its commissioners, departments, boards, officers, agents or employees, will be liable for any damage to the property of TIDA or for any bodily injury to or death of any persons, resulting or arising from the condition of the Property or its use by SFPUC, and TIDA expressly releases any claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings (together, "Claims"), related to such physical or environmental condition of the Property or any law regulation applicable thereto.
- c. Each party agrees to be responsible for its acts under this MOU, but shall not be responsible for any consequential or incidental damages from any cause whatsoever. Nothing in this MOU shall make the SFPUC responsible for any damage to or failure of the existing wastewater treatment facility.

## **11. No Third Party Interest**

This MOU is intended to document the understanding of the parties with respect to the subject matter of this MOU and is entered into for the sole benefit of the parties. No third party interests are established or conveyed by this MOU, and no third party shall have standing to seek remedy under the MOU or to enforce any provisions of this MOU.

## **12. Dispute Resolution**

If a party to this MOU determines that the other has failed to fulfill its obligations under this MOU, that party shall provide the other with written notice detailing the alleged breach, and within ten (10) days of receipt of such notice, the General Managers (or their designees) of TIDA and SFPUC shall meet and confer to resolve any such breach.

## **13. Authority**

All matters requiring the SFPUC's approval under this MOU shall be approved by the General Manager of SFPUC or his or her designee, and by the SFPUC Commission, if required under SFPUC policy. All matters requiring TIDA's approval shall be approved by the TIDA Director or his or her designee, and by the TIDA Board, if required under TIDA policy.

## **14. Cooperation**

Subject to the terms and conditions of this MOU, TIDA and SFPUC staff shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all parties (subject to any necessary approvals). Each party shall keep the other promptly informed of all material matters which come to its attention relating to or affecting the development, design or construction of the Project, including, without limitation, any disruption in schedule or matters that may trigger the need for a design revision. Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU. In addition to any conditions described in this MOU, the parties' obligations are expressly subject to the receipt of all legally required approvals following any required environmental review.

**15. Compliance with the California Environmental Quality Act (CEQA) and Resource Agencies Regulations**

On June 7, 2011, the Board of Supervisors, by Resolution No. 246-11, adopted the CEQA Findings, the MMRP and a Statement of Overriding Considerations for the Treasure Island-Yerba Buena Island Redevelopment Project and approved the Project, which includes the WWTP Project. Therefore, CEQA review for the WWTP as proposed is complete with two exceptions.

As stated in Recital L, prior to approval of the WWTP Project and when specific processes and equipment for the WWTP, or any modifications to related existing facilities such as the existing outfall are proposed, and prior to approval of a development plan for the Additional Parcel, additional CEQA review will be completed. If required, certification or adoption of the appropriate CEQA document will be completed prior to award of a construction contract or development of the Additional Parcel. Resource agency permits will be obtained prior to initiation of construction.

**16. Certification of Funds; Budget and Fiscal Provisions of the Charter.**

This MOU is subject to the budget and fiscal provisions of the City's Charter. City has no obligation to make appropriations for the obligations of the parties contemplated in this MOU in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Both parties recognize that assumption of risk of possible non-appropriation is part of the consideration for this MOU. Any contracts issued as contemplated in this MOU are subject to Controller's certification of funds. THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS MOU.

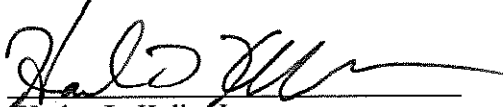
IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date first above written.

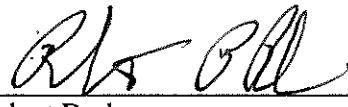
SFPUC:

THE AUTHORITY:

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through its Public Utilities  
Commission


TREASURE ISLAND DEVELOPMENT  
AUTHORITY, a California public benefit  
corporation

By:   
Harlan L. Kelly, Jr.  
General Manager

By:   
Robert Beck  
Treasure Island Director

Approved as to form:

Dennis J. Herrera,  
City Attorney

By:   
Deputy City Attorney

## **LIST OF EXHIBITS**

Exhibit A – Legal description/plat for future SFPUC WWTP site

Exhibit B – Preliminary Design/Construction Schedule

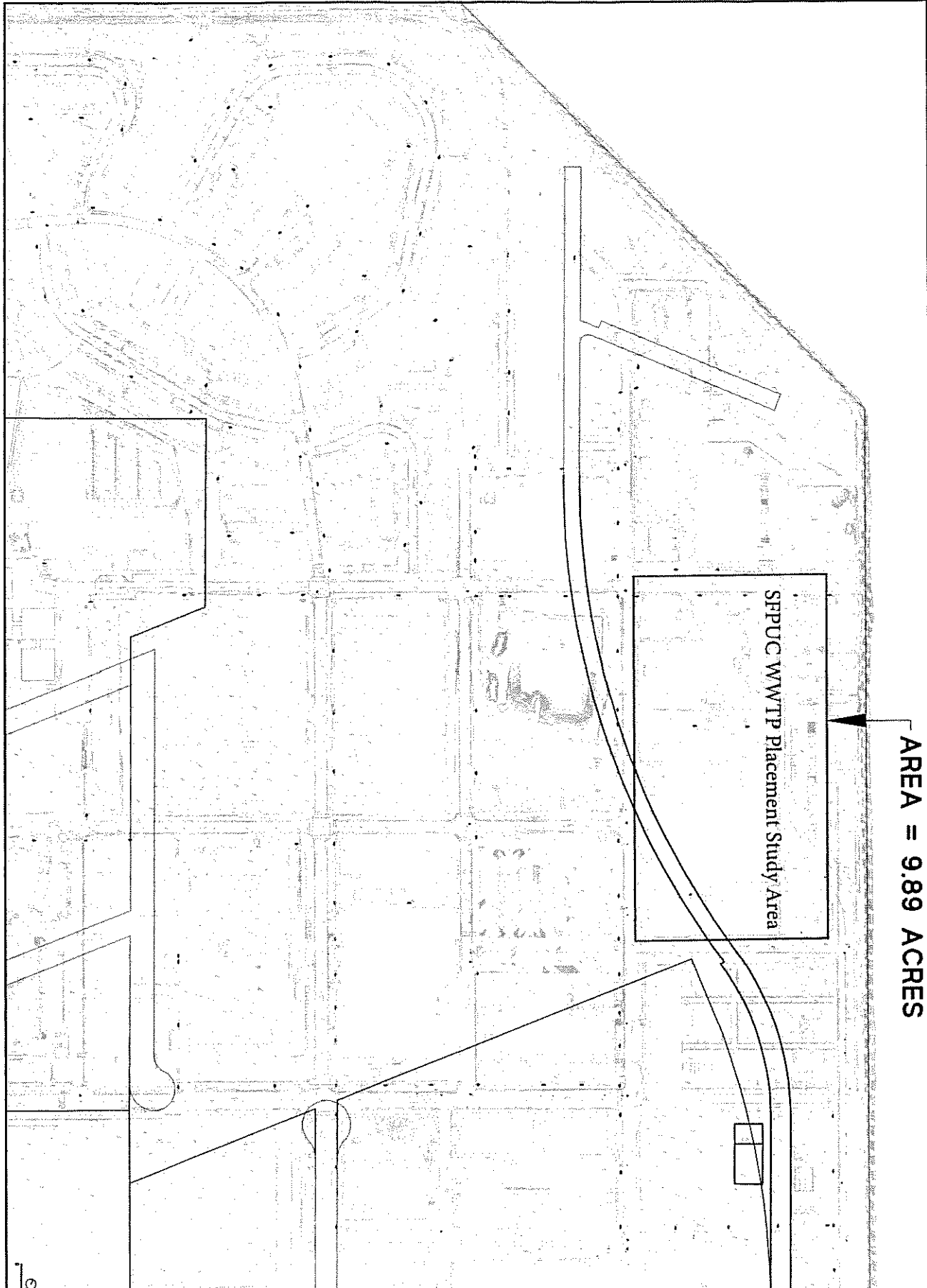
Exhibit C – Existing Leased Areas to SFPUC

Exhibit X – SFPUC Resolution

Exhibit Y – TIDA Resolution

## **EXHIBIT A - Diagram of SFPUC WWTP Placement Study Area**

Memorandum of Understanding between the Treasure Island Development Authority (TIDA) and the San Francisco Public Utilities Commission (SFPUC) Regarding Construction of New Wastewater Treatment Facilities to Serve Treasure Island and Yerba Buena Island



AREA = 9.89 ACRES

SFPUC WWTP Placement Study Area



Date	01/05/17	By	
Scale	1" = 100'	Checked	
Drawn	LVT	Approved	
Job No	20160015-10		

TREASURE ISLAND  
 WWTP LOT AND PUC LOT

CITY OF SAN FRANCISCO COUNTY OF SAN FRANCISCO CALIFORNIA

**BKF** 255 SHORELINE DRIVE, STE 200  
 REDWOOD CITY, CA 94063  
 650/482-8300  
 650/482-8399 (FAX)  
 ENGINEERS / SURVEYORS / LANDSCAPE

## **EXHIBIT B - Preliminary Design/Construction Schedule**

Memorandum of Understanding between the Treasure Island Development Authority (TIDA) and the San Francisco Public Utilities Commission (SFPUC) Regarding Construction of New Wastewater Treatment Facilities to Serve Treasure Island and Yerba Buena Island



EXHIBIT B

TREASURE ISLAND WASTEWATER TREATMENT PLANT IMPLEMENTATION  
CONCEPTUAL DESIGN / CONSTRUCTION SCHEDULE

Item	Duration	Start Date	End Date	2017				2018				2019				2020				2021				2022			
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
<b>Planning</b>																											
Conduct preliminary evaluation of options and create bridging documents	6 months	4/1/2017	10/1/2017	██████████																							
<b>Site Preparation</b>																											
TIDA / TICD prepares new TI WWTP plant site (Construction - by TICD contractors)	18 months	12/15/2017	6/15/2019					██████████																			
Site Ready for plant construction			June 2019																								
<b>RFP Bid and Award</b>																											
SFPUC prepares RFQ for Design-Build Team Selection	2 months	6/1/2017	8/1/2017	██████████																							
Advertise Design-Build RFQ	2 months	9/1/2017	11/1/2017		██████████																						
SFPUC prepares RFP for Design-Build Team selection	3 months	8/1/2017	11/1/2017		██████████																						
Advertise and bid Design-Build RFP	2 months	11/15/2017	1/15/2018			██████████																					
Negotiate, Award and NTP contract	1 1/2 months	1/15/2018	3/1/2018				██████████																				
Issue Notice to Proceed	1 day	3/10/2018	March 2018						▲																		
<b>Design/Construction of New Facilities</b>																											
SFPUC and Design-Build Team prepares design of new TI WWTP	18 months	3/15/2018	9/15/2019					██████████																			
Select treatment process	4 months	3/15/2018	7/15/2018		██████████																						
Prepare conceptual plant layout	1 month	7/16/2018	8/16/2018																								
Determine footprint needed for new TI WWTP	1 month	8/16/2018	9/15/2018																								
Footprint for new TI WWTP established			September 2018																								
Design-Build Team constructs new facilities	24 months	9/16/2018	9/15/2021																								
Start-up and Commissioning	2 months	9/16/2021	11/16/2021																								
Complete Construction	1 day	1/2/2022	January 2022																								

- NOTES**
- \*TIDA owns the land where the new TI WWTP is anticipated to be located. The existing WWTP is on Navy-owned property, which is scheduled for transfer to TIDA by 12/31/2020, which is unlikely to be delayed. Transfer of the existing WWTP parcel to TIDA will allow decommissioning and demolition of (E) WWTP once the new plant is constructed, accepted and in service.
  - \*Design assumes that the existing WWTP outfall will be re-used. Inspection of the existing outfall is planned for this Fiscal Year; if its condition is not acceptable or deemed not repairable, we may need longer times to account for a new outfall and to obtain all of the associated permits (USACE, BCDC, F+G, etc.).
  - \*Permit requirements are unclear at this time. If a new outfall is required, work within SF Bay would trigger need for environmental permits (401 WQC, Section 404, etc.) This item is a placeholder in the schedule and will be refined as the project definition becomes better understood.
  - \*New NPDES Permit is assumed for the TI WWTP. The existing permit expires March 31, 2020.

## **EXHIBIT C - Properties in Use by SFPUC**

Memorandum of Understanding between the Treasure Island Development Authority (TIDA) and the San Francisco Public Utilities Commission (SFPUC) Regarding Construction of New Wastewater Treatment Facilities to Serve Treasure Island and Yerba Buena Island

# Exhibit C

