

File No. 200947

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date February 17, 2021

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

#### OTHER (Use back side if additional space is needed)

- SFMTA CEQA Determination \_\_\_\_\_
- SFMTA Board of Directors Resolution No. 200407-035 \_\_\_\_\_
- SFMTA Presentation - September 30, 2020 \_\_\_\_\_
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Completed by: Linda Wong

Date February 12, 2021

Completed by: Linda Wong

Date \_\_\_\_\_

1 [Administrative Code Waivers - SFMTA Potrero Yard Modernization Project - Project Delivery  
2 Procedure]

3 **Ordinance waiving certain procurement and contracting requirements in Chapters 6,**  
4 **14B, and 21 of the Administrative Code, as applied to the Potrero Yard Modernization**  
5 **Project (Project), to authorize the San Francisco Municipal Transportation Agency**  
6 **(SFMTA) to: procure design, construction, finance, maintenance, asset management,**  
7 **and other services (Joint Development Services) for the Project utilizing a joint**  
8 **development delivery method; select a developer team utilizing a best-value selection**  
9 **process; and, provided that the City elects to proceed with the Project after completing**  
10 **its review under the California Environmental Quality Act, exempt agreements for Joint**  
11 **Development Services from certain contracting requirements in Chapters 6, 14B, and**  
12 **21 of the Administrative Code, but requiring the payment of prevailing wages,**  
13 **implementation of a local business enterprise utilization program, and compliance with**  
14 **the City’s local hire policy and first source hiring Ordinance.**

15  
16 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
17 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
18 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
19 **Board amendment additions** are in double-underlined Arial font.  
20 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
21 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
22 subsections or parts of tables.

23 Be it ordained by the People of the City and County of San Francisco:

24 Section 1. General Background.

25 (a) Under its Building Progress Program, the San Francisco Municipal  
Transportation Agency (“SFMTA”) is undertaking conceptual plans and studies to renovate

1 and/or replace a number of its outdated facilities to support and improve transit operations  
2 and pursue complementary joint development opportunities. One of the program's first  
3 potential projects is the Potrero Yard Modernization Project ("Project"), located at  
4 2500 Mariposa Street in the Mission District and for which the SFMTA is exploring the joint  
5 development of private housing and commercial components. The Project would advance the  
6 goals of the Public Lands for Housing program, the citywide response to Mayor Ed Lee's 2014  
7 State of the City address directing City agencies to examine their underutilized sites with  
8 regard to their potential for housing.

9 (b) The SFMTA is studying and developing the Project, which could replace the  
10 Potrero Yard's obsolete two-story maintenance building and bus yard with a modern and more  
11 efficient bus maintenance and storage facility ("Bus Facility"). The SFMTA would use the Bus  
12 Facility to maintain and store its expanding fleet of electric buses, improve working conditions  
13 for employees, ensure resiliency in the face of climate change and natural disasters, and  
14 improve transit service by helping to reduce vehicle breakdowns, increase on-time  
15 performance, and reduce passenger overcrowding.

16 (c) The SFMTA has been working with other City agencies, including the Planning  
17 Department, the Mayor's Office of Housing and Community Development, and the Office of  
18 Economic and Workforce Development, to study the development and integration of private  
19 housing and other complementary uses with the Bus Facility as part of the Project. Based on  
20 internal analyses and a public outreach program, the SFMTA anticipates that housing is a  
21 feasible and compatible use at the site and expects that housing would be a component of the  
22 Project. The SFMTA estimates the Project could accommodate a range of 525 to 575  
23 residential units, with an affordability target of at least 50%. The SFMTA will encourage the  
24 Project to seek additional funds to maximize the affordability percentage, even up to 100%.

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1 (d) Based on an initial technical feasibility study for the Project, the SFMTA  
2 estimates the cost to construct the Project would be approximately \$500 million  
3 (in 2019 dollars and exclusive of costs not directly related to construction, such as  
4 architectural, engineering, financing, administrative, and permitting costs). The SFMTA has  
5 determined, and the Board of Supervisors concurs, that the Project would be “a public  
6 transportation capital improvement project under the jurisdiction of the San Francisco  
7 Municipal Transportation Agency that will support an increase or improvement in Municipal  
8 Railway (“Muni”) service” under Administrative Code Section 29.1(c)(5), and thus, under that  
9 Section and Section 29.1(b), is not subject to a fiscal feasibility finding under Administrative  
10 Code Chapter 29. Notwithstanding these exemptions, the SFMTA would proceed with the  
11 Project only if it is determined through further study and development that the Project is  
12 fiscally feasible.

13 (e) The SFMTA is undertaking environmental review under the California  
14 Environmental Quality Act, California Public Resources Code Sections 21000 et seq., and the  
15 CEQA Guidelines and San Francisco Administrative Code Chapter 31 (collectively, “CEQA”)  
16 with the Planning Department. If, following completion of this CEQA review, the Project is  
17 approved, the SFMTA anticipates construction of the Project to commence in 2023 and be  
18 completed by 2026, a period which may be preceded by certain early works construction  
19 activities that relate directly to and ensure the timely start of the Project, and support transit  
20 operations during that time period. If the Project goes forward, the cost of early works  
21 activities will not exceed 25% of the cost to construct the Bus Facility and private residential  
22 component. The SFMTA is working with the Department of Public Works to assist with  
23 procurement and delivery of the Project.

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1 (f) The Project would not involve the disposal of surplus property under California  
2 Code Sections 54220 et seq., because the site would be needed for the SFMTA's  
3 transportation use and the City's housing use.

4 Section 2. Findings Supporting Joint Development of the Potrero Yard Modernization  
5 Project.

6 (a) According to the Federal Transit Administration, joint development projects  
7 involve: (1) integrated development of transit and non-transit improvements, with transit  
8 projects physically or functionally related to commercial, residential, or mixed-use  
9 development; (2) public and private investments that are coordinated between transit  
10 agencies and developers to improve land owned by a transit agency or related to a transit  
11 improvement; and (3) mutual benefit and shared cost among all parties involved. According  
12 to the Office of Economic and Workforce Development, the City can create critical public  
13 benefits without diverting scarce resources from basic civic needs by using joint development  
14 projects. Working with private entities would allow the City to expand the public benefit with  
15 private investments.

16 (b) To date, the SFMTA's objectives for the Project ("Project Objectives") have been  
17 identified as follows: (1) select a private entity developer early in the CEQA process to provide  
18 input and develop a functional and attractive design that reflects input from the community;  
19 (2) complete construction by the end of 2026; (3) transfer all or portions of the Project's  
20 design, construction, financing, maintenance, and real estate risks to a private entity, giving  
21 the SFMTA budget and schedule certainty and making joint development financially feasible  
22 while operating the Bus Facility safely, efficiently, and reliably in a manner compatible with the  
23 Project's joint development components; (4) realize savings from the Project's joint  
24 development components to support the Bus Facility to the extent it is financially feasible; and  
25

1 (5) make payments to the private entity only when the Project is substantially complete. As  
2 the Project is further studied, these Project Objectives may evolve.

3 (c) Unlike conventional methods of contracting for new construction, in which a  
4 public entity procures discrete functions through separate solicitations, joint development  
5 projects use a single private entity that has the full responsibility and financial liability for  
6 performing a significant number of services under a long-term contractual arrangement with  
7 the public entity. These services could include pre-development, design, construction,  
8 financing, operations, or asset management services (collectively or in any combination, “Joint  
9 Development Services”). Some examples of Joint Development Services specific to the  
10 Project include, but are not limited to, the competitive (e.g., low-bid or best-value)  
11 procurement and management of early works contractors for preliminary construction  
12 activities directly related to and needed for the Project, design-build contractors for the entire  
13 Project, and asset management contractors for the joint development components and the  
14 building infrastructure they share with the Bus Facility. Under a joint development project, the  
15 private sector partner may make a substantial cash, at-risk, equity investment in the project if  
16 the financing structure and final risk allocation calls for it, and the public sector gains access  
17 to new revenue and/or service delivery capacity without having to pay the private-sector  
18 partner upfront.

19 (d) Based on the Project Objectives, the SFMTA has determined it is appropriate  
20 and in the City’s best interest at this time to pursue joint development to study, develop, and  
21 deliver the Project on time and within budget.

22 Section 3. Joint Development Procurement Process; Exemption from Certain  
23 Administrative Code Provisions.

24 (a) Administrative Code Chapter 6 codifies the City’s policies and procedures for  
25 public works contracts, including design, engineering, and construction contracts;

1 Administrative Code Chapter 21 regulates the City’s acquisition of commodities and  
2 professional services, including finance, as well as maintenance, asset management, and  
3 other general services; and Administrative Code Chapter 14B codifies the City’s policies and  
4 requirements for utilization of Local Business Enterprises (LBEs) on and non-discrimination in  
5 public contracts generally. The Joint Development Services required for the Project will likely  
6 span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate  
7 the acquisition of these services in one procurement, as required for joint development  
8 projects.

9 (b) Notwithstanding any provision of the Administrative Code, the SFMTA is  
10 authorized to procure and contract for Joint Development Services utilizing the joint  
11 development delivery method described below:

12 (1) The SFMTA may pre-qualify, solicit proposals from, and enter into one or  
13 more agreements with a private entity for Joint Development Services for the Project.

14 (2) The SFMTA may use a request for qualifications process to prequalify  
15 and shortlist the private entities allowed to submit proposals to provide Joint Development  
16 Services for the Project. The request for qualifications shall generally describe the Project,  
17 the Project Objectives, the desired qualifications, experience, and responsibilities of the  
18 selected party, and the overall procurement process, delivery method, and schedule for the  
19 Project.

20 (3) The SFMTA may issue to shortlisted parties a request for proposals. The  
21 request for proposals may state a fixed budget for the Project, and describe the Project, the  
22 Project Objectives, the range of Joint Development Services and delivery methods the  
23 SFMTA is considering for the Project, and the proposal submittal requirements and evaluation  
24 criteria. The proposal evaluation criteria may include, but are not limited to, the qualifications  
25 of respondents, their projected construction and financing costs for the Project, life-cycle cost

1 savings to the City, design quality, and the extent to which the proposal or proposals meet the  
2 Project Objectives. The request for proposals may also include the form of agreement or  
3 basic term sheet for one or more of the Joint Development Services agreements, and any  
4 other information the SFMTA deems necessary to adequately describe the Project,  
5 development opportunity, procurement process, delivery method, and Joint Development  
6 Services needed to deliver the Project.

7 (4) Based on the evaluation of proposals received, the SFMTA may select  
8 one respondent with the proposal the SFMTA determines provides the overall best value to  
9 the City and negotiate with that respondent the terms of any Joint Development Services  
10 agreement. The best-value determination shall be based on proposal evaluation criteria  
11 included in the request for proposals. In making the best-value determination, the SFMTA  
12 retains the right to hold and enter into negotiations with the selected respondent.

13 (5) The SFMTA may enter into one or more agreements for Joint  
14 Development Services with the selected respondent and any agreements ancillary thereto.  
15 The forms of agreements may include pre-development, early works, design-build, asset  
16 management, lease-purchase, lease-leaseback, development, project, direct, and other  
17 appropriate agreements to deliver the Project.

18 (6) The SFMTA may offer a reasonable payment for work product on terms  
19 and conditions and in such amount as determined by the Director of Transportation to short-  
20 listed respondents who are not selected for exclusive negotiations for Joint Development  
21 Services. The receipt of a payment by such a respondent shall be contingent upon their  
22 proposal being responsive to the request for proposals and the SFMTA having the right to  
23 own work product included in the proposal.

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1 (c) Except as provided below, any Joint Development Services agreement awarded  
2 in connection with the Project shall be exempt from the procurement and contracting  
3 requirements of Administrative Code Chapters 6, 14B, and 21.

4 (1) The SFMTA shall require that all construction, asset management, and  
5 other covered work or improvement performed under any Joint Development Services  
6 agreement pay prevailing wages in accordance with Section 6.22(e) of Article II of Chapter 6  
7 of the Administrative Code, comply with applicable certified payroll requirements under those  
8 provisions of the Administrative Code by submitting certified payroll through the City's certified  
9 payroll reporting system, and comply with the requirements of the State Apprenticeship  
10 Program in accordance with Section 6.22(n) of Article II of Chapter 6. The Office of Labor  
11 Standards Enforcement shall have authority to enforce such prevailing wage requirements.

12  
13 (2) The SFMTA shall require that all construction, asset management, and  
14 other covered work or improvement performed under any Joint Development Services  
15 agreement comply with the City's Local Hiring Policy as set forth in Administrative Code  
16 Chapter 82 or the City's First Source Hiring Program as set forth in Administrative Code  
17 Chapter 83, as applicable.

18 (3) The SFMTA shall work with the Contract Monitoring Division to develop  
19 an LBE program that is consistent with the policy goals and purpose of Chapter 14B to ensure  
20 participation by LBEs and non-discrimination in the design, construction, and ongoing asset  
21 management of the Project.

22 (4) At all stages of the Project's procurement process, the SFMTA must  
23 obtain applicable approvals from the SFMTA Board of Directors or Board of Supervisors as  
24 required under the San Francisco Charter or Municipal Code. If the SFMTA intends to  
25 contract for a Joint Development Services agreement with a cost that could exceed

1 \$10 million or a term beyond ten years, the SFMTA will at the appropriate time request that  
2 the Board of Supervisors approve the corresponding agreement or agreements pursuant to  
3 Charter Section 9.118. The SFMTA will also submit for review a term sheet for any proposed  
4 management or use agreements for the Project to the Board of Supervisors before requesting  
5 its final approval of those agreements pursuant to Charter Section 9.118.

6 (d) The provisions of this ordinance shall be implemented in a manner consistent  
7 with the civil service provisions of the Charter.

8 Section 4. Environmental Review.

9 The SFMTA is undertaking CEQA review of the Project with the Planning Department.  
10 This ordinance shall not be construed as an approval of the Project. Rather, this ordinance  
11 simply puts in place a procedure to continue to develop, study, and design the Project, and, if  
12 the Project is approved following environmental review, to implement and deliver the Project.  
13 No approval of the Project will occur until CEQA review is completed, and until the City  
14 decision-makers review and consider the information contained in the CEQA document, and  
15 all other relevant information about the Project. The Project will continue to develop as further  
16 studies are conducted, and the City retains absolute discretion to (a) require modifications to  
17 the proposed Project and/or implementation of specific measures to mitigate significant  
18 adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse  
19 impacts of the proposed Project, including the “no project” alternative; (c) reject all or part of  
20 the proposed Project if the economic and social benefits of the proposed Project do not  
21 outweigh otherwise unavoidable significant adverse impacts of the Project; (d) approve the  
22 proposed Project upon a finding that the economic and social benefits of the proposed Project  
23 outweigh otherwise unavoidable significant adverse environmental impact of the proposed  
24 Project; and (e) deny the proposed Project.

25 Section 5. Effective Date.

1           This ordinance shall become effective 30 days after enactment. Enactment occurs  
2 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
3 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
4 Mayor’s veto of the ordinance.

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7 APPROVED AS TO FORM:  
8 DENNIS J. HERRERA, City Attorney

9 By:    /s/ \_\_\_\_\_  
10       Isidro Alarcón Jiménez  
11       Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**

(Substituted 9/22/2020)

[Administrative Code Waivers - SFMTA Potrero Yard Modernization Project - Project Delivery Procedure]

**Ordinance waiving certain procurement and contracting requirements in Chapters 6, 14B, and 21 of the Administrative Code, as applied to the Potrero Yard Modernization Project, to authorize the San Francisco Municipal Transportation Agency to: procure design, construction, finance, maintenance, asset management, and other services (Joint Development Services) for the Project utilizing a joint development delivery method; select a developer team utilizing a best-value selection process; and, provided that the City elects to proceed with the Project after completing its review under the California Environmental Quality Act, exempt agreements for Joint Development Services from certain contracting requirements in Chapters 6, 14B, and 21 of the Administrative Code, but requiring the payment of prevailing wages, implementation of a local business enterprise utilization program, and compliance with the City's local hire policy and first source hiring Ordinance.**

Amendments to Current Law

There are no amendments to current law. The Potrero Yard Modernization Project (Project) is in its conceptual planning and study phase. If the Board of Supervisors adopts this ordinance and the San Francisco Municipal Transportation Agency ("SFMTA") elects to enter into any agreement with a qualified private entity to further study and develop the Project by providing design, construction, finance, maintenance, asset management, and other services (Joint Development Services), the agreement would be exempt from certain procurement and contracting requirements under Administrative Code Chapters 6, 14B, and 21, except that payment of prevailing wages, implementation of a local business enterprise utilization program, and compliance with the City's local hire policy and first source hiring ordinance would apply, as applicable.

Background Information

The SFMTA is exploring the technical and financial feasibility to simultaneously develop and integrate a new bus maintenance and storage facility (Bus Facility) with private multi-family housing, including affordable housing, and commercial space at its Potrero Yard property in the Mission District. The SFMTA estimates the Project could accommodate a range of 525 to 575 residential units, for which the SFMTA would establish a goal of at least 50 percent affordable units, and encourage the Project to seek additional funds to maximize affordable units up to 100 percent.

The SFMTA estimates the cost to construct the Project would be approximately \$500 million (in 2019 dollars and exclusive of costs not directly related to construction, such as architectural, engineering, financing, administrative, and permitting costs), and anticipates construction of the Project could commence in 2023 and be completed in 2026.

Based on the unique risks involved in potentially integrating an operating Bus Facility with private housing and commercial components, the SFMTA has determined it is appropriate and in the City's best interest at this time to pursue a joint development approach to further study, develop, and deliver the proposed Project on time and within budget.

Under a joint development approach, the SFMTA could contract with a single private entity and transfer to that entity all or portions of the Project's design, construction, financing, maintenance, and real estate risks, giving the SFMTA budget and schedule certainty and making joint development financially feasible while operating the Bus Facility safely, efficiently, and reliably in a manner compatible with the Project's joint development components. This contract and any related agreements would be submitted to the Board of Supervisors for approval to the extent required under Charter Section 9.118.

The ordinance describes the procurement method the SFMTA would follow for the Project, would allow design stipends to be paid to certain qualified respondents, and exempts the agreements for Joint Development Services from certain procurement and contracting requirements under Chapters 6, 14B, and 21, but still requires compliance with the payment of prevailing wages, including compliance with the requirements of the State Apprenticeship Program, implementation of a local business enterprise utilization program, and compliance with the City's local hire policy and first source hiring ordinance, as applicable.

The SFMTA plans to issue a request for proposals for Joint Development Services and select and enter into a pre-development agreement with the successful proposer in 2021. As soon as practicable thereafter, the SFMTA will submit for review to the Board of Supervisors term sheets for any subsequent agreements with costs that could exceed \$10 million or terms beyond ten years, which term sheets will serve as the basis for negotiating the agreements. The SFMTA estimates it will submit completed agreements for review and approval by the Board of Supervisors in the first quarter of 2023.

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<p><b>Item 2</b>  <b>File 20-0947</b>  <i>(Continued from September 30, 2020)</i></p>	<p><b>Department:</b>  Municipal Transportation Agency</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Administrative Code Chapters 6 (public works procurement), 14B, (Local Business Enterprise and non-discrimination), and Chapter 21 (procurement of commodities and services) for the Potrero Yard Modernization Project.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The SFMTA is proposing a Joint Development Services project to replace the bus storage and maintenance facility at Bryant and Mariposa Streets, and potentially construct housing. SFMTA would select a master developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including replacement the bus storage and maintenance facility and the residential and commercial development. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an agreement with SFMTA.</li> <li>• The proposed ordinance does not waive certain prevailing wage, First Source Hiring, Local Business Enterprise (LBE), and State Apprenticeship Program requirements. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services in one procurement, as required for joint development projects.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million. Of that, \$39.6 million is included in the SFMTA Five-Year Capital Improvement Program for FY 2021 – FY 2025.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed ordinance to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement, and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.</li> <li>• Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

**BACKGROUND****Potrero Yard Modernization Project**

Potrero Yard, a 4.4-acre site located at Bryant Street and Mariposa Street, is a 100-year old facility that currently serves as a storage yard and trolley bus maintenance facility. SFMTA proposes to construct a modern maintenance facility to improve worker safety, enhance worksite efficiency, and align the worksite with City policy objectives related to environmental sustainability. According to SFMTA, the layout of the maintenance facility does not conform to current design standards that would optimize worksite efficiency, and the structural condition of the facility could impede restoration of Muni service after a major earthquake.

In addition to the construction of a modern storage and maintenance facility and to leverage the construction opportunity to address Citywide goals for housing production, the SFMTA plans to solicit proposals for the bus facility and joint development atop the bus facility as a mixed-use residential development with ground floor community-serving uses. The SFMTA estimates that the Potrero Yard Modernization Project could support the construction of between 525 and 575 new housing units. While no agreement is yet in place, the SFMTA has proposed an initial target of 50 percent of the housing units being affordable (or 262 to 288 units) to low- to moderate-income residents.

To pursue these objectives, SFMTA is asking the Board to approve the procurement framework that will allow the Agency to enter into Joint Development Services agreements with a private development team to design, build, finance, maintain, and perform asset management services for the proposed new Potrero Yard storage and maintenance facility.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Chapter 6 of the Administrative Code, which contains policies for the City's public works procurements, Chapter 14B of the Administrative Code, which contains policies for Local Business Enterprise and non-discrimination in the City's contracting processes, and Chapter 21 of the Administrative Code, which contains policies related to the City's contracting process for commodities and professional services, with the exception of the provisions below. The exemptions would only apply to SFMTA contracting related to Joint Development Services.

The proposed ordinance would not waive the following Administrative Code provisions:

- Prevailing Wages: All construction work related to any space of project development will be required to pay prevailing wages in accordance with the provision outlined in Section 6.22(e) of the Administrative Code.
- State Apprenticeship Program Requirements: All construction work related to any space of project development will be required to comply with state apprenticeship hiring requirements in accordance with the provision outlined in Section 6.22(n) of the Administrative Code.
- Local Hiring / First Source Policies: The legislation states that the SFMTA will require that all construction, asset management, or related work performed under any Development Agreement be in compliance with the City's Local Hiring Policy, per Chapter 82 of the Administrative Code, or the City's First Source Hiring Program, per Chapter 83 of the Administrative Code.
- Local Business Enterprise: The SFMTA would work with the Contract Monitoring Division to develop a Local Business Enterprise program for the project that is "consistent" with Chapter 14B of the Administrative Code and would require selection of the majority of LBEs after the Board of Supervisors approves the Project Agreement that would obligate the developer to build the Project.

### **Other Code Provisions**

According to the City Attorney's Office, certain City contracting requirements as well as all State licensing requirements and various provisions of the Administrative Code related to the approval and ongoing monitoring and oversight of City contracts will continue to apply despite exemptions granted through the pending ordinance. Chapters 12B and 12C of the Administrative Code pertaining to non-discrimination in contracts will remain in effect and binding on the Potrero Yard procurement and contracting framework, and to all agreements executed through this procurement process. Chapter 25 of the Environmental Code outlining requirements for Public Works projects to meet clean construction requirements will remain in effect under the proposed ordinance. The Local Business Enterprises (LBE) certification process specified in Sections 14B 3(A)-(E) of the Administrative Code will continue to regulate the certification requirements for LBEs from whom services are procured under any agreement for Joint Development Services. Finally, the Potrero Yard agreements will remain subject to the provision of the City's Surveillance Technology Ordinance Administrative Code Section 19B.

### **Proposed Procurement Process**

#### *Selection and Exclusive Negotiating Agreement*

According to the proposed ordinance, the SFMTA may pre-qualify and solicit proposals from private developers for Joint Development Services for the Project. In August 2020, the SFMTA issued a Request for Qualifications (RFQ) and received four responses in November 2020. The SFMTA selected three developers to participate in a Request for Proposals (RFP) in early 2021 to develop the Project:



- Potrero Mission Community Partners, led by John Laing Limited and Edgemoor Infrastructure & Real Estate LLC;
- Potrero Neighborhood Collective, led by Plenary Americas US Holdings Inc.; and
- Potrero Yard Community Partners, led by Fengate Asset Management and Emerald Fund, Inc.

SFMTA will select one developer to enter into the first Joint Development Services agreement, the Pre-Development Agreement, which will be used to negotiate the Project Agreement and the developer's Joint Development Services.

#### *Joint Development Services*

According to Section 1 (c) of the proposed ordinance, Joint Development Services could include procurement and management of contractors for pre-development, design-build contractors, and asset management contractors for joint housing and bus facility development. Section 3 (b) (5) states that the SFMTA may enter into one or more agreements with the selected developer for Joint Development Services, including pre-development, early works, design-build, asset management, lease-purchase, lease-leaseback, development, project, direct, and other agreements to deliver the project.

#### *Compensation to Other Proposers*

The proposed ordinance provides the SFMTA the option to compensate the two proposers who are not selected for exclusive negotiations for the Project for their work product on terms and conditions and in such an amount as determined by the Director of Transportation. Such compensation would be contingent upon their proposals' being responsive to the RFP and the SFMTA's having the right to own the work products included in the proposals. According to discussions with SFMTA staff, payment of stipends to unsuccessful shortlisted proposers (in this case, two of three proposers) is a standard practice for this type of project, where the RFP requires that the proposing teams invest considerable expense for an approximately five-month proposal preparation period.

#### *California Environmental Quality Act (CEQA)*

According to the SFMTA, the Planning Department is currently conducting a California Environmental Quality Act review of the proposed bus storage and maintenance facility and potential housing development. The Administrative Draft Environmental Impact Report is expected to be released in April 2021. According to the proposed ordinance, approval of the proposed ordinance does not constitute an approval of the project, and no project approval will occur until completion of CEQA review.

If the SFMTA and the selected developer successfully negotiate a Project Agreement that is approved by the Board of Supervisors, construction of the Potrero Yard Modernization Project is expected to occur in calendar years 2023 through 2026.

## FISCAL IMPACT

The proposed ordinance states the development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million. Of that, \$39.6 million is included in the SFMTA Five-Year Capital Improvement Program for FY 2021 – FY 2025, the Agency’s 5-year program of projects. According to Jonathan Rewers, SFMTA Building Progress Program Manager, \$20.6 million of that amount is included in the Agency’s 2-Year Capital Budget for Fiscal Years 2021 and 2022, which is supported by appropriations. Given the early stages of project planning, final funding sources for the construction phase have not yet been identified.

### Fiscal Feasibility

Because the proposed modernization of the Potrero Yard facility qualifies as a transit improvement project, the project is exempt from the finding of fiscal feasibility requirement under Chapter 29 of the Administrative Code. However, the proposed ordinance states that, if after further review the housing and commercial component of the project is not deemed to be financially feasible, as defined by the SFMTA, then the Agency would not proceed with that component of the project and would only proceed with the transit component.

## POLICY CONSIDERATION

### Development Approach

According to the proposed ordinance, the Federal Transit Administration (FTA) defines joint development projects as projects that involve: (1) integrated development of transit and non-transit improvements, with transit projects physically or functionally related to commercial, residential, or mixed-use development; (2) public and private investments that are coordinated between transit agencies and developers to improve land owned by a transit agency or related to a transit improvement; and (3) mutual benefit and shared cost among all parties involved. According to discussions with SFMTA staff, if the SFMTA and developer successfully negotiate a Project Agreement, the Project Agreement would require the developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including the bus storage and maintenance facility and the residential and commercial component. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an air-rights lease with the SFMTA, or an alternate agreement as negotiated by the parties. The form of agreement for the developer’s use of the housing and commercial development would specify the affordability requirements.

### Administrative Code Waivers

As noted above, the proposed ordinance waives procurement and contracting requirements under Chapters 6, 14B, and 21 of the Administrative Code for the Potrero Yard Modernization Project, for which key provisions are summarized below. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services

in one procurement, as required for joint development projects. According to SFMTA staff, a Project Agreement will contain similar provisions to those being waived.

#### *Competitive Procurement Procedures*

Section 6.20 of the Administrative Code generally requires formal competitive procurement for public works contracts above \$706,000. Section 21.1 of the Administrative Code generally requires competitive solicitations for procurement of commodities and professional services. Both of these provisions would be waived under the proposed ordinance, with the ordinance proposing an alternate framework that provides for a best-value competitive solicitation.

#### *Lowest Bid for Construction Contracts*

Section 6.20 of the Administrative Code, which requires public works contracts valued above \$706,000 be awarded to those bids that demonstrate the ability meet all project specifications at lowest possible cost. Section 6.61 of the Administrative Code allows for “best-value” criteria to be used for design-build contracts, which are evaluated based upon responsibility and qualifications, stated subjective criteria, and project and/or financing costs. The proposed ordinance would authorize SFMTA to select the development team based on the overall best value to the City. Best value evaluation criteria include but are not limited to the qualifications of respondents, their projected construction and financing costs for the Project, life cycle cost savings to the City, design quality, and the extent to which the proposal or proposals meet the Project Objectives.

#### *Not-to-Exceed Amounts*

Section 21.19 of the Administrative Code requires professional service and commodities contracts contain a maximum not-to-exceed amount. The proposed ordinance waives this requirement. According to discussions with SFMTA staff, SFMTA intends to include a not-to-exceed amount in the Project Agreement, which is likely the final Joint Services Development agreement, and which would be subject to Board of Supervisors approval.

#### **Board of Supervisors Approval and Reporting**

False Claims. Section 6.80 of the Administrative Code requires written notification to the Board of Supervisors if a public works contractor submits false claims to the City. The proposed ordinance waives this Code section, Administrative Code Chapter 28.3 (which is not a subject of this ordinance) also includes submission of false information as grounds for disbarment of a contractor.

Collusion with City Officials. Section 6.81 of the Administrative Code allows the Board of Supervisors, on the recommendation of the Mayor, Department Head or the board or commission concerned, to nullify of a public works contract if contractors are found to have colluded with City officials. The proposed ordinance, as written, waives this requirement.

Labor Standards Enforcement and Prevailing Wage Requirements. Section 6.24 authorizes, subject to approval by the Mayor and Department of Administrative Services, the Office of Labor Standards Enforcement (OLSE) to develop and administer a plan to insure that all work contracted related to public works and public improvements will be conducted in manner

consistent with Section 6.22(e) of the Administrative Code. While this provision would be waived, the proposed ordinance states that all Project work would be required to comply with applicable certified payroll requirements, and that the OLSE would continue to enforce prevailing wage.

Public Works Contractor Performance. Section 6.26 of the Administrative Code requires public works contractors' performance be monitored and evaluated in a database maintained by the awarding Departments and report performance to the Board of Supervisors. According to discussions with SFMTA staff, the proposed ordinance waives this requirement because the master developer, and not SFMTA would have the contractual relationship with Project contractors, but would set up oversight and monitoring requirements in the Project Agreement.

LBE Reporting and Enforcement. Section 14B.15 requires the Contract Monitoring Division to provide quarterly reports, and relevant City Departments to provide annual reports, to the Board of Supervisors regarding progress towards meeting Local Business Enterprise and non-discrimination goals set forth in Chapter 14 of the Administrative Code. Section 14.B17 authorizes the Director of the Contract Monitoring Division to review and enforce the provisions of Chapter 14B as they related to LBE contract procurements. While the proposed ordinance waives this requirement, the proposed ordinance states that SFMTA shall work with the Contract Monitoring Division to develop an LBE program that is consistent with the policy goals and purpose of Chapter 14B to ensure participation by LBEs and non-discrimination in the design, construction, and ongoing asset management of the Project.

### **Inspection of Records**

Administrative Code Section 21.34 allows the City to audit books and records of professional service and commodities contractors. Both of these provisions would be waived under the proposed ordinance.

### **Summary**

According to discussions with SFMTA staff, the intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement. Although the proposed ordinance states that the SFMTA will submit a term sheet for any proposed management or use agreements for the Project to the Board of Supervisors before requesting its final approval of those agreements pursuant to Charter Section 9.118, the Budget and Legislative Analyst recommends that the proposed ordinance be amended to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement; and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.

**RECOMMENDATIONS**

- Amend the proposed ordinance to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement: and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.
- Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.

<p><b>Item 3</b> <b>File 20-0947</b></p>	<p><b>Department:</b> Municipal Transportation Agency</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Administrative Code Chapters 6 (public works procurement), 14B, (Local Business Enterprise and non-discrimination), and Chapter 21 (procurement of commodities and services) for the Potrero Yard Modernization Project.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The SFMTA is proposing a Joint Development Services project to replace the bus storage and maintenance facility at Bryant and Mariposa Streets, and potentially construct housing. SFMTA would select a master developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including replacement the bus storage and maintenance facility and the residential and commercial development. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an agreement with SFMTA.</li> <li>• The proposed ordinance does not waive certain prevailing wage, First Source Hiring, Local Business Enterprise (LBE), and State Apprenticeship Program requirements. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services in one procurement, as required for joint development projects.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million. Of that, \$39.6 million is included in the SFMTA Five-Year Capital Improvement Program for FY 2021 – FY 2025.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed ordinance to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement, and (2) the term sheet will provide that the proposed Project Agreement include (a) certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.</li> <li>• Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

**BACKGROUND**

**Potrero Yard Modernization Project**

Potrero Yard, a 4.4-acre site located at Bryant Street and Mariposa Street, is a 100-year old facility that currently serves as a storage yard and trolley bus maintenance facility. SFMTA proposes to construct a modern maintenance facility to improve worker safety, enhance worksite efficiency, and align the worksite with City policy objectives related to environmental sustainability. According to SFMTA, the layout of the maintenance facility does not conform to current design standards that would optimize worksite efficiency, and the structural condition of the facility could impede restoration of Muni service after a major earthquake.

In addition to the construction of a modern storage and maintenance facility and to leverage the construction opportunity to address Citywide goals for housing production, the SFMTA plans to solicit proposals for the bus facility and joint development atop the bus facility as a mixed-use residential development with ground floor community-serving uses. The SFMTA estimates that the Potrero Yard Modernization Project could support the construction of between 525 and 575 new housing units. While no agreement is yet in place, the SFMTA has proposed an initial target of 50 percent of the housing units being affordable (or 262 to 288 units) to low- to moderate-income residents.

To pursue these objectives, SFMTA is asking the Board to approve the procurement framework that will allow the Agency to enter into Joint Development Services agreements with a private development team to design, build, finance, maintain, and perform asset management services for the proposed new Potrero Yard storage and maintenance facility.

**DETAILS OF PROPOSED LEGISLATION**

Note: This report is based on a substituted ordinance to be submitted to the September 30, 2020 Budget and Finance Committee.

The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Chapter 6 of the Administrative Code, which contains policies for the City’s public works procurements, Chapter 14B of the Administrative Code, which contains policies for Local Business Enterprise and non-discrimination in the City’s contracting processes, and Chapter 21 of the Administrative Code, which contains policies related to the City’s contracting process for commodities and professional services, with the exception of the provisions below. The exemptions would only apply to SFMTA contracting related to Joint Development Services.

The proposed ordinance would not waive the following Administrative Code provisions:

- Prevailing Wages: All construction work related to any space of project development will be required to pay prevailing wages in accordance with the provision outlined in Section 6.22(e) of the Administrative Code.
- State Apprenticeship Program Requirements: All construction work related to any space of project development will be required to comply with state apprenticeship hiring requirements in accordance with the provision outlined in Section 6.22(n) of the Administrative Code.
- Local Hiring / First Source Policies: The legislation states that the SFMTA will require that all construction, asset management, or related work performed under any Development Agreement be in compliance with the City's Local Hiring Policy, per Chapter 82 of the Administrative Code, or the City's First Source Hiring Program, per Chapter 83 of the Administrative Code.
- Local Business Enterprise: The SFMTA would work with the Contract Monitoring Division to develop a Local Business Enterprise program for the project that is "consistent" with Chapter 14B of the Administrative Code and would require selection of the majority of LBEs after the Board of Supervisors approves the Project Agreement that would obligate the developer to build the Project.

### **Other Code Provisions**

According to the City Attorney's Office, certain City contracting requirements as well as all State licensing requirements and various provisions of the Administrative Code related to the approval and ongoing monitoring and oversight of City contracts will continue to apply despite exemptions granted through the pending ordinance. Chapters 12B and 12C of the Administrative Code pertaining to non-discrimination in contracts will remain in effect and binding on the Potrero Yard procurement and contracting framework, and to all agreements the executed through this procurement process. Chapter 25 of the Environmental Code outlining requirements for Public Works projects to meet clean construction requirements will remain in effect under the proposed ordinance. The Local Business Enterprises (LBE) certification process specified in Sections 14B 3(A)-(E) of the Administrative Code will continue to regulate the certification requirements for LBEs from whom services are procured under any agreement for Joint Development Services. Finally, the Potrero Yard agreements will remain subject to the provision of the City's Surveillance Technology Ordinance Administrative Code Section 19B.

### **Proposed Procurement Process**

#### *Selection and Exclusive Negotiating Agreement*

According to the proposed ordinance, the SFMTA may pre-qualify and solicit proposals from private developers for Joint Development Services for the Project. In August 2020, the SFMTA issued a Request for Qualifications (RFQ), with responses due in October 2020, to design, build, finance, and maintain the Project. The SFMTA may then select a short list of up to three developers to participate in a forthcoming Request for Proposals (RFP) to develop the Project,



and select one developer to enter into the first Joint Development Services agreement, the Pre-Development Agreement, which will be used to negotiate the Project Agreement and the developer’s Joint Development Services.

*Joint Development Services*

According to Section 1 (c) of the proposed ordinance, Joint Development Services could include procurement and management of contractors for pre-development, design-build contractors, and asset management contractors for joint housing and bus facility development. Section 3 (b) (5) states that the SFMTA may enter into one or more agreements with the selected developer for Joint Development Services, including pre-development, early works, design-build, asset management, lease-purchase, lease-leaseback, development, project, direct, and other agreements to deliver the project.

*Compensation to Other Proposers*

The proposed ordinance provides the SFMTA the option to compensate the two proposers who are not selected for exclusive negotiations for the Project for their work product on terms and conditions and in such an amount as determined by the Director of Transportation. Such compensation would be contingent upon their proposals’ being responsive to the RFP and the SFMTA’s having the right to own the work products included in the proposals. According to discussions with SFMTA staff, payment of stipends to unsuccessful shortlisted proposers (in this case, two of three proposers) is a standard practice for this type of project, where the RFP requires that the proposing teams invest considerable expense for an approximately five-month proposal preparation period.

*California Environmental Quality Act (CEQA)*

According to the SFMTA, the Planning Department is currently conducting a California Environmental Quality Act review of the proposed bus storage and maintenance facility and potential housing development. According to the proposed ordinance, approval of the proposed ordinance does not constitute an approval of the project, and no project approval will occur until completion of CEQA review.

If the SFMTA and the selected developer successfully negotiate a Project Agreement that is approved by the Board of Supervisors, construction of the Potrero Yard Modernization Project is expected to occur in calendar years 2023 through 2026.

**FISCAL IMPACT**

The proposed ordinance states the development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million. Of that, \$39.6 million is included in the SFMTA Five-Year Capital Improvement Program for FY 2021 – FY 2025, the Agency’s 5-year program of projects. According to Jonathan Rwers, SFMTA Building Progress Program Manager, \$20.6 million of that amount is included in the Agency’s 2-Year Capital Budget for Fiscal Years 2021 and 2022, which is supported by appropriations. Given the early stages of project planning, final funding sources for the construction phase have not yet been identified.

**Fiscal Feasibility**

Because the proposed modernization of the Potrero Yard facility qualifies as a transit improvement project, the project is exempt from the finding of fiscal feasibility requirement under Chapter 29 of the Administrative Code. However, the proposed ordinance states that, if after further review the housing and commercial component of the project is not deemed to be financially feasible, as defined by the SFMTA, then the Agency would not proceed with that component of the project and would only proceed with the transit component.

**POLICY CONSIDERATION****Development Approach**

According to the proposed ordinance, the Federal Transit Administration (FTA) defines joint development projects as projects that involve: (1) integrated development of transit and non-transit improvements, with transit projects physically or functionally related to commercial, residential, or mixed-use development; (2) public and private investments that are coordinated between transit agencies and developers to improve land owned by a transit agency or related to a transit improvement; and (3) mutual benefit and shared cost among all parties involved. According to discussions with SFMTA staff, if the SFMTA and developer successfully negotiate a Project Agreement, the Project Agreement would require the developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including the bus storage and maintenance facility and the residential and commercial component. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an air-rights lease with the SFMTA, or an alternate agreement as negotiated by the parties. The form of agreement for the developer's use of the housing and commercial development would specify the affordability requirements.

**Administrative Code Waivers**

As noted above, the proposed ordinance waives procurement and contracting requirements under Chapters 6, 14B, and 21 of the Administrative Code for the Potrero Yard Modernization Project, for which key provisions are summarized below. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services in one procurement, as required for joint development projects. According to SFMTA staff, a Project Agreement will contain similar provisions to those being waived.

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Section 21.19 of the Administrative Code requires professional service and commodities contracts contain a maximum not-to-exceed amount. The proposed ordinance waives this requirement. According to discussions with SFMTA staff, SFMTA intends to include a not-to-exceed amount in the Project Agreement, which is likely the final Joint Services Development agreement, and which would be subject to Board of Supervisors approval.

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master developer, and not SFMTA would have the contractual relationship with Project contractors, but would set up oversight and monitoring requirements in the Project Agreement.

LBE Reporting and Enforcement. Section 14B.15 requires the Contract Monitoring Division to provide quarterly reports, and relevant City Departments to provide annual reports, to the Board of Supervisors regarding progress towards meeting Local Business Enterprise and non-discrimination goals set forth in Chapter 14 of the Administrative Code. Section 14.B17 authorizes the Director of the Contract Monitoring Division to review and enforce the provisions of Chapter 14B as they related to LBE contact procurements. While the proposed ordinance waives this requirement, the proposed ordinance states that SFMTA shall work with the Contract Monitoring Division to develop an LBE program that is consistent with the policy goals and purpose of Chapter 14B to ensure participation by LBEs and non-discrimination in the design, construction, and ongoing asset management of the Project.

**Inspection of Records**

Administrative Code Section 21.34 allows the City to audit books and records of professional service and commodities contractors. Both of these provisions would be waived under the proposed ordinance.

**Summary**

According to discussions with SFMTA staff, the intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement. Although the proposed ordinance states that the SFMTA will submit a term sheet for any proposed management or use agreements for the Project to the Board of Supervisors before requesting its final approval of those agreements pursuant to Charter Section 9.118, the Budget and Legislative Analyst recommends that the proposed ordinance be amended to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement: and (2) the term sheet will provide that the proposed Project Agreement include (a) certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.

**RECOMMENDATIONS**

- Amend the proposed ordinance to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement: and (2) the term sheet will provide that the proposed Project Agreement include (a) certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage

and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.

- Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.

AFFORDABILITY LANGUAGE

An initial target of 50 percent of the housing units being affordable, with express encouragement for the Project to seek additional funds to maximize the affordability percentage, even up to 100% affordable. The affordable units would be financed through a cross-subsidy from market-rate units, widely available funding sources for affordable housing (e.g., Low Income Housing Tax Credits, tax-exempt bonds), City affordable housing funds if available, and other innovative funding sources identified by the Developer in coordination with MOHCD that may be available during the PDA phase. The initial target and language to maximize affordability, up to 100% affordable, is the result of extensive conversations with stakeholders and City policy makers. While 50 percent is an ambitious though attainable initial target, the SFMTA encourages innovative approaches to design, financing, and project delivery for the Housing and Commercial Component that would deliver a greater number of affordable housing units and increase the affordable housing percentage, including moderate income housing, while fulfilling the Project Objectives outlined in Section 3.1. The RFP will define the evaluation criteria for proposals that demonstrate innovative solutions resulting in increases in the Housing and Commercial Component's percentage of the housing units being affordable above the initial target.

AFFORDABLE HOUSING DEVELOPER QUALS EDITS

Page #	Current Text	Proposed Text
40	Relevant experience in developing, financing, and managing affordable housing and mixed-use projects in San Francisco; and experience with TDM programs, CEQA, entitlement, zoning, and community outreach of real estate projects.	Relevant experience in developing, financing, and managing affordable housing and mixed-use projects in San Francisco, including in Districts 10 or 9; and experience with TDM programs, CEQA, entitlement, zoning, and community outreach of real estate projects.
41	Affordable Housing Developer and Key Personnel's relevant experience to successfully deliver the Project: Development, financing, and management of affordable housing projects in San Francisco, and experience with TDM programs, CEQA approvals, entitlements, and community outreach	Affordable Housing Developer and Key Personnel's relevant experience to successfully deliver the Project: Development, financing, and management of affordable housing projects in San Francisco, including in Districts 10 or 9, and experience with TDM programs, CEQA approvals, entitlements, and community outreach
41	Experience with multi-family and mixed-use affordable housing projects of similar size in the City, including working with SF Planning, and a track record of community engagement that delivers successful outcomes and experience with multiple levels of affordability and target populations (e.g., supportive housing, family housing, workforce housing)	[MAKE THIS THE FIRST CRITERION] A community-based nonprofit organization whose mission includes the development of multi-family affordable housing with multiple levels of affordability and target populations (e.g., supportive housing, family housing, low-income housing, workforce housing)
	SPLIT INTO TWO	A track record of community engagement, including in Districts 10 or 9, that delivers successful outcomes of building community support for similar projects
62	Each TS Form B must demonstrate the Affordable Housing Developer's experience in developing, designing, building, financing, managing, and maintaining affordable housing projects of a similar scope and complexity to the affordable portion of the Project's Housing and Commercial Component.	[SID NOTES TO MODIFY FORM B TO INCLUDE] Each TS Form B must demonstrate the Affordable Housing Developer's experience in developing, designing, building, financing, managing, and maintaining affordable housing projects, including projects in San Francisco's District 10 or 9, of a similar scope and complexity to the affordable portion of the Project's Housing and Commercial Component.



Not a "project" under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

*Melinda Hne*

Date

San Francisco Municipal Transportation Agency

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 200407-035

WHEREAS, The Potrero Yard Modernization Project (Project) includes the simultaneous development and construction of a modern bus storage and maintenance facility with multi-family housing constructed above the facility; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) will deliver the Project under its Building Progress Program and consistent with the citywide Public Land for Housing initiative, which encourages joint development opportunities for housing on public sites; and,

WHEREAS, Based on the Project's public and private features, staff have determined it is appropriate and in the City's best interest to deliver the Project utilizing a joint development procurement method; and,

WHEREAS, The joint development solution provides for a single point-of-responsibility for managing project complexity and contractors (e.g., design-build contractors, maintenance contractors for private housing development), financing, and successfully delivering the Project; and,

WHEREAS, The SFMTA has partnered with the Department of Public Works to deliver the Project and plans to issue a Request for Qualifications and subsequent Request for Proposals to procure the services of a joint development partner.

WHEREAS, The SFMTA requires a project-specific ordinance from the Board of Supervisors because existing authority to utilize the joint development procurement method does not currently exist in the Administrative Code.

WHEREAS, The project-specific ordinance is required before the SFMTA and Department of Public Works issue the RFP for the joint development services in the summer of 2020.

WHEREAS, In November 2019 a project application for the Project was submitted to the San Francisco Planning Department to initiate environmental review of the Project under the California Environmental Quality Act (CEQA); and,

WHEREAS, On March 13, 2020, the SFMTA, under authority delegated by the Planning Department, determined that Project Specific Legislation for Potrero Yard Modernization Project is not a "project" under the CEQA pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors; now, therefore, be it



RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA to use a joint development procurement method for the Potrero Yard Modernization Project; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to seek approval from the Board of Supervisors for a Project-specific ordinance to implement the joint development procurement method in a manner that is most efficient for the Project.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 7, 2020.

  
\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



London Breed, Mayor

Gwyneth Borden, Chair  
Amanda Eaken, Vice Chair

Cheryl Brinkman, Director  
Steve Heminger, Director

Jeffrey Tumlin, Director of Transportation

August 18, 2020

Honorable Members of the Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton Goodlett Place  
San Francisco, CA 94102

**Subject: Project-Specific Ordinance for the Potrero Yard Modernization Project**

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) submits, for your consideration, information to support an ordinance for the Potrero Yard Modernization Project (Project). The SFMTA is exploring the feasibility of simultaneously developing a new bus maintenance and storage facility with multi-family housing, including affordable housing, and small commercial uses on the Project site.

The ordinance would authorize the SFMTA to use a joint-development procurement method to deliver the Project after completing CEQA review. The ordinance would exempt the Project from certain contracting requirements under Chapters 6, 14B, 21, and 23 of the Administrative Code, but still require payment of prevailing wages, implementation of a local business enterprise utilization program, and compliance with the City's local hire policy and first source hiring ordinance. The ordinance would also authorize the best-value selection of the Project's developer team, and payment of a design stipend to up to two unsuccessful respondent teams.

**Background**

The Project could replace the Potrero Yard's obsolete maintenance building and bus yard in the Mission District with a modern and efficient trolley and battery-electric bus maintenance and storage facility. The SFMTA would use the bus facility to do routine maintenance on buses, to provide open, naturally lit, and well-ventilated working conditions for employees, to ensure resiliency to climate change and natural disasters, and to improve transit service.

Under the City's Public Land for Housing program, the SFMTA is working with other City departments, including San Francisco Planning, the Mayor's Office of Housing and Community Development, and the Office of Economic and Workforce Development, to explore integrating housing and small commercial uses with the bus facility.

Based on internal analyses and an extensive public outreach program, the SFMTA anticipates that housing is a feasible and compatible use at the project site. The SFMTA estimates the Project could accommodate a range of 525 to 575 residential units, with an affordability target of at least 50 percent. The SFMTA will encourage the Project to seek additional funds to maximize the affordability percentage, even up to 100 percent.



**SFMTA**

The SFMTA estimates the cost to construct the Project would be approximately \$500 million (in 2019 dollars and exclusive of costs not directly related to construction, such as design, financing, and permitting). The SFMTA anticipates starting construction in 2023 and completing construction in 2026. The SFMTA is working with the Department of Public Works to assist with procurement and delivery of the Project.

The financial, construction cost, and budgetary assumptions used for the Project are all based on pre-COVID-19 conditions. While the goals of the Project have not changed (e.g., the size of the housing component and the minimum 50 percent affordability target), funding sources and market conditions are more uncertain than they were earlier in the year. The SFMTA will continue to work diligently with our fellow City departments to pursue the Project's goals to the best of our ability in the face of challenges related to COVID-19.

Because of the Project's multiple components and objectives, the SFMTA and Public Works have determined it is appropriate, and in the City's best interest to deliver the Project utilizing a joint-development procurement method. On April 7, 2020 the SFMTA Board of Directors approved a resolution authorizing the use of a joint development procurement method for the Project and authorizing the Director of Transportation to seek approval from the Board of Supervisors for a Project-specific ordinance to implement the joint development procurement method for the Project.

### **Joint-Development Procurement Method**

Unlike conventional methods of contracting for new construction, in which discrete functions are procured through separate solicitations, joint development projects use a single private entity that has the full responsibility and financial liability for performing a significant number of services in connection with a project.

The joint-development procurement method would provide a long-term contractual arrangement between the SFMTA and a joint development partner. Under this arrangement, the joint development partner would be the single point-of-responsibility for managing contractors (e.g., design-build contractors, maintenance contractors for private housing development) and successfully delivering the Project.

The SFMTA would retain ownership of the of the Project site and bus facility, while the joint development partner would deliver the entire Project and would obtain property rights in the private housing development for the duration of the long-term contract (e.g., based on air rights or another contractual mechanism). In addition, the SFMTA seeks to enter into an operations and maintenance agreement with the joint development partner to provide assurances on quality and durability of construction methods and equipment design related to the building structure and major building systems (e.g. HVAC).

The SFMTA would pay the joint development partner to construct the bus facility through long-term performance-based availability payments instead of an upfront payment for the entire cost of construction. The cost of the housing component will be financed from non-SFMTA sources, including sources identified by the developer to maximize the number of affordable housing units. The joint development partner's compensation for the private housing development would be as a customary, at-risk private development through real estate revenue streams such as rents collected by the developer from tenants.



**SFMTA**

The joint development procurement method offers compelling advantages to meet the Project's objectives:

1. Mitigates cost and schedule risk by (a) selecting a joint development partner early in the CEQA process (currently underway) to provide input and develop a functional and attractive design that reflects input from the community; (b) agreeing on a fixed-price, date-certain contract with the private partner; and (c) incentivizing on-schedule construction by linking payments for the bus facility to occupancy readiness or substantial completion of the facility;
2. Transfers to the joint development partner the technical challenges of integrating the public bus facility and the private housing development and establishes the partner as the single point of responsibility for the Project.

### **Project-Specific Ordinance**

The project-specific ordinance would authorize the SFMTA to use a joint development procurement method to deliver the Project, as follows:

1. Allow selection of a joint development partner using a two-step (i.e., request for qualifications and request for proposals), best-value procurement method rather than a low-bid method. The best-value method would allow the SFMTA and the Department of Public Works to more holistically evaluate the track record, capacity, skill, and quality of bidders rather than selecting solely on the basis of price.
2. Allow the SFMTA to enter into one or more agreements with the joint development partner for the design, construction, and financing of the Project, and the long-term maintenance of the non-transit components of the Project.
3. Authorize the payment of a stipend (in an amount to be determined by the Director of Transportation) to the two shortlisted proposers that are not selected through a request for proposals process. The receipt of a stipend would be contingent upon a proposal's being responsive to the request for proposals and the SFMTA having the right to own work product included in the proposal.
4. Exempt the Project from otherwise applicable sections of Chapters 6, 14B, 21, and 23 of Administrative Code, so long as the project agreements require payment of prevailing wages pursuant to Section 6.22(e) and Article VII of Chapter 23, compliance with the City's local hire policy pursuant to Chapter 83, and implementation of a local business enterprise program in consultation with the City's Contract Monitoring Division.

Project-specific ordinances are common when departments have proposed utilization of novel project delivery methods not yet codified in the Administrative Code. Examples include the use of construction manager/general contractor (CM/GC) project delivery method for the Zuckerberg General Hospital



Rebuild and the new Public Safety Building. The 49 South Van Ness project also required special authorization by the Board of Supervisors.

### **Funding Impact**

There is no immediate funding impact related to this project-specific ordinance. The SFMTA believes the joint development procurement method will ultimately provide savings to the SFMTA in terms of both project cost and schedule adherence.

The project specific ordinance would authorize payment of stipends to the two unsuccessful shortlisted proposers. The decision to pay stipends would be made by the Director of Transportation, subject to his budget authority. The Director would therefore determine whether the cost of a stipend would be outweighed by its potential benefits in terms of proposal quality.

### **Environmental Review**

The SFMTA is undertaking CEQA review of the Project with the Planning Department. Authorization of the ordinance is not an approval of the Project and is not subject to CEQA review. Rather, this authorization is simply to put in place a procedure to continue to develop, study, and design the Project, and, if the Project is approved, to implement and deliver the Project.

No Project approval will occur until CEQA review is completed, and if and until the City decision-makers consider the information contained in the CEQA document and adopt the Project Environmental Impact Report.

### **Recommendation**

To simultaneously develop and integrate a new bus maintenance and storage facility with private multi-family housing, including affordable housing, and other compatible uses, and mitigate schedule and budgetary risks, the SFMTA recommends that the Board of Supervisors approve a project-specific ordinance to use a joint development procurement method for the Potrero Yard Modernization Project.

Thank you for your consideration of the proposed ordinance. Should you have any questions or require more information, please contact Rafe Rabalais at 415-646-2764.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey Tumlin".

Jeffrey Tumlin  
Director of Transportation



**SFMTA**

**BUILDING PROGRESS**

# **Potrero Yard Modernization Project**

Project Delivery Procedure

**BOS Budget and Finance Committee  
September 30, 2020**

## BUILDING PROGRESS Program Overview

*SFMTA Facilities Framework* became the **BUILDING PROGRESS program** in Fall 2017.

The Building Progress Program will:

- **Modernize SFMTA facilities** in order to meet the needs of everyone who travels in San Francisco;
- **Improve the transportation system's resiliency** to climate change, seismic events, technology changes, and
- **Make the SFMTA a better neighbor** in the parts of the city that currently host our facilities.

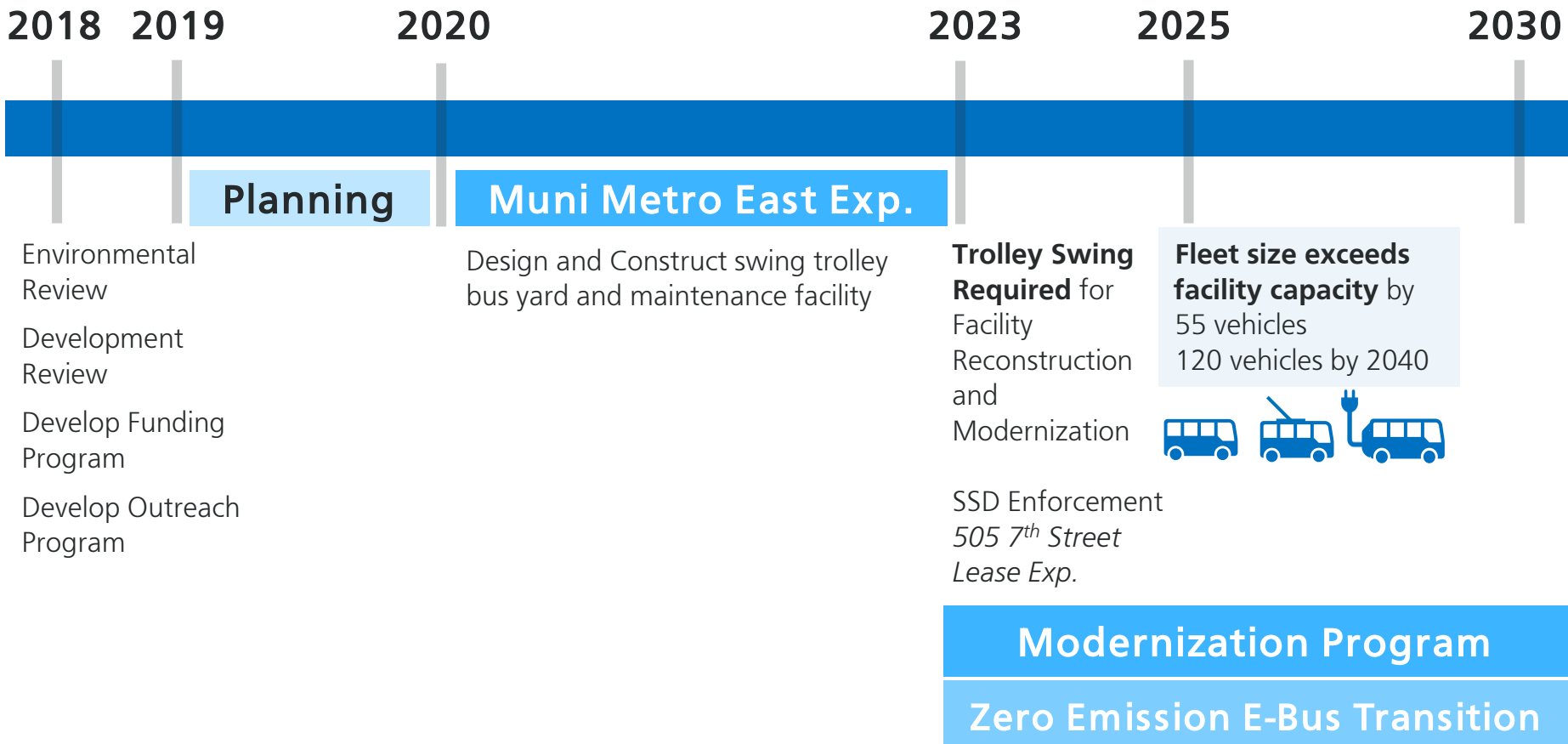
<https://www.sfmta.com/projects/building-progress-program>

<https://www.sfmta.com/reports/2017-sfmta-facilities-framework>

# BUILDING PROGRESS

## Master Program Schedule

The growth of the Muni Fleet and transition to all electric requires a major **modernization program** of SFMTA yards and maintenance facilities.



Develop Funding Program

Develop Outreach Program

SSD Enforcement  
505 7<sup>th</sup> Street  
Lease Exp.



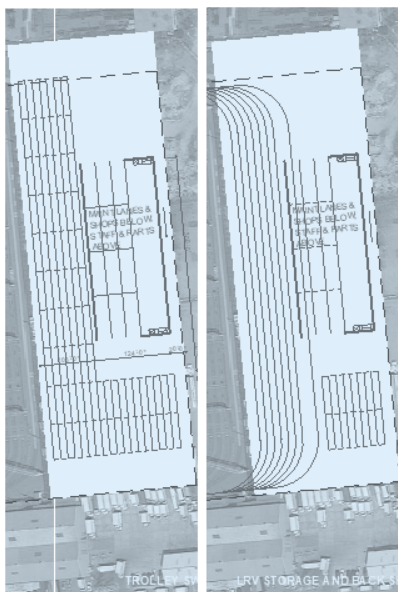


# BUILDING PROGRESS

## Modernization Program

### MME

Build for trolley coach swing, convert to rail and shop uses



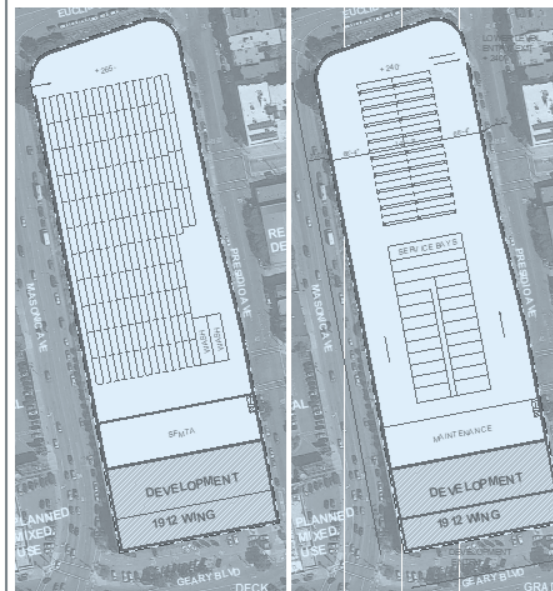
### Potrero

Rebuild as multi-level trolley and motor coach facility with private development above; support first e-busses



### Presidio

Rebuild as multi-level trolley and motor coach facility with private development adjacent; consider e-bus transition.



### Kirkland (or Woods)

Rebuild as motor coach facility (e-bus transition)



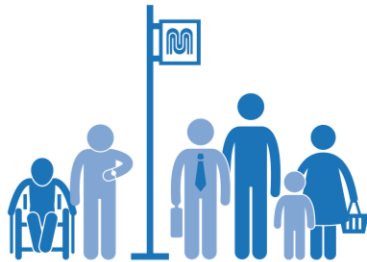
*Use MME for swing while rebuilding Potrero & Presidio and lease while rebuilding Kirkland*

## BUILDING PROGRESS

# Potrero Yard Modernization Project



## A LOOK AT POTRERO YARD



**102,000**

Muni riders rely on buses from Potrero Yard every day. (~14% of Muni riders)

### Existing Facility



### Future Facility



Potrero Yard was built to serve 100 street cars. Today it serves 136 trolley buses for eight routes. In many of the maintenance bays the ceiling is too low to do roof repairs indoors or lift buses to repair them from below.

# Potrero Yard Modernization Project

## Core Transportation Objectives

Rebuild and modernize Potrero Yard **by 2026**

Provide infrastructure for **battery electric busses**

Improve **safety and working conditions** for the SFMTA workforce

Consolidate functions for **efficiencies** (Training + Street Operations)

## Building/Site Objectives

Enhance architecture and urban design

Enhance streetscape to ensure public safety and reduce conflicts

Maximize housing on the site, including a substantial % of affordable units

Ensure that project demonstrates leadership in sustainability

## Commitment to:

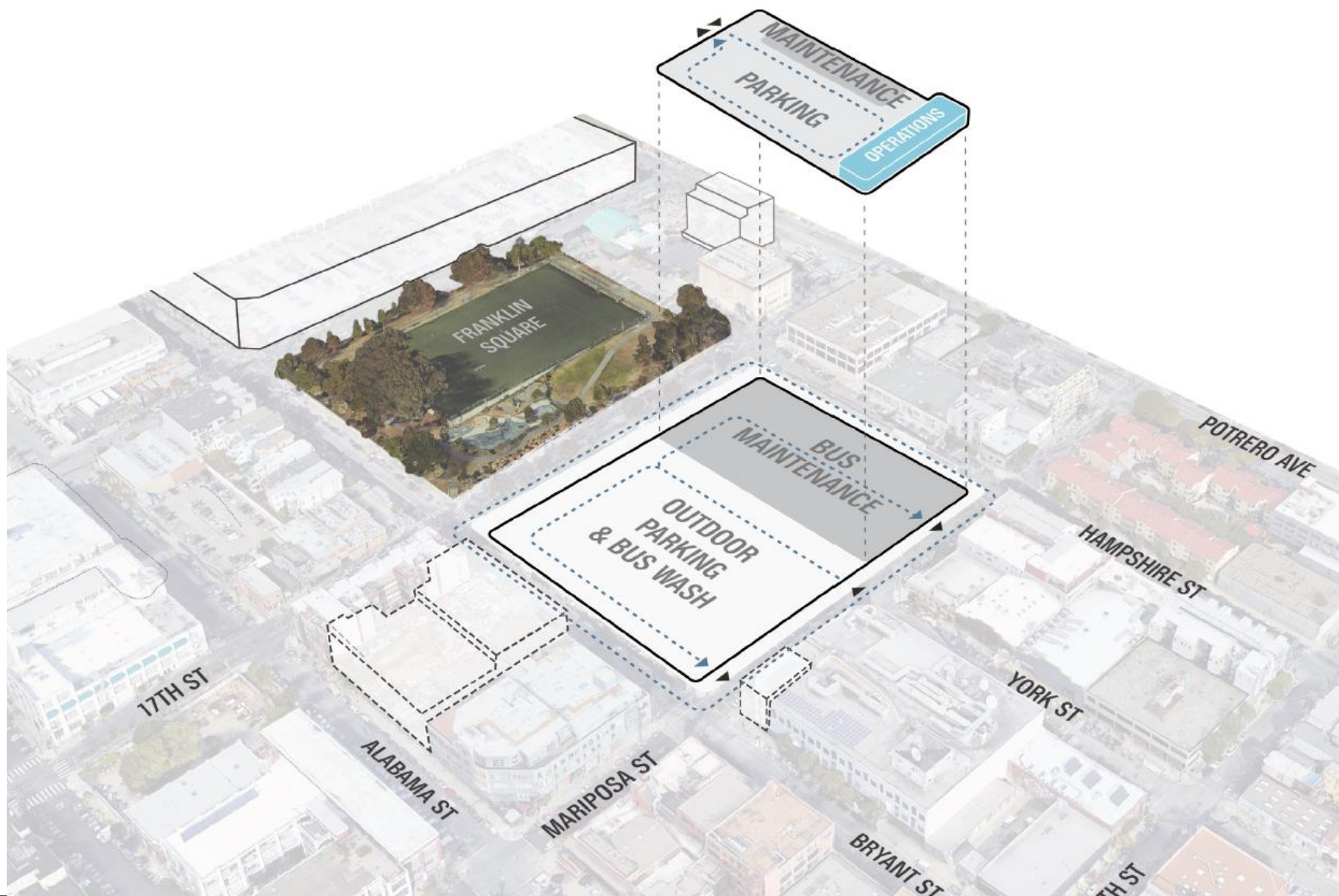
A responsible public investment

A joint development is financially feasible

Inclusive and transparent community participation

# BUILDING PROGRESS

## Potrero Yard Modernization Project



## BUILDING PROGRESS

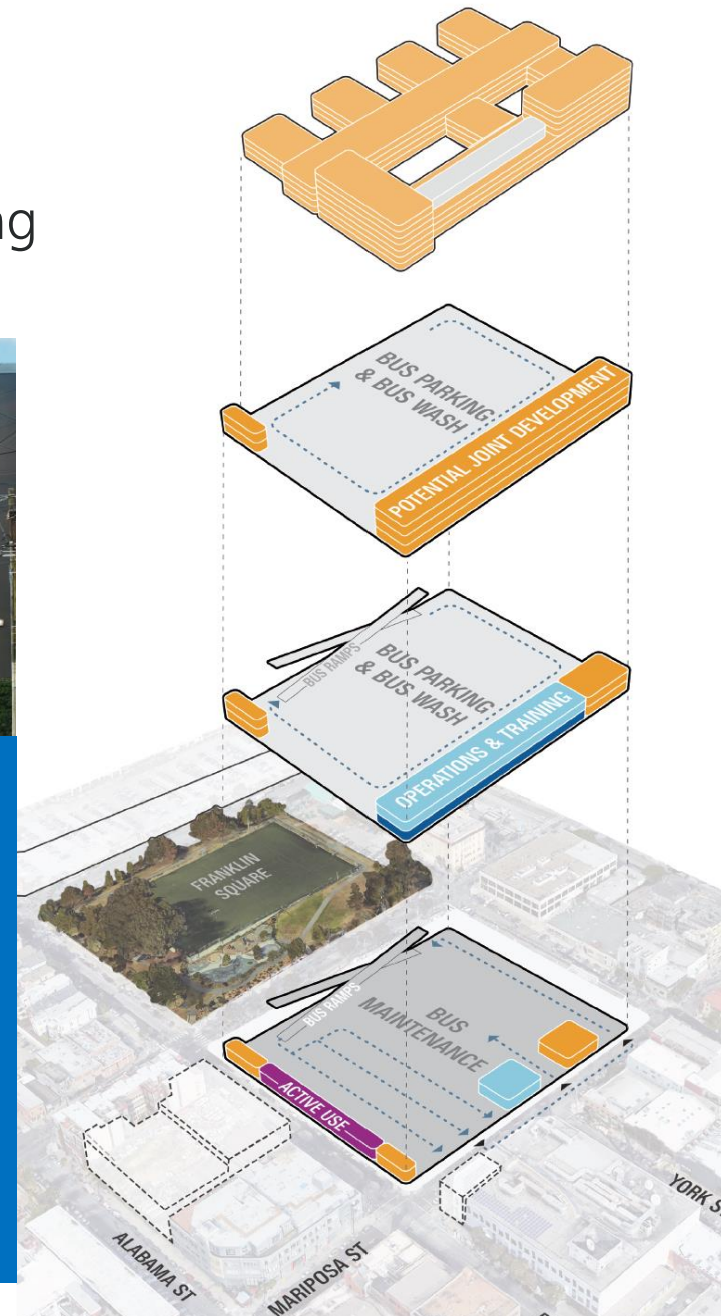
### Potrero Yard Modernization Project

Extensive outreach to date has led the following project concept and planning application.



#### Potrero Yard Key Operational Elements:

- Ramps for efficient on-site circulation
- Modern and sufficient bus lifts for vehicle fleet maintenance
- Modern bus wash bays ensuring a clean vehicle fleet
- Modern amenities for bus operators, maintenance and street ops
- Power upgrades allowing for transition to Zero Emission e-Bus
- Storage capability for growing Muni Fleet and Muni Service
- Dedicated and modern operator training facility



## Potrero Yard Modernization Project

**The Potrero Yard Modernization Project has been delivered using innovative project delivery methods**, to ensure the project meets the core transportation objectives, project schedule, budget and policy goals. This includes a joint-development project delivery model.

- The Potrero Yard project partnership structure proposes to design, build, finance, operate, and maintain the new site.
- As the proposed site work and joint-development concept includes housing, a new framework is needed to guide how a developer is procured.
- The Administrative Code does not include joint development partnerships in the procurement options for City projects.

## Potrero Yard Modernization Project

**Other key provisions** of the legislation include:

- Allowing the SFMTA to make a “best value” selection that assesses both quality and cost.
- Obligating the project to essential City policies like local hire, prevailing wage, and an LBE program.
- Adding an opportunity for the Board of Supervisors to review the draft Project Agreement term sheet early in the process.
- Allowing the project to pay a design stipend to up to 2 unsuccessful bidding teams at the end of the RFP process to ensure competitive bids.

## Potrero Yard Modernization Project

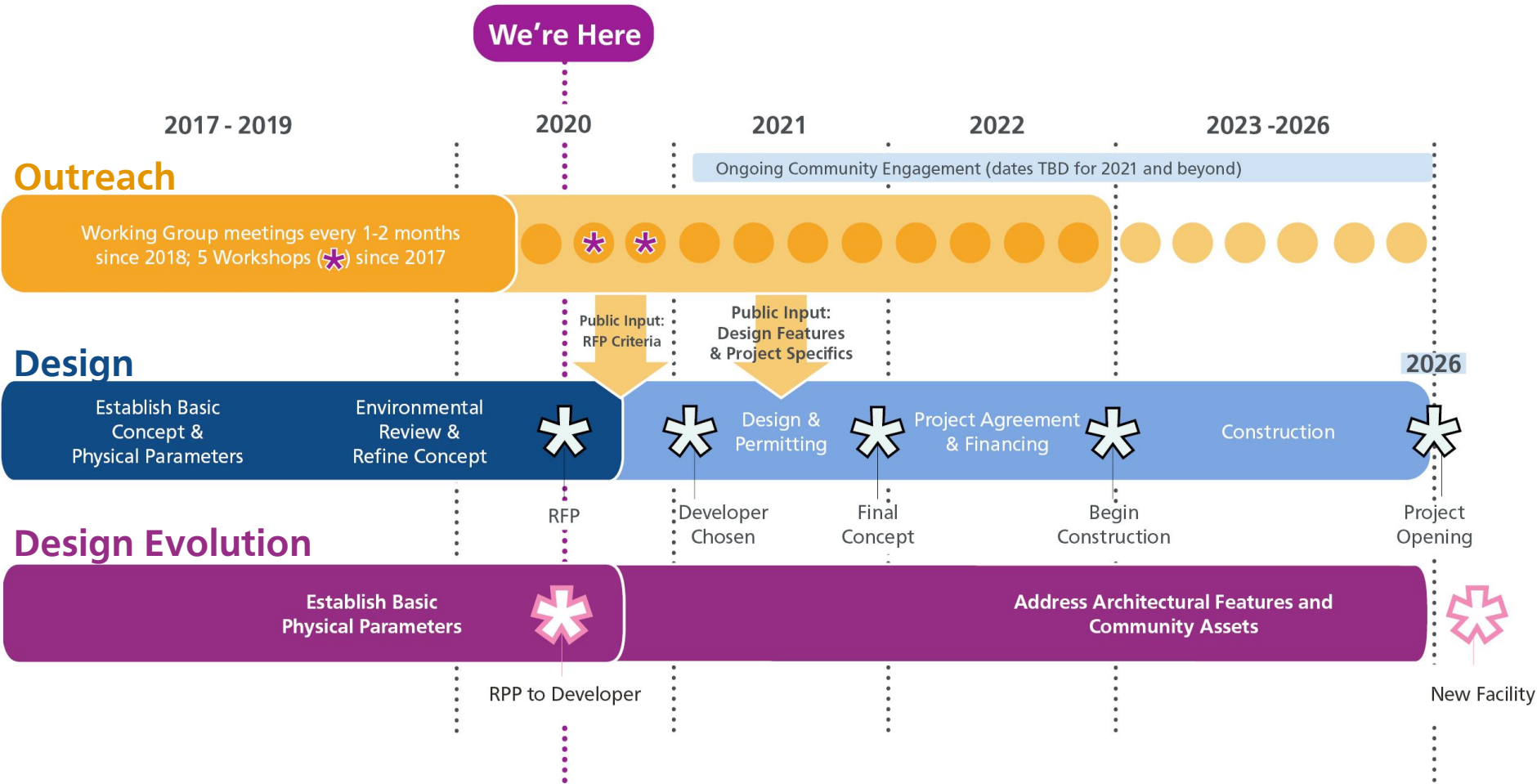
**Key considerations** for the proposed legislation include:

- New bus facility is multi-level and fully equipped for battery-electric buses **highly technical and specialized design and construction.**
- **Setting the framework** for the project procurement a reduces risk to potential development partners, thereby ensuring better proposals to the SFMTA.
- The city is asking potential developers to leverage our funds with private dollars to get this vital infrastructure project built. Without this legislation, there will be added risk, meaning additional cost to the City in cost proposals.
- The city is asking teams to spend months preparing their proposals, which is very costly. The design stipend to unsuccessful bidders included in the legislation offsets some of that expense and encourages developers to bid.
- The project schedule and process requires this not later than January 2021 to keep RFP and project on-schedule.



# Potrero Yard Modernization Project

## Potrero Project Schedule



# Thank You. Questions?

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