

[Administrative Code Waivers and Delegation of Charter Contract Approval Authority - Biogas Utilization Project Agreements, Southeast Treatment Plant]

Ordinance authorizing the San Francisco Public Utilities Commission (SFPUC) to exempt certain design, construction, finance, operation, and maintenance services and related agreements for the Public-Private Partnership (P3) delivery of the Biogas Utilization Project at the Southeast Treatment Plant (SEP), located at 1800 Jerrold Avenue, from Chapters 6, 14B, and 21, and Section 23.30 of the Administrative Code, but requiring compliance with the underlying public policies, including the payment of prevailing wages, implementation of a local business enterprise participation program, and compliance with the City's local hire policy and first source hiring ordinance, as applicable to such agreements, and permitting a best-value selection of the contractor team if the City elects to proceed with the Project after completing its review under the California Environmental Quality Act; and delegating to the SFPUC the authority under Charter, Section 9.118, to approve all necessary contracts that are \$10,000,000 or more and/or in excess of ten years.

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

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

Section 1. General Background.

1 (a) The San Francisco Public Utilities Commission (SFPUC) is planning to deliver a
2 new facility to convert biogas generated from the Biosolids Digester Facilities Project (BDFP)
3 at the Southeast Treatment Plant (SEP), located at 1800 Jerrold Avenue, into Renewable
4 Natural Gas (RNG) for pipeline injection (Biogas Utilization Project or Project).

5 (b) If approved, the proposed Biogas Utilization Project would provide beneficial use
6 of the biogas generated at the SEP and in doing so would promote current California state
7 goals for in-state production and distribution of RNG as documented in California Assembly
8 Bill 1900 (enacted in 2012) and California Senate Bill 840 (enacted in 2016). In addition, the
9 generation of RNG aligns with the City's sustainability policies, as it displaces the use of fossil
10 fuels and improves local air quality. RNG currently offers the highest economic and
11 environmental value as renewable fuel for compressed natural gas (CNG) vehicles, but it also
12 provides an opportunity as a "bridge fuel" for in-city natural gas uses that cannot shift to
13 electric.

14 (c) The RNG will be injected into an existing natural gas pipeline, which PG&E
15 owns and operates and is located adjacent to the SEP. SFPUC intends to enter into a new
16 long-term interconnection service agreement with PG&E.

17 (d) The P3 delivery method involves a public-private partnership in which there is
18 competitive procurement of a private sector partner (also referred to as P3 contractor) for the
19 SFPUC. The P3 contractor would provide financing, design, construction, operation, and/or
20 maintenance of the biogas utilization facilities, and sales and marketing of the produced fuel
21 and renewable fuel credits. To compensate the P3 contractor for these services, the SFPUC
22 will grant the P3 contractor rights to the produced fuel and associated revenue, with possible
23 revenue sharing, and renewable fuel credits. If the SFPUC approves the Project and awards a
24 P3 contract, the P3 delivery method would allow the SFPUC to preserve capital by deferring
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1 to the P3 contractor the up-front costs of construction, operations, and sales and the risks of
2 construction costs overruns, production quality, and revenue.

3 (e) Based on an initial technical feasibility study for the Project, the SFPUC
4 estimates the cost to construct the Project would be approximately \$50,000,000
5 (in 2022 dollars and exclusive of costs not directly related to construction, such as
6 engineering, financing, administrative, and permitting costs). The private sector partner will
7 finance these costs in exchange for rights to the biogas and related credits.

8 (f) The Biogas Utilization Project is considered part of the BDFP for the purpose of
9 federal funding under the Water Infrastructure Finance and Innovation Act (WIFIA), as it was a
10 planned component of BDFP under the first loan, and therefore construction of this project will
11 require compliance with federal requirements.

12 (g) In alignment with the BDFP construction and facility start-up, the Biogas
13 Utilization Project must be operational and ready to accept the biogas from the new biosolids
14 facilities in the fourth quarter of calendar year 2026.

15 Section 2. Findings Supporting P3 Delivery for the Biogas Utilization Project.

16 (a) Unlike conventional methods of contracting for new construction, in which a
17 public entity procures discrete functions through separate solicitations, P3 delivery uses a
18 single private entity that has the responsibility and financial liability for performing a significant
19 number of services under a long-term contractual arrangement with the public entity. These
20 services could include pre-development, design, construction, financing, operations and
21 maintenance services (collectively or in any combination, "P3 Services"). Under P3 delivery,
22 the private sector partner may make a substantial cash, at-risk, equity investment in the
23 project if the financing structure and final risk allocation calls for it, and the public sector gains
24 access to new revenue and/or service delivery capacity without having to pay the private
25 sector partner upfront.

1 (b) Although the City has limited experience implementing P3 projects, this delivery
2 method is a fully developed and market-accepted means to deliver infrastructure projects.
3 Several significant and high-profile P3 projects have been completed in California at the state
4 and municipal levels. The Federal government and over 30 states have adopted specific
5 legislation (including California Government Code Section 5956) to enable the use of P3 in
6 the procurement of infrastructure projects. The City is currently in the process of another P3
7 project, referred to as the Potrero Yard Modernization Project, that the Board of Supervisors
8 approved in 2021, with the enactment of Ordinance No. 38-21.

9 (c) For the Biogas Utilization Project, the P3 Services would include: financing,
10 design, construction, operation, and/or maintenance of the biogas utilization facilities, and/or
11 sales and marketing of the produced fuel and renewable fuel credits.

12 (d) A primary driver for P3, and the California Government Code sections that
13 authorize it, is access to private investment capital for fee-producing infrastructure facilities.
14 "Fee-producing" means the entities that benefit from the project pay for the operation of the
15 facility, i.e., the project must have payback. The financial model developed for the project
16 establishes the initial feasibility of the Biogas Utilization Project by confirming that project
17 revenue is enough to repay private capital investment over a reasonable term (20 years).
18 Revenue is generated by selling the RNG and generating renewable fuel credits through
19 federal and state incentive programs. The financial model was developed by the BDFP design
20 consultant team with input from SFPUC's Finance team. The model is a tool for predicting the
21 range of financial outcomes based on several inputs: biogas production rates, Renewable
22 Identification Number credit (RIN) values, Low Carbon Fuel Standard credit (LCFS) values,
23 RNG values, project capital cost, operation and maintenance costs, escalation, and P3
24 payment structure. The model shows the project has a positive rate of return for the P3
25 contractor as well as for the SFPUC. The model indicates that the P3 delivery outcome is

1 consistent with the legislative goals of private infrastructure financing government projects by
2 being “fee producing” and having attainable payback.

3 (e) The Biogas Utilization Project is expected to deliver a positive 20-year net
4 present value (NPV). Project revenues are strongly linked to market-based RIN and LCFS
5 values which are not guaranteed and are expected to fluctuate. With P3, SFPUC should have
6 no capital outlay and no operation and maintenance costs. SFPUC may receive an annual
7 payment from the P3 (either fixed or variable). The intent is to transfer financial risk to the P3
8 contractor in exchange for its right to potential profit on the value of the biogas.

9 (f) SFPUC staff has identified the following objectives for the Project (“Project
10 Objectives”): (1) provide beneficial use of the biogas generated at the SEP; (2) net the highest
11 value for the biogas and potentially produce a revenue source for the SFPUC; (3) reduce on-
12 site air emissions into the surrounding Bayview-Hunters Point neighborhood by eliminating the
13 energy recovery facility and combustion of biogas in the turbine; and (4) reduce SFPUC
14 capital expenditure by including private financing funded by the sale of the RNG and the
15 renewable fuel credits.

16 (g) Based on the Project Objectives, the SFPUC has determined it is appropriate
17 and in the City’s best interest at this time to adopt a P3 delivery approach to deliver the
18 Project.

19 (h) Because the Board of Supervisors has not generally authorized the P3 delivery
20 approach in the Administrative Code, the SFPUC requests such authority for the Project,
21 which requires exemptions from Administrative Code Chapters 6, 14B, and 21, and Section
22 23.30. The authority granted by this ordinance would allow the SFPUC to contract with a
23 single P3 contractor to provide a turnkey solution to the reuse of biogas generated from
24 wastewater treatment.
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1 Section 3. P3 Procurement Process; Exemption from Certain Administrative Code
2 Provisions.

3 (a) Administrative Code Chapter 6 codifies the City's policies and procedures for
4 public work contracts, including design, engineering, and construction contracts;
5 Administrative Code Chapter 21 regulates the City's acquisition of commodities and
6 professional services, including finance, as well as maintenance, asset management, and
7 other general services; Administrative Code Chapter 14B codifies the City's policies and
8 requirements for participation of Local Business Enterprises (LBEs) and non-discrimination in
9 public contracts generally; Administrative Code Chapter 23 governs the City's real property
10 transactions, with Section 23.30 therein requiring determination of the market value of leases
11 for City-owned property. The P3 Services required for the Project will likely span the subject
12 matter of Chapters 6, 14B, and 21 and Section 23.30, but none of these provisions
13 contemplates the acquisition of these services in one procurement, as required for P3
14 Services.

15 (b) Notwithstanding these specified provisions of the Administrative Code, the
16 SFPUC is authorized to procure and contract for P3 Services for the Biogas Utilization Project
17 using the P3 delivery method described below:

18 (1) The SFPUC may pre-qualify, solicit proposals from, and enter into one or
19 more agreements with, private entities for P3 Services for the Project.

20 (2) The SFPUC may issue a request for qualifications to pre-qualify and
21 shortlist the private entities allowed to submit proposals to provide P3 Services for the Project.
22 The request for qualifications shall generally describe the Project, the Project Objectives, the
23 desired qualifications, experience, and responsibilities of the selected party, and the overall
24 procurement process, delivery method, summary of contract terms, and schedule for the
25 Project.

1 (3) The SFPUC may issue to shortlisted parties a request for proposals. The
2 request for proposals may describe the Project, the Project Objectives, the range of P3
3 Services and delivery methods the SFPUC is considering for the Project, the proposal
4 submittal requirements, and the evaluation criteria. The proposal evaluation criteria may
5 include, but need not be limited to, the qualifications of respondents, projected construction
6 and financing costs for the Project, life-cycle cost savings to the City, design quality, and the
7 extent to which the proposal or proposals meet the Project Objectives. The request for
8 proposals may also include the form of agreement or basic term sheet for one or more of the
9 P3 Services agreements, and any other information the SFPUC deems necessary or
10 appropriate to adequately describe the Project, development opportunity, procurement
11 process, delivery method, and P3 Services needed to deliver the Project.

12 (4) Based on the evaluation of proposals received, the SFPUC will negotiate
13 the terms of a P3 Services agreement with the highest-ranked proposer, and if negotiations
14 are unsuccessful it will move to the next highest-ranked proposer, and continue this process
15 until a satisfactory agreement is reached. The ranking of proposers will be a best-value
16 determination that shall be based on evaluation criteria identified in the request for proposals
17 and clarifications obtained after initial review of the proposals. In making the best-value
18 determination, the SFPUC retains the right to hold and enter into negotiations with the
19 selected proposer(s).

20 (5) The SFPUC may enter into one or more agreements for P3 Services with
21 the selected P3 contractor and any ancillary agreements as appropriate. The forms of
22 agreements to deliver the Project may include but are not be limited to pre-development, early
23 works, design-build, finance, and operations and maintenance.
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1 (c) Except as provided below, any P3 Services agreement awarded in connection
2 with the Project shall be exempt from the requirements of Administrative Code Chapters 6,
3 14B, 21, and Section 23.30.

4 (1) The SFPUC shall require that any contractor performing construction
5 under any P3 Services agreement pay prevailing wages in accordance with Section 6.22(e) of
6 Article II of Chapter 6 of the Administrative Code, comply with applicable certified payroll
7 requirements under those provisions of the Administrative Code by submitting certified payroll
8 through the City's certified payroll reporting system, and comply with the requirements of the
9 State Apprenticeship Program in accordance with Section 6.22(n) of Article II of Chapter 6.
10 The Office of Labor Standards Enforcement shall have authority to enforce such prevailing
11 wage requirements.

12 (2) The SFPUC shall require that any contractor performing construction
13 under any P3 Services agreement comply with the City's Local Hiring Policy as set forth in
14 Administrative Code Chapter 82 and/or the City's First Source Hiring Program as set forth in
15 Administrative Code Chapter 83, as applicable.

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

20 (4) The SFPUC shall ensure that the Project and any related contracts
21 comply with the public policy behind all Administrative Code sections that would otherwise be
22 applicable in the absence of this ordinance. In addition to the items set forth above in
23 subsections (c)(1)-(3), this includes, without limitation, the SFPUC ensuring that the contractor
24 that will be constructing the Project is properly licensed and insured, and obtains payment and
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1 performance bonds for the full value of the construction work, as well as ensuring compliance
2 with any and all relevant labor and safety protections.

3 (d) With the planned location for the Biogas Utilization Project being on-site at the
4 SEP, to the extent that the P3 contractor is responsible for the construction, operation, or
5 maintenance of the Biogas Utilization Project, the P3 contractor will need sufficient rights to
6 enter and control the relevant portion of the SEP property. The extent of those rights may
7 vary depending on the nature of the P3 Services agreement. In the case where the P3
8 contractor constructs, and then operates and maintains, the Biogas Utilization Project for the
9 described 20-year term, the P3 contractor will have lease-like control over the relevant portion
10 of the SEP property and have lease-like terms included in the relevant P3 Services agreement
11 to protect the SFPUC. The cost-savings realized by collocating the Biogas Utilization Project
12 with the SEP will mean that more of the revenue is a potential profit for both the City and the
13 P3 contractor. Any P3 Services agreement awarded in connection with the Project shall be
14 exempt from the requirements of Administrative Code Section 23.30, to the extent it would be
15 applicable as the value of any leasehold interest is incorporated into the Project financial
16 model and would not benefit from separate appraisal.

17 (e) The provisions of this ordinance shall be implemented in a manner consistent
18 with the civil service provisions of the Charter.

19 (f) In any agreement for P3 Services which involves the use of any funds furnished,
20 given, or loaned by the government of the United States or the State of California, all laws,
21 rules, and regulations of the government of the United States or the State of California or of
22 any of their agencies, relative to the performance of the services under the agreement and the
23 conditions under which the services are to be performed, shall prevail over the requirements
24 of this ordinance when such laws, rules, or regulations are in conflict with or otherwise
25 preempt the requirements of this ordinance.

1 Section 5. ~~Delegation of Contract Approval Authority Under Charter Section 9.118.~~

2 ~~(a) Subject to Project approvals, the SFPUC intends that one or more resulting P3~~
3 ~~Services agreement(s) and/or Project implementation agreement(s) would be subject to Board~~
4 ~~of Supervisors approval under Charter Section 9.118(b), because the Project contemplates~~
5 ~~non-construction services with a term that may exceed 10 years and/or the value of the~~
6 ~~biogas conveyed to the P3 contractor may exceed \$10,000,000, and under Charter Section~~
7 ~~9.118(c), because the Project contemplates the P3 contractor's use of City land for a period~~
8 ~~that may exceed 10 years.~~

9 ~~(b) The Board of Supervisors hereby delegates authority to the San Francisco Public~~
10 ~~Utilities Commission to approve these P3 Services agreement(s) and/or Project~~
11 ~~implementation agreement(s) under Charter Sections 9.118(b) and 9.118(c), up to a~~
12 ~~maximum term of 30 years, upon the SFPUC General Manager's written recommendation.~~

13 Section 45. Environmental Review.

14 (a) The City prepared and certified a Final Environmental Impact Report for the
15 BDFP on March 8, 2018 (Planning Department Case No. 2015-000644ENV) (BDFP EIR)
16 under the California Environmental Quality Act (CEQA) and Administrative Code Chapter 31.
17 A facility to use biogas (generated at the site for energy recovery) is a component of the
18 BDFP and was evaluated in the BDFP EIR. The City is currently evaluating whether any
19 changes to the biogas utilization under the Biogas Utilization Project require additional CEQA
20 review.

21 (b) Approval of this ordinance shall not be construed as an approval of the Biogas
22 Utilization Project. Rather, this ordinance simply authorizes a set of contracting procedures to
23 allow the City to continue to develop, study, and design the Project, and, if the Project is
24 approved following any additional environmental review, to implement and deliver the Project.
25 No approval of the Project will occur until CEQA review is completed. The City will evaluate

1 the need for and conduct any required additional environmental review of the Biogas
2 Utilization Project following development of more detailed design. Nothing in this ordinance
3 implements any approvals or facilities for the Project, or grants any entitlements for the
4 Project. The City retains absolute discretion to: (1) modify the Project to mitigate significant
5 adverse environmental impacts, (2) select feasible alternatives which avoid significant
6 adverse impacts of the Project, (3) require the implementation of specific measures to mitigate
7 the significant adverse environmental impacts of the Project, (4) reject the Project as
8 proposed if the economic and social benefits of the Project do not outweigh otherwise
9 unavoidable significant adverse impacts of the project, or (5) approve the Project upon a
10 finding that the economic and social benefits of the Project outweigh otherwise unavoidable
11 significant adverse impacts.

12 Section 56. Effective Date.

13 This ordinance shall become effective 30 days after enactment. Enactment occurs
14 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
15 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
16 Mayor's veto of the ordinance.

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19 APPROVED AS TO FORM:
20 David Chiu, City Attorney

21 By: /s/
22 TYSON ARBUTHNOT
Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 230002

Date Passed: March 07, 2023

Ordinance authorizing the San Francisco Public Utilities Commission (SFPUC) to exempt certain design, construction, finance, operation, and maintenance services and related agreements for the Public-Private Partnership (P3) delivery of the Biogas Utilization Project at the Southeast Treatment Plant (SEP), located at 1800 Jerrold Avenue, from Chapters 6, 14B, and 21, and Section 23.30 of the Administrative Code, but requiring compliance with the underlying public policies, including the payment of prevailing wages, implementation of a local business enterprise participation program, and compliance with the City's local hire policy and first source hiring ordinance, as applicable to such agreements, and permitting a best-value selection of the contractor team if the City elects to proceed with the Project after completing its review under the California Environmental Quality Act.

February 15, 2023 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

February 15, 2023 Budget and Finance Committee - RECOMMENDED AS AMENDED

February 28, 2023 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

March 07, 2023 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 230002

I hereby certify that the foregoing
Ordinance was **FINALLY PASSED** on
3/7/2023 by the Board of Supervisors of the
City and County of San Francisco.


Angela Calvillo
Clerk of the Board



London N. Breed
Mayor

3-17-23

Date Approved