

1 [Contracting Process - Treasure Island Wastewater Treatment Plant - Waiver of Certain  
2 Administrative Code Provisions]

3 **Ordinance waiving certain provisions in Administrative Code, Sections 6.61 and 6.64,**  
4 **and Chapter 21, as applied to the proposed design and construction of the Treasure**  
5 **Island Wastewater Treatment Plant (“Plant”) to authorize the Public Utilities**  
6 **Commission to: procure operation and maintenance services for the Plant and for the**  
7 **associated collection system in one procurement in addition to design and**  
8 **construction services for the Plant under Administrative Code, Section 6.61; waive**  
9 **Administrative Code, Section 21.3 requirements that general services be awarded to**  
10 **the lowest responsible, responsive bidder; waive the Administrative Code,**  
11 **Section 21.9(a)(2), prohibition against having a solicitation for general or professional**  
12 **services be more than ten years, as applicable to the operations and maintenance**  
13 **portion of the contract; waive Administrative Code, Section 6.64, as applicable to**  
14 **procurement of as-needed construction services as applicable to the maintenance**  
15 **portion of the contract; waive Administrative Code, Section 6.61(c)(5), as applicable to**  
16 **procurement of trade packages for construction of the Plant; state that the award of the**  
17 **operations and maintenance contract will be subject to the approval of the Board of**  
18 **Supervisors pursuant to Charter, Section 9.118; and adopt findings under the California**  
19 **Environmental Quality Act.**

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

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

1           **Section 1. General Background.**

2           (a) The Naval Station Treasure Island (“NSTI”) is a former United States Navy (“Navy”)  
3 base located in the City and County of San Francisco (“City”) that consists of two islands,  
4 Treasure Island (“TI”) and Yerba Buena Island (“YBI”), connected by a causeway. The  
5 Treasure Island Development Authority (“TIDA”) is the entity responsible for the reuse and  
6 development of NSTI. Under the Base Caretaker Cooperative Agreement (“BCCA”) between  
7 TIDA and the Navy, TIDA is responsible for the operation and maintenance of the existing  
8 Wastewater Treatment Plant (“WWTP”) and its associated collection system. Based on the  
9 annual Memorandum of Understanding between TIDA and the San Francisco Public Utilities  
10 Commission (“SFPUC”) regarding Utility Services at NSTI, the SFPUC has been providing  
11 utility services to the residents of TI and YBI.

12           (b) Under a conveyance agreement that governs the transfer of NSTI from the Navy to  
13 TIDA, the Navy will convey NSTI to TIDA in phases as the Navy completes environmental  
14 remediation as part of the realignment and closure project. As TIDA acquires the NSTI  
15 property from the Navy, it will convey portions of the property to Treasure Island Community  
16 Development (“TICD”) for development. The scope of this complex and phased 15- to 20-  
17 year development project includes demolition of existing buildings and utilities,  
18 geotechnical/ground improvements, construction of 8,000 new homes, and construction of  
19 new wastewater and stormwater infrastructure.

20           (c) TICD is obligated to design, construct, and complete the infrastructure at TI/YBI,  
21 including new, separate wastewater and stormwater collection and conveyance systems, and  
22 stormwater management controls (e.g., pipelines, pump stations, outfall). The SFPUC will  
23 assume ownership of the new infrastructure upon its completion and acceptance by the Board  
24 of Supervisors. The new WWTP, however, is not part of TICD’s infrastructure construction  
25 obligations and will be planned, designed, constructed, and owned by the SFPUC.

1 (d) SFPUC Wastewater Enterprise (“WWE”), TIDA, and TICD currently face  
2 challenges on TI/YBI with the operations and maintenance of the existing NSTI infrastructure.  
3 The infrastructure has been ineffectively maintained over the past 70 years, resulting in  
4 frequent collections system failures and regulatory compliance violations, which has also  
5 caused WWE maintenance staff to expend a disproportionate amount of resources on TI/YBI.  
6 The WWE North Point maintenance crew spends approximately 40% of its time maintaining  
7 the TI/YBI system, which serves 1,800 residents, and 60% of its time on the mainland, which  
8 serves 200,000+ residents and commercial tenants.

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10 **Section 2. SFPUC Findings Supporting Design-Build-Operate Delivery Method**  
11 **and Environmental Findings.**

12 (a) On April 23, 2019, the SFPUC Commission adopted Resolution No. 19-0082,  
13 approving the General Manager’s recommendation to use the Design-Build-Operate (“DBO”)   
14 project delivery method for Project No. CWP11001, New Treasure Island Wastewater  
15 Treatment Plant (“Project”), due to the complexity, scheduling constraints, regulatory  
16 compliance needs, and extensive need for operations and maintenance support. According to  
17 industry standards, DBO implicitly includes maintenance, training and transfer. A critical  
18 component of the Project is for the SFPUC to procure operations and maintenance services  
19 for the WWTP and the associated collection system to address the wastewater infrastructure  
20 needs for Treasure Island. The DBO procurement method is the only method that would  
21 provide a single point of accountability for the design, construction, operation, and  
22 maintenance of the Project, maximizing lifecycle cost savings by integrating the designer,  
23 builder, and operator in the design and construction of the Project, and providing additional  
24 needed resources to WWE operations and maintenance staff. The SFPUC estimates that the  
25 duration for the design-build portion of the DBO contract will be three years at a cost of \$110-

1 \$130 million, and that the duration for the operations, maintenance, and training portion of the  
2 contract for the WWTP and collection system will be for an initial term of 10 years, with two  
3 five-year options to extend, at a cost of at least \$50 million for the initial 10 years.

4 (b) Based on the Commission’s determination that the DBO method is the most  
5 efficient and appropriate procurement vehicle to realize cost and time savings, and is in the  
6 public’s best interest under the circumstances, the SFPUC Commission authorized the  
7 General Manager to seek approval from the Board of Supervisors for a project-specific  
8 ordinance to approve the use of a DBO project delivery method in a manner that is most  
9 efficient for the Project.

10 (c) In Resolution No. 19-0082, the SFPUC Commission also adopted environmental  
11 findings associated with the actions contemplated in this ordinance. The Board of  
12 Supervisors adopts those findings as its own. Said Resolution is on file with the Clerk of the  
13 Board of Supervisors in File No. 190597 and incorporated herein by reference.

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15 **Section 3. Design Build Operate Procurement; Modification of Administrative**  
16 **Code Sections 6.61, Section 6.64, and Section 21 Requirements.**

17 (a) Administrative Code Section 6.61 (“Section 6.61”) allows the City to procure design  
18 and construction services for public works projects, whereby the City retains a design-builder  
19 to design and build the project. Administrative Code Chapter 21 (“Chapter 21”) allows for the  
20 procurement of general and professional services, which include the operations and  
21 maintenance services that will be part of this procurement. For purposes of this Project, the  
22 SFPUC shall comply with the selection process prescribed in Section 6.61 and Chapter 21,  
23 except as stated below.

24 (b) In compliance with Section 6.61(c), the General Manager intends to invite qualified  
25 DBO contractors to compete for the contract through a pre-qualification process, and shortlist

1 no less than three pre-qualified firms to compete in the subsequent request for proposals  
2 (“RFP”) process. The short-listed firms will be eligible to submit proposals for evaluation in  
3 response to the RFP.

4 (c) The General Manager also intends to comply with the best value evaluation  
5 procedure in Section 6.61(c)(1), including that the evaluation of non-cost criteria will constitute  
6 a maximum of 60% of the overall evaluation, and evaluation of the cost criteria will constitute  
7 not less than 40% of the overall evaluation. The procurement will include design, build,  
8 operation and maintenance services. Other DBO wastewater projects in the country have  
9 used a fixed price and net present value analysis for the design/build costs, as well as for the  
10 operations, maintenance, and repair and replacement costs for those projects. The General  
11 Manager intends to use the fixed price and net present value analysis for this Project for both  
12 the WWTP and associated collections system over a 20-year analysis period to evaluate  
13 costs. These costs will be based on the DBO contractor’s design/build costs, as well as  
14 guaranteed pricing for operations, maintenance, repair, and replacement for the first year after  
15 commissioning of the WWTP, and then adjusted for inflation annually. The General Manager  
16 shall have the discretion to procure a single contract with the DBO contractor for the design,  
17 build, operation and maintenance services, or to procure two contracts with the DBO  
18 contractor, one contract for the design and construction of the plant, and a subsequent  
19 contract for the operations and maintenance of the plant and associated collection system.

20 (d) Pursuant to Administrative Code Section 21.04(a)(1), the General Manager is  
21 authorized to purchase general and professional services directly when such purchase is  
22 recommended by a department head and is approved by the Purchaser. To the extent the  
23 operations and maintenance services for the contract include general and/or professional  
24 services as defined by Section 21.02, the General Manager has recommended, and the  
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1 Purchaser has approved, that the General Manager purchase such services directly through  
2 this procurement.

3 (e) Pursuant to Administrative Code Section 21.3, the procurement of general services  
4 estimated to cost in excess of the Minimum Competitive Amount, as defined in Section 21.02,  
5 and which is currently \$110,000, requires an award of the contract to the lowest responsible  
6 and responsive bidder, subject to certain exceptions not applicable here. For the operations  
7 and maintenance services in this contract, this provision is waived to allow the General  
8 Manager to procure general services, to the extent applicable, pursuant to the best value  
9 evaluation as set forth in subsections (b) and (c) above.

10 (f) Administrative Code Section 21.9(a)(2) provides that a solicitation for a contract for  
11 multiple years or with options to extend the term for multiple years shall not provide for  
12 extensions of the contract for a period in excess of 10 years from the date of the initial  
13 contract. For the operations and maintenance services in this contract, this provision is  
14 waived to allow the operations and maintenance portion of the contract to have an initial 10-  
15 year term with two five-year options to extend due to the potential need for long-term  
16 operations and maintenance support, as well as the incentive for the DBO contractor to  
17 maximize lifecycle costs due its potential long-term responsibility to operate and maintain the  
18 WWTP and associated collection system.

19 (g) Administrative Code Section 6.64 authorizes the General Manager to execute  
20 contracts for construction services on an as-needed basis, with definite or indefinite quantities  
21 of work. Because the operations and maintenance services for this contract will include repair  
22 and replacement of the WWTP and collection system on an as-needed basis, this provision is  
23 waived to allow the General Manager to include procurement of these construction services  
24 as part of this contract to ensure that the DBO contractor becomes the single point of  
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1 responsibility to operate and maintain the WWTP and associated collection system during the  
2 life of the contract.

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4 **Section 4. Selection of Trade Subcontractors; Waiver of Administrative Code**  
5 **Section 6.61(c)(5).**

6 (a) Under Administrative Code Section 6.61(c)(5), the selected design-builder procures  
7 subcontracts for the trade work for a project by: 1) inviting pre-qualified trade subcontractors  
8 to submit competitive bids evaluated on price and responsibility; 2) inviting core trade  
9 subcontractors to be evaluated on qualifications only; 3) allowing the design-builder to self-  
10 perform scopes of work specified in the RFP; or 4) allowing direct negotiation of up to 7.5% of  
11 the total estimated construction subcontractor costs.

12 (b) The General Manager has determined that selection of subcontractors according to  
13 the procedures in Section 6.61(c)(5) would not be the most cost- and time-efficient way of  
14 implementing the Project in that a great advantage to this delivery method is giving the DBO  
15 contractor responsibility and control over the design and construction to achieve the most-  
16 efficient delivery with long-term benefits. Therefore, for the trade work on this Project, the  
17 requirements of Section 6.61(c)(5), with respect to procurement of trade subcontractors, are  
18 waived.

19 (c) Because the DBO contractor will propose a fixed price for design and construction,  
20 the General Manager will require that subcontractors be listed at the time of proposal for all  
21 trade subcontracts with a value exceeding 5% of the contract amount applicable to  
22 construction work.

23 (d) In addition, the General Manager may specify in the RFP one or more scopes of  
24 work that may be self-performed by the DBO contractor or authorize the DBO contractor to  
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1 self-perform work after determining the cost of the work to be fair and reasonable by an  
2 independent cost estimate.

3 (e) Following award of the DBO contract, the DBO contractor will be able to add or  
4 substitute trade subcontractors for the remaining construction work.

5 (f) All trade subcontractors, whether listed at the time of proposal or added or  
6 substituted after contract award, shall be afforded all of the protections of the California  
7 Subletting and Subcontracting Fair Practices Act at California Public Contract Code Section  
8 4100 *et seq.* as amended from time to time.

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10 **Section 5. Contract Award Subject to Charter Section 9.118.** Because the General  
11 Manager intends that the operations and maintenance portion of this contract will extend  
12 beyond 10 years and is anticipated to exceed \$10 million, the SFPUC will at the appropriate  
13 time request the Board of Supervisors' approval of the contract pursuant to Charter Section  
14 9.118.

15 Section 6. The provisions of this ordinance shall be implemented in a manner  
16 consistent with the civil service provisions of the Charter.

17 Section 7. Effective Date. This ordinance shall become effective 30 days after  
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
20 of Supervisors overrides the Mayor's veto of the ordinance.

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22 APPROVED AS TO FORM:  
23 DENNIS J. HERRERA, City Attorney

24 By: \_\_\_\_\_  
25 JULIE VEIT  
Deputy City Attorney