

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

3 **Ordinance authorizing the San Francisco Municipal Transportation Agency to exempt**
4 **certain design, construction, finance, maintenance, and real estate agreements for the**
5 **development of the Potrero Yard Modernization Project from Chapters 6, 14B, 21, and**
6 **23 of the Administrative Code, but requiring the payment of prevailing wages,**
7 **implementation of a local business enterprise utilization program, and compliance with**
8 **the City’s local hire policy and first source hiring ordinance, as applicable, and**
9 **permitting a best-value selection of the developer team if the City elects to proceed**
10 **with the Project after completing its review under the California Environmental Quality**
11 **Act.**

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

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

20 Section 1. General Background.

21 (a) Under its Building Progress Program, the San Francisco Municipal
22 Transportation Agency (“SFMTA”) is undertaking conceptual plans and studies to renovate
23 and/or replace a number of its outdated facilities to support and improve transit operations
24 and pursue complementary joint development opportunities. One of the program’s first
25 potential projects is the Potrero Yard Modernization Project (“Project”), located at
25 2500 Mariposa Street in the Mission District and for which the SFMTA is exploring the joint

1 development of private housing and commercial components. The Project would advance the
2 goals of the Public Lands for Housing program, the citywide response to Mayor Ed Lee’s 2014
3 State of the City address directing City agencies to examine their underutilized sites with
4 regard to their potential for housing.

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

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

21 (d) Based on an initial technical feasibility study for the Project, the SFMTA
22 estimates the cost to construct the Project would be approximately \$500 million
23 (in 2019 dollars and exclusive of costs not directly related to construction, such as
24 architectural, engineering, financing, administrative, and permitting costs). The SFMTA has
25 determined, and the Board of Supervisors concurs, that the Project would be “a public

1 transportation capital improvement project under the jurisdiction of the San Francisco
2 Municipal Transportation Agency that will support an increase or improvement in Municipal
3 Railway (“Muni”) service” under Administrative Code Section 29.1(c)(5), and thus, under that
4 Section and Section 29.1(b), is not subject to a fiscal feasibility finding under Administrative
5 Code Chapter 29. Notwithstanding these exemptions, the SFMTA would proceed with the
6 Project only if it is determined through further study and development that the Project is
7 fiscally feasible.

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

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

22 Section 2. Findings Supporting Joint Development of the Potrero Yard Modernization
23 Project.

24 (a) According to the Federal Transit Administration, joint development projects
25 involve: (1) integrated development of transit and non-transit improvements, with transit

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

9 (b) To date, the SFMTA's objectives for the Project ("Project Objectives") have been
10 identified as follows: (1) select a private entity developer early in the CEQA process to provide
11 input and develop a functional and attractive design that reflects input from the community;
12 (2) complete construction by the end of 2026; (3) transfer all or portions of the Project's
13 design, construction, financing, maintenance, and real estate risks to a private entity, giving
14 the SFMTA budget and schedule certainty and making joint development financially feasible
15 while operating the Bus Facility safely, efficiently, and reliably in a manner compatible with the
16 Project's joint development components; (4) realize savings from the Project's joint
17 development components to support the Bus Facility to the extent it is financially feasible; and
18 (5) make payments to the private entity only when the Project is substantially complete. As
19 the Project is further studied, these Project Objectives may evolve.

20 (c) Unlike conventional methods of contracting for new construction, in which a
21 public entity procures discrete functions through separate solicitations, joint development
22 projects use a single private entity that has the full responsibility and financial liability for
23 performing a significant number of services under a long-term contractual arrangement with
24 the public entity. These services could include pre-development, design, construction,
25 financing, operations, or asset management services (collectively or in any combination, "Joint

1 Development Services”). Some examples of Joint Development Services specific to the
2 Project include, but are not limited to, the competitive (e.g., low-bid or best-value)
3 procurement and management of early works contractors for preliminary construction
4 activities directly related to and needed for the Project, design-build contractors for the entire
5 Project, and asset management contractors for the joint development components and the
6 building infrastructure they share with the Bus Facility. Under a joint development project, the
7 private sector partner may make a substantial cash, at-risk, equity investment in the project if
8 the financing structure and final risk allocation calls for it, and the public sector gains access
9 to new revenue and/or service delivery capacity without having to pay the private-sector
10 partner upfront.

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

14 Section 3. Joint Development Procurement Process; Exemption from Certain
15 Administrative Code Provisions.

16 (a) Notwithstanding any provision of the Administrative Code, the SFMTA is authorized
17 to procure and contract for the Project utilizing the joint development process described
18 below:

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

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

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

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

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

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

7 (b) Except as provided below, the procurement of the Joint Development Services
8 and any Joint Development Services agreement are exempt from the requirements of
9 Administrative Code Chapters 6, 14B, 21, and 23.

10 (1) The SFMTA shall require that all construction, asset management, and
11 other covered work or improvement performed under any Joint Development Services
12 agreement pay prevailing wages in accordance with Article VII of Chapter 23 and
13 Section 6.22(e) of Article II of Chapter 6 of the Administrative Code, as applicable, and comply
14 with applicable certified payroll requirements under those provisions of the Administrative
15 Code by submitting certified payroll through the City's certified payroll reporting system. The
16 Office of Labor Standards Enforcement shall have authority to enforce such prevailing wage
17 requirements.

18 (2) The SFMTA shall require that all construction, asset management, and
19 other covered work or improvement performed under any Joint Development Services
20 agreement comply with the City's Local Hiring Policy as set forth in Administrative Code
21 Chapter 83 and Article VII of Chapter 23 or the City's First Source Hiring Program as set forth
22 in Administrative Code Chapter 23, as applicable.

23 (3) The SFMTA shall work with the Contract Monitoring Division to develop a
24 Local Business Enterprise ("LBE") program to ensure participation by LBEs in the design,
25 construction, and ongoing asset management of the Project.

1 (4) At all stages of the Project’s procurement process, the SFMTA must
2 obtain required approvals from the SFMTA Board of Directors. If the SFMTA intends to
3 contract for the long-term asset management of the Project beyond 10 years or any Joint
4 Development Services agreement with a cost that could exceed \$10 million, the SFMTA will at
5 the appropriate time request that the Board of Supervisors approve the corresponding
6 agreement or agreements pursuant to Charter Section 9.118.

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

9 Section 4. Environmental Review.

10 The SFMTA is undertaking CEQA review of the Project with the Planning Department.
11 This authorization action shall not be deemed an approval of the Project. Rather, this
12 authorization is simply to put in place a procedure to continue to develop, study, and design
13 the Project, and, if the Project is approved, to implement and deliver the Project. No approval
14 of the Project will occur until CEQA review is completed, and until the City decision-makers
15 review and consider the information contained in the CEQA document, and all other relevant
16 information about the Project. The Project will continue to develop as further studies are
17 conducted, and the City could consider alternatives, mitigation measures, or changes to the
18 Project at the time it considers approval of the Project.

19 Section 5. Effective Date.

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

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: /s/
4 Isidro Alarcón Jiménez
5 Deputy City Attorney

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