

## **PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO. 15-0196

WHEREAS, On November 5, 2002, the voters of the City and County of San Francisco (the "City") approved Proposition E, codified as Article VIII B of the Charter of the City (the "Charter"), which among other things, authorized the Commission to issue revenue bonds, including notes, commercial paper or other forms of indebtedness, when authorized by ordinance approved by a two-thirds vote of the Board of Supervisors, for the purpose of reconstructing, replacing, expanding, repairing or improving water facilities or clean water facilities, or combinations of water and clean water facilities under the jurisdiction of the Commission; and

WHEREAS, Pursuant to Section 8B.124 of the Charter approval of any bonds or other forms of indebtedness thereunder is additionally subject to the provision of certain certifications of an independent engineer retained by the Commission and certain certifications by the San Francisco Planning Department, which certifications shall make the findings and determinations set forth in Section 8B.124, and

WHEREAS, On April 20, 2010, the Board adopted Ordinance No. 89-10 to approve, among other things, the issuance and sale of water revenue bonds by the Commission pursuant to Proposition E of 2002, in a principal amount not to exceed \$1,737,724,038, to finance, among other things, WSIP Projects and other associated financing costs, which ordinance became effective on May 30, 2010 (the "2010 Ordinance"); and

WHEREAS, The Commission has determined that it is necessary and desirable to acquire and/or construct additional capital facilities of the Water Enterprise, including the San Francisco Westside Recycled Water Project (Water Enterprise Project No. CUW30201) (collectively the "Improvements"), and, subject to Board of Supervisors' authorization, has further determined to finance the costs of the Improvements through the execution and delivery of the State Revolving Fund Loans secured by one or more Installment Sale Agreements and Grant, to be entered into with the State of California Water Resources Control Board under the Clean Water State Revolving Fund (referred to herein as the "Installment Sale Agreements"); and

WHEREAS, The Commission has determined to seek Board of Supervisors approval of an amendment of the provisions of the 2010 Ordinance to authorize, in addition to the issuance of Water Revenue Bonds, the execution and delivery of one or more Installment Sale Agreements in connection with financing the costs of the Improvements and costs of issuance and other incidental costs related thereto (the "Supplemental Ordinance"); and

WHEREAS, The Installment Sale Agreements are payable from a pledge of Net Revenues of the Water Enterprise on a parity lien basis with the outstanding Bonds of the Water Enterprise, as such terms are defined in that certain Indenture dated as of January 1, 2003, as amended and supplemented (the "Indenture"), between the Commission and U. S. Bank National Association; and

WHEREAS, The Commission now desires to authorize the use of Installment Sale Agreements, subject to Board of Supervisors authorization as required by Section 8B.124 of the Charter (as further described below) and subject to the approval of the execution and delivery from time to time of one or more such Agreements by the Commission pursuant to said Section 8B.124; and

WHEREAS, On September 3, 2015, the San Francisco Planning Commission certified the Final Environmental Impact Report (FEIR), Planning Department Case Number 2008.0091E, by its Motion No. M-19422 and adopted the required California Environmental Quality Act (CEQA) Findings, including a Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program (MMRP) under Motion Number M-19443; and

WHEREAS, On September 8, 2015, this Commission adopted the required CEQA Findings, including the Statement of Overriding Considerations, and the MMRP under Resolution No. 15-0187; and

WHEREAS, The State Water Resources Control Board may fund the Improvements with loans, bonds or other indebtedness, the interest upon which is excluded from gross income for federal income tax purposes, (the "Obligations" or alternatively referred to as the Installment Sales Agreements) in an amount to finance all or a portion of the Improvements, including San Francisco Westside Recycled Water Project; and

WHEREAS, The Commission has determined that the moneys advanced and to be advanced to pay certain expenditures ("Expenditures") of the Improvements are or will be available only for a temporary period and it is necessary to reimburse all such expenditures made no earlier than 60 days prior to the date hereof with respect to the Project from proceeds of the Obligations; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the Commission to declare its reasonable official intent to reimburse prior expenditures for the Improvements with proceeds of the Obligations; now, therefore, be it

RESOLVED, As follows:

Section 1. Authorization to Enter Into Installment Sale Agreements. The Commission hereby authorizes and directs the General Manager (or designee) to enter into one or more Installment Sale Agreements with the State Water Resources Control Board pursuant to Section 8B. 124 of the Charter, or to accept grants, to finance a portion of the design, acquisition and construction of the Improvements (including the costs of issuance for such obligations) and other incidental costs relating thereto; and the Commission hereby authorizes the General Manager (or designee) to execute and deliver such Installment Sale Agreements from time to time by the Commission pursuant to Section 8B. 124 of the Charter to finance all or a portion of the Improvements, including the San Francisco Westside Recycled Water Project; provided such Installment Sale Agreements, together with the issuance of Water Revenue Bonds under Ordinance No. 89-10 and the proposed Supplemental Ordinance, do not exceed \$1,737,724,038, and such Installment Sale Agreements do not exceed the maximum rate or rates of interest of twelve percent (12%) per annum and shall not exceed a term of thirty (30) years from the date of the execution of any Installment Sale Agreement, or such later date as provided in such contract; and further provided that the General Manager (or his designee) shall present the terms of any Installment Sale Agreements to this Commission for its approval prior to execution and delivery. The General Manager (or his designee) is hereby authorized to determine the timing, amount and manner of each Installment Sale Agreement executed pursuant to and subject to this authorization; provided however, the Commission's authorization to enter into any Installment Sale Agreements is subject to the Commission having obtained supplemental budgetary authority to cover such agreements. The Installment Sale Agreements are payable from a pledge of the Net Revenues of the Water Enterprise on a parity lien basis with the payment of any outstanding Bonds of the Water Enterprise, as such terms are defined in that certain Indenture dated as of

January 1, 2003, as amended and supplemented (the "Indenture"), between the Commission and U. S. Bank National Association.

Section 2. The Commission adopts this Resolution for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations.

Section 3. The Commission hereby declares its official intent, pursuant to Section 1.150-2 of the Treasury Regulations, to use proceeds of the Installment Sale Agreements to reimburse the Expenditures incurred in connection with the Improvements.

Section 4. The Commission reasonably expects the maximum principal amount of the Installment Sale Agreements to be issued for the San Francisco Westside Recycled Water Project to finance will not exceed \$188,128,710.

Section 5. Reimbursement. This Resolution is being adopted no later than 60 days after the date the Commission will expend moneys for the construction of a portion of the Improvements cost expected to be reimbursed with Capital Project Funds. Each Expenditure will be either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Obligations, (c) a non-recurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Commission so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Commission.

Section 6. General Authority. Subject to the conditions and limitations contained in this Resolution, the General Manger, the Deputy General Manager and Chief Operating Officer and the Assistant General Manager for Business Services and Chief Financial Officer and their duly authorized deputies and agents are hereby authorized and directed, jointly and severally, to take such actions and to execute and deliver such certificates, agreements, requests or other documents, as they may deem necessary or desirable to facilitate the execution and delivery of any Installment Sale Agreements, to obtain title and other insurance with respect to the facilities to be financed, and otherwise to carry out the provisions of this Resolution. Any such actions are solely intended to further the purposes of the Resolution, and are subject in all respects to the terms of the Resolution, and any such action cannot increase the risk to the Commission, and that such official shall consult with the City Attorney prior to execution and provided that within 30 days of the documents approved by this Resolution being executed by all parties, such final documents (showing marked changes, if any) shall be provided to the Clerk of the Board, for inclusion in the official file, together with a brief explanation of any changes from the date of the adoption of this Resolution.

Section 7. Request Supplemental Ordinance to Add to 2010 Ordinance; Submittal to Board for Approval. The General Manager, for, in the name of and on behalf of the Commission, is hereby authorized and directed to cause a proposed Supplemental Ordinance to be submitted to the Board of Supervisors for its approval to add to the 2010 Ordinance the authorization to provide for the negotiation, execution and delivery of Installment Sales Agreements for Improvements, including the San Francisco Westside Recycled Water Project, subject to the requirements of the Charter.

Section 8. Ratification. That all actions authorized and directed by this Resolution and heretofore taken are hereby ratified, approved and confirmed by this Commission.

Effective Date. This resolution shall take effect from and after its adoption.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of September 22, 2015.*

  
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*Secretary, Public Utilities Commission*