

File No. 151020

Committee Item No. 13

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

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date December 9, 2015

Board of Supervisors Meeting

Date \_\_\_\_\_

### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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Completed by: Victor Young Date December 4, 2015

Completed by: Victor Young Date \_\_\_\_\_

1 [Amending Ordinance No. 89-10 - Water Revenue Bond Issuance and Sale - Public Utilities  
2 Commission - Not to Exceed \$1,737,724,038]

3 **Ordinance amending Ordinance No. 89-10, to authorize the San Francisco Public**  
4 **Utilities Commission to enter into one or more State of California State Water**  
5 **Resources Control Board Installment Sale Agreements and Grants in an aggregate**  
6 **principal amount not to exceed the previously authorized amount of \$1,737,724,038 to**  
7 **finance, among other projects, the costs of the San Francisco Westside Recycled**  
8 **Water Project pursuant to the Charter, including Proposition E, an amendment to the**  
9 **Charter enacted by the voters on November 5, 2002; and ratifying previous actions**  
10 **taken in connection therewith.**

11  
12 NOTE: Additions are *single-underline italics Times New Roman*;  
13 deletions are *strike-through italics Times New Roman*.  
14 Board amendment additions are double-underlined;  
15 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. Findings. The Board of Supervisors (the "Board") of the City hereby finds  
18 and declares as follows:

19 A. On November 5, 2002, the voters of the City and County of San Francisco (the  
20 "City") approved Proposition E, codified as Article VIII B of the Charter of the City (the  
21 "Charter"), which among other things, authorized the Commission to issue revenue bonds,  
22 including notes, commercial paper or other forms of indebtedness, when authorized by  
23 ordinance approved by a two-thirds vote of the Board of Supervisors, for the purpose of  
24 reconstructing, replacing, expanding, repairing or improving water facilities or clean water  
25

1 facilities, or combinations of water and clean water facilities under the jurisdiction of the  
2 Commission; and

3 B. The Commission has from time to time issued its revenue bonds to finance  
4 projects benefitting the Water Enterprise; and

5 C. By Resolution No.15-0196 adopted on September 22, 2015 (the "Commission  
6 Resolution"), the Commission has determined to authorize the execution of State Revolving  
7 Fund Loans secured by one or more Installment Sale Agreements and Grants, entered into  
8 with the State of California Water Resources Control Board under the Clean Water State  
9 Revolving Fund (referred to herein as the "Installment Sale Agreements"), including the costs  
10 of the San Francisco Westside Recycled Water Project (the "Westside Project" as such  
11 project is further described in the Commission Resolution), costs of issuance and other  
12 incidental costs related thereto, and formally has requested this Board of Supervisors to  
13 authorize the execution and delivery of Installment Sale Agreements and to authorize the  
14 acceptance of available grants for such purposes, pursuant to Section 8B.124 of the Charter,  
15 such Commission Resolution and the Installment Sale Agreements referenced therein being  
16 on file with the Clerk of the Board in File No. \_\_\_\_\_, which is hereby declared to be a  
17 part of this Ordinance as if set forth fully herein; and

18 D. The Commission has determined that it is necessary and desirable to finance  
19 the costs of the Westside Project through the execution and delivery of the Installment Sale  
20 Agreements. The Installment Sale Agreements will be payable from a pledge of the Net  
21 Revenues of the Water Enterprise on a parity lien basis with outstanding Bonds of the Water  
22 Enterprise, as such terms as defined in that certain Indenture dated as of August 1, 2002, as  
23 amended and supplemented (the "Indenture"), between the Commission and U. S. Bank  
24 National Association, as trustee thereunder. The Board now desires to authorize the  
25 execution and delivery from time to time of Installment Sale Agreements by the Commission

1 pursuant to said Section 8B.124; provided however, the Commission shall file with the Board  
2 of Supervisors any and all certifications required by Section 8B.124 of the Charter prior to the  
3 execution and delivery of any Installment Sale Agreements authorized hereby (as further  
4 described below); and

5 E. Section 8B.124 of the Charter allows for the issuance of revenue bonds or  
6 other forms of indebtedness by ordinance approved by two-thirds of the Board, subject to the  
7 provision of certain certifications of an independent engineer retained by the Commission and  
8 certain certifications by the San Francisco Planning Department, which certifications shall  
9 make the findings and determinations set forth in Section 8B.124; and

10 F. The Commission has requested to supplement and amend Ordinance No. 89-  
11 10 to authorize, in addition to Water Revenue Bonds, the execution and delivery of Installment  
12 Sale Agreements, in either case, in an aggregate principal amount not to exceed  
13 \$1,737,724,038.

14 Section 2. Ordinance No. 89-10 is Amended and Supplemented. Ordinance No. 89-10  
15 is hereby amended and supplemented to authorize, in addition to the issuance of Water  
16 Revenue Bonds, the execution and delivery of Installment Sale Agreements to finance,  
17 among other projects, all or a portion of the costs of the San Francisco Westside Project (such  
18 project being further described in Commission Resolution 15-0196, adopted by the  
19 Commission on September 22, 2015); provided however that the Commission shall not be  
20 authorized to issue any such indebtedness in an aggregate principal amount exceeding  
21 \$1,737,724,038.

22 Section 3. Approval of the Installment Sale Agreements. Subject to the terms of this  
23 Ordinance, the Commission is hereby authorized to enter into one or more Installment Sale  
24 Agreements with the State Water Resources Control Board pursuant to Section 8B. 124 of  
25 the Charter to finance all or a portion of the Westside Project (including the costs of issuance

1 for such obligations) and other incidental costs relating thereto; and the Board hereby  
2 approves the execution and delivery of such agreements from time to time by the Commission  
3 pursuant to Section 8B. 124 of the Charter and in accordance with the Commission  
4 Resolution, at a maximum rate or rates of interest of not to exceed twelve percent (12%) per  
5 annum and for a term not to exceed 30 years from the date of the execution of any Installment  
6 Sale Agreement, or from such other date as otherwise provided in said Agreement. The  
7 Commission is hereby authorized to determine the timing, amount and manner of each  
8 Installment Sale Agreement executed pursuant to this authorization; provided however, the  
9 Commission's authorization to enter into any Installment Sale Agreements subject to the filing  
10 with the Clerk of the Board any certifications required by Proposition E prior to the issuance of  
11 any bonds herein authorized. The Commission is also hereby authorized to accept such  
12 grants to be applied to pay for the costs of the Westside Project.

13 Section 4. General Authority. The Controller, Treasurer, the City Attorney and other  
14 officers of the City and their duly authorized deputies and agents are hereby authorized and  
15 directed, jointly and severally, to take such actions and to execute and deliver such  
16 certificates, agreements, requests or other documents, as they may deem necessary or  
17 desirable to facilitate the execution and delivery of any Installment Sale Agreements, to obtain  
18 title and other insurance with respect to the facilities to be financed, and otherwise to carry out  
19 the provisions of this Ordinance. Any such actions are solely intended to further the purposes  
20 of the Ordinance, and are subject in all respects to the terms of the Ordinance, and any such  
21 action cannot increase the risk to the City, or require the City to spend any resources, and that  
22 such official shall consult with the City Attorney prior to execution and provided that within 30  
23 days of the documents approved by this Ordinance being executed by all parties, such final  
24 documents (showing marked changes, if any) shall be provided to  
25

1 the Clerk of the Board, for inclusion in the official file, together with a brief explanation of any  
2 changes from the date of the adoption of this Ordinance.

3 Section 5. Ratification of Prior Actions. All actions authorized and directed by this  
4 Ordinance in connection with the execution and delivery of Installment Sale Agreements or  
5 the acceptance of grants as described in this Ordinance, and heretofore taken, are hereby  
6 ratified, approved and confirmed by this Board.

7 Section 6. File Documents. All documents referred to as on file with the Clerk of the  
8 Board are in File No. 151020.

9 Section 7. Effective Date. Pursuant to Section 2.105 of the Charter, this Ordinance  
10 shall take effect immediately upon its adoption.

11  
12  
13 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

14  
15 By:   
16 MARK D. BLAKE  
Deputy City Attorney

<b>Item 13</b> <b>File 15-1020</b>	<b>Department:</b> Public Utilities Commission (PUC)
<b>EXECUTIVE SUMMARY</b>	
<b>Legislative Objectives</b>	
<ul style="list-style-type: none"> <li>• The proposed ordinance would amend the previously approved ordinance that authorized the PUC to sell \$1.7 billion in water revenue bonds, and allow the PUC to enter into one or more State Water Resources Control Board agreements for loans in an amount up to \$1.7 billion to finance Water Enterprise projects, including the San Francisco Westside Recycled Water Project.</li> </ul>	
<b>Key Points</b>	
<ul style="list-style-type: none"> <li>• In April 2010, the Board of Supervisors adopted Ordinance No. 89-10 approving the sale of water revenue bonds in a principal amount not-to-exceed \$1,737,724,038. Since the authorization to sell water revenue bonds, an additional funding source has become available to finance the PUC Water Enterprise projects. The Clean Water State Revolving Loan Fund Program, administered by the State Water Resources Control Board, provides low interest loans (SRF loans) and other financing mechanisms to fund water quality projects. The PUC's Water Enterprise's planned San Francisco Westside Recycled Water Project is eligible for State loan funds.</li> </ul>	
<b>Fiscal Impact</b>	
<ul style="list-style-type: none"> <li>• The State loan to fund the PUC's Westside Recycled Water Project provides a lower interest rate than revenue bond financing, having a current estimated interest rate of 1.6 percent. This compares to an estimated interest rate of 4 to 5 percent if the PUC water revenue bonds were used as a funding source. Using State loan funds as funding source for the \$188.1 million Westside Recycled Water Project would save the City an estimated \$3.8 million in interest costs. Such interest savings would be passed on to PUC water customers in order to offset future water rate increases.</li> <li>• Based on current market interest rates, PUC estimates that every \$100.0 Million financed with State loans instead of revenue bonds results in a debt service savings of approximately \$2.0 million each year over the life of a 30-year loan.</li> </ul>	
<b>Recommendation</b>	
<ul style="list-style-type: none"> <li>• Approve the proposed ordinance.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 8B.124 states that the Public Utilities Commission (PUC) may issue revenue bonds and 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 Public Utilities Commission.

**BACKGROUND**

In April 2010, the Board of Supervisors adopted Ordinance No. 89-10 approving the sale of water revenue bonds in a principal amount not-to-exceed \$1,737,724,038.

Since the authorization to sell water revenue bonds, an additional funding source has become available to finance the PUC recycled water projects. The Clean Water State Revolving Loan Fund Program, administered by the State Water Resources Control Board, provides low interest loans (SRF loans) and other financing mechanisms to fund water quality projects. The PUC's Water Enterprise's planned San Francisco Westside Recycled Water Project is eligible for State loan funds.

**Clean Water SRF for Water Recycling Funding Program**

The San Francisco Westside Recycled Water Project is a PUC Water Enterprise project that will begin construction in September 2016. It would bring recycled water from a recycled water treatment facility to Golden Gate Park, Lincoln Park Golf Course, the Presidio Golf Course and the National Cemetery to be used for irrigation. The Board of Supervisors has previous project appropriations to the Westside Project \$157,050,710 in water revenue bond proceeds. The PUC's 10-Year Capital Plan recommends a need for additional water revenue bond funds of \$31,078,000 for the period FY 2016-17 through FY 2019-20, for an estimated total Project budget of \$188,128,710.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would amend the previously approved ordinance that authorized the PUC to sell \$1.7 billion in water revenue bonds, and allow the PUC to enter into one or more State Water Resources Control Board agreements for loans in an amount up to \$1.7 billion to finance Water Enterprise projects, including the San Francisco Westside Recycled Water Project.

**FISCAL IMPACT**

The State loan to fund the PUC's Westside Recycled Water Project provides a lower interest rate than revenue bond financing, having a current estimated interest rate of 1.6 percent. This compares to an estimated interest rate of 4 to 5 percent if the PUC water revenue bonds were used as a funding source. Using State loan funds as funding source for the \$188.1 million Westside Recycled Water Project would save the City an estimated \$3.8 million in interest costs

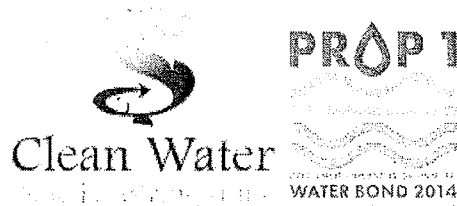


annually. Such interest savings would be passed on to PUC water customers in order to offset future water rate increases.

No other PUC Water Enterprise projects are identified as eligible for SRF loans at this time. However, the proposed ordinance would provide the PUC authority to borrow up to \$1.7 billion in SFR Loans instead of the originally approved water revenue bonds should additional projects become eligible.

#### **RECOMMENDATION**

Approve the proposed ordinance.




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PROPOSITION 1 WATER RECYCLING

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PUBLIC UTILITIES COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



Water Boards

INSTALLMENT SALE AGREEMENT AND GRANT

WATER RECYCLING CONSTRUCTION FINANCING

SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT

CLEAN WATER STATE REVOLVING FUND PROJECT NO. [ 8111-110]

WATER RECYCLING PROJECT NO. [ ]

PROPOSITION 1 PROJECT NO. XXXXXXXXXXXXX

AGREEMENT NO. [ ]

AMOUNT: \$

ELIGIBLE START DATE: \_\_\_\_\_

END DATE: \_\_\_\_\_

DATED AS OF [DATE]

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- EXHIBIT I – MATERIAL LITIGATION, INVESTIGATIONS, AUDITS

Name of Recipient  
Agreement No.: XX-XXX-550  
Project No.: X-XX-XXXX-XXX

This Installment Sale Agreement and Grant, including all exhibits and attachments hereto, (Agreement) is dated as of the date set forth on the cover page of this Agreement, by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California (State Water Board), and the local government entity identified on the first page of this Agreement, duly organized and existing under the laws of the State of California (Recipient):

WITNESSETH:

WHEREAS the United States of America, pursuant to Title VI of the federal Water Pollution Control Act as such has been and may be amended from time to time (Federal Act), requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the State as a condition to receipt of capitalization grants under the Clean Water Act; and

WHEREAS the State of California (State) has established a Clean Water State Revolving Fund (CWSRF or SRF) pursuant to Chapter 6.5 of Division 7 of the California Water Code (State Act) to be used for purposes of the Clean Water Act; and

WHEREAS the State Water Board is the state agency authorized to administer the CWSRF and provide financial assistance from the CWSRF to recipients for the construction of eligible projects, as provided in the State Act; and

WHEREAS through the passage of various bond acts, the voters of the State have authorized the State Water Board to make available certain general obligation bond proceeds (GO Bond Proceeds) for projects meeting certain criteria; and

WHEREAS the State Water Board determines eligibility for financial assistance from the SRF, determines a reasonable schedule for financing such projects, ensures compliance with the Federal Act and the State Act and the State GO Bond Act, and establishes the terms and conditions of an applicable financing agreement; and

WHEREAS the Recipient has applied to the State Water Board for financial assistance from the SRF, for the purpose of financing or refinancing the Project described in this Agreement, and the State Water Board has reviewed and approved said application; and

WHEREAS the Recipient has or will incur costs incurred in connection with the planning, design, acquisition, construction, and installation of the Project described in this Agreement, including exhibits hereto; and

WHEREAS on the basis of the Recipient's application and the representations and warranties set forth herein, the State Water Board proposes to assist in financing the costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Installment Payments, which obligation will be secured by Net Revenues, as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act and the State GO Bond Act;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I DEFINITIONS



1.1 Definitions.

Unless otherwise specified, each capitalized term used in this Agreement (including the Exhibits hereto) has the following meaning:

"Additional Payments" means the Additional Payments described in Section 3.2(c) of this Agreement.

"Agreement" means this Installment Sale Agreement and Grant, dated as of the date set forth on the first page hereof, by and between the State Water Board and the Recipient, including all exhibits and attachments hereto.

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Authorized Representative" means the duly appointed representative of the Recipient. For all authorized representatives, a certified original of the authorizing resolution that designates the authorized representative, by title, must accompany the first disbursement request, and any other documents or requests required or allowed under this Agreement.

"Bank" means the California Infrastructure and Economic Development Bank.

"Bonds" means any series of bonds issued by the Bank all or a portion of the proceeds of which may be applied to fund the Project in whole or in part or that are secured in whole or in part by Installment Payments paid hereunder.

"Code" as used in Article IV of this Agreement means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete.

"CWSRF" means the Clean Water State Revolving Fund.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer the SRF.

"Eligible Start Date" means the date set forth in Exhibit B, establishing the date after which construction costs may be incurred and eligible for reimbursement hereunder, subject to the 60-day look back period established in the Reimbursement Resolution.

"Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period hereafter selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Recipient's own employees or equipment for construction of the Project.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Installment Payments" means Installment Payments due and payable by the Recipient to the State Water Board under this Agreement, the amounts of which are set forth as Exhibit C hereto.

"Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported pursuant to Rule 15c2-12(b)(5).

"Loan Repayments" means repayments due and payable by the Recipient to the State Water Board under this Agreement, the amounts of which are set forth as Exhibit C hereto.

"Material Event" means any event that, as determined by the Division, might cause the State Water Board to violate the terms and conditions of its agreements with U.S. EPA or its bond covenants, including any of the following: (a) revenue shortfalls; (b) unscheduled draws on the Reserve fund, if any, or the Enterprise Fund; (c) substitution of insurers, or their failure to perform; (d) adverse findings by the Regional Water Quality Control Board; (e) litigation related to the Revenues, the System, or the Project, whether pending or anticipated; (f) any false warranty or representation made by the Recipient relevant to this Agreement; (g) loss, theft, damage, or impairment to the Revenues or the System; (h) seizure of, or levy on any collateral securing this Agreement; (i) dissolution or cessation of operations by Recipient, termination of Recipient's existence, insolvency of Recipient, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Recipient.

"Material Obligation" means any senior or parity obligation of the Recipient payable from Revenues as identified as of the date of this Agreement in Exhibit F, this Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Installment Payments and Additional Payments as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified in the Project Description attached hereto as Exhibit A and Exhibit A-FBA and in the documents thereby incorporated by reference.

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time and the WRFPP Guidelines.

"Project" means the Project financed by this Agreement as described in Exhibit A, Exhibit A-FBA, and in the documents incorporated by reference herein.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy, and which are reasonable, necessary and allocable by the Recipient to the Project under generally accepted accounting principles, plus capitalized interest.

"Project Funds" means funds disbursed by the State Water Board to the Recipient for purposes of this Agreement.

"Recipient" means the recipient of Project Funds, as identified on the front page of this Agreement.

"Reimbursement Resolution" means the Recipient's reimbursement resolution identified in Exhibit A of this Agreement.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with generally accepted accounting principles, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"Rule 15c2-12(b)(5)" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

"SRF" means the Clean Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board, an administrative and regulatory agency of the State of California.

"System" means all wastewater, water recycling, and/or potable water collection, transport, treatment, storage, and/or disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

"System Obligation" means any long-term obligation of the Recipient payable from the Enterprise Fund, including this Obligation and obligations reflected in Exhibit F hereto.

"WRFP Guidelines" means the Water Recycling Funding Program Guidelines, as amended by the State Water Board on June 16, 2015.

## 1.2 Exhibits and Appendices Incorporated.

All exhibits and appendices to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement.

## ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

The Recipient represents, warrants, and commits to the following as of the date set forth on the first page hereof and continuing thereafter for the term of the Agreement.

## 2.1 General Recipient Commitments.

The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance.

## 2.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized. This Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

## 2.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the first page hereof.

## 2.4 No Litigation.

There are no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project other than as described in Exhibit I hereto.

## 2.5 Solvency.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. As of the date set forth on the first page hereof, Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. Recipient is able to pay its debts as they become due.

## 2.6 Legal Status and Eligibility.

Recipient is duly organized and existing and in good standing under the laws of the State of California, and will remain so during the term of this Agreement. Recipient shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Recipient shall maintain its eligibility for funding under this Agreement for the term of this Agreement.

## 2.7 Financial Statements.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with generally accepted accounting principles or other accounting standards reasonably approved by the State Water Board. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

2.8 Completion of Project.

The Recipient agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A and Exhibit A-FBA.

2.9 Award of Construction Contracts.

- (a) The Recipient agrees to award the prime construction contract no later than the date specified in Exhibit A.
- (b) The Recipient agrees to promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient agrees to make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny such a timely request, but the Division may deny requests received after this time.

2.10 Notice.

(1) The Recipient agrees to notify the Division in writing within five (5) working days of the occurrence of the following:

- (a) Material defaults on this Obligation;
- (b) Unscheduled draws on debt service reserves held for this Obligation, if any, reflecting financial difficulties;
- (c) Bankruptcy, insolvency, receivership or similar event of the Recipient;
- (d) Actions taken pursuant to state law in anticipation of filing Chapter 9;
- (e) Other Material Events or Listed Events;
- (f) Change of ownership of the Project or change of management or service contracts, if any, for operation of the Project; or

(2) The Recipient agrees to notify the Division within 10 working days of the following:

- (a) Material defaults on System Obligations, other than this Obligation;
- (b) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
- (c) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
- (d) Substitution of credit or liquidity providers, if any, or their failure to perform;
- (e) Any litigation pending or threatened against Recipient regarding its water or wastewater capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the Recipient's Revenues;

- (f) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
- (g) Rating changes on outstanding System Obligations, if any;
- (h) Issuance of additional parity obligations; or
- (i) Negotiations regarding proposed parity obligations.

(3) The Recipient agrees to notify the Division promptly of the following:

- (a) Any substantial change in scope of the Project. The Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;
- (b) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (c) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (d) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the Division;
- (e) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- (f) Any monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board staff may observe and document such activities;
- (g) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days' notice to both the Division and USEPA Region IX. The contact for USEPA Region IX is Josh Amaris at Amaris.josh@epa.gov (415) 972-3597; or
- (h) Completion of Construction of the Project, and actual Project Completion.

## 2.11 Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 3.7 of this Agreement. The Recipient agrees to request, if necessary, the authorization of the Recipient's

decision-maker or decision-maker body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in Section 3.7 hereof and its obligation to operate and maintain the Project for its useful life. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding any such challenge.

#### 2.12 Project Access.

The Recipient agrees to ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Obligation. The Recipient acknowledges that, except for a subset of archeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated by Exhibit A and Exhibit A-FBA, and all reports, disbursement requests, and supporting documentation submitted hereunder.

#### 2.13 Project Completion; Initiation of Operations.

Upon Completion of Construction of the Project, the Recipient agrees to expeditiously initiate Project operations.

#### 2.14 Continuous Use of Project; Lease or Disposal of Project.

The Recipient agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring acceleration of all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.

#### 2.15 Project Reports.

(a) Quarterly Reports. The Recipient agrees to expeditiously provide status reports no less frequently than quarterly, starting with the execution of this Agreement. These reports shall accompany disbursement requests. At a minimum the reports will contain the following information:

- a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- a description of compliance with environmental requirements;
- a listing of change orders including amount, description of work, and change in contract amount and schedule;
- any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

(b) Project Completion Report. The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Quality Control Board on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must address the following:

- (a) describe the Project,
- (b) describe the water quality problem the Project sought to address,
- (c) discuss the Project's likelihood of successfully addressing that water quality problem in the future, and
- (d) summarize compliance with environmental conditions, if applicable.

Where the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.

- (c) **As Needed Reports.** The Recipient agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the SRF Program or to fulfill any reporting requirements of the federal government.
- (d) **Recycled water reports.** The Recipient shall submit annual reports for a period commencing with Completion of Construction through one (1) full year after all proposed recycled water users included in the Project are connected for service (minimum five [5] years).
  - Reports will be submitted in hard copy and electronically.
  - The first annual report is due on February 28th following the first complete calendar year of operation and shall cover the period from the Completion of Construction through the end of the first full calendar year thereafter. Subsequent annual reports are due by February 28th following the year covered. The annual reports shall be prepared in accordance with the "Water Recycling Funding Guidelines", dated July 2008, or any successor guidelines.
  - The reports shall briefly review the operation of the Project during the preceding year, identify current users and user contracts, provide monthly Project water deliveries to each user, the amount of fresh/potable water usage offset by the use of recycled water, and monthly amounts of water from each source delivered through Project facilities, list the funds received from other State and federal agencies for this Project during the period by agency, the amount, type of assistance (grants, loans, etc.), and a description of the facilities, components, and items the funds were used for; list the power and maintenance costs associated with the Project for the period, indicate current plans and programs for use of any Project capacity not under contract, summarize Project financial experience, describe compliance with any special conditions of this Agreement; describe direct and indirect benefits of the project to the state/local water supply and economy; describe other benefits and challenges arising from the project; and provide such other information as may be reasonably required to evaluate Project benefits and use of Project facilities.

#### 2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

The Recipient agrees to report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient agrees to comply with 40 CFR § 33.301.

#### 2.17 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Recipient agrees to:



- (1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
  - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
  - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.
- (b) The Recipient shall be required to maintain separate books, records and other material relative to the Project. The Recipient shall also be required to retain such books, records, and other material for itself and for each contractor or subcontractor who performed work on this project for a minimum of thirty-six (36) years after Project Completion. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement. The provisions of this section shall survive the discharge of the Recipient's Obligation hereunder and shall survive the term of this Agreement.

#### 2.18 Audit.

- (a) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.
- (b) Audit disallowances will be returned to the State Water Board.

#### 2.19 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain

the sign in good condition for the duration of the construction period. The sign shall include the following disclosure statement and color logos (available from the Division):



"Funding for this [estimated total project dollar amount] [name of] project has been provided in full or in part by Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds."

The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

The Recipient shall include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

### ARTICLE III FINANCING PROVISIONS

#### 3.1 Purchase and Sale of Project.

The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement without further action on the part of the Recipient or the State Water Board. The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

#### 3.2 Amounts Payable by the Recipient.

- (a) **Installment Payments.** Interest will accrue beginning with each disbursement. Beginning one year after Completion of Construction, repayment of the principal of the Project Funds, together with all interest accruing thereon, shall be repaid annually commencing on the date that is one (1) year after Completion of Construction, and shall be fully amortized by the date specified in Exhibit B.

The Installment Payments are based on a standard fully amortized assistance amount with equal annual payments. The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, less the Installment Payment. Installment Payment calculations will be made beginning one (1) year after Completion of Construction and shall be fully amortized not later than the date specified in Exhibit B. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

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Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient.

The Recipient agrees to make each Installment Payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred to the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other costs incurred. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

The Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

Each Installment Payment shall be paid by check and in lawful money of the United States of America.

The Recipient agrees that it shall not be entitled to interest earned on undisbursed funds. Upon execution of this Agreement, the State Water Board shall encumber an amount equal to the Obligation. The Recipient hereby agrees to pay Installment Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement.

- (b) Project Costs. The Recipient agrees to pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (c) Additional Payments. In addition to the Installment Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

- (d) The Recipient may without penalty prepay all or any portion of the outstanding principal amount of the Obligation provided that the Recipient shall also pay at the time of such prepayment all accrued interest on the principal amount prepaid through the date of prepayment.

### 3.3 Obligation Absolute.

The obligation of the Recipient to make the Installment Payments and other payments required to be made by it under this Agreement, from Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Installment Payments and Additional Payments have been paid in full, the Recipient shall not discontinue or suspend any Installment Payments or other payments required to be made by it hereunder when due, whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Installment Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

### 3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys in the SRF made available pursuant to this Agreement.

### 3.5 Disbursement of Project Funds; Availability of Funds.

- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
  - (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B and Exhibit A-FBA. (Note that this Agreement will be amended to incorporate Exhibit A-FBA after final budget approval.)
  - (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.15 above.
  - (4) The Recipient agrees that it will not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.

- (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
  - (6) The Recipient agrees that it will not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
  - (7) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

### 3.6 Withholding of Disbursements and Material Violations.

- (a) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
  - (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
  - (2) The Recipient fails to maintain reasonable progress toward completion of the Project.
- (b) For the purposes of this Agreement, the terms "material violation" or "threat of material violation" include, but are not limited to:
  - (1) Placement on the ballot of an initiative or referendum to reduce Revenues;
  - (2) Passage of such an initiative or referendum;
  - (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure Revenues; or
  - (4) Any other action or lack of action that may be construed by the Division as a material violation or threat thereof.

### 3.7 Pledge; Rates, Fees and Charges; Additional Debt.

- (a) Establishment of Enterprise Fund and Reserve Fund. In order to carry out its Material Obligations, the Recipient agrees and covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in Exhibit D of this Agreement, the Recipient agrees to establish and maintain a Reserve Fund.

- (b) Pledge of Net Revenues, Enterprise Fund, and Reserve Fund. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D in priority as specified in Exhibit F (senior, parity, or subordinate). The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D to secure the Obligation, including payment of Installment Payments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund, shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.
- (c) Application and Purpose of the Enterprise Fund. Subject to the provisions of any outstanding Material Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the Material Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt.
- (d) Rates, Fees and Charges. The Recipient agrees, to the extent permitted by law, to fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues equal to the debt service on System Obligations, including the Obligation, for such Fiscal Year, plus any coverage ratio specified in Exhibit D of this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
- (e) Additional Debt Test.
  - (1) Additional Senior Debt. The Recipient's future debt that is secured by revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the applicant's ability to repay its SRF obligations.
  - (2) Additional Parity Debt. The Recipient may secure future debt on parity with this Obligation under the conditions set forth in Exhibit D of this Agreement.

### 3.8 Financial Management System and Standards.

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient agrees to be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto, including but not limited to Section 210(a)-(d). (Pub. L. 98-502.)

### 3.9 Accounting and Auditing Standards.

The Recipient will maintain separate Project accounts in accordance with generally accepted accounting principles. The Recipient shall comply with "Standards for Audit of Governmental Organizations,

Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135, subd. (I).)

### 3.10 Other Assistance.

If federal or state funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient may retain such funding up to an amount which equals the Recipient's local share of Project Costs. To the extent allowed by requirements of other funding sources, any funding received in excess of the Recipient's local share, not to exceed the total amount funded under this Agreement, shall be remitted to the State Water Board to be applied to Installment Payments due hereunder, if any.

## ARTICLE IV . TAX COVENANTS

### 4.1 Purpose.

The purpose of this Article IV is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Article IV sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Project Funds will be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

### 4.2 Tax Covenant.

The Recipient agrees that it will not take or authorize any action or permit any action within its reasonable control to be taken, or fail to take any action within its reasonable control, with respect to the Project which would result in the loss of the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

### 4.3 Governmental Unit.

The Recipient is a state or local governmental unit as defined in Section 1.103-1 of the Treasury Regulations or an instrumentality thereof (a "Governmental Unit") and is not the federal government or any agency or instrumentality thereof.

### 4.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance costs it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project. Such costs have not previously been financed with the proceeds of any other issue of tax-exempt obligations.

### 4.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section 4.12 hereof, operates the Project.

### 4.6 Temporary Period.

The Recipient reasonably expects that at least eighty-five percent (85%) of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Recipient has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the Recipient or a related party) to a third party to expend at least five percent (5%) of the Project Funds on the costs of the Project. The

completion of acquisition, construction, improvement and equipping of the Project and the allocation of Project Funds to expenditures for the Project will proceed with due diligence.

#### 4.7 Working Capital.

No operational expenditures of the Recipient or any related entity are being, have been or will be financed or refinanced with Project Funds.

#### 4.8 Expenditure of Proceeds.

Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section 4.20 below), (ii) Preliminary Expenditures (as defined in Section 4.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Project Funds.

#### 4.9 Private Use and Private Payments.

None of the Project Funds or the Project are, have been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). None of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local governmental unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

#### 4.10 No Sale, Lease or Private Operation of the Project.

The Project will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section 4.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered (to the extent of its reasonable control) with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons



or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

#### 4.11 No Disproportionate or Unrelated Use.

None of the Project Funds or the Project are, have been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

#### 4.12 Management and Service Contracts.

With respect to management and service contracts, the determination of whether a particular use constitutes Private Use shall be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations, Revenue Procedure 97-13, and other applicable rules and regulations. As of the date hereof, none of the Project Funds or the Project are being used to provide property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than Governmental Units) that involve the management of property or the provision of services that do not comply with the standards of the Treasury Regulations and Revenue Procedure 97-13, as modified by IRS Notice 2014-67.

Except to the extent the Recipient has received an opinion of counsel expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel") and satisfactory to the State Water Board and the Bank to the contrary, the Recipient will not enter into any management or service contracts with any person or entity that is not a Governmental Unit for services to be provided with respect to the Project except with respect to contracts that meet the following requirements: (i) the compensation is reasonable for the services rendered; (ii) the compensation is not based, in whole or in part, on a share of net profits from the operation of the Project; (iii) the term of the contract, including all renewal options, does not exceed five (5) years; and (iv) all of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a stated amount, a periodic capitation fee, a capitation fee, a per unit fee, or combination of the preceding. The compensation for services may be all, or may include, a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses). A capitation fee is a fixed periodic amount for each person for whom the service provider assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons vary substantially, e.g., a fixed dollar amount payable per month to a service provider for each member of a plan for whom the provider agrees to provide all needed services for a specified period. A capitation fee may include a variable component of up to twenty percent (20%) of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

#### 4.13 No Disposition of Financed Property.

The Recipient does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

#### 4.14 Useful Life of Project.

The economic useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth on Exhibit B hereto.

#### 4.15 Installment Payments.

Installment Payments generally are expected to be derived from assessments, taxes, fees, charges or other current revenues of the Recipient in each year, and such current revenues are expected to equal or exceed the Installment Payments during each payment period. Any amounts accumulated in a sinking

fund or bona fide debt service fund to pay Installment Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Installment Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of Installment Payments will be depleted once a year except for a reasonable carryover amount not exceeding earnings on such fund or one-twelfth of the Installment Payments in either case for the immediately preceding year.

#### 4.16 No Other Replacement Proceeds.

The Recipient will not use any of the Project Funds to replace or substitute other funds of the Recipient that were otherwise to be used to finance the Project or which are or will be used to acquire securities, obligations or other investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

#### 4.17 No Sinking or Pledged Fund.

Except as set forth in Section 4.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Installment Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Installment Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

#### 4.18 Reserve Amount.

The State Water Board requires that the Recipient maintain and fund a separate account in an amount equal to one (1) year of debt service with respect to the Obligation (the "Reserve Amount") as set forth in Exhibit D. The Recipient represents that the Reserve Amount is and will be available to pay debt service with respect to the Obligation, if and when needed. The Reserve Amount consists solely of revenues of the Recipient and does not include any proceeds of any obligations the interest on which is excluded from gross income for federal income tax purposes or investment earnings thereon. The aggregate of the Reserve Amount, up to an amount not exceeding the lesser of (i) ten percent of the aggregate principal amount of the Obligation, (ii) the maximum annual debt service with respect to the Obligation, or (iii) 125 percent of the average annual debt service with respect to the Obligation, will be treated as a reasonably required reserve fund.

#### 4.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference, pursuant to Exhibit A.

#### 4.20 Reimbursement Expenditures.

Subject to other limitations in this Agreement, a portion of the Project Funds may be applied to reimburse the Recipient for Project costs paid before the date hereof, so long as the Project cost was (i) not paid prior to sixty (60) days before the Recipient's adoption of a declaration of official intent to finance the Project, (ii) not paid more than eighteen (18) months prior to the date hereof or the date the financed facility was placed-in-service, whichever is later, and (iii) not paid more than three (3) years prior to the date hereof (collectively, "Reimbursement Expenditures"), unless such cost is attributable to a "preliminary expenditure." Preliminary expenditure for this purpose means architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to the commencement of acquisition, construction or rehabilitation of the Project. Preliminary expenditures may not exceed 20% of the costs of the Project financed with the Obligation.

#### 4.21 Change in Use of the Project.

The Recipient reasonably expects to use all Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of Project Funds will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code, the Recipient will use all Project Funds and the Project solely as set forth in the Agreement.

#### 4.22 Rebate Obligations.

If the Recipient satisfies the requirements of one of the spending exceptions to rebate specified in Section 1.148-7 of the Treasury Regulations, amounts earned from investments, if any, acquired with the Project Funds will not be subject to the rebate requirements imposed under Section 148(f) of the Code. If the Recipient fails to satisfy such requirements for any period, it will notify the State Water Board and the Bank immediately and will comply with the provisions of the Code and the Treasury Regulations at such time, including the payment of any rebate amount or any yield reduction payments calculated by the State Water Board or the Bank.

#### 4.23 No Federal Guarantee.

The Recipient will not directly or indirectly use any of the Project Funds in any manner that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, taking into account various exceptions including any guarantee related to investments during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a bona fide debt service fund, investments of a reasonably required reserve or replacement fund, investments in bonds issued by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Treasury Regulations.

#### 4.24 No Notices or Inquiries From IRS.

Within the last 10 years, the Recipient has not received any notice of a final action of the Internal Revenue Service that determines that interest paid or payable on any debt obligation of the Recipient is or was includable in the gross income of an owner or beneficial owner thereof for federal income tax purposes under the Code.

#### 4.25 Amendments.

The provisions in this Article may be amended, modified or supplemented at any time to reflect changes in the Code upon obtaining written approval of the State Water Board and the Bank and an opinion of Nationally-Recognized Bond Counsel to the effect that such amendment, modification or supplement will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

#### 4.26 Reasonable Expectations.

The Recipient warrants that, to the best of its knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Article, the expectations of the Recipient as set forth in this Article are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Article IV.

## ARTICLE V MISCELLANEOUS PROVISIONS

### 5.1 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

### 5.2 Assignability.

The Recipient agrees and consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Installment Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation). This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

### 5.3 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.

### 5.4 Competitive Bidding

Any construction contracts related in any way to the Planning shall be let by competitive bid procedures which assure award of such contracts to the lowest responsible bidders. Recipient shall adhere to any applicable state or local ordinance for competitive bidding and applicable labor laws.

Recipient shall not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by the Division. Recipient must provide a full explanation if Recipient is proposing to award a construction contract to anyone other than the lowest responsible bidder.

### 5.5 Compliance with Law, Regulations, and Policy.

- (a) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Recipient agrees that, to the extent applicable, the Recipient will:
  - (1) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
  - (2) Comply with the State Water Board's Policy;
  - (3) Comply with and require compliance with the list of state laws attached as Exhibit H.
  - (4) Comply with and require its contractors and subcontractors on the Project to comply with federal DBE requirements; and

- (5) Comply with and require its contractors and subcontractors to comply with the list of federal laws attached as Exhibit E.

5.6 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

5.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, including Bonds issued on behalf of the State Water Board, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach. In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

5.8 Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

5.9 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

5.10 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State under this Agreement.

#### 5.11 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement and the discharge of the Recipient's Obligation hereunder.

#### 5.12 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

#### 5.13 Leveraging Covenants.

- (a) Tax Covenant. Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Article IV of this Agreement.
- (b) Disclosure of Financial Information, Operating Data, and Other Information. The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5). The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure reports and materials concerning the Recipient required by the terms of any financing other than this Agreement and to submit such reports to the State Water Board at the same time such reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

#### 5.14 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or

applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.

- (b) The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### 5.15 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

#### 5.16 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during its useful life in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund funded in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to enable the Recipient to pay all remaining unpaid principal portions of the Loan Repayments, if any, the Recipient shall provide additional funds to restore or replace the damaged portions of the System.

Recipient agrees that for any policy of general liability insurance concerning the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional

insured; and shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

#### 5.17 Permits, Subcontracting, and Remedies.

The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules and regulations. Recipient shall procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees; and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

#### 5.18 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met. In addition, the Recipient agrees to comply with the provisions of Exhibit G (Davis-Bacon).

#### 5.19 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

#### 5.20 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

#### 5.21 Related Litigation.

Under no circumstances may a Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

#### 5.22 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request. (40 CFR 31.34, 31.36)



5.23 State Water Board Action; Costs and Attorney Fees.

The Recipient agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

5.24 Termination; Immediate Acceleration; Interest.

- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete satisfaction of the Obligation by the Recipient, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Project Funds disbursed hereunder, accrued interest, penalty assessments due, and Additional Payments. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.
- (c) Where the Recipient is a private entity that has been determined to have violated an applicable prohibition in the Prohibition Statement below or has an employee who is determined by USEPA to have violated an applicable prohibition in the Prohibition Statement below that is either associated with performance under this aware or imputed to the Recipient using the standards and due process for imputing the conduct of an individual to an organization pursuant to 2 CFR Part 180, the Recipient acknowledges and agrees that any funds disbursed under this Agreement may become immediately due and payable and that penalties up to the amount of the federal capitalization grant may be due by the Recipient to the State Water Board, in addition to any other criminal or civil penalties that may become due. The Recipient, its employees, its contractors, and any subrecipients or subcontractors may not engage in trafficking in persons, procure a commercial sex act, or use forced labor.

5.25 Timeliness.

Time is of the essence in this Agreement.

5.26 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

5.27 Useful Life.

The Recipient agrees that the economic useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth in Exhibit B hereto.

Name of Recipient  
Agreement No.: XX-XXX-550  
Project No.: X-XX-XXXX-XXX

5.28 Venue.

The State Water Board and the Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

5.29 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

Name of Recipient  
Agreement No.: XX-XXX-550  
Project No.: X-XX-XXXX-XXX

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**«RECIPIENTCAPS»:**

By: \_\_\_\_\_  
Name: «Officer1»  
Title: «Title1»  
Date: \_\_\_\_\_

**STATE WATER RESOURCES CONTROL BOARD:**

By: \_\_\_\_\_  
Name:  
Title: Deputy Director  
Division of Financial Assistance  
Date: \_\_\_\_\_

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

1. The Recipient agrees to start construction no later than the estimated date of \_\_\_\_\_.
2. The Completion of Construction date is hereby established as \_\_\_\_\_.
3. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than six months after Completion of Construction, unless prior approval has been granted by the Division. Otherwise, the undisbursed balance of this Agreement will be deobligated.
4. Incorporated by reference into this Agreement are the following documents:
  - (a) the Final Plans & Specifications, dated \_\_\_\_\_, which are the basis for the construction contract to be awarded by the Recipient (Agreement will be amended to incorporate such document);
  - (b) the Waste Discharge Requirement Order No. \_\_\_\_\_ (and/or National Pollutant Discharge Elimination System Permit No. \_\_\_\_\_);
  - (c) the Recipient's Reimbursement Resolution No. \_\_\_\_\_ dated \_\_\_\_\_.
5. Scope of Work. [to be inserted by the State Water Board]

EXHIBIT B – PROJECT FINANCING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs, is Written Dollar Amount dollars and no cents (\$Dollar Amount).
2. Project Funding. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of up to Written Dollar Amount dollars and no cents (\$Dollar Amount). Of this amount, contingent on sections 4 and 5 of this Exhibit, the estimated amount of principal that will be due to the State Water Board under this Agreement is Written Dollar Amount dollars and no cents (\$Dollar Amount).
3. Payment, Interest Rate, and Charges. The Recipient agrees to make all Installment Payment according to the schedule in Exhibit C at an interest rate of Written Interest Rate % (X%) per annum. The Recipient agrees to pay an Administrative Service Charge in lieu of interest as reflected in Exhibit C. The Recipient agrees to pay a Small Community Grant Fund Charge in lieu of interest as reflected in Exhibit C.
4. [reserved]
5. Proposition 1. Contingent on the Recipient's performance of its obligations under this Agreement, the State Water Board agrees to make a grant of up to Written Dollar Amount dollars and no cents (\$Dollar Amount). Upon Completion of Construction, the State Water Board will prepare an alternate payment schedule reflecting this grant.
6. The term of this agreement is from \_\_\_\_\_ (Eligible Start Date) to \_\_\_\_\_.
7. Budget costs are contained in the Project Cost Table, which is part of Exhibit A-FBA. (This Agreement will be amended to incorporate Exhibit A-FBA.)
8. Preliminary budget costs are as follows:

Planning and design allowances: \$

Construction costs and disbursements are not available until after this Agreement has been amended to incorporate Exhibit A-FBA. Construction costs incurred prior to the Eligible Start Date on the cover page of this Agreement are not eligible for reimbursement. Failure to begin construction according to the timelines set forth in Exhibit A may require the Recipient to repay to the State Water Board all disbursed Project Funds, including planning and design allowances.

Name of Recipient  
Agreement No.: XX-XXX-550  
Project No.: C-06-XXXX-XXX

### EXHIBIT C –PAYMENT SCHEDULE

See the attached preliminary Payment Schedule dated Date. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

EXHIBIT D — SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

[environmental]

[credit – coverage, reserve]

[technical]

[other legal]

Additional Debt.

- (1) Senior Debt. The Recipient's future debt that is secured by revenues pledged herein may not be senior to this Obligation ~~[, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the applicant's ability to repay its CWSRF obligations];~~
- (2) Parity Debt. The Recipient may secure future debt on parity with this Obligation provided the Recipient delivers to the State Water Board a certificate of the Recipient meeting the applicable additional bonds test (related to the type of future parity obligation to be issued) required to be delivered under the Amended and Restated Indenture, dated as of August 1, 2002, by and between the Recipient and U.S. Bank National Association, as trustee [assuming coverage meets or exceeds our Policy requirement], so long as any Material Obligation besides this Obligation is outstanding and so long as coverage meets or exceeds the 1.1x coverage requirement for maximum annual debt service set forth in the Policy.

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following conditions required by USEPA:

1. Architectural and engineering contracts. Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that such any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
2. GAAP. The Recipient must maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB). The Recipient shall maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.
3. Fiscal sustainability. The Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.
4. American Iron and Steel. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
5. DUNS. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
6. Executive Compensation. Where the Recipient received 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), the Recipient agrees to notify the State Water Board. The Recipient agrees to provide information regarding executive compensation to the State Water Board upon request, in order for the State Water Board to comply with USEPA requirements.
7. Trafficking in Persons. The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds in the amount of \$101,065,000. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement and full payment will be due immediately, if a Recipient or



EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

subrecipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

8. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

The Recipient certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- (b) Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.

9. Anti-Lobbying Provisions (40 CFR Part 34) & Anti-Litigation Provisions (2 CFR 220, 225, or 230). The Recipient shall ensure that no funds under this Agreement are used to engage in lobbying of the federal government or in litigation against the United States unless authorized under existing law. The Recipient shall abide by 2 CFR 225 (OMB Circular A-87) (or, if not applicable, other parallel requirements), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities. The Recipient agrees to submit certification and disclosure forms in accordance with these provisions. In accordance with the Byrd Anti-Lobbying Amendment, any Recipient who makes a prohibited expenditure under 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. The Recipient shall abide by its respective 2 CFR 200, 225, or 230, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.
10. Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at [www.epa.gov/osbp](http://www.epa.gov/osbp). The Recipient shall comply

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts.

11. Prevailing Wage. The Recipient agrees to comply with the Davis-Bacon provisions attached as Exhibit G.

The Recipient agrees to comply with the following federal laws, as applicable to recipients of SRF funding:

**Environmental Authorities**

1. Archeological and Historical Preservation Act of 1974, Pub. L. 86-523, as amended, Pub. L. 93-291 16 USC § 469a-1.
2. Clean Air Act, Pub. L. 84-159, as amended.
3. Coastal Barrier Resources Act, Pub. L. 97-348, 96 Stat. 1653; 16 USC § 3501 et seq.
4. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 USC § 1451 et seq.
5. Endangered Species Act, Pub. L. 93-205, as amended; 16 USC § 1531 et seq..
6. Environmental Justice, Executive Order 12898.
7. Floodplain Management, Executive Order, 11988 as amended by Executive Order 12148.
8. Protection of Wetlands, Executive Order 11990, as amended by Executive Order No. 12608.
9. Farmland Protection Policy Act, Pub. L. 97-98; 7 USC § 4201 et seq.
10. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.
11. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 80 Stat. 917 (1966) 16 USC § 470 et seq.
12. Safe Drinking Water Act, Pub. L. 93-523, as amended; 42 USC § 300f et seq.
13. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 82 Stat. 913; 16 USC § 1271 et seq.
14. Essential Fish Habitat Consultation. Pub. L. 94-265, as amended, 16 USC § 1801 et seq.
15. Recycled Materials. Executive Order 13101; Section 6002 Resource Conservation and Recovery Act – 42 USC § 6962.

**Economic and Miscellaneous Authorities**

1. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372/ 42 USC § 3331 et seq.
2. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

- Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368; 40 CFR Part 31.
3. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655
  - 4.. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, EO 13202, as amended by EO 13208.
  6. Hotel and Motel Fire Safety Act of 1990 (PL 101-391, as amended). All conference, meeting, convention, or training funded in whole or in part with federal funds shall comply with the protection and control guidelines of this act. Recipients may search <http://www.usfa.dhs.gov/applications/hotel/>.

**Social Policy Authorities**

1. Age Discrimination Act of 1975, Pub. L. 94-135; 42 USC § 6102.
2. Race Discrimination. Title VI of the Civil Rights Act of 1964, Pub. L. 88-352.1; 42 USC § 2000d; 40 CFR Part 7.
3. Sex Discrimination. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act); 33 USC § 1251; 40 CFR Part 7.
4. Disability Discrimination. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250); 29 USC § 794; 40 CFR Part 7.
5. Equal Employment Opportunity, Executive Order 11246.
6. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

EXHIBIT F — SCHEDULE OF SYSTEM OBLIGATIONS

Except for the following and the Obligation evidenced by this Agreement, the Recipient certifies that it has no outstanding System Obligations and that it is in compliance with all applicable additional debt provisions of the following:

The following outstanding debt is senior to the Obligation:

Title	Interest Rate	End Date
NONE		

The following outstanding debt is on parity with the Obligation:

Title	Interest Rate	End Date
2015 Series A Water Revenue Bonds		
Other?		

The following outstanding debt is subordinate to the Obligation:

Title	Interest Rate	End Date
MOU between the City of San Francisco and the SPFUC (Headquarters Reimbursement)		
Other?		

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

The Recipient shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section 5.

Requirements Under The Consolidated Appropriations Act, 2014 (P.L. 113-76)

For Recipients That Are Governmental Entities:

If a Recipient has questions regarding when Davis Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board.

The Recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

### 1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2014 Consolidated Appropriation Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If the Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with the State Water Board before authorizing work on that site.

### 2. Obtaining Wage Determinations.

- (a) Recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
  - (i) While the solicitation remains open, the Recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The Recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipients may request a finding from the State Water Board that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State Water Board will provide a report of its findings to the Recipient.
  - (ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State Water Board, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the Recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

- (c) Recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

- (a) The Recipient shall ensure that the Recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014 Consolidated Appropriations Act, the following clauses:

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can

EXHIBIT G – DAVIS-BACON REQUIREMENTS

be easily seen by the workers. Recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

- (ii)(A) The Recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding. The Recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full



### EXHIBIT G – DAVIS-BACON REQUIREMENTS

social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient(s).

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
    - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
  - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor,

#### EXHIBIT G – DAVIS-BACON REQUIREMENTS

sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the

#### EXHIBIT G – DAVIS-BACON REQUIREMENTS

trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
  - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

EXHIBIT G – DAVIS-BACON REQUIREMENTS

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

- (a) Contract Work Hours and Safety Standards Act. The Recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The Recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

- (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

CFR 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the USEPA, the Department of Labor, and the State Water Board, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### 5. Compliance Verification

- (a) The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the Recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The Recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

## EXHIBIT H - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

### 1. EMERGENCY DROUGHT REGULATIONS

The Recipient certifies that it complies with and shall continue to comply with the State Water Board's Drought Emergency Water Conservation regulations in Section 863-866 of title 23 of the California Code of Regulations. The Recipient will include a discussion of its implementation in reports submitted pursuant to Section 2.15 of this Agreement.

### 2. CDIAC PRE-ISSUANCE and POST ISSUANCE REPORTS

If Recipient is a local or state government entity, Recipient must submit a Pre-Issuance Report to California Debt and Investment Advisory Commission 30 days prior to the issuance of any debt according to the requirements of Government Code section 8855(i). Such a Recipient must also submit a Post-Issuance Report to California Debt and Investment Advisory Commission 21 days after to the issuance of any debt according to the requirements of Government Code section 8855(j).

### 3. COMPLIANCE WITH STATE REQUIREMENTS

Recipient represents that is in in compliance with and agrees that it will continue to maintain compliance with the state requirements set forth below:

#### (a) Monthly Water Diversion Reporting

If Recipient is a water diverter, Recipient must maintain compliance with Water Code section 5103, subdivision (e)(2)(A) by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.

#### (b) Public Works Contractor Registration With Department Of Industrial Relations

To bid for public works contracts, Recipient and Recipient's subcontractors must register with the Department of Industrial Relations as required by Labor Code sections 1725.5 and 1771.1. Pursuant to subdivision (e) of section 1725.5 and subdivision (g) of section 1771.1, the registration requirements apply to any bid proposal submitted on or after March 1, 2015, and any contract entered into on or after April 1, 2015.

#### (c) Volumetric Pricing & Water Meters

If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must charge each customer for actual water volume measured by water meter according to the requirements of Water Code sections 526 and 527. Section 527 further requires that such suppliers not subject to section 526 install water meters on all municipal and industrial service connections within their service area by 2025.

#### (d) Urban Water Demand Management

If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must implement water demand management measures approved by the Department of Water Resources according to the requirements of Water Code section 10631.5, subdivision (a)(1).

#### (e) Delta Plan Consistency Findings

If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient must submit certification of project consistency with the Delta Plan to the Delta

EXHIBIT H - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.

(f) Agricultural Water Management Plan Consistency

If Recipient is an agricultural water supplier as defined by Water Code section 10608.12, Recipient must comply with Agricultural Water Management Planning requirements as mandated by Water Code section 10852.

(g) Charter City Project Labor Requirements

If Recipient is a charter city as defined in Labor Code section 1782, subdivision (d)(2), Recipient will comply with the requirements of Labor Code section 1782 and Public Contract Code section 2503 as discussed in the following subparts (a) and (b).

(1) Prevailing Wage

Recipient certifies that it is eligible for state funding assistance notwithstanding Labor Code section 1782.

Specifically Recipient certifies that no charter provision nor ordinance authorizes a construction project contractor not to comply with Labor Code's prevailing wage rate requirements, nor, within the prior two years (starting from January 1, 2015 or after) has the city awarded a public works contract without requiring the contractor to comply with such wage rate requirements according to Labor Code section 1782.

(2) Labor Agreements

Recipient certifies that no charter provision, initiative, or ordinance limits or constrains the city's authority or discretion to adopt, require, or utilize project labor agreements that include all the taxpayer protection antidiscrimination provisions of Public Contract Code section 2500 in construction projects, and that Recipient is accordingly eligible for state funding or financial assistance pursuant to Public Contract Code section 2503.

Name of Recipient  
Agreement No.: XX-XXX-550  
Project No.: C-06-XXXX-XXX

EXHIBIT I - MATERIAL LITIGATION, INVESTIGATIONS, AUDITS

None.







San Francisco  
**Water Power Sewer**  
Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102  
T 415.554.3155  
F 415.554.3161  
TTY 415.554.3488

**TO: Angela Calvillo, Clerk of the Board**

**FROM: Patrick Caceres, Policy and Government Affairs Manager**

**DATE: October 9, 2015**

**SUBJECT: Amending Ordinance No. 89-10 Water Revenue Bond Issuance and Sale - Public Utilities Commission - Not to Exceed \$1,737,724,038**

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Attached please find an original and one copy of a proposed ordinance authorizing the San Francisco Public Utilities Commission (SFPUC) to enter into One or More State of California State Water Resources Control Board Installment Sale Agreement and Grant in an aggregate principal amount not to exceed the previously authorized amount of \$1,737,724,038 to finance, among other projects, the costs of the San Francisco Westside Recycled Water Project pursuant to the Charter, including Proposition E, an amendment to the Charter enacted by the voters on November 5, 2002; and ratifying previous actions taken in connection therewith.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Ordinance
2. BOS Ordinance No. 89-10
3. SFPUC Resolution No. 15-0196
4. Notice of Determination (NOD) for Planning Department Case No. 2008.0091E
5. San Francisco Planning Commission Motion No. M-19422
6. San Francisco Planning Commission Motion No. M-19443
7. SFPUC Resolution No. 15-0187
8. SFPUC Resolution No. 08-0200
9. SFPUC Resolution No. 09-0102
10. BOS Ordinance No. 189-09

Please contact Patrick Caceres at 554-0706 if you need any additional information on these items.

**Edwin M. Lee**  
Mayor

**Ann Moller Caen**  
President

**Francesca Vietor**  
Vice President

**Vince Courtney**  
Commissioner

**Anson Moran**  
Commissioner

**Ike Kwon**  
Commissioner

**Harlan L. Kelly, Jr.**  
General Manager



**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*

# PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 15-0187

WHEREAS, San Francisco Public Utilities Commission (SFPUC) staff developed a project description under the Water System Improvement Program (WSIP) for meeting water supply demands, otherwise known as Project No. CUW30201, San Francisco Westside Recycled Water Project, in the City and County of San Francisco, California; and

WHEREAS, The objectives of the Project are to construct a new recycled water treatment facility, pump station, underground reservoir and associated pipelines and that would produce and deliver up to 2 million gallons per day of recycled water for irrigation, lake fill, and other non-potable uses, to diversify the SFPUC's water supply portfolio and increase the use of local water supply sources; and

WHEREAS, A Final Program Environmental Impact Report (PEIR) was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, the SFPUC approved the WSIP and adopted findings and a Mitigation Monitoring and Reporting Program (MMRP) as required by California Environmental Quality Act (CEQA) on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The Planning Department prepared an EIR for the Project that is tiered from the PEIR, as authorized by and in accordance with CEQA and the CEQA Guidelines; and

WHEREAS, On September 3, 2015, the San Francisco Planning Commission reviewed and considered the Final Environmental Impact Report (FEIR) for the Project in Planning Department File No. 2008.0091E, consisting of the Draft Environmental Impact Report (EIR) and the Responses to Comments document, and found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of the CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code, and found further that the FEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Responses to Comments document contains no significant revisions to the Draft EIR, and certified the completion of said FEIR in compliance with CEQA and the CEQA Guidelines in its Motion No. M-19442; and

WHEREAS, The Planning Commission, also on September 3, 2015, adopted CEQA Findings, including a statement of overriding considerations and an MMRP by Motion No. M-19443. The Planning Department found the Project consistent with the General Plan on September 3, 2015; and

WHEREAS, This Commission has reviewed and considered the information contained in the FEIR, all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the Project and the EIR; and

WHEREAS, The Project and FEIR files have been made available for review by the SFPUC and the public, and those files are part of the record before this Commission; and

WHEREAS, The Planning Department, Timothy Johnston, is the custodian of records, located in File No. 2008.0091E, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

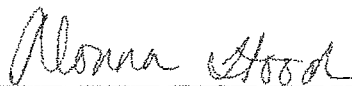
WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA, (CEQA Findings) and a proposed MMRP, which material was made available to the public and the Commission for the Commission's review, consideration and action; now, therefore, be it

RESOLVED, That this Commission has reviewed and considered the FEIR, finds that the FEIR is adequate for its use as the decision-making body for the actions taken herein, and hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Attachment B and incorporated herein as part of this Resolution by this reference thereto; and be it

FURTHER RESOLVED, That the General Manager, or his designee, is authorized to apply for, accept and execute required approvals from State agencies, including but not limited to, California Regional Water Quality Control Board, California Department of Transportation, and California Coastal Commission, and any other regulatory approvals as required. To the extent that the terms and conditions of the necessary approvals will require SFPUC to indemnify other parties, those indemnity obligations are subject to review and approval by the San Francisco Risk Manager. The General Manager is authorized to agree to such terms and conditions that are within the lawful authority of the agency to impose, in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the required approval, as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission hereby approves Project No. CUW30201, San Francisco Westside Recycled Water Project, and authorizes staff to proceed with actions necessary to implement the Project; provided, that staff returns to the Commission to seek: approval of necessary agreements with the Recreation and Park Department, Presidio Trust, California Army National Guard, and San Francisco Zoological Society; authorization for State Revolving Fund and State Water Recycling Fund financing; Board of Supervisor's approval, where required; and award of construction contracts.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of September 8, 2015.*



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Secretary, Public Utilities Commission



# Attachment A

## San Francisco Westside Recycled Water Project California Environmental Quality Act Findings: Findings of Fact, Evaluation of Mitigation Measures and Alternatives, and Statement of Overriding Considerations San Francisco Public Utilities Commission

In determining to approve the San Francisco Westside Recycled Water Project ("SFRW Project" or "Project") described in Section I, Project Description, below, the San Francisco Public Utilities Commission ("SFPUC") makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code.

This document is organized as follows:

**Section I** provides a description of the Project proposed for adoption, the environmental review process for the Project (San Francisco Westside Recycled Water Project Environmental Impact Report, Planning Department Case No., 2008.0091E, State Clearinghouse No. 2008052133) (the "Final EIR" or "EIR"), the approval actions to be taken and the location of records;

**Section II** identifies the impacts found not to be significant that do not require mitigation;

**Section III** identifies potentially significant impacts that can be avoided or reduced to less-than-significant levels through mitigation and describes the disposition of the mitigation measures;

**Section IV** identifies significant impacts that cannot be avoided or reduced to less-than-significant levels and describes any applicable mitigation measures as well as the disposition of the mitigation measures;

**Section V** evaluates the different Project alternatives and the economic, legal, social, technological and other considerations that support approval of the Project and the rejection of alternatives, or elements thereof, analyzed; and

**Section VI** presents a statement of overriding considerations setting forth specific reasons in support of the Commission's actions and rejection of the alternatives not incorporated into the Project.

The Mitigation Monitoring and Reporting Program ("MMRP") for the mitigation measures that have been proposed for adoption is attached with these findings as **Attachment B to Resolution No. 15-0187**. The MMRP is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. Attachment B provides a table setting forth each mitigation measure listed in the Final Environmental Impact Report for the Project ("Final EIR") that is required to reduce or avoid a significant adverse impact. Attachment B also specifies the agency responsible for implementation of each measure and establishes monitoring actions and a monitoring schedule. The full text of the mitigation measures is set forth in Attachment B.

These findings are based upon substantial evidence in the entire record before the Commission. The references set forth in these findings to certain pages or sections of the Draft Environmental Impact Report ("Draft EIR" or "DEIR") or the Comments and Responses document ("C&R") in the Final EIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

## **I. Approval of the Project**

### **A. Project Description**

By this action, the SFPUC adopts and implements the SFRW Project identified in the Final EIR. Specifically, the Project adopted by the SFPUC includes the following:

- Construction of a recycled water treatment plant at the SFPUC's Oceanside Water Pollution Control Plant (WPCP) and within a portion of the adjacent California Army National Guard site. Recycled water produced at this facility would be used in Golden Gate Park for irrigation and as fill water for Golden Gate Park lakes; and for irrigation in the Panhandle portion of the park; Lincoln Park Golf Course, and various areas of the Presidio. The treatment plant would have an annual average production capacity of up to 2 million gallons per day (mgd) and sized to meet peak-day demands of up to 5 mgd.
- Construction of a transmission pipeline primarily along 36th Avenue that would run between the proposed recycled water treatment plant at the Oceanside WPCP and the existing Central Reservoir in Golden Gate Park. The pipeline would deliver the recycled water from the Oceanside WPCP to the areas of use.
- Construction of transmission pipelines between the Central Reservoir and Lincoln Park and the Presidio and the adjacent Golden Gate Park Panhandle.
- Construction of an expanded underground reservoir to provide additional storage capacity and a new pump station to provide increased pumping capacity at the Central Reservoir site.

## B. Project Objectives

The three main objectives of the SFRW Project are:

- Diversify the SFPUC's water supply by developing recycled water.
- Develop a new water supply in San Francisco that is both reliable and drought resistant.
- Reduce the use of potable water and groundwater for irrigation and other nonpotable uses by supplying those demands with recycled water.

In addition, the Project is part of the SFPUC's adopted Water System Improvement Program ("WSIP") adopted by this Commission on October 30, 2008 (see Section C.1). The WSIP consists of over 70 local and regional facility improvement projects that would increase the ability of the SFPUC's water supply system to withstand major seismic events and prolonged droughts and to meet estimated water-purchase requests in the service areas. With the exception of the water supply goal, the overall WSIP goals and objectives are based on a planning horizon through 2030. The water supply goal to meet delivery needs in the SFPUC service area is based on a planning horizon through 2018. The overall goals of the WSIP for the regional water system are to:

- Maintain high-quality water.
- Reduce vulnerability to earthquakes.
- Increase water delivery reliability.
- Meet customer water supply needs.
- Enhance sustainability.
- Achieve a cost-effective, fully operational system.

The Project would help meet WSIP level-of-service goals and system performance objectives. These goals include providing a total of 10 mgd annual average of water supply from recycled water, groundwater, and conservation projects to meet retail demand in San Francisco. Of this amount, the WSIP project description indicated that approximately 4 mgd annual average would be derived from recycled water projects in San Francisco. This Project would provide up to 2 mgd of recycled water; currently identified customers are estimated to use 1.6 mgd. This Project would also enable implementation of the SFPUC's Groundwater Supply Project, approved by the SFPUC in December, 2013. The SFPUC's Groundwater Supply Project calls for installation of new groundwater wells to recover 2.5 to 3.0 mgd of groundwater in the first phase and conversion of existing irrigation wells in Golden Gate Park to potable use, providing 1.0 to 1.5 mgd of groundwater in the second phase. The second phase cannot occur until recycled water is available for Golden Gate Park landscaping or until another landscaping water source is identified. Thus the Project would also help meet the WSIP goal of providing approximately 4 mgd annual average of water supply from groundwater.

## C. Environmental Review

### 1. *Water System Improvement Program Environmental Impact Report*

On October 30, 2008, the SFPUC approved the Water System Improvement Program (also known as the "Phased WSIP") with the objective of repairing, replacing, and seismically upgrading the system's aging pipelines, tunnels, reservoirs, pump stations, and storage tanks (SFPUC, 2008; SFPUC Resolution No. 08-0200). The WSIP improvements span seven counties—Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, San Mateo, and San Francisco (see SFPUC Resolution No. 08-0200).

To address the potential environmental effects of the WSIP, the San Francisco Planning Department prepared a Program EIR ("PEIR"), which was certified by the San Francisco Planning Commission on October 30, 2008 (Motion No. 17734). At a project-level of detail, the PEIR evaluated the environmental impacts of the WSIP's water supply strategy and, at a program level of detail, it evaluated the environmental impacts of the WSIP's facility improvement projects. The PEIR contemplated that additional project-level environmental review would be conducted for the facility improvement projects, including the San Francisco Recycled Water Project.

### 2. *San Francisco Westside Recycled Water Project Environmental Impact Report*

In accordance with Sections 15063 and 15082 of the CEQA Guidelines, the Environmental Planning ("EP") staff of the San Francisco Planning Department, as lead agency, sent a first and then a revised Notice of Preparation ("NOP") to interested entities and individuals to begin the formal CEQA scoping process for the Project on June 5, 2008, and September 8, 2010, respectively. Following the 2010 NOP scoping period, the SFPUC in response to public feedback evaluated alternative possible sites, resulting in a revised Project proposal for which the Planning Department issued a revised NOP/Initial Study (IS) on July 16, 2014 with the scoping period ending on August 15, 2014. The NOP was distributed to interested parties that had received the initial NOPs, public agencies, additional interested parties and landowners/occupants located in the vicinity of the Project facilities, and was posted on the Planning Department's website and placed in the legal classified section of the San Francisco Chronicle.

The San Francisco Planning Department received nine comments on the scope of the EIR either at the scoping meeting or in writing following the 2014 scoping meeting. The comment inventories for all three NOPs are included in the Scoping Report in Appendix A of the EIR along with the IS.

EP then prepared the Draft EIR, which described the Project and the environmental setting, identified potential impacts, presented mitigation measures for impacts found to be significant or potentially significant, and evaluated Project alternatives. The Draft EIR analyzed the impacts associated with each of the key components of the Project, and identified mitigation measures applicable to reduce impacts found to be significant or potentially significant for each key component. It also included an analysis of three alternatives to the Project. In assessing

construction and operational impacts of the Project, the EIR considered the impacts of the Project as well as the cumulative impacts associated with the proposed Project in combination with other past, present, and future actions that could affect the same resources.

Each environmental issue presented in the Draft EIR was analyzed with respect to significance criteria that are based on EP guidance regarding the environmental effects to be considered significant. EP guidance is, in turn, based on CEQA Guidelines Appendix G, with some modifications.

The Draft EIR was circulated for public comment from March 18, 2015 through May 4, 2015. A public hearing on the Draft EIR to accept written or oral comments was held at the San Francisco Planning Commission meeting at San Francisco City Hall on April 23, 2015. During the public review period, EP received written comments sent through the mail, fax, or email. A court reporter was present at the public hearing, transcribed the public hearing verbatim, and prepared a written transcript.

EP then prepared the C&R document, which provided written responses to each comment received on the Draft EIR. The C&R document was published on August 19, 2015 and included copies of all of the comments received on the Draft EIR and individual responses to those comments. The C&R provided additional, updated information and clarification on issues raised by commenters, as well as SFPUC and Planning Department staff-initiated text changes to address Project updates. The Planning Commission reviewed and considered the Final EIR, which includes the Draft EIR and the C&R document, and all of the supporting information. The Final EIR provided augmented and updated information presented in the Draft EIR, on the following topics: Project description, cultural resources, transportation and circulation, air quality, hydrology and water quality, biological resources, and Project alternatives. This augmentation and update of information in the Draft EIR did not constitute new information or significance that altered any of the conclusions of the EIR.

In certifying the Final EIR, the Planning Commission determined that none of the factors are present that would necessitate recirculation of the Final EIR under CEQA Guidelines Section 15088.5. The Final EIR contains no information revealing (1) any new significant environmental impact that would result from the Project or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible Project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project, but that was rejected by the Project's proponents, or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. This Commission concurs in that determination.

The Commission finds that the Project is within the scope of the Project analyzed in the Final EIR and the Final EIR fully analyzed the Project proposed for approval. No new impacts have been identified that were not analyzed in the Final EIR.

## **D. Approval Actions**

### ***1. San Francisco Planning Commission Actions***

On August 13, 2015, the Planning Commission certified the Final EIR.

The Planning Commission also adopts CEQA Findings, makes General Plan consistency findings, and issues a Coastal Development Permit.

### ***2. San Francisco Public Utilities Commission Actions***

The SFPUC is taking the following actions and approvals to implement the Project:

- Adopts these CEQA findings and the attached Mitigation Monitoring and Reporting Program.
- Approves the Project, as described in these findings, and authorizes the General Manager or his designee to obtain necessary permits, consents, agreements and approvals as set forth in the Commission's Resolution No. 15-0187 approving the Project to which this Attachment A is attached. Approvals include entering into an agreement with the San Francisco Recreation and Parks Commission ("SFRPD") for construction in and use of SFRPD-managed land for recycled water facilities and pipelines.

### ***3. San Francisco Recreation and Parks Commission***

The Recreation and Parks Commission adopts CEQA Findings and approves an agreement with SFPUC for construction, operation and maintenance of recycled water facility structures and pipelines on park lands.

### ***4. San Francisco Board of Supervisors Actions***

The Planning Commission's certification of the Final EIR may be appealed to the Board of Supervisors. If appealed, the Board of Supervisors will determine whether to uphold the certification or to remand the Final EIR to the Planning Department for further review.

The San Francisco Board of Supervisors adopts CEQA Findings, approves an allocation of bond monies to pay for implementation of the Project, and approves the recycled water facility structures in Golden Gate Park.

### ***5. Other – Federal, State, and Local Agencies***

Implementation of the Project will involve consultation with or required approvals by other local, state, and federal regulatory agencies, including (but not limited to) the following:

- Other San Francisco City entities, including the Department of Public Works, and the San Francisco Municipal Transportation Agency

- California Army National Guard (lease amendment)
- California State Water Resources Control Board (loan approval; stormwater and recycled water discharges)
- California Department of Transportation (encroachment permit)
- California Coastal Commission (coastal permit)
- Presidio Trust (water supply agreement)
- U.S. Environmental Protection Agency and Regional Water Quality Control Board (NPDES permit)

To the extent that the identified mitigation measures require consultation or approval by these other agencies, this Commission urges these agencies to assist in implementing, coordinating, or approving the mitigation measures, as appropriate to the particular measure.

#### **E. Contents and Location of Records**

The record upon which all findings and determinations related to the Project are based ("Record of Proceedings") includes the following:

- The Draft EIR and all documents referenced in or relied upon by the EIR. (The references in these findings to the EIR or Final EIR include both the Draft EIR and the Comments and Responses document.)
- The PEIR for the Phased WSIP Variant, which is incorporated by reference in the SFRW Project EIR.
- All information (including written evidence and testimony) provided by City staff to the SFPUC and Planning Commission relating to the EIR, the Project, and the alternatives set forth in the EIR.
- All information (including written evidence and testimony) presented to the SFPUC and the Planning Commission by the environmental consultant and sub-consultants who prepared the EIR or that was incorporated into reports presented to the SFPUC.
- All information presented at any public hearing or workshop related to the Project and the EIR.
- The Mitigation Monitoring and Reporting Program.
- All other documents available to the SFPUC and the public, comprising the administrative record pursuant to Public Resources Code Section 21167.6(e).

The SFPUC has relied on all of the information listed above in reaching its decision on the Project, even if not every document was formally presented to the SFPUC. Without exception, these documents fall into one of two categories. Many documents reflect prior planning or legislative decisions that the SFPUC was aware of in approving the Project. Other documents influenced the expert advice provided to Planning Department staff or consultants, who then provided advice to the SFPUC. For these reasons, such documents form part of the underlying factual basis for the SFPUC's decisions relating to the adoption of the Project.

The public hearing transcript, a copy of all letters regarding the Draft EIR received during the public review period, the administrative record, and background documentation for the Final EIR are available at the San Francisco Planning Department, 1650 Mission Street, San Francisco. **Jonas P. Ionin**, Commission Secretary, is the Custodian of Records for the Planning Department Materials concerning approval of the Project and adoption of these findings are contained in SFPUC files, SFPUC Project No. CUW30102 in the Bureau of Environmental Management, San Francisco Public Utilities Commission, 525 Golden Gate Avenue, San Francisco, California 94102. The Custodian of Records is **Scott MacPherson**. All files have been available to the SFPUC and the public for review in considering these findings and whether to approve the Project.

#### **F. Findings about Significant Environmental Impacts and Mitigation Measures**

The following Sections II, III, and IV set forth the SFPUC's findings about the Final EIR's determinations regarding significant environmental impacts and the mitigation measures proposed to address them. These findings provide the written analysis and conclusions of the SFPUC regarding the environmental impacts of the Project and the mitigation measures included as part of the Final EIR and adopted by the SFPUC as part of the Project. To avoid duplication and redundancy, and because the SFPUC agrees with, and hereby adopts, the conclusions in the Final EIR, these findings will not repeat the analysis and conclusions in the Final EIR but instead incorporate them by reference and rely upon them as substantial evidence supporting these findings.

In making these findings, the SFPUC has considered the opinions of SFPUC staff and experts, other agencies, and members of the public. The SFPUC finds that (i) the determination of significance thresholds is a judgment decision within the discretion of the City and County of San Francisco; (ii) the significance thresholds used in the EIR are supported by substantial evidence in the record, including the expert opinion of the EIR preparers and City staff; and (iii) the significance thresholds used in the EIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Project. Thus, although, as a legal matter, the SFPUC is not bound by the significance determinations in the EIR (see Public Resources Code, Section 21082.2, subdivision (e)), the SFPUC finds them persuasive and hereby adopts them as its own.

These findings do not attempt to describe the full analysis of each environmental impact contained in the Final EIR. Instead, a full explanation of these environmental findings and conclusions can be found in the Final EIR, and these findings hereby incorporate by reference the



discussion and analysis in the Final EIR supporting the determination regarding the project impact and mitigation measures designed to address those impacts. In making these findings, the SFPUC ratifies, adopts and incorporates in these findings the determinations and conclusions of the Final EIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

As set forth below, the SFPUC adopts and incorporates all of the mitigation measures set forth in the Final EIR and the attached MMRP to substantially lessen or avoid the potentially significant and significant impacts of the Project. The SFPUC intends to adopt each of the mitigation measures proposed in the Final EIR. Accordingly, in the event a mitigation measure recommended in the Final EIR has inadvertently been omitted in these findings or the MMRP, such mitigation measure is hereby adopted and incorporated in the findings below by reference. In addition, in the event the language describing a mitigation measure set forth in these findings or the MMRP fails to accurately reflect the mitigation measures in the Final EIR due to a clerical error, the language of the policies and implementation measures as set forth in the Final EIR shall control. The impact numbers and mitigation measure numbers used in these findings reflect the information contained in the Final EIR.

In Sections II, III and IV below, the same findings are made for a category of environmental impacts and mitigation measures. Rather than repeat the identical finding dozens of times to address each and every significant effect and mitigation measure, the initial finding obviates the need for such repetition because in no instance is the SFPUC rejecting the conclusions of the Final EIR or the mitigation measures recommended in the Final EIR for the Project.

## **II. Impacts Found Not To Be Significant and Thus Do Not Require Mitigation**

Under CEQA, no mitigation measures are required for impacts that are less than significant (Public Resources Code, Section 21002; CEQA Guidelines, Sections 15126.4, subdivision (a)(3), 15091). Based on the evidence in the whole record of this proceeding, the SFPUC finds that the implementation of the Project either does not apply or will result in no impacts in the following areas: (1) Population and Housing: displace existing housing units or people or require new housing; (2) Transportation and Circulation: change air traffic patterns; (3) Noise: expose people to airplane noise or be substantially affected by existing noise levels; (4) Air Quality: create objectionable odors; (5) Recreation: create a need for new facilities; (6) Utilities and Service Systems: conflict with solid waste regulations; (7) Public Services: create a need for new or altered facilities; (8) Biological Resources: conflict with local policies protecting biological resources, such as trees, or a habitat conservation plan or other similar plan; (9) Geology and Soils: change existing topography or unique geologic features of the site; (10) Hydrology and Water Quality: expose housing to flooding hazard, impede or redirect flood flows, or expose people or structures to harm from flooding, seiche, tsunami or mudflow; (11) Hazardous Materials: create a safety hazard from aircraft or fires; (12) Mineral and Energy Resources: result in loss of mineral resource or availability of a resource recovery site; and (13) Agricultural Resources: all issues. These subjects are not further discussed in these findings.

The SFPUC further finds that implementation of the Project will not result in any significant impacts in the following areas and that these impact areas therefore do not require mitigation:

#### **Land Use**

- **Impact LU-1:** The Project would not physically divide an established community.
- **Impact LU-2:** The Project would not conflict with any applicable land use plans, policies, or regulations of any agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect.
- **Impact LU-3:** The Project would not impact the existing character of the vicinity.
- **Impact C-LU:** The Project would not have a cumulative impact on land use.

#### **Aesthetics**

- **Impact AE-1:** The Project would not have an adverse effect on a scenic vista, scenic resource, or the existing visual character or quality of the site and its surroundings.
- **Impact AE-2:** The Project would not result in a substantial source of light or glare.
- **Impact C-AE:** The Project would not have a cumulative impact on aesthetics.

#### **Population and Housing**

- **Impact PH-1:** The Project would not induce substantial population growth, either directly or indirectly.
- **Impact C-PH:** The Project would not have a project-specific impact on population and housing and, therefore, would not directly result in a significant cumulative impact on population and housing.

#### **Cultural Resources**

- **Impact CP-1:** The Project would not cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5, including those resources listed in Article 10 or Article 11 of the San Francisco Planning Code.

#### **Transportation and Circulation**

- **Impact TR-1:** The Project would not result in conflict with an applicable congestion management program.
- **Impact TR-2:** Closure of travel lanes during Project construction would temporarily reduce roadway capacity and increase traffic delays on area roadways, causing

temporary and intermittent conflicts with all modes of travel, but the effects would be of short duration and limited in magnitude.

- **Impact TR-3:** Project construction would cause temporary increases in traffic volumes on area roadways, but would not cause substantial conflicts with the performance of the circulation system.
- **Impact TR-4:** Project construction within roadways would not substantially limit access to adjacent roadways and land uses.
- **Impact TR-5:** Project construction would not substantially impair access to alternative transportation facilities (public transit, bicycle, or pedestrian facilities), although it could temporarily deteriorate the performance of such facilities.
- **Impact TR-6:** Project operation and maintenance activities would cause some increases in traffic volumes on area roadways, but would not substantially alter transportation conditions and would not cause conflicts with alternative travel modes, including vehicles, emergency vehicles, transit, pedestrians, and bicycle traffic.
- **Impact C-TR:** The Project, in combination with past, present, and reasonably foreseeable future projects, would not substantially contribute to cumulative traffic increases on local and regional roads.

#### Noise and Vibration

- **Impact NO-1:** The Project would not result in substantial groundborne vibration or groundborne noise levels.
- **Impact NO-2:** Project operations would not result in the exposure of persons to, or generation of, noise levels in excess of standards or a substantial increase in ambient noise levels in the Project vicinity.
- **Impact NO-3:** Construction of the Project would not result in a substantial temporary increase in ambient noise levels at the closest residential receptors, and would not expose persons to substantial noise levels in excess of standards established in the Noise Ordinance (Article 29 of the Police Code).
- **Impact C-NO:** The Project would not have significant cumulative noise impacts.

#### Air Quality

- **Impact AQ-1:** The Project would not create objectionable odors that would affect a substantial number of people.

- **Impact AQ-3:** The Project's construction activities would generate TACs, including DPM, but would not expose sensitive receptors to substantial pollutant concentrations.
- **Impact C-AQ:** The Project could result in cumulative air quality impacts associated with criteria pollutant and precursor emissions and health risks, but the Project's contribution would not be cumulatively considerable.

#### **Greenhouse Gas Emissions**

- **Impact C-GG-1:** The Project would generate greenhouse gas emissions during Project construction and operation, but not at levels that would result in a significant impact on the environment or conflict with any policy, plan, or regulation adopted for the purpose of reducing greenhouse gas emissions.

#### **Wind and Shadow**

- **Impact WS-1:** The Project would not alter wind in a manner that substantially affects public areas.
- **Impact WS-2:** The Project would not create new shadow in a manner that could substantially affect outdoor recreation facilities or other public areas.
- **Impact C-WS:** The Project would not have significant cumulative wind and shadow impacts.

#### **Recreation**

- **Impact RE-1:** The Project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facilities.
- **Impact C-RE:** The Project would not have a significant cumulative impact on recreation.

#### **Utilities and Service Systems**

- **Impact UT-1:** The Project would not result in construction or expansion of water or wastewater treatment facilities, exceed wastewater treatment requirements, or stormwater drainage facilities, exceed wastewater requirements, or result in a determination by the wastewater treatment provider that there is insufficient capacity to serve the Project.
- **Impact UT-2:** The Project would have sufficient water supply available, and would not require new or expanded water supply resources or entitlements.

- **Impact UT-3:** The Project would be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs.
- **Impact UT-4:** The Project would comply with all applicable statutes and regulations related to solid waste.
- **Impact UT-5:** The Project's construction would not result in a substantial adverse effect related to disruption, relocation, or accidental damage to existing utilities.
- **Impact C-UT:** The Project would not have a significant cumulative impact on utilities and service systems.

#### **Biological Resources**

- **Impact BI-2:** The Project would not have a substantial adverse effect on riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFW or USFWS.
- **Impact BI-3:** The Project would not have a substantial adverse effect on federally protected wetlands, as defined by Section 404 of the Clean Water Act.
- **Impact BI-4:** The Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

#### **Geology and Soils**

- **Impact GE-1:** The Project would not expose people or structures to substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, seismic groundshaking, or seismically induced ground failure.
- **Impact GE-2:** The Project would not result in substantial soil erosion or the loss of topsoil.
- **Impact GE-3:** The Project is not located on a geologic unit or soil that is unstable, or that could become unstable as a result of the Project.
- **Impact C-GE:** The Project would not have a significant cumulative impact related to geologic hazards.

#### **Hydrology and Water Quality**

- **Impact HY-1:** Project construction would not violate any water quality standards or waste discharge requirements or otherwise degrade water quality.

- **Impact HY-2:** Project operation would not contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems, provide substantial additional sources of polluted runoff, or, with the exception of potentially violating water quality standards, otherwise substantially degrade water quality.
- **Impact HY-3:** The Project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.
- **Impact HY-4:** The Project would not alter the existing drainage pattern of the area in a manner that would result in substantial erosion, siltation, or flooding on or off the site.
- **Impact C-HY-1:** The Project would not have a significant cumulative hydrology and water quality impact.

#### **Hazards and Hazardous Materials**

- **Impact HZ-1:** Project construction would not result in a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.
- **Impact HZ-2:** The Project would be constructed on a site identified on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 but excavation activities would not expose workers and the public to adverse effects from release of hazardous materials.
- **Impact HZ-3:** Reconfiguration of the chemical building interior would not expose workers and the public to hazardous building materials including asbestos-containing materials, lead-based paint, PCBs, bis(2-ethylhexyl) phthalate (DEHP), and mercury, or result in a release of these materials into the environment during construction.
- **Impact HZ-4:** The Project would not result in adverse effects related to hazardous emissions or handling of acutely hazardous materials within ¼ mile of an existing school.
- **Impact HZ-5:** The Project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.
- **Impact C-HZ-1:** The Project would not have a significant cumulative impact related to hazardous materials.

#### **Mineral and Energy Resources**

- **Impact ME-1:** The Project would not encourage activities that result in the use of large amounts of fuel, water, or energy, or use of these resources in a wasteful manner.

- **Impact C-ME:** The Project would not have significant cumulative mineral and energy impacts.

### **III. Findings of Potentially Significant or Significant Impacts That Can Be Avoided or Reduced to a Less-Than-Significant Level through Mitigation and the Disposition of the Mitigation Measures**

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potentially significant impacts if such measures are feasible (unless mitigation to such levels is achieved through adoption of a project alternative). The findings in this Section III and in Section IV concern mitigation measures set forth in the EIR. These findings discuss mitigation measures as proposed in the EIR and recommended for adoption by the SFPUC, which can be implemented by the SFPUC. The mitigation measures proposed for adoption in this section and referenced following each Project impact discussed in this Section III, are the same as the mitigation measures identified in the Final EIR for the Project. The full text of each mitigation measure listed in this section is contained in the Final EIR and in Attachment B, the MMRP. The Commission finds that for the reasons set forth in the Final EIR and elsewhere in the record, the impacts identified in this section would be reduced to a less-than-significant level through implementation of the mitigation measures identified in this section.

#### **Project Impacts**

##### **Cultural Resources**

**Impact CP-2: The proposed project could cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5. (Less than Significant with Mitigation)**

Based on the results of the background research, geoarchaeological assessment, and survey results, there is generally, throughout the CEQA Area of Potential Effect, a low potential for uncovering archaeological resources during Project construction. However, it is possible that previously unrecorded and buried (or otherwise obscured) archaeological deposits could be discovered during Project construction. Excavation, grading, and the movement of heavy construction vehicles and equipment could expose and cause impacts on unknown archaeological resources, which would be a *significant* impact. The impact would be reduced to a less-than-significant level through mitigation measure M-CP-2, which requires avoidance measures or appropriate treatment of cultural resources if accidentally discovered.

- *Mitigation Measure M-CP-2, Accidental Discovery of Archaeological Resources*

**Impact CP-3: The Project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. (Less than Significant with Mitigation)**

Ground-disturbing activities associated with the construction of the recycled water treatment plant would extend about 23 feet into the Colma Formation, a geologic unit with a high paleontological sensitivity. Vertebrate fossils, including parts of mammoths and bison, have been found in the Colma Formation in San Francisco. Given the sensitivity of the Colma Formation and the depth of excavation, the Project could adversely impact paleontological resources at the water treatment plant site, a *significant* impact. The impact would be reduced to a less-than-significant level through mitigation measure M-CP-3, which requires the contractor to stop all ground disturbance within 50 feet if a paleontological resource is encountered and to implement actions to investigate the discovery and recover fossil remains by a qualified professional before ground-disturbing activities can resume.

- *Mitigation Measure M-CP-3, Accidental Discovery of Paleontological Resources*

**Impact CP-4: The proposed Project could accidentally disturb human remains, including those interred outside of formal cemeteries. (Less than Significant with Mitigation)**

Based on the background research, geological assessment, and survey results, there is a low potential for Project construction to uncover human remains, except for the Project area adjacent to the Golden Gate Cemetery (see Impact CP-5). Although no known human burials have been identified within the Project site, the possibility of encountering human remains cannot be entirely discounted. Earthmoving activities associated with Project construction could result in direct impacts on previously undiscovered human remains. Therefore, the disturbance to human remains could be a *significant* impact. The impact would be reduced to a less-than-significant level through mitigation measure M-CP-4, which requires avoidance measures or the appropriate treatment of human remains if accidentally discovered.

- *Mitigation Measure M-CP-4, Accidental Discovery of Human Remains*

**Impact CP-5: Construction of the Project along Clement Street from 36th Avenue to 39th Avenue on the south side of Lincoln Park could disturb human remains associated with the historic-period Golden Gate Cemetery. (Less than Significant with Mitigation)**

The Project borders the boundary of Lincoln Park, the location of the historic-period Golden Gate Cemetery where 19th century inhabitants of San Francisco were buried. Past projects in the area have uncovered human remains, which have provided a wealth of information about the overall health of these former inhabitants. While there is a slight potential for the Project to uncover human remains, the disturbance of remains would be a *significant* impact. The impact would be reduced to a less-than-significant level with the implementation of mitigation measure M-CP-5, which requires the development of a monitoring program to monitor for the presence of human remains in the historic-period during construction and to take specific steps to comply with legal requirements and to take mitigation actions to recover historically important data.



- *Mitigation Measure M-CP-5, Archeological Monitoring Program*

#### **Air Quality**

**Impact AQ-2: The Project's construction activities would generate fugitive dust and criteria air pollutants, and could violate an air quality standard or contribute substantially to an existing or projected air quality violation. (Less than Significant with Mitigation)**

When the construction schedules of components of the Project overlap, NO<sub>x</sub> emissions could exceed the BAAQMD's 54 pounds/day significance criterion, a *significant* impact. Mitigation measure M-AQ-2 would reduce the Project's combined construction-related criteria pollutant emissions below the significance criteria by using construction equipment with Tier 3 engines or better, reducing the impact to less than significant.

- *Mitigation Measure M-AQ-2, Construction Emissions Minimization*

#### **Biological Resources**

**Impact BI-1: The Project would potentially have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS. (Less than Significant with Mitigation)**

The overall potential of the Project area to support special-status fish or plant species is considered low because the Project area lacks suitable habitat. Several special-status animals might use habitat in certain parts of the Project area or vicinity for roosting, foraging, or breeding purposes, including California red-legged frog, western pond turtle, Yuma myotis, western red bat, and hoary bat. In addition, there are a number of native resident and migratory bird species protected under federal and State legislation with the potential to use trees, shrubs, and other habitats as well as buildings within the Project area for nesting and foraging.

Existing trees at the Oceanside WPCP facility and the California Army National Guard property, and in the vicinity of the Central Pump Station, could support native nesting birds. Removal and/or relocation of trees with active nests and construction noise and activity adjacent to such trees during bird nesting season could result in nest abandonment, destruction, injury or mortality of nestlings and disruption of reproductive behavior during the breeding season, including mortality of individual birds, such as red-shouldered hawk, red-tailed hawk, Cooper's hawk, or American kestrel, a *significant* impact. Implementation of mitigation measure M-BI-1a would reduce potential impacts on special-status birds to a less-than-significant level by requiring surveys of the Project site to identify nests and protection of nesting birds.

Vegetation clearing (including tree removal) at the Oceanside WPCP and the Central Pump Station could result in direct mortality of special-status bats. Direct mortality of special-status bats would be a *significant* impact. Mitigation measure BI-1b would require surveys of the

Project site within two weeks of tree removal. With implementation of M-BI-1b, the impact on roosting bats would be reduced to less than significant.

Due to the proximity of aquatic habitats to the Lake Merced, North Lake, and Central Pump Station well facility sites, western pond turtle and California red-legged frog could utilize upland habitat where the Project construction activities will occur. If California red-legged frog or western pond turtle are present, they could be injured or killed, a *significant* impact. Mitigation measure M-BI-1c would mitigate the effect by requiring pre-construction surveys within 14 days of the construction activity. With implementation of mitigation measure M-BI-1c, the impact would be less than significant.

- *Mitigation Measure M-BI-1a, Nesting Bird Protection Measures*
- *Mitigation Measure M-BI-1b, Avoidance and Minimization Measures for Special-Status Bats*
- *Mitigation Measure M-BI-1c, Avoidance and Minimization Measures for California Red-Legged Frog and Western Pond Turtle*

### **Cumulative Impacts**

#### **Cultural Resources**

**Impact C-CP: The Project could result in cumulatively considerable impacts related to historical, archaeological, paleontological resources or human remains. (Less than Significant with Mitigation)**

Cumulative projects in the Project vicinity could adversely affect the same cultural resources affected by the Project and the Project could make a considerable contribution to a cumulative cultural resource impact, a *significant* impact. The Project's impacts, however, are site specific and implementation of site-specific mitigation measures M-CP-2, M-CP-3, M-CP-4 and M-CP-5 would reduce Project impacts such that the Project's contribution to this cumulative impact would be less than significant.

- *Mitigation Measure M-CP-2, Accidental Discovery of Archaeological Resources*
- *Mitigation Measure M-CP-3, Accidental Discovery of Paleontological Resources*
- *Mitigation Measure M-CP-4, Accidental Discovery of Human Remains*
- *Mitigation Measure M-CP-5, Archeological Monitoring Program*

#### **Biological Resources**

**Impact C-BI-1: The Project, in combination with past, present, and reasonably foreseeable future projects in the vicinity, could result in significant cumulative impacts on biological resources. (Less than Significant with Mitigation)**

Construction of the Project has the potential to adversely affect special-status species, if present, including California red-legged frog, western pond turtle, special-status bats, and native nesting birds. It is assumed that the cumulative projects including the past cumulative projects have already caused substantial adverse cumulative changes to biological resources in San Francisco; the Project area was converted from its original sand dune habitat to current uses. Current and reasonably foreseeable projects could have construction-related impacts if construction occurs at the same time as the Project. These projects include the Vista Grande Drainage Basin Improvement Plan, the Parkmerced Project, and the San Francisco Groundwater Supply Project. The Project's contribution to cumulative impacts on biological resources would be cumulatively considerable, a *significant* impact. However, with the implementation of Project-level mitigation measures to reduce impacts to these species, the Project's incremental contribution to potential cumulative impacts on biological resources would not be cumulatively considerable (less than significant).

- *Mitigation Measure M-BI-1a, Nesting Bird Protection Measures*
- *Mitigation Measure M-BI-1b, Avoidance and Minimization Measures for Special-Status Bats*
- *Mitigation Measure M-BI-1c, Avoidance and Minimization Measures for California Red-Legged Frog and Western Pond Turtle*

#### **IV. Significant Impacts That Cannot Be Avoided or Reduced to a Less-Than-Significant Level**

##### **WSIP Impact**

Based on substantial evidence in the whole record of these proceedings, the SFPUC finds that, where feasible, changes or alterations have been required or incorporated into the SFRW Project to reduce the significant environmental impacts as identified in the Final EIR for the Project. All Project-specific impacts will be reduced to a less-than-significant level with the implementation of the mitigation measures proposed in the Final EIR and set forth in the MMRP, attached hereto as Attachment B.

The SFPUC further finds, however, that the Project is a component of the WSIP and, therefore, will contribute to the significant and unavoidable impact caused by the WSIP water supply decision. For the WSIP impact listed below, the effect remains significant and unavoidable. The SFPUC determines that the following significant impact on the environment, as reflected in the Final PEIR, is unavoidable, but under Public Resources Code Section 21081(a) (3) and (b), and CEQA Guidelines Sections 15091(a) (3), 15092(b) (2) (B), and 15093, the SFPUC determines that the impact is acceptable due to the overriding considerations described in Section VI below. This finding is supported by substantial evidence in the record of this proceeding.

The WSIP PEIR and this Commission's Resolution No. 08-0200 related to the WSIP water supply decision identified three significant and unavoidable impacts of the WSIP: *Impact 5.4.1-2-*

*Stream Flow: Effects on flow along Alameda Creek below the Alameda Creek Division Dam; Impact 5.5.5-1-Fisheries: Effects on fishery resources in Crystal Springs reservoir (Upper and Lower); and Impact 7-1-Indirect growth inducing impacts in the SFPUC service area.* Mitigation measures that were proposed in the PEIR were adopted by this Commission for these impacts; however, the mitigation measures could not reduce all the impacts to a less than significant level, and these impacts were determined to be significant and unavoidable. This Commission has already adopted the mitigation measures proposed in the PEIR to reduce these impacts when it approved the WSIP in its Resolution No. 08-0200. This Commission also adopted a Mitigation Monitoring and Reporting Program as part of that approval. The findings regarding the three impacts and mitigation measures for these impacts set forth in Resolution No. 08-0200 are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings.

Subsequent to the certification of the PEIR, the Planning Department has conducted more detailed, site-specific review of two of the significant and unavoidable water supply impacts identified in the PEIR. In the case of *Impact 5.5.5-1*, the Project-level fisheries analysis in the Lower Crystal Springs Dam Improvement Project Final EIR modifies the PEIR impact determination based on more detailed site-specific data and analysis and determined that impacts on fishery resources due to inundation effects would be less than significant. Project-level conclusions supersede any contrary impact conclusions in the PEIR. The SFPUC adopted CEQA Findings with respect to the approval of the Lower Crystal Springs Dam Improvement Project in Resolution No. 10-0175. The CEQA Findings in Resolution No. 10-0175 related to the impacts on fishery resources due to inundation effects are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings.

In the case of *Impact 5.4.1-2*, the project level analysis in the Calaveras Dam Replacement project Final EIR modifies the PEIR determination and concludes that the impact related to stream flow along Alameda Creek between the diversion dam and the confluence with Calaveras Creek (PEIR Impact 5.4.1-2) will be less than significant based on more detailed, site-specific modeling and data. Project-level conclusions supersede any contrary impact conclusions in the PEIR. The SFPUC adopted CEQA Findings with respect to the approval of the Calaveras Dam Improvement Project in Resolution No. 11-0015. The CEQA Findings in Resolution No. 11-0015 related to the impacts on fishery resources due to inundation effects are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings.

The remaining significant and unavoidable water supply impact listed in Resolution No. 08-0200 is as follows, relating to *Impact 7-1*:

**Potentially Significant and Unavoidable WSIP Water Supply and System Operation Impact**

- **Growth:** Indirect growth-inducement impacts in the SFPUC service area.

## V. Evaluation of Project Alternatives

This section describes the Project as well as alternatives and the reasons for approving the Project and for rejecting the alternatives as infeasible. CEQA mandates that an EIR evaluate a reasonable range of alternatives to the Project or the Project location that generally reduce or avoid potentially significant impacts of the Project. CEQA requires that every EIR also evaluate a "No Project" alternative. Alternatives provide a basis of comparison to the Project in terms of their significant impacts and their ability to meet Project objectives. This comparative analysis is used to consider reasonable, potentially feasible options for minimizing environmental consequences of the Project.

### A. Reasons for Approval of the Project

The overall goals of the WSIP for the regional water system are to:

- Maintain high-quality water and a gravity-driven system.
- Reduce vulnerability to earthquakes – deliver basic service to the three regions in the service area within 24 hours and restore facilities to meet average-day demand within 30 days after a major earthquake.
- Increase delivery reliability – allow planned maintenance shutdown without customer service interruption and minimize risk of service interruption from unplanned outages.
- Meet customer water supply needs through 2018 – meet average annual water purchase requests during non-drought years and meet dry-year delivery needs while limiting rationing to a maximum 20 percent systemwide; diversify water supply options during non-drought and drought years and improve use of new water resources, including the use of groundwater, recycled water, conservation and transfers.
- Enhance sustainability.
- Achieve a cost-effective, fully operational system.

The Project would help meet WSIP level-of-service goals and system performance objectives. Specific objectives of the Project are to:

- Diversify the SFPUC's water supplies by developing recycled water.
- Develop a new water supply in San Francisco that is both reliable and drought resistant.
- Reduce the use of potable water and groundwater for irrigation and other nonpotable uses by supplying those demands with recycled water.

The WSIP aims to provide a total of 10 mgd annual average of water supply from recycled water, groundwater, and conservation projects to meet retail demand in San Francisco. Of this amount,

the WSIP project description indicated that approximately 4 mgd annual average would be derived from recycled water projects in San Francisco. This Project would provide up to 2 mgd of recycled water; currently identified customers are estimated to use 1.6 mgd. Also, this Project would enable implementation of the SFPUC's Groundwater Supply Project, approved by the SFPUC in December, 2013. The SFPUC's Groundwater Supply Project calls for installation of new groundwater wells to recover 2.5 to 3.0 mgd of groundwater in the first phase and conversion of existing irrigation wells in Golden Gate Park to potable use, providing 1.0 to 1.5 mgd of groundwater in the second phase. The second phase cannot occur until recycled water is available for Golden Gate Park landscaping or until another landscaping water source is identified. Thus the Project would also help meet the WSIP goal of providing approximately 4 mgd annual average of water supply from groundwater.

This increase in water supply would improve the SFPUC's ability to deliver water to its customers in San Francisco during both drought and non-drought periods. The Project will help the SFPUC to diversify its water supply portfolio, which largely consists of imported surface water. It would add up to 2 mgd from recycled water to the SFPUC water supply, and enable implementation of the second phase the SFPUC's Groundwater Supply Project, which would provide 1.0 to 1.5 mgd of groundwater to the SFPUC's potable water supply. The proposed Project is a fundamental component of the SFPUC's WSIP and is needed to fully meet WSIP goals and objectives, in particular those for seismic reliability, delivery reliability, and water supply reliability.

## **B. Alternatives Rejected and Reasons for Rejection**

The Commission rejects the alternatives set forth in the Final EIR and listed below because the Commission finds that there is substantial evidence, including evidence of economic, legal, social, technological, and other considerations described in this section in addition to those described in Section VI below under CEQA Guidelines 15091(a)(3), that make such Alternatives infeasible. In making these infeasibility determinations, the Commission is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." The Commission is also aware that under CEQA case law the concept of "feasibility" encompasses (i) the question of whether a particular alternative promotes the underlying goals and objectives of a project, and (ii) the question of whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

### ***Alternative A: No Project***

Under the No Project Alternative, the SFRW Project would not be constructed or operated. The proposed recycled water treatment, storage, and distribution facilities would not be constructed and 1.6 mgd of recycled water would not be produced or delivered to customers to offset potable demand. Existing irrigation demand at Golden Gate Park, Lincoln Park, and the Presidio, as well as lake refill would continue to be met with existing potable sources and groundwater. The two existing irrigation wells in Golden Gate Park that are part of the second phase of the SFPUC's

Groundwater Supply Project would not be converted to potable groundwater well facilities unless and until another source of water for irrigation and lake fill can be found.

The No Project Alternative would not meet any of the project objectives, which are to diversify the SFPUC's water supplies by developing recycled water, develop a new water supply in San Francisco that is both reliable and drought resistant, and reduce the use of potable water and groundwater for irrigation and other nonpotable uses by supplying those demands with recycled water. Also, it would fail to meet the WSIP goals and objectives that rely directly on the contribution of the Project to fulfill systemwide level of service objectives. If the Project is not constructed, the SFPUC's water supply portfolio would not include up to 2 mgd of recycled water. It would also prevent the SFPUC from implementing the second phase of SFPUC's Groundwater Supply Project, which would produce 1.0 to 1.5 mgd of groundwater. This phase of the project cannot be implemented until another source of water besides groundwater is provided to Golden Gate Park for irrigation and lake refill. The SFPUC would be limited in its ability to meet its adopted WSIP seismic delivery and water supply reliability goals, particularly in the San Francisco region, because of reduced water supply in San Francisco.

Under the No Project Alternative, current conditions would continue and all construction-related impacts would be avoided. Consequently, there would be no potential to encounter previously unrecorded and buried archaeological deposits, archeological resources, human remains, or legally-significant prehistoric depositions within the Colma Formation at the Oceanside WPCP. No construction activities means that fugitive dust and criteria pollutant emissions would not occur and there would be no construction-related effects or disturbance to special-status species, including the California red-legged frog, western pond turtle, nesting birds and roosting bats. While the No Project Alternative would avoid or reduce impacts that would occur compared to those of the Project, the Project impacts would be fully mitigated through the adoption of identified mitigation measures. The only unmitigated impact that would occur with the Project is the Project's contribution to the WSIP impact of indirect impacts related to growth. To the extent that the 2 mgd of water supply from the Project contributes to growth, the Project's contribution to the indirect impacts associated with growth would not occur with the No Project Alternative.

The Commission rejects the No Project Alternative as infeasible because it would not meet any of the project objectives, and because it would jeopardize the SFPUC's ability to meet the adopted WSIP goals and objectives as set forth in SFPUC Resolution No. 08-0200.

#### *Alternative B: Project Design Alternative*

Alternative B: Project Design Alternative, would locate the recycled water treatment plant at the San Francisco Zoo overflow parking lot, a 2.3 acre site north of the Oceanside WPCP and east of the Great Highway. Under the Project as proposed, the site would be used for construction staging. Storage and pumping facilities that under the Project would be located at the Central Reservoir site in Golden Gate Park would instead be located with the recycled water treatment plant at the San Francisco Zoo overflow parking lot. Under this Alternative, distribution pipelines would avoid Route 35/Skyline Boulevard and streets adjacent to Sunset Boulevard and instead, distribution pipelines would run from the San Francisco Zoo overflow parking lot north to

Wawona Street, then east to 34th Street, and north up 34th Street into Golden Gate Park. Construction activities would be sequenced and staggered, reducing the amount of concurrent construction and extending the overall Project construction duration. Staging would not occur at Harding Road and Herbst Road. Other aspects of the Project would remain unchanged and the Project would be able to produce the same 5 mgd peak flow amount, or 2 mgd annual average amount of recycled water.

This Alternative reduces impacts on cultural resources in several ways. As a result of decreasing the area of construction activities slightly by consolidating the treatment and storage facilities to one area at the San Francisco Zoo overflow parking lot instead of at the Oceanside WPCP and Central Reservoir sites, the impacts on unknown archaeological resources and human remains would be reduced. This Alternative would eliminate the potential impacts to paleontological resources because it would avoid construction in the Colma Formation below the Oceanside WPCP site. As a result of reducing impacts on cultural resources, the Alternative would make less of a contribution to cumulative impacts on cultural resources.

The daily impact on air quality would be less under Alternative B than the Project. By construction sequencing and staggering construction activities, Alternative B would reduce the amount of fugitive dust and criteria pollutants emitted at one time, thereby reducing the potential to exceed regulatory thresholds based on emissions per day. However, the total amount of construction would not be reduced and the total amount of air pollution would be the same as for the Project.

Alternative B would reduce impacts on biological resources. Fewer impacts could occur to nesting birds because trees would not need to be removed between the Oceanside WPCP and the California National Guard property. Also, vegetation clearing at the Central Reservoir site would be avoided as would disturbance of trees on Route 35/Skyline Boulevard and Sunset Avenue. Pipeline construction that would instead occur on Wawona Street and 34th Avenue would disturb few trees. Alternative B also would reduce impacts on roosting bats by reducing construction near trees in the vicinity of the Oceanside WPCP, Lake Merced, and the Central Pump Station site where bats are thought most likely to roost. Finally, the elimination of construction near Lake Merced, along Route 35/Skyline Boulevard, and near Harding and Herbst Roads, and elimination of most construction around the Central Reservoir site, would reduce impacts on the Western Pond turtle and California red-legged frog, which may be found in upland habitat in these areas. The only remaining areas where these species may be found, at Metson and Lloyd Lakes in Golden Gate Park would have minimal construction nearby, limited to installation of pipeline distribution lines. As a result of reduced impacts on biological resources under Alternative B, the contribution to cumulative impacts to biological resources also would be reduced as compared to the Project.

This Alternative also would increase certain impacts as compared to the Project and result in different impacts than the Project in the areas of noise, traffic, and energy use. Alternative B would increase construction and operational noise levels in the vicinity of the San Francisco Zoo by moving the construction activities and facilities approximately 900 feet closer to Zoo facilities



as compared to the Project. Increased noise could negatively impact Zoo animals. Operational noise impacts might be reduced through noise reduction berms.

Shifting the location of construction of the recycled water treatment plant could increase truck traffic along the Great Highway and potentially require lane detours. Also, relocating distribution pipelines from Route 35/Skyline Boulevard and Sunset Avenue to Wawona Street and 34th Avenue would cause an increase in traffic on narrower roadways, possibly increasing traffic impacts.

Finally, locating the recycled water storage reservoir at the Zoo parking lot instead of at the Central Reservoir site would require additional energy to pump recycled water over longer distances and elevations to customers north of the Central Reservoir site. Under the Project, four 100 horsepower pumps (one standby) would be installed at the Central Reservoir site in a new pump station to pump recycled water from the Central Reservoir to users in Golden Gate Park and north. There also would be three pumps with motors of up to 200 horsepower to pump recycled water from the treatment facility to the Central Reservoir site. Under Alternative B, a new pump station would be installed instead at the Zoo parking lot site, with three or more up to 400 horsepower pumps installed to pump recycled water to all the planned distribution points. By comparison, Alternative B would require more energy to distribute the recycled water to the same planned distribution points.

The Project Design Alternative would meet all of the Project objectives and WSIP goals and objectives, although completion of the Project would be delayed due to a longer construction schedule. It is also possible that future treatment plant operations would be restricted because of proximity to the Zoo facilities and concern by the Zoo of disruption to Zoo activities and disturbance of animals.

The SFPUC rejects the Project Design Alternative as infeasible. While the Project Design Alternative would reduce some impacts to cultural resources, biological resources, and air quality, all of the Project impacts that it would reduce will be reduced to less than significant levels under the Project with the implementation of adopted mitigation measures. The Project Design Alternative will increase other impacts in the areas of noise and traffic. It is possible that such effects, if significant, could be mitigated but may affect Project operations. Alternative B also would increase energy use by requiring the pumping of recycled water over a longer distances and elevations than under the Project, resulting in energy waste. Thus, the Project Design Alternative does not have a clear environmental benefit over the Project as the Project would mitigate its impacts and it is unclear whether the increased impacts of the Project Design Alternative can be fully mitigated.

Most problematic from a feasibility perspective is the fact that the SFPUC does not have control over the proposed site for the co-located recycled water treatment plant, pump station, and water storage facilities at the San Francisco Zoo overflow parking lot. The parking lot is under the management of the San Francisco Recreation and Parks Department with the premises leased to the nonprofit San Francisco Zoological Society. The SFPUC would need the consent of the San Francisco Zoo and the San Francisco Recreation and Parks Departments to obtain use of the site.

The SFPUC has been informed that the Zoo has plans to use the site for necessary Zoo operations, including meeting stringent animal isolation and testing requirements. The San Francisco Zoo and the Recreation and Parks Departments are therefore, unlikely to readily agree to the SFPUC taking over use of the site.

Under the circumstances, the SFPUC finds that the Project Design Alternative is not feasible as the site is currently and in the future projected to be needed by the San Francisco Zoo for its own operations. In addition, even if the San Francisco Zoo and the Recreation and Parks Departments might eventually agree to the SFPUC's use of the site, the SFPUC is faced with an unpredictable period of delay in implementing the Project. Finally, the Project Design Alternative would result in minimal to no benefit to the environment. All Project impacts, with the exception of the WSIP-related impact to growth are mitigable. On the other hand, the Project Design Alternative would cause energy waste and it would have the same WSIP-related impact to growth. For all of these reasons, the SFPUC rejects the Project Design Alternative as infeasible.

#### *Alternative C: Reduced Project Alternative*

The Reduced Project Alternative would eliminate recycled water supply to Lincoln Park and the Presidio. Under the Reduced Project Alternative, a new underground storage reservoir and pump station would not be constructed at the Central Reservoir site and distribution pipelines north of the Central Reservoir would be eliminated. The size of the recycled water treatment plant and storage at the Oceanside WPCP would be reduced somewhat and the construction duration would be shorter. As a result of these changes from the Project, the recycled water treatment plant would have a reduced peak-day capacity of 3.8 mgd instead of 5 mgd and an annual average capacity of 1.7 mgd instead of 2.0 mgd.

This Alternative reduces impacts on cultural resources in several ways. First, as a result of eliminating recycled water supply to Lincoln Park, significant potential impacts on human remains that may be associated with the former Golden Gate Cemetery site (e.g. Lincoln Park) would be avoided. Second, construction of a smaller recycled water supply treatment plant, eliminating new storage and pumping facilities at the Central Reservoir site, and eliminating distribution pipelines north of the Central Reservoir reduces the area of excavation, reducing potential exposure to unknown archeological resources and unknown human remains. Third, constructing a smaller recycled water treatment plant reduces potential impacts to paleontological resources that may be found in the Colma Formation as less excavation in that area would be required. Finally, by reducing cultural resource impacts, the contribution to cumulative impacts on cultural resources also would be reduced.

Alternative C would not reduce the daily impact on air quality, but because total construction activities are reduced, the total volume of air pollution emitted during construction is less under Alternative C than the Project.

Alternative C would reduce impacts on biological resources. Fewer impacts could occur to nesting birds, California red-legged frog and western pond turtle as a result of reduced construction activities at the Central Reservoir site where these species could be impacted. As a

result of reduced impacts on biological resources under Alternative C, this alternative would make less of a contribution to cumulative impacts to biological resources as compared to the Project.

Alternative C also would reduce energy usage as compared to the Project because it would eliminate the need to pump recycled water to Lincoln Park and the Presidio from the Central Reservoir site. Alternative C would also reduce the contribution to the WSIP's indirect growth inducing impact by reducing the amount of water that could be supplied to a growing population.

Alternative C: Reduced Project Alternative would meet the Project objectives, which are to diversify the SFPUC's water supplies by developing recycled water, develop a new water supply in San Francisco that is both reliable and drought resistant, and reduce the use of potable water and groundwater for irrigation and other nonpotable uses by supplying those demands with recycled water. However, by reducing the capacity of the recycled water treatment plant, Alternative C would not provide the full amount of recycled water supply provided under the Project so the degree to which it would meet the last of these objectives would be reduced somewhat. Alternative C would enable implementation of the SFPUC's Groundwater Supply Project, approved by the SFPUC in December, 2013, because it would provide recycled water to Golden Gate Park, facilitating the implementation of the second phase of the SFPUC's Groundwater Supply Project, which calls for conversion of existing irrigation wells in Golden Gate Park to potable use, providing 1.0 to 1.5 mgd of groundwater.

However, Alternative C would only partially meet the WSIP goals and objectives that rely directly on the contribution of the Project to fulfill systemwide level of service objectives. The WSIP aims to provide a total of 10 mgd annual average of water supply from recycled water, groundwater, and conservation projects to meet retail demand in San Francisco. Of this amount, the WSIP project description indicated that approximately 4 mgd annual average would be derived from recycled water projects in San Francisco. The Project would provide up to 2 mgd of recycled water on an annual average basis, and 5 mgd peak day flow, but under Alternative C this would be reduced to 1.7 mgd annual average and 3.8 mgd peak day flow. Under the project, currently identified customers have a demand of 1.6 mgd annual average and 4 mgd peak-day, but customer served would be reduced to those with a demand of 1.38 mgd annual average and 2.81 mgd peak day. Customers at Lincoln Park and the Presidio that could use recycled water would continue to use potable water sources for irrigation.

To the extent that Alternative C fails to fully satisfy WSIP identified water supply goals and objectives as approved under SFPUC Resolution 08-0200, it would limit the SFPUC's ability to provide water to customers during both drought and non-drought periods and may prevent the SFPUC from limiting rationing during drought periods to a maximum 20 percent systemwide. Customers in San Francisco would be most affected as water supply in the city would be reduced during peak demand periods by up to 1.2 mgd. As a result, the SFPUC may need to revise the WSIP goals and objectives or develop additional water supply projects.

**Environmentally Superior Alternative.** The Reduced Project Alternative would be the Environmentally Superior Alternative, other than the No Project Alternative. The Reduced

Project Alternative would not increase any impacts and it would reduce impacts on cultural resources and biological resources. Also, it would reduce energy use and reduce the total amount of air pollution produced by the Project.

The Reduced Project Alternative would still contribute to the WSIP's significant and unavoidable indirect impact related to growth, but to a lesser degree than for the Project, as it would provide 0.3 mgd less of water supply on an annual average basis that could contribute to growth.

The Commission rejects the Reduced Project Alternative as infeasible because it will not allow the SFPUC to fully meet WSIP goals and objectives. Additionally, although this alternative would generally meet the SFPUC's objectives for the Project, it would not satisfy the Project's third objective to the same degree as the Project, namely to reduce the use of potable water and groundwater for irrigation and other nonpotable uses by supplying those demands with recycled water. Likewise, it would only partially meet the WSIP goals and objectives, which rely directly on the up to 2 mgd of local recycled water supply on the west side of San Francisco that the Project would provide to fulfill systemwide level of service objectives. The total average yield under normal operations for the Reduced Project Alternative would be 1.7 mgd, causing the SFPUC to fall short of the 2 mgd annual water supply designed for the Project and the WSIP identified supply need of 4 mgd from local recycled water supply by 2018. Although the SFPUC originally envisioned that the 4 mgd of recycled water would supply customers on the west side of San Francisco and now the SFPUC expects the west side recycled water demand to be somewhat reduced, the SFPUC has not revised its originally WSIP goal of obtaining 4 mgd from recycled water and is exploring recycled water supply options on the east side of the City. Thus, if the Project were sized below the Project size of 2 mgd annual average, and designed not to serve Lincoln Park and the Presidio, some viable recycled water supply customers on the west side of San Francisco would not be able to make use of recycled water and instead would need to continue to use groundwater or imported surface water for irrigation and other nonpotable uses. Such a situation would be contrary to the WSIP goal of diversifying water supply options and improving use of new water resources, such as recycled water. For these reasons, the SFPUC rejects the Reduced Yield Alternative as infeasible.

## **VI. Statement of Overriding Considerations**

Pursuant to CEQA Section 21081 and CEQA Guidelines Section 15093, the Commission hereby finds, after consideration of the Final EIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological and other benefits of the Project as set forth below, independently and collectively outweighs the significant and unavoidable impacts and is an overriding consideration warranting approval of the Project. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Commission will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this section, and in the documents found in the Record of Proceedings, as defined in Section I.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Commission specifically finds that there are significant benefits of the Project in spite of the unavoidable significant impacts, and therefore makes this Statement of Overriding Considerations. The Commission further finds that, as part of the process of obtaining Project approval, all significant effects on the environment from implementation of the Project have been eliminated or substantially lessened where feasible. All mitigation measures proposed in the Final EIR for the Project are adopted as part of this approval action. Furthermore, the Commission has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technical, legal, social, and other considerations.

The Project will have the following benefits:

- The Project will expand and diversify the SFPUC's water supply portfolio to increase system reliability, particularly for retail customers in San Francisco. The Project provides an additional 2 mgd of water supply from other than imported surface water, the main water supply source in the SFPUC water system.
- The Project will increase the use of local water supply sources. The Project provides 2 mgd of recycled water to irrigators on the Westside of San Francisco who are now using imported potable surface water or groundwater for irrigation.
- The Project will reduce dependence on imported surface water. The Project provides 2 mgd from local recycled water.
- The Project, by providing recycled water for irrigation and lake refill in Golden Gate Park will enable the implementation of the second phase of the SFPUC's San Francisco Groundwater Supply Project, which will provide 1.0 to 1.3 mgd of potable groundwater supply.

In addition, the Project will further the WSIP's goals and objectives. As part of the approval of Resolution 08-2000, the SFPUC adopted a Statement of Overriding Considerations as to why the benefits of the WSIP outweighed the significant and unavoidable impacts associated with the WSIP. This Statement of Overriding Considerations is relevant to the significant and unavoidable impact related to growth-inducement to which this Project contributes. The findings regarding the Statement of Overriding Considerations set forth in Resolution No. 08-2000 are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings. In addition, for the particular reasons set forth below, this Project helps to implement the following benefits of the WSIP:

- Implementation of the WSIP will reduce vulnerability to earthquakes. The WSIP includes many features that are designed to improve the seismic safety and reliability of the water system as a means of saving human life and property under a catastrophic earthquake scenario or even a disaster scenario not rising to the level of catastrophe. Effecting the improvements to assure the water system's continued reliability, and developing it as part of a

larger, integrated water security strategy, is critical to the Bay Area's economic security, competitiveness and quality of life. This Project provides a critical source of water – local recycled water – that will be available even if it is not possible for a period of time to obtain imported surface water from the SFPUC's regional water system.

- The WSIP would meet SFPUC customer water supply needs by providing 265 mgd of retail and wholesale customer purchases from the SFPUC watersheds, and meet or offset the remaining 20 mgd through conservation, recycled water, and groundwater in the retail and wholesale service areas. Ten mgd of this would be met, as proposed under the WSIP, through conservation, recycled water, and groundwater projects in San Francisco, and 10 mgd would be met through local conservation, recycled water and groundwater in the wholesale service area. Of the 10 mgd that would come from projects in San Francisco, the WSIP identifies 4 mgd from local recycled water. This Project would provide up to 2 mgd of this critical 4 mgd of local recycled water. In addition, by providing recycled water to Golden Gate Park, this Project will enable implementation of the second phase of the SFPUC's San Francisco Groundwater Supply Project, which will provide 1.0 to 1.3 mgd of potable groundwater for San Francisco residents, water that is currently used for irrigation and lake refill in Golden Gate Park.
- The WSIP will substantially improve use of new water sources and drought management, including use of groundwater, recycled water, conservation, and transfers. A critical part of the WSIP is to provide water from new sources other than from imported surface water from the Hetch Hetchy Valley or watersheds in Alameda County and the Peninsula. This Project is important to meeting the WSIP goal of providing local recycled water in San Francisco.
- The WSIP projects are designed to meet applicable federal and state water quality requirements. This Project, which will produce recycled water by treating sanitary sewage with microfiltration/ultrafiltration, reverse osmosis, and ultraviolet light disinfection, will provide recycled water that meets or exceeds the California Department of Public Health requirements for disinfected tertiary recycled water.
- The WSIP will diversify water supply options during non-drought and drought periods. The Project supports this WSIP objective by providing up to 2 mgd of local recycled water during both drought and non-drought periods.

Having considered these benefits, including the benefits discussed in Section I above, the Commission finds that the benefits of the Project and the Project's furtherance of the WSIP goals and objectives outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912B) – MITIGATION MONITORING AND REPORTING PROGRAM

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
CP-2	The proposed project could cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5(f).	<p><b>Mitigation Measure M-CP-2: Accidental Discovery of Archaeological Resources.</b></p> <p>The following measures shall be implemented should construction activities result in the accidental discovery of an archaeological resource:</p> <p>The following mitigation measure is required to avoid any potential adverse effect from the proposed project on accidentally discovered buried or submerged historical resources as defined in CRQA Guidelines Sections 15064.5(a) and (c). The project sponsor shall distribute the Planning Department archaeological resource "ALERT" sheet to the project prime contractor, to any project subcontractor (including demolition, excavation, grading, foundation, etc. firms) or utilities firm involved in soils disturbing activities within the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel including machine operators, field crew, supervisory personnel, etc. The project sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractors), and utilities firm to the ERO confirming that all field personnel have received copies of the Alert Sheet.</p> <p>Should any indication of an archaeological resource be encountered during any soils disturbing activity of the project, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery until the ERO has determined what additional measures should be undertaken.</p> <p>If the ERO determines that an archaeological resource may be present within the project site, the project sponsor shall retain the services of a qualified archeological consultant, based on standards developed by the Planning Department archeologist. The archeological consultant shall evaluate the discovered material and advise the ERO as to whether the discovery historical or unique retains sufficient integrity and is of potential scientific/historical/cultural significance. If a significant archeological resource is present, the archeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the ERO may require, if warranted, specific additional measures to be implemented by the project sponsor including avoidance measures or other appropriate mitigation.</p> <p>Measures might include preservation in situ of the archeological resource, an archeological monitoring program or an archeological testing/data recovery program. If an archeological monitoring program or archeological testing program is required, it shall be consistent with the EP division guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.</p> <p>The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describing the archeological and historical research methods employed in the archeological testing/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p>	<ol style="list-style-type: none"> <li>1) SFPUC EMB</li> <li>2) SFPUC CMB</li> <li>3) SFPUC CMB/HEM (Archaeologist)</li> <li>4) SFPUC CMB/HEM (Archaeologist)</li> </ol>	<ol style="list-style-type: none"> <li>1) SFPUC BEM</li> <li>2) SFPUC BEM</li> <li>3) SFPUC BEM and ERO</li> <li>4) SFPUC BEM and ERO</li> </ol>	<ol style="list-style-type: none"> <li>1) Ensure that measures related to archaeological discoveries are included in contract documents.</li> <li>2) Ensure that all personnel attend environmental training prior to beginning work, receive "ALERT" sheet, and sign the training sign-in sheets. Maintain file of signature sheets for submission to ERO. Monitor to ensure that the contractors implement measures in contract document, report non-compliance and ensure corrective action.</li> <li>3) Evaluate the potential discovery and advise the ERO as to the significance of the discovery. If warranted, proceed with measures that may include the following:                         <ol style="list-style-type: none"> <li>a. On-site preservation of resource;</li> <li>b. Archeological monitoring program with prior review/approval of ERO; or</li> <li>c. Archeological testing/data recovery program with prior review/approval of ERO.</li> </ol> </li> <li>4) Prepare a Final Archeological Resources Report. Submit to ERO for review and approval. Submit to others as required once approved by ERO.</li> </ol>	<ol style="list-style-type: none"> <li>1) Design</li> <li>2) Preconstruction and Construction</li> <li>3) Construction</li> <li>4) Post Construction</li> </ol>

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**SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912E) – MITIGATION MONITORING AND REPORTING PROGRAM (Continued)**

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
<b>Cultural and Paleontological Resources (cont.)</b>						
CP-2 (cont.)		<p>Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey NWIC shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound copy, one unbound copy and one unlocked, searchable copy on compact disk (CD) three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/Cultural Resources Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.</p>				
CP-3	The project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.	<p><b>Mitigation Measure M-CF3: Accidental Discovery of Paleontological Resources.</b> The following measures shall be implemented should construction at the recycled water treatment plant site result in the accidental discovery of paleontological resources:</p> <p>To reduce the potential for the proposed project to result in a significant impact on paleontological resources, the SFPUC shall arrange for a paleontological training by a qualified paleontologist regarding the potential for such resources to exist in the project site and how to identify such resources. The training could consist of a recorded presentation of the initial training that could be reused for new personnel. The training shall also include a review of penalties for looting and disturbance of these resources. An alert sheet shall be prepared by the qualified paleontologist and shall include the following:</p> <ol style="list-style-type: none"> <li>1. A discussion of the potential to encounter paleontological resources.</li> <li>2. Instructions for reporting observed looting of a paleontological resource; and instructions that if a paleontological deposit is encountered within a project area, all soil-disturbing activities in the vicinity of the deposit shall cease and the Environmental Review Officer (ERO) shall be notified immediately.</li> <li>3. Who to contact in the event of an unanticipated discovery.</li> </ol> <p>If potential fossils are discovered by construction crews, all earthwork or other types of ground disturbance within 50 feet of the find shall stop immediately until the qualified professional paleontologist can assess the nature and importance of the find. Based on the scientific value or uniqueness of the find, the paleontologist may record the find and allow work to continue, or recommend salvage and recovery of the fossil. The paleontologist may also propose modifications to the stop-work radius based on the nature of the find, site geology, and the activities occurring on the site. If treatment and salvage is required, recommendations shall be consistent with SVP 1995 guidelines and currently accepted scientific practice, and shall be subject to review and approval by the ERO or designee. If required, treatment for fossil remains may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The SFPUC shall be responsible for ensuring that treatment is implemented and reported to the San Francisco Planning Department. If no report is required, the SFPUC shall nonetheless ensure that information on the nature, location, and depth of all finds is readily available to the scientific community through university curation or other appropriate means.</p>	<ol style="list-style-type: none"> <li>1) SFPUC EMB</li> <li>2) SFPUC CMB/BEM (Paleontologist)</li> <li>3) SFPUC CMB/BEM</li> </ol>	<ol style="list-style-type: none"> <li>1) SFPUC RFM</li> <li>2) SFPUC BEM and ERO</li> <li>3) SFPUC BEM and ERO</li> </ol>	<ol style="list-style-type: none"> <li>1) Insure that contract documents include the listed measures related to paleontological resources.</li> <li>2) Obtain and review résumé or other documentation on paleontologist's qualifications. Ensure that contractor's staff participate in the environmental training prior to beginning work and sign the training sign-in sheet. Maintain file of sign-in sheets.</li> <li>3) In the event of a discovery, confirm suspension of work, examine fossil, and advise the ERO to the significance of the discovery. Earthwork and ground disturbance in the vicinity of find shall stop until qualified paleontologist can assess nature/importance of find and make a recommendation regarding further action.</li> <li>4) Monitor to ensure that the contractor implements measures in contract documents including insuring that all potential discoveries are reported as required and that contractor suspends work in the vicinity. Report noncompliance and ensure corrective action.</li> </ol>	<ol style="list-style-type: none"> <li>1) Design</li> <li>2) Preconstruction and Construction</li> <li>3) Construction</li> </ol>

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SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912E) – MITIGATION MONITORING AND REPORTING PROGRAM (Continued)

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
<b>Cultural and Paleontological Resources (cont.)</b>						
CP-4	The proposed project could accidentally disturb unknown human remains, including those buried outside of formal cemeteries.	<p><b>Mitigation Measure M-CP-4: Accidental Discovery of Unknown Human Remains.</b></p> <p>The following measures shall be implemented should construction activities, all of which are outside a dedicated cemetery, result in the accidental discovery of previously unknown human remains and associated cultural materials:</p> <p>The treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activities shall comply with applicable state laws. This shall include immediate notification of the coroner of the county within which the project is located for (i) a determination that no investigation of the cause of death is required; and (ii) in the event of the coroner's determination that the human remains are Native American, notification of the California Native American Heritage Commission, which shall appoint a Most Likely Descendant (MLD) (ERC Section 5097.98). The archaeological consultant, SFPUC, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15264.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curatorial care, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 24 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the removal method, the SFPUC shall follow Section 5097.96(b) of the PRC, which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."</p>	<ol style="list-style-type: none"> <li>1) SFPUC EMB</li> <li>2) SFPUC CMB/BEM (Archaeologist)</li> <li>3) SFPUC CMB/BEM</li> </ol>	<ol style="list-style-type: none"> <li>1) SFPUC BEM</li> <li>2) SFPUC BEM</li> <li>3) SFPUC BEM and ERO</li> </ol>	<ol style="list-style-type: none"> <li>1) Ensure that contract documents include measures related to discovery of human remains.</li> <li>2) If potential human remains or funerary objects are encountered, mobilize an archeologist to confirm existence of human remains. If human remains are confirmed, perform required coordination and notifications.</li> <li>3) Monitor to ensure that the contractor implements measures in contract documents including insuring that all potential human remains are reported as required and that contractor suspends work in the vicinity. Report non-compliance and ensure corrective action.</li> </ol>	<ol style="list-style-type: none"> <li>1) Design</li> <li>2) Construction</li> <li>3) Construction</li> </ol>
CP-5	Construction of the proposed project along Clement Street from 36th Avenue to 39th Avenue on the south side of Lincoln Park could disturb human remains associated with the historic period Golden Gate Cemetery.	<p><b>Mitigation Measure M-CP-5: Archeological Monitoring Program.</b></p> <p>Based on the potential that human remains associated with the historic-period Golden Gate Cemetery may be present (buried) within the project area, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on the human remains if exposed during construction. The project sponsor shall retain the services of a qualified archeological consultant, based on standards developed by the Planning Department archeologist. The archeological consultant shall undertake an archeological monitoring program (AMP) as specified herein. In addition, the consultant shall be available to conduct an archeological data recovery program (ADRP) if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sect. 15264.5 (a)(1).</p> <p><b>Archeological Monitoring Program.</b> The archeological consultant shall prepare and submit to the ERO for review and approval an AMP for the ground disturbing activities associated with construction of distribution pipelines along Clement Street from 36th Avenue to 39th Avenue on the south side of Lincoln Park and a connection point to</p>	<ol style="list-style-type: none"> <li>1) SFPUC CMB/BEM (Archeologist)</li> <li>2) SFPUC BEM (Archeologist)</li> <li>3) SFPUC CMB/BEM</li> <li>4) SFPUC BEM (Archeologist)</li> </ol>	<ol style="list-style-type: none"> <li>1) SFPUC BEM and ERO</li> <li>2) SFPUC BEM and ERO</li> <li>3) SFPUC BEM and ERO</li> <li>4) SFPUC BEM and ERO</li> </ol>	<ol style="list-style-type: none"> <li>1) Prepare and implement an Archeological Monitoring Program in consultation with ERO. Submit AMP to the ERO for review and approval. If human remains are encountered, perform required coordination and notifications. Document activities in monitoring logs.</li> <li>2) If required by the ERO, prepare Archeological Data Recovery Plan and submit for review and approval to ERO.</li> <li>3) Monitor to ensure that contractor implements applicable measures in contract documents. Report non-compliance, and ensure corrective action.</li> <li>4) Prepare Final Archeological Resources Report (FARR) to document historical significance of any discovered archeological resource and submit to ERO.</li> </ol>	<ol style="list-style-type: none"> <li>1) Preconstruction/Construction</li> <li>2) Preconstruction/Construction</li> <li>3) Construction</li> <li>4) Post-construction</li> </ol>

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SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912E) – MITIGATION MONITORING AND REPORTING PROGRAM (Continued)

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
<b>Cultural and Paleontological Resources (cont.)</b>						
CP-5 (cont.)		<p>the Lincoln Park Pump Station. The AMP shall be conducted in accordance with the approved AMP. The AMP shall minimally include the following provisions:</p> <ul style="list-style-type: none"> <li>The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored and the frequency. In most cases, any soil-disturbing activities, such as denuitiation, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundations, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential human remains and to their depositional context;</li> <li>The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of human remains;</li> <li>The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on human remains;</li> <li>The archeological monitor shall record and be authorized to collect soil samples and artifactual/ceremonial material as warranted for analysis;</li> <li>If human remains are encountered, all soils-disturbing activities in the vicinity of the find shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the find is evaluated. The archeological consultant shall immediately notify the ERO of the encountered human remains.</li> </ul> <p>If human remains are encountered, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the SFPUC immediately notifies the San Francisco County coroner for (i) a determination that no investigation of the cause of death is required, and (ii) a determination whether the human remains are Native American. If the human remains are not Native American, and if the coroner determines the remains are not subject to his or her authority, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing and/or an ADRP. If the ERO determines that the human remains could be adversely affected by the proposed project, at the discretion of the project sponsor either:</p> <ol style="list-style-type: none"> <li>The proposed project shall be re-designed so as to avoid any adverse effect on the human remains; or</li> <li>A data recovery program shall be implemented, unless the ERO determines that the find is of greater interpretive than research significance and that interpretive use of the find is feasible.</li> </ol> <p><b>Archeological Data Recovery Program.</b> If required by the ERO, the archeological data recovery program shall be conducted in accord with an ADRP. The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP</p>				

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SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912E) - MITIGATION MONITORING AND REPORTING PROGRAM (Continued)

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
CP-5 (cont.)		<p>prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The A/DRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.</p> <p>The scope of the ADRP shall include the following elements:</p> <ul style="list-style-type: none"> <li>• <i>Field Methods and Procedures.</i> Descriptions of proposed field strategies, procedures, and operations.</li> <li>• <i>Cataloging and Laboratory Analysis.</i> Description of selected cataloging system and artifact analysis procedures.</li> <li>• <i>Discard and Deaccession Policy.</i> Description of and rationale for field and post-field discard and deaccession policies.</li> <li>• <i>Interpretive Program.</i> Consideration of an on-site/off-site public interpretive program during the course of the ADRP.</li> <li>• <i>Security Measures.</i> Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.</li> <li>• <i>Final Report.</i> Description of proposed report format and distribution of results.</li> <li>• <i>Curation.</i> Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.</li> </ul> <p><i>Final Archeological Resources Report.</i> The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p> <p>Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey NWIC shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound, and one unlinked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (California Department of Parks and Recreation 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.</p>				

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**SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912E) – MITIGATION MONITORING AND REPORTING PROGRAM (Continued)**

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
<b>Cultural and Paleontological Resources (cont)</b>						
C-CP	The proposed project could result in cumulatively considerable impacts related to historical, archaeological, or paleontological resources or human remains.	Implement Mitigation Measures M-CP-2 (Accidental Discovery of Archeological Resources), M-CP-3 (Accidental Discovery of Paleontological Resources), M-CP-4 (Accidental Discovery of Unknown Human Remains), and M-CP-5 (Archeological Monitoring Program).			See respective mitigation measures	
<b>Air Quality</b>						
AQ-2	The proposed project's construction activities would generate fugitive dust and criteria air pollutants, and could violate an air quality standard or contribute substantially to an existing or projected air quality violation.	<p><b>Mitigation Measure M-AQ-2: Construction Emissions Minimization.</b></p> <p><b>A. Additional Exhaust Control Measures.</b> In addition to complying with the Clean Construction Ordinance requirements (use of biodiesel fuel grade B20 or higher, and either meets or exceeds Tier 2 engines or operate with the most effective VDECS for off-road equipment), average construction-related NOx emissions from all overlapping project components shall not exceed 54 pounds per day. The construction contract specifications shall require the contractor to submit a comprehensive inventory of all off-road construction equipment greater than 25 horsepower and operating for more than 20 total hours over the entire duration of construction activities. The inventory shall include each vehicle's license plate number, horsepower rating, engine production year, and projected hours of use or fuel throughput for each piece of equipment. The inventory shall demonstrate, through the use of Tier 3 engines (or engines retrofitted with CARB Level 3 Verified Diesel Emissions Control Strategy), that the combined average emissions from all overlapping project components shall not exceed 54 pounds per day. The contractor shall update the inventory and submit it monthly to the SEPUC throughout the duration of the project.</p>	1) SFPUC RMB 2) SFPUC CMB/BEM	1) SFPUC BEM 2) SFPUC BEM/	1) Ensure all appropriate language incorporated into contract documents 2) Monitor to ensure that contractor implements measures in contract documents including the update and monthly submittal of comprehensive inventories to the SFPUC throughout the duration of the project.	1) Design 2) Construction
<b>Biological Resources</b>						
BI-1	The project would potentially have a substantial adverse effect, either directly or through habitat modification, on species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.	<p><b>Mitigation Measure M-BI-1a: Nesting Bird Protection Measures.</b></p> <p>Nesting birds and their nests shall be protected during construction by use of the following:</p> <ul style="list-style-type: none"> <li>• Conducting vegetation and tree removal and construction activities outside the bird nesting season (February 1 to August 30), to the extent feasible.</li> <li>• If construction occurs during the bird nesting season, a qualified wildlife biologist would conduct preconstruction surveys within seven days of the start of construction or after any construction breaks of 14 days or more to identify active nests. A nest is defined to be active for raptors if there is a pair of raptors displaying reproductive behavior (i.e., courting) at the nest and/or if the nest contains eggs or chicks. Surveys shall be performed for the project site and suitable habitat within 250 feet of the project site in order to locate any active passerive nests and within 500 feet of the project site to the extent access is granted by other property owners to locate any active raptor (birds of prey) nests or double-crested cormorant or heron rookeries.</li> <li>• If active nests are located during the preconstruction bird nesting survey, the wildlife biologist shall evaluate if the schedule of construction activities could affect the active nest and the following measures shall be implemented based on their determination:                             <ol style="list-style-type: none"> <li>1. If construction is not likely to affect the active nest, it may proceed without restrictions; however, a biologist shall regularly monitor the nest to confirm there is no adverse effect and may revise their determination at any time during the nesting season. In this case, the following measure would apply.</li> </ol> </li> </ul>	1) SFPUC EMB 2) SFPUC CMB/BEM (Qualified Biologist) 3) SFPUC CMB	1) SFPUC BEM 2) SFPUC BEM 3) SFPUC BEM	1) Ensure that requirements related to nesting bird protection are included in contract documents. 2) Obtain and review resume or other documentation of consulting biologist's qualifications. Conduct surveys as required. If active nests are located during survey, establish buffer zones, consulting with USFWS/CDFW as necessary, and monitor regularly. Document monitoring activities in logs. 3) Monitor to ensure that contractor(s) implements measures in contract documents. Report noncompliance, and ensure corrective action.	1) Design 2) Preconstruction and Construction 3) Construction

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**SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912E) – MITIGATION MONITORING AND REPORTING PROGRAM (Continued)**

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
<b>Biological Resources (cont.)</b>						
BI-1 (cont.)		<p>2. If construction may affect the active nest, the biologist shall establish a no disturbance buffer. The biologist shall determine the appropriate buffer taking into account the species involved, the presence of any obstruction, such as a building, is within line-of-sight between the nest and construction, and the level of project and ambient activity (i.e. adjacent to a road or active trail). No disturbance buffers for passerines typically vary from 25 feet and greater and for raptors from 300 feet and greater. For bird species that are federally and/or state-listed sensitive species (i.e., threatened, endangered, fully protected, species of special concern), an SFPUC representative, supported by the wildlife biologist, shall consult with the USFWS and/or CDFW regarding nest buffers.</p> <p>Removing inactive passerine nests may occur at any time. Inactive raptor nests shall not be removed unless approved by the USFWS and/or CDFW.</p> <p>Removing or relocating active nests shall be coordinated by the SFPUC representative with the USFWS and/or CDFW, as appropriate, given the nests that are found on the site.</p> <p>Any birds that begin nesting within the project area and survey buffers and construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels and no work exclusion zones shall be established around active nests in these cases.</p>				
		<p><b>Mitigation Measure M-B1-1b: Avoidance and Minimization Measures for Special-Status Bats.</b></p> <p>In coordination with the SFPUC, a qualified wildlife biologist shall conduct preconstruction special-status bat surveys before trees and structures that are suitable for bat roosting (i.e., excluding temporary trailers, retaining walls, etc.) are removed. If active day or night roosts are found, the wildlife biologist shall take actions to make such roosts unsuitable habitat before trees and structures are removed. A no-disturbance buffer of 100 feet shall be created around active bat roosts being used for maternity or hibernation purposes. Bat roosts that begin during construction are presumed to be unaffected, and no buffer would be necessary.</p>	<p>1) SFPUC EMB 2) SFPUC CMB/BEM (Qualified Biologist) 3) SFPUC CMB/BEM</p>	<p>1) SFPUC BEM 2) SFPUC BEM 3) SFPUC BEM</p>	<p>1) Ensure that contract documents include applicable avoidance and minimization measures. 2) Obtain and review resume or other documentation of consulting biologist's qualifications. Conduct preconstruction survey. If roosts are found, implement appropriate measures. Document activities in monitoring log. 3) Monitor to ensure that contractor(s) implement measures in contract documents. Report noncompliance, and ensure corrective action.</p>	<p>1) Design 2) Preconstruction and Construction 3) Construction</p>
		<p><b>Mitigation Measure M-B1-1c: Avoidance and Minimization Measures for California Red-Legged Frog and Western Pond Turtle.</b></p> <p>During construction on Route 35/Skyline Boulevard, at the Central Pump Station site, on the pipeline route within Golden Park near aquatic habitat, and during use of the Harding Road and tierst Road staging areas, the SFPUC shall ensure a biological monitor is present during installation of exclusion fencing and initial vegetation clearing and/or grading, and shall implement the following measures:</p> <p>Within one week before work at these sites begins (including demolition and vegetation removal), a qualified biologist shall supervise the installation of exclusion fencing along the boundaries of the work area, as deemed necessary by the biologist to prevent California red-legged frogs and western pond turtles from entering the work area. The contractor shall install suitable fencing with a minimum height of 3 feet above ground surface with an additional 4-6 inches of fence material buried for unpaved surfaces and sand-bagged at the lower edge where needed for paved surfaces such that species cannot crawl under the fence.</p>	<p>1) SFPUC EMB 2) SFPUC CMB/BEM (Biologist) 3) SFPUC CMB/BEM (Biologist) 4) SFPUC CMB/BEM</p>	<p>1) SFPUC BEM 2) SFPUC BEM 3) SFPUC BEM 4) SFPUC BEM</p>	<p>1) Ensure that contract documents include applicable avoidance and minimization measures for California red-legged frog, western pond turtles, including requirement for exclusion fencing. 2) Develop worker training program and ensure that all construction personnel participate in the environmental training prior to beginning work at the job site(s). Require workers to sign the training program sign-in sheet. Maintain file of training sign-in sheets. 3) Obtain and review resume or other documentation of consulting biologist's qualifications. Conduct preconstruction surveys, species relocation (if it is not possible for the species to move out of the project area out of its own volition, and, in the case of an identified red-legged frog(s), approved by the USFWS and/or</p>	<p>1) Design 2) Preconstruction and Construction 3) Preconstruction and Construction 4) Construction</p>

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SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT (SF Environmental Planning Case No. 2008.00912E) – MITIGATION MONITORING AND REPORTING PROGRAM (Continued)

Impact No.	Impact Summary	Adopted Mitigation Measures	Monitoring and Reporting Program			
			Responsible Party	Reviewing and Approval Party	Monitoring and Reporting Actions	Implementation Schedule
<b>Biological Resources (cont.)</b>						
BI-1 (cont.)		<ul style="list-style-type: none"> <li>A qualified biologist shall conduct environmental awareness training in person or via video for all construction workers prior to construction workers beginning their work efforts on the project. The training shall include information on species identification, avoidance measures to be implemented by the project, and the regulatory requirements and penalties for non-compliance. If necessary, the content shall vary according to specific construction areas (e.g., workers on city streets will receive training on nesting birds but not on California red-legged frog identification).</li> <li>A qualified biologist shall survey the project area within 48 hours before the onset of initial ground-disturbing activities and shall be present during initial vegetation clearing and ground-disturbing activities. The biological monitor shall monitor the exclusion fencing weekly to confirm proper maintenance and inspect for frogs and turtles. If California red-legged frogs or western pond turtles are found, the SFPUC shall halt construction in the vicinity that poses a threat to the individual as determined by the qualified biologist. If possible, the individual shall be allowed to move out of the project area of its own volition (i.e., if it is near the exclusion fence that can be temporarily removed to let it pass). For western pond turtles, a qualified biologist shall relocate turtles to the nearest suitable habitat. For California red-legged frog, a SFPUC representative shall contact the USFWS and/or CDFW for instructions on how to proceed. Construction shall resume after the individual is out of harm's way.</li> </ul> <p>During project activities, excavations deeper than 6 inches shall be covered overnight or an escape ramp of earth or a wooden plank at a 3:1 rise shall be installed; openings such as pipes where California red-legged frogs or western pond turtles might seek refuge shall be covered when not in use, and all trash that may attract predators or hide California red-legged frogs or western pond turtles shall be properly contained on a daily basis, removed from the work-site, and disposed of regularly. Following construction, the construction contractor shall remove all trash and construction debris from work areas.</p>			<p>CDFW) and monitoring, including weekly fence inspection. Document activities in monitoring logs.</p> <p>4) Monitor to ensure that contractor(s) implements measures in contract documents. Report non-compliance, and ensure corrective action.</p>	
C-BI-1	The project, in combination with past, present, and reasonably foreseeable future projects in the vicinity, could result in significant cumulative impacts on biological resources.	Implement Mitigation Measures M-BI-1a (Nesting Bird Protection Measures), M-BI-1b (Avoidance and Minimization Measures for Special-Status Bats), and M-BI-1c (Avoidance and Minimization Measures for California Red-Legged Frog and Western Pond Turtle).	See respective mitigation measures			

## PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0102

WHEREAS, pursuant to Section 9.107 of the Charter (the "Charter") of the City and County of San Francisco (the "City"), the Board of Supervisors of the City (the "Board") is authorized to provide for the issuance of revenue bonds following the assent of a majority of the voters upon any proposition for the issuance of such revenue bonds; and

WHEREAS, such revenue bonds shall be issued and sold in accordance with State law or any procedure provided for by ordinance of the City; and

WHEREAS, at a duly called and held election on November 5, 2002, a majority of voters voting on the measure approved Proposition A ("Proposition A of 2002") to authorize the issuance by the Public Utilities Commission of the City (the "Commission") of its revenue bonds in the aggregate principal amount of \$1,628,000,000 for the purpose of providing funds for the financing of the acquisition and construction of various capital projects (the "Improvements") to the water system (the "Water Enterprise") of the City; and

WHEREAS, in 2006, the Commission issued \$507,815,000 of its San Francisco Water Revenue Bonds, 2006 Series A for the purpose of financing the Improvements to the Water Enterprise under Proposition A of 2002; and

WHEREAS, at a duly called and held election on November 5, 2002, a majority of voters voting on the measure approved Proposition E ("Proposition E") to authorize the issuance by the Commission, subject to the terms of Proposition E, of its revenue bonds without limitation for the purpose, among other things, of providing funds for the financing of the acquisition and construction of various capital projects (the "Improvements") to the water system (the "Water Enterprise") of the City; and

WHEREAS, pursuant to the Charter of the City, Article V of Chapter 43 of Part I of the San Francisco Administrative Code, enacted by Ordinance No. 203-98, adopted on June 8, 1998 by the Board and signed by the Mayor on June 19, 1998; Resolution No. 03-0048, adopted on March 25, 2003 by the Commission; Resolution No. 300-03 adopted on May 6, 2003 by Board and signed by the Mayor on May 16, 2003 and Proposition A of 2002, the Commission is authorized to issue commercial paper notes in an aggregate principal amount not to exceed \$250,000,000; and

WHEREAS, on October 30, 2008, the Commission was granted approval pursuant to Charter amendments enacted by the voters on November 5, 2002 as Proposition E ("Proposition E") to increase its commercial paper program authorization by an additional \$250,000,000, to bring its program total to \$500,000,000; and

WHEREAS, on October 30, 2008 the Commission reviewed and considered the Final Program Environmental Impact Report (PEIR) prepared for the Water System Improvement Program (WSIP), and certified by the Planning Commission in Planning Commission Motion No. 17734, and adopted the findings required by the California Environmental Quality Act (CEQA) including a statement of overriding considerations and monitoring and reporting program in its Resolution No. 08-0200; and

WHEREAS, the Commission hereby determines that one or more series of tax-exempt or taxable water revenue bonds in an aggregate principal amount of not to exceed \$1,120,185,000 shall be issued pursuant to the authorization granted under Proposition A of 2002, and entitled "San Francisco Water Revenue Bonds, 20\_\_ Series \_\_\_\_" with the exact year of issuance, designation and series to be determined by the General Manager as provided herein (or such other or additional designations as may be appropriate (the "Bonds"), pursuant to one or more Supplemental Indentures (the "Supplemental Indentures") by and between the Commission and U.S. Bank National Association, as trustee (the "Trustee"), which supplement the Amended and Restated Indenture dated as of August 1, 2002, as amended and supplemented (collectively, with the Supplemental Indentures, the "Indenture"), by and between the Trustee and the Commission; and

WHEREAS, the Bonds may be sold either by competitive sale pursuant to an official notice of sale (the "Official Notice of Sale") or by negotiated sale pursuant to one or more bond purchase contracts; and

WHEREAS, the Commission has determined that it is desirable to delegate to the General Manager the authority to determine whether to sell the Bonds by negotiated sale or competitive sale, to accomplish the timely sale of the Bonds and to achieve the lowest possible interest, issuance and other costs to the Commission with respect to the Bonds; and

WHEREAS, the Commission has determined that it is desirable to delegate to the General Manager the authority to negotiate, for and on behalf of the Commission, the sale of the Bonds to one or more purchasers thereof in accordance with the provisions of this resolution, and to authorize the preparation, with the assistance of disclosure counsel, and the distribution by the purchasers of the Bonds of, one or more Preliminary Official Statements and one or more Official Statements (collectively, "Official Statement"); and

WHEREAS, if, pursuant to this resolution, the General Manager determines to sell the Bonds by negotiated sale, the Commission hereby determines to authorize the General Manager to select and appoint underwriters for the Bonds and to further authorize the General Manager, with the consent of the City Attorney, to enter into one or more bond purchase agreements (collectively, "Bond Purchase Agreements"); and

WHEREAS, if, pursuant to this resolution, the General Manager determines to sell the Bonds by competitive sale, the Commission desires to receive, by competitive sale, bids to purchase the Bonds and, for such purpose, hereby determines to authorize the preparation, with the assistance of disclosure counsel, and the distribution by the financial advisors to the Commission (the "Financial Advisors") of (i) one or more Official Statements and (ii) one or more Official Notices of Sale and to authorize the preparation by Co-Bond Counsel and the publication of one or more notices of intention to sell (the "Notice of Intention to Sell"); and



WHEREAS, the Commission also desires to authorize the General Manager to issue bonds pursuant to the Indenture (the "Refunding Bonds") to refund previously issued San Francisco Water Revenue Bonds if and to the extent such refunding meets the requirements of Section 9.109 of the Charter and Article VIII of Chapter 43 of the Administrative Code; and

WHEREAS, the Commission expects to pay and incur certain expenditures in connection with the Improvements to be financed from the proceeds of the Bonds or other bonds of the Commission prior to the issuance and sale of the Bonds or such other bonds, and the Commission intends to reimburse itself and to pay third parties for such prior expenditures from the proceeds of the Bonds or such other bonds; and

WHEREAS, Section 1.150-2 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986 (the "Treasury Regulations") requires the Commission to declare its reasonable official intent to reimburse prior expenditures with the proceeds of a subsequent borrowing; and

WHEREAS, the Treasury Regulations require that any reimbursement allocation of proceeds of the Bonds or such other bonds be made with respect to expenditures incurred prior to the issuance of the Bonds or such other bonds will occur not later than eighteen (18) months after the later of (i) the date on which the expenditure is paid or (ii) the date on which the project is placed in service or abandoned, but in no event later than three (3) years after the expenditure is paid; and

WHEREAS, as an exception to the general requirement under the Charter that the issuance of revenue bonds be approved by voters of the City, the Charter amendments enacted by the voters under Proposition E, the Commission is authorized, subject to the referendum process and certain additional conditions, to issue revenue bonds, notes and other forms of indebtedness when authorized by ordinance approved by a two-thirds vote of the Board, for the purpose of reconstructing, replacing, expanding, preparing or improving water facilities or clean water facilities or combinations of water and clean water facilities under the jurisdiction of the Commission; and

WHEREAS, the Board has previously approved appropriations in the aggregate amount of \$2,949,924,182 for Improvements to be financed pursuant to the authorizations granted under Proposition A of 2002 and Proposition E (the "Water Improvement Projects"); and

WHEREAS, the Commission intends to request the Board to authorize an ordinance approving the issuance of revenue bonds for the Water Improvement Projects; and

WHEREAS, subject to the approval of the Board, all acts, conditions and things required by the Charter and the Constitution and laws of the State of California and the Indenture to exist, to have happened and to have been performed precedent to and in connection with the consummation of the financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law and, subject to such approval, the Commission is duly authorized and empowered, pursuant to each and every requirement of law, to authorize such financing and issue the Bonds and to authorize the execution and delivery of one or more Supplemental Indentures, Preliminary and Final Official Statements, Official Notices of Sale,

Continuing Disclosure Certificates, Bond Purchase Agreements and related documents for the purposes, in the manner and upon the terms provided; now, therefore, be it

RESOLVED by the Public Utilities Commission of the City and County of San Francisco, as follows:

Section 1. Authorization of the Bonds. The issuance and sale of the Bonds in an aggregate principal amount not to exceed \$1,120,185,000, is hereby authorized and approved by the Commission, subject to approval by the Board of Supervisors, provided that at no time shall the amount of Bonds issued pursuant to this authorization, when added to the principal amount of the commercial paper issued pursuant to Proposition A of 2002 and outstanding, exceed \$1,120,185,000. The Bonds shall be issued for the purpose of providing funds for the financing of the acquisition and construction of the Improvements, refunding the Commission's commercial paper notes issued to fund a portion of the Improvements, making a deposit to the funds established under the Supplemental Indentures to fund an additional portion of the Improvements, making deposits to the capitalized interest accounts established under the Supplemental Indentures to pay interest on the Bonds as determined by the General Manager, funding the reserve accounts established under the Supplemental Indentures and paying costs of issuance of the Bonds. The Bonds shall be issued in accordance with this resolution, the Indenture and the Charter. The General Manager is hereby authorized and directed to determine whether to sell the Bonds via one or more competitive or negotiated sales, as he deems appropriate and in the best financial interest of the Commission; the aggregate principal amount of Bonds to be issued (subject to the maximum amount authorized herein) and to provide for the sale of the Bonds (with the designation and series to be determined by the General Manager), subject to the limitations set forth herein. The form of the Bonds, in substantially the form presented to this Commission, as set forth in an exhibit to the Supplemental Indentures, is hereby approved. The President or General Manager of the Commission is hereby authorized and directed to approve and to execute the Bonds by manual or facsimile signature; and the Secretary of the Commission is hereby authorized and directed to attest, by manual or facsimile signature and to cause the seal of the Commission to be reproduced or impressed on the Bonds with such changes, additions, amendments or modifications therein which they may deem necessary or desirable and as the City Attorney may require or approve, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Bonds, subject to the limitations set forth in Section 2 hereof. The Bonds are to be water revenue bonds, payable exclusively from the revenue of the Water Enterprise of the Commission. The Bonds are not secured by the taxing power of the City.

Section 2. Form of Supplemental Indenture. The proposed form of Supplemental Indenture between the Commission and the Trustee, submitted to this Commission, and the terms and conditions thereof, is hereby approved. The President or General Manager of the Commission or their designees and the Secretary of the Commission are authorized and directed to execute and deliver said form of Supplemental Indenture with such additions thereto or changes therein which they may deem necessary or desirable and as the City Attorney may require or approve, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Supplemental Indentures. The Secretary of the Commission is hereby directed to file a copy of said form of Supplemental Indentures with the minutes of this meeting. The exact name of the Bonds, principal amount, date, maturity date or dates (with a final maturity date of not more than 35 years from the date of issuance), maximum interest rate or rates (not to exceed twelve percent (12%) per annum), series designation, interest payment dates, forms, registration privileges, place or places

of payment, terms of redemption (optional redemption for each series of the Bonds shall be as provided in the Supplemental Indentures); insurance provisions and other terms of the Bonds shall be (subject to the foregoing limitations) as provided in the Indenture.

Section 3. Disposition of Revenues; Rate Covenant. Section 5.01(b) of the Indenture which sets forth the disposition of Revenues (as defined in the Indenture) applicable to the Commission's Water Enterprise Bonds is hereby confirmed by the Commission and the Commission further confirms, pledges and covenants with the holders of the Bonds that the Revenues shall be appropriated and expended in the order of priority set forth in Section 5.01(b) of the Indenture. This Commission also declares that the Commission will comply with all of the terms, provisions and covenants contained in the Indenture, including the covenants to establish, fix, prescribe and collect rates, fees and charges sufficient to enable the Commission to comply with the terms, conditions and covenants of the Indenture.

Section 4. Preliminary Official Statement and Official Statement. The Preliminary Official Statement relating to the Bonds, submitted to this Commission, is hereby approved, and the General Manager or the General Manager's designee is hereby authorized and directed to certify, for and on behalf of the Commission, that the Preliminary Official Statement, with such changes, additions and supplements as they may deem necessary or appropriate, is deemed final as of its date, within the meaning of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (except for the omission of certain final pricing, rating and related information as permitted by said rule), and the Preliminary Official Statement, together with the Official Notice of Sale (as applicable) is hereby authorized to be used in connection with marketing of the Bonds. After the sale of the Bonds, the General Manager is hereby authorized and directed, for and on behalf of the Commission, to execute the Official Statement in substantially the form of the Preliminary Official Statement, subject to such additions thereto and changes therein, and any amendments or supplements thereto which are deemed necessary by the General Manager, in consultation with the City Attorney.

Section 5. Official Notice of Sale and Notice of Intention to Sell. In the event the General Manager determines to sell a series of the Bonds by competitive sale: (i) the proposed form of Official Notice of Sale inviting bids for the Bonds, submitted to this Commission is hereby approved, with such additions, changes and corrections thereto as the General Manager shall require or approve; (ii) sealed proposals shall be received on such date or dates as shall be selected by the General Manager for the purpose of the sale of the Bonds, the interest rate or rates of which will be designated in the bid, in accordance with the terms and conditions of the Official Notice of Sale; (iii) the General Manager is hereby authorized to award the Bonds to the highest responsible bidder, so long as such bid shall provide an interest rate to the Commission of not to exceed twelve percent (12%) per annum, and the price to be paid to the Commission for such series of Bonds shall not be less than the par value thereof, less a total discount of not to exceed five percent (5%); (iv) if such true interest cost and price are acceptable to the General Manager and satisfy the foregoing criteria, the General Manager is hereby authorized and directed to accept, on behalf of the Commission, the best responsive bid for such series of Bonds; (v) the Financial Advisors are hereby authorized and directed to cause to be distributed to prospective bidders for such series of Bonds copies of the Official Notice of Sale, subject to such corrections, revisions or additions as may be acceptable to the General Manager, including determination of the principal amount of the Bonds to be sold at such time; (vi) the Secretary of the Commission is directed to file a copy of said form of Official Notice of Sale with the minutes

of this meeting; (vii) the General Manager or his designee is hereby authorized and directed to publish a Notice of Intention to Sell each such series of Bonds and (viii) the General Manager is hereby authorized and directed to cause said Notice of Intention to Sell, to be published once at least five days before the date of sale of the respective series of Bonds in a financial newspaper of general circulation in the City and in a financial publication generally circulated throughout the state or reasonably expected to be disseminated among prospective bidders for the Bonds.

Section 6. Negotiated Sale and Bond Purchase Agreements. In the event that the General Manager determines to sell a series of the Bonds by negotiated sale, (i) the General Manager is hereby authorized to select and appoint one or more investment banking firms to act as underwriters (the "Underwriters") for the Bonds in accordance with City policies and procedures, including but not limited to the City's policy to provide locally disadvantaged business enterprises an equal opportunity to participate in the performance of all City contracts; (ii) the General Manager is hereby authorized and directed, for and on behalf of and in the name of the Commission, to sell at one or more negotiated sales in such aggregate principal amount as the General Manager may determine; (iii) the Bonds may be issued in one or more issues and/or subseries, as the General Manager deems appropriate in consultation with the Underwriters, Financial Advisors and Co-Bond Counsel, and shall be sold to the Underwriters pursuant to one or more Bond Purchase Agreements; (iii) the General Manager or his designee is hereby authorized to enter into one or more Bond Purchase Agreements with the Underwriters, individually or collectively as the General Manager deems appropriate, in such form or forms as the General Manager may approve, in consultation with the City Attorney, such approval to be evidenced conclusively by the delivery to the Underwriters of each such Bond Purchase Agreement; provided, however, that the total compensation to the Underwriters shall not exceed 0.9% of the par value of the Bonds; (iv) the Bonds shall be delivered to the Underwriters upon payment of the purchase price, namely, said par value thereof, plus the premium or less the discount set forth in the Bond Purchase Agreement, together with accrued interest, if any, at the initial rates set forth in said Bond Purchase Agreement; and (v) the Bonds shall bear interest at said rates, payable on the dates determined as provided in the Supplemental Indenture and shall be distinguished by such alpha-numeric or other designations as the General Manager may determine consistent with the Supplemental Indenture.

Section 7. Continuing Disclosure Certificate. The proposed form of Continuing Disclosure Certificate for the Bonds, submitted to this Commission, is hereby approved. The General Manager or the General Manager's designee is hereby authorized and directed to execute said Continuing Disclosure Certificate, substantially in the form submitted to this Commission, with such additions, changes and corrections thereto as the General Manager shall approve, in consultation with the City Attorney. The Secretary of the Commission is directed to file a copy of said form of Continuing Disclosure Certificate with the minutes of this meeting.

Section 8. Refunding Bonds. The issuance and sale of Refunding Bonds is hereby authorized and approved by the Commission, subject to the Board approving the issuance of such Refunding Bonds and the requirement that the Refunding Bonds meet the debt service saving tests set forth in Section 9.109 of the Charter and Article VIII of Chapter 43 of the Administrative Code. The Refunding Bonds shall be issued from time to time pursuant to one or more Indentures, and the General Manager is hereby authorized and directed to determine, from time to time, the aggregate principal amount of Refunding Bonds to be issued (subject to the maximum amount authorized herein) and to provide for the sale of the Refunding Bonds (with

the exact name, year of issuance, designation and series of such Refunding Bonds to be determined by the General Manager) in such manner as the General Manager shall determine. The issuance and sale of the Refunding Bonds shall comply with the provisions of this resolution.

Section 9. Reimbursement. The Commission hereby declares its official intent to reimburse expenditures of the Commission relating to the Improvements to be financed from the proceeds of the Bonds or other bonds of the Commission that are incurred or paid prior to the issuance and sale of the Bonds or such other bonds from the proceeds of the Bonds or such other bonds.

Section 10. Adoption of CEQA Findings. The Commission hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, all as set forth in Resolution 08-0200, adopted by the Commission on October 30, 2008, and hereby finds and determines that Improvements to be financed with proceeds of the Bonds are within the scope of the WSIP and activities evaluated in the Final PEIR.

Section 11. Conformance with City General Plan. In accordance with the provisions of Proposition A, the Board determined that the bond projects were in conformance with the City's General Plan, and this Commission hereby finds and determines that the Improvements to be financed with proceeds of the Bonds are within the activities evaluated in the General Plan Referral then submitted to the Board.

Section 12. Revenue Bond Oversight Committee. The General Manager is hereby authorized to make the deposit for the benefit of the Revenue Bond Oversight Committee ("RBOC") required by Article 5A.31(d) of the Administrative Code, provided that any amounts so paid from the proceeds of Bonds that have not been spent by RBOC in connection with such Bonds (as contemplated by Article 5A.31(c) of the Administrative Code) within 36 months of the date of issuance of such Bonds shall be returned to the Commission for deposit into the Improvement Fund and expended by the Commission to acquire and construct Improvements.

Section 13. Submittal to Board for Approval. The General Manager is hereby authorized and directed to submit to the Board a resolution to approve the issuance of the Bonds as required by the Charter. The General Manager is hereby further authorized and directed to submit to the Board an Ordinance authorizing the issuance of not to exceed \$1,321,924,182 aggregate principal amount of Water Revenue Bonds under the terms of Proposition E; provided however the issuance of such Water Revenue Bonds shall be subject to the terms of Proposition E (approved by the voters November 2002), and the General Manager shall return to this Commission and the Board for approval of any disclosure and security documents prepared in connection with the issuance of such Bonds to finance Water Improvement Projects.

Section 14. General Authority. The officers of this Commission, the General Manager, the Assistant General Manager, Business Services and Chief Financial Officer of the Commission and the officers of the Commission are hereby authorized and directed, each acting alone, for and in the name and on behalf of this Commission, to execute and deliver any and all documents, certificates and representations, including, but not limited to, signature certificates, no-litigation certificates, tax certificates, letters of representation relating to book-entry registration, and certificates concerning the contents of the Official Statement and the Official

Statement and the Preliminary Official Statement, to contract for municipal bond insurance for all or a portion of the Bonds if determined to be beneficial, to contract for a surety bond for the required reserve for all or a portion of the Bonds, to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the issuance and sale of the Bonds, the financing of the Improvements and the actions which the Commission has approved in this resolution. The General Manager is authorized to delegate any of the responsibilities or duties set forth in this resolution to the Assistant General Manager, Business Services and Chief Financial Officer of the Commission.

Section 15. Ratification. All actions heretofore taken by the officials, employees and agents of the Commission with respect to the sale and issuance of the Bonds are hereby approved, confirmed and ratified.

Section 16. Effective Date. This resolution shall take effect from and after its adoption.

PASSED AND ADOPTED on June 23, 2009, by the following vote:

AYES: 4

NOES: 0

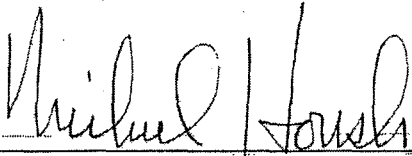
ABSENT: 0



\_\_\_\_\_  
President of the Public Utilities Commission  
of the City and County of San Francisco

[Seal]

Attest:



\_\_\_\_\_  
Secretary of the Public Utilities Commission  
of the City and County of San Francisco

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

By: \_\_\_\_\_  
Deputy City Attorney

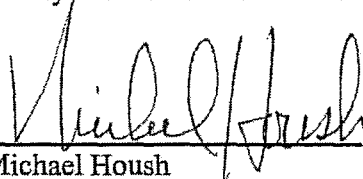
## CERTIFICATE OF SECRETARY

I, Michael Housh, Secretary of the Public Utilities Commission of the City and County of San Francisco, hereby certify that the foregoing is a full, true and correct copy of Resolution No. **09-0102** duly adopted at the regular meeting of the Public Utilities Commission, duly and regularly held on June 23, 2009, of which meeting all of the members of said Commission had due notice.

I further certify that at least 72 hours prior to such meeting I caused to be delivered to the Documents Department of the San Francisco Public Library two copies of the agenda for such meeting to be posted immediately upon receipt by such Department at the place designated by the City Librarian for the posting of agenda in the central public library, which place is accessible to the public in accordance with Section 8.16 of the Administrative Code of the City and County of San Francisco, and that a brief description of such resolution appeared as an item on such agenda.

I further certify that I have carefully compared the foregoing copy with the original minutes of said meeting on file and of record in my office; that said copy is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded in any manner since the date of its adoption, and the same is now in full force and effect.

IN WITNESS WHEREOF, I have executed this certificate and affixed the seal of the Public Utilities Commission of the City and County of San Francisco thereto this June 23, 2009.



Michael Housh  
Secretary of the Public Utilities  
Commission of the City and  
County of San Francisco

[SEAL]

00151738/16/3143.0120



## PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 08-0200

WHEREAS, the San Francisco Public Utilities Commission approved and adopted a Long-Term Strategic Plan for Capital Improvements, a Long-Range Financial Plan, and a Capital Improvement Program on May 28, 2002 under Resolution No. 02-0101; and

WHEREAS, the San Francisco Public Utilities Commission determined the need for the Water System Improvement Program (WSIP) to address water system deficiencies including aging infrastructure, exposure to seismic and other hazards, maintaining water quality, improving asset management and delivery reliability, and meeting customer demands; and

WHEREAS, Propositions A and E passed in November 2002 by San Francisco voters and Assembly Bill No. 1823 was also approved in 2002 requiring the City and County of San Francisco to adopt a capital improvement program designed to restore and improve the regional water system; and

WHEREAS, the San Francisco Public Utilities Commission staff developed a variant to the WSIP referred to as the Phased WSIP; and

WHEREAS, the two fundamental principles of the program are 1) maintaining a clean, unfiltered water source from the Hetch Hetchy system, and 2) maintaining a gravity-driven system; and

WHEREAS, the overall goals of the Phased WSIP for the regional water system include 1) Maintaining high-quality water and a gravity-driven system, 2) Reducing vulnerability to earthquakes, 3) Increasing delivery reliability, 4) Meeting customer water supply needs, 5) Enhancing sustainability, and 6) Achieving a cost-effective, fully operational system; and

WHEREAS, on October 30, 2008, the Planning Commission reviewed and considered the Final Program Environmental Impact Report (PEIR) in Planning Department File No. 2005.0159E, consisting of the Draft PEIR and the Comments and Responses document, and found that the contents of said report and the procedures through which the Final PEIR was prepared, publicized and reviewed complied with the provisions of the California Environmental Quality Act (CEQA), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code ("Chapter 31") and found further that the Final PEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the Draft PEIR, and certified the completion of said Final PEIR in compliance with CEQA, the CEQA Guidelines and Chapter 31 in its Motion No. 17734; and

WHEREAS, this Commission has reviewed and considered the information contained in the Final PEIR, all written and oral information provided by the Planning

Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the WSIP and the PEIR; and

WHEREAS, the WSIP and Final PEIR files have been made available for review by the San Francisco Public Utilities Commission and the public, and those files are part of the record before this Commission; and

WHEREAS, San Francisco Public Utilities Commission staff prepared proposed findings, as required by CEQA, (CEQA Findings) and a proposed Mitigation, Monitoring and Reporting Program (MMRP), which material was made available to the public and the Commission for the Commission's review, consideration and action; and

WHEREAS, the Phased WSIP includes the following program elements: 1) full implementation of all WSIP facility improvement projects; 2) water supply delivery to regional water system customers through 2018; 3) water supply sources (265 million gallons per day (mgd) average annual from SFPUC watersheds, 10 mgd conservation, recycled water, groundwater in San Francisco, and 10 mgd conservation, recycled water, groundwater in the wholesale service area); 4) dry-year water transfers coupled with the Westside Groundwater Basin Conjunctive Use project to ensure drought reliability; 5) re-evaluation of 2030 demand projections, regional water system purchase requests, and water supply options by 2018 and a separate SFPUC decision by 2018 regarding water deliveries after 2018; and, 6) provision of financial incentives to limit water sales to an average annual 265 mgd from the SFPUC watersheds through 2018; and

WHEREAS, the SFPUC staff has recommended that this Commission make a water supply decision only through 2018, limiting water sales from the SFPUC watersheds to an average annual of 265 mgd; and

WHEREAS, before 2018, the SFPUC would engage in a new planning process to re-evaluate water system demands and water supply options. As part of the process, the City would conduct additional environmental studies and CEQA review as appropriate to address the SFPUC's recommendation regarding water supply and proposed water system deliveries after 2018; and

WHEREAS, by 2018, this Commission will consider and evaluate a long-term water supply decision that contemplates deliveries beyond 2018 through a public process; and

WHEREAS, the SFPUC must consider current needs as well as possible future changes, and design a system that achieves a balance among the numerous objectives, functions and risks a water supplier must face, including possible increased demand in the future; now, therefore, be it

RESOLVED, this Commission hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, attached to this Resolution as Attachment A and incorporated herein as part of this Resolution by this reference thereto, and adopts the Mitigation Monitoring and Reporting Program attached to this Resolution as Attachment B and incorporated herein as part of this Resolution by this reference thereto; and, be it

FURTHER RESOLVED, this Commission hereby approves a water system improvement program that would limit sales to an average annual of 265 mgd from the watersheds through 2018, and the SFPUC and the wholesale customers would

collectively develop 20 mgd in conservation, recycled water, and groundwater to meet demand in 2018, which includes 10 mgd of conservation, recycled water, and groundwater to be developed by the SFPUC in San Francisco, and 10 mgd to be developed by the wholesale customers in the wholesale service area; and, be it

FURTHER RESOLVED, the San Francisco Public Utilities Commission shall set aggressive water conservation and recycling goals, shall bring short and long-term conservation, recycling, and groundwater programs on line at the earliest possible time, and shall undertake every effort to reduce demand and any further diversion from the San Francisco Public Utilities Commission watersheds; and, be it

FURTHER RESOLVED, San Francisco Public utilities Commission staff shall provide ongoing updates to this Commission about the progress and development of conservation, recycling, and groundwater programs, and shall provide annual figures and projections for water system demands and sales, and provide water supply options; and, be it

FURTHER RESOLVED, As part of the Phased WSIP, this Commission hereby approves implementation of delivery and drought reliability elements of the WSIP, including dry-year water transfers coupled with the Westside Groundwater Basin Conjunctive Use project, which meets the drought-year goal of limiting rationing to no more than 20 percent on a system-wide basis; and, be it

FURTHER RESOLVED, This Commission hereby approves the Phased Water System Improvement Program, which includes seismic and delivery reliability goals that apply to the design of system components to improve seismic and water delivery reliability, meet current and future water quality regulations, provide for additional system conveyance for maintenance and meet water supply reliability goals for year 2018 and possibly beyond; and, be it

FURTHER RESOLVED, This Commission hereby approves the following goals and objectives for the Phased Water System Improvement Program:

**Phased WSIP GOALS AND OBJECTIVES**

Program Goal	System Performance Objective
Water Quality – <i>maintain high water quality</i>	<ul style="list-style-type: none"> <li>• Design improvements to meet current and foreseeable future federal and state water quality requirements.</li> <li>• Provide clean, unfiltered water originating from Hetch Hetchy Reservoir and filtered water from local watersheds.</li> <li>• Continue to implement watershed protection measures.</li> </ul>

Program Goal	System Performance Objective
<i>Seismic Reliability – reduce vulnerability to earthquakes</i>	<ul style="list-style-type: none"> <li>• Design improvements to meet current seismic standards.</li> <li>• Deliver basic service to the three regions in the service area (East/South Bay, Peninsula, and San Francisco) within 24 hours after a major earthquake. Basic service is defined as average winter-month usage, and the performance objective for design of the regional system is 229 mgd. The performance objective is to provide delivery to at least 70 percent of the turnouts in each region, with 104, 44, and 81 mgd delivered to the East/South Bay, Peninsula, and San Francisco, respectively.</li> <li>• Restore facilities to meet average-day demand of up to 300 mgd within 30 days after a major earthquake.</li> </ul>
<i>Delivery Reliability – increase delivery reliability and improve ability to maintain the system</i>	<ul style="list-style-type: none"> <li>• Provide operational flexibility to allow planned maintenance shutdown of individual facilities without interrupting customer service.</li> <li>• Provide operational flexibility to minimize the risk of service interruption due to unplanned facility upsets or outages.</li> <li>• Provide operational flexibility and system capacity to replenish local reservoirs as needed.</li> <li>• Meet the estimated average annual demand of up to 300 mgd under the conditions of one planned shutdown of a major facility for maintenance concurrent with one unplanned facility outage due to a natural disaster, emergency, or facility failure/upset.</li> </ul>
<i>Water Supply – meet customer water needs in non-drought and drought periods</i>	<ul style="list-style-type: none"> <li>• Meet average annual water demand of 265 mgd from the SFPUC watersheds for retail and wholesale customers during non -drought years for system demands through 2018.</li> <li>• Meet dry-year delivery needs through 2018 while limiting rationing to a maximum 20 percent system-wide reduction in water service during extended droughts.</li> <li>• Diversify water supply options during non-drought and drought periods.</li> <li>• Improve use of new water sources and drought management, including groundwater, recycled water, conservation, and transfers.</li> </ul>
<i>Sustainability – enhance sustainability in all system activities</i>	<ul style="list-style-type: none"> <li>• Manage natural resources and physical systems to protect watershed ecosystems.</li> <li>• Meet, at a minimum, all current and anticipated legal requirements for protection of fish and wildlife habitat.</li> <li>• Manage natural resources and physical systems to protect public health and safety</li> </ul>
<i>Cost-effectiveness – achieve a cost-effective, fully operational system</i>	<ul style="list-style-type: none"> <li>• Ensure cost-effective use of funds.</li> <li>• Maintain gravity-driven system.</li> <li>• Implement regular inspection and maintenance program for all facilities.</li> </ul>

And, be it

FURTHER RESOLVED, This Commission authorizes and directs SFPUC staff to

design and develop WSIP facility improvement projects consistent with the Phased WSIP Goals and Objectives.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of October 30, 2008*

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*Michael Howell*

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*Secretary, Public Utilities Commission*

3: 2015.042

**ENDORSED  
FILED**  
SAN FRANCISCO County Clerk

OCT 05, 2015



# SAN FRANCISCO PLANNING DEPARTMENT

## Notice of Determination

by: **FALLON LIM**  
Deputy County Clerk

*Approval Date:* September 29, 2015  
*Case No.:* 2008.0091E  
*State Clearinghouse No.:* 2008052133  
*Project Title:* **San Francisco Westside Recycled Water Project**  
*Location:* The project is located at several locations throughout western San Francisco, including the SFPUC's Oceanside Water Pollution Control Plant and a portion of the adjacent area leased by the City and County of San Francisco to the California Army National Guard near Lake Merced; the Central Reservoir in Golden Gate Park; the Panhandle portion of Golden Gate Park; and roadways connecting the recycled water treatment plant to Golden Gate Park, the Presidio, and Lincoln Park City and County of San Francisco

*Lead Agency:* City and County of San Francisco  
*Staff Contact:* Timothy Johnston, San Francisco Planning Department (415) 575-9035, [timothy.johnston@sfgov.org](mailto:timothy.johnston@sfgov.org)

*Project Sponsor:* San Francisco Public Utilities Commission  
*Staff Contact:* Scott MacPherson, San Francisco Public Utilities Commission (415) 551-4525, [smacpherson@sfwater.org](mailto:smacpherson@sfwater.org)

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning Information:  
415.558.6377

OCT 05 2015  
 POSTED  
 TO

To: County Clerk, City and County of San Francisco  
 City Hall Room 168  
 1 Dr. Carlton B. Goodlett Place  
 San Francisco, CA 94102

Pursuant to the California Environmental Quality Act (CEQA), the Guidelines of the Secretary for Resources, and San Francisco requirements, this Notice of Determination is transmitted to you for filing. At the end of the posting period, please return this Notice to the Staff Contact with a notation of the period it was posted.

*Attached fee:*  
 \$60 filing fee AND  \$3,069.75 EIR Fee

### PROJECT DESCRIPTION:

The San Francisco Westside Recycled Water Project (project) is a recycled water project located in western San Francisco. The primary purpose of the project is to reduce the City and County of San Francisco's (CCSF) reliance on potable water for nonpotable uses, such as irrigation, through the production and distribution of highly treated recycled water. The project would meet the current water demand in areas of western San Francisco that have substantial irrigation needs, including Golden Gate Park, Lincoln Park/Lincoln Park Golf Course (Lincoln Park), the Presidio Golf Course, and other irrigated areas within the Presidio. In addition to the capacity intended to serve these areas, the proposed project would have enough capacity to serve potential future customers, such as the San Francisco Zoo (Zoo). The project includes construction of a recycled water treatment plant and underground storage as well as

construction of and/or upgrades to distribution facilities (pipelines and pumping facilities) for service to existing customers.

The project is a component of the SFPUC's Water System Improvement Program (WSIP), which includes facility improvement projects designed to: (1) maintain high-quality water; (2) reduce vulnerability to earthquakes; (3) increase delivery reliability and improve the ability to maintain the system; (4) meet customer purchase requests in nondrought and drought periods; (5) enhance sustainability in all system activities; and (6) achieve a cost-effective, fully operational system.

The SFPUC would construct the following project components.

**Treatment and Storage.** The recycled water treatment facilities would include:

1. Approximately 30,000 square foot (approximately 40 to 45 feet in height) treatment plant at the Oceanside WPCP with annual average production capacity of up to 2.0 mgd, but sized to meet peak-day demands (during summer months) of up to 5.0 mgd;
2. Reconfiguration of the existing chemical storage building at the Oceanside WPCP to house the additional chemicals required for the recycled water treatment process;
3. New secondary effluent pumps at the Oceanside WPCP;
4. Reconfiguration of the existing chlorine contact channels within the Oceanside WPCP to provide 760,000 gallons of secondary effluent equalization storage;
5. 350,000-gallon reservoir underneath the recycled water treatment plant used during the treatment process;
6. Proposed 840,000-gallon buried storage reservoir adjacent to the existing Central Reservoir in Golden Gate Park.

**Distribution.** The distribution facilities would include:

1. Recycled water transmission pump station (approximately 50 by 100 feet and 20 feet high) at the recycled water treatment plant, including a proposed 40,000 gallon recycled water pump wet well used to submerge pumps;
2. Use and potential modification (within existing footprint) of the existing pump station and Central Reservoir at the Golden Gate Park Central Reservoir site;
3. Recycled water distribution pump station adjacent to the existing Central Pump Station in Golden Gate Park. The new pump station would be about 80 feet by 50 feet and 20 feet tall or less;
4. Upgrade or replacement of the existing irrigation booster pumps in the Panhandle;
5. Use of the existing irrigation pump station at Lincoln Park;

Notice of Determination  
October 5, 2015

CASE NO. 2008.0091E  
San Francisco Westside Recycled Water Project

6. Approximately 3 miles of proposed pipeline (16 to 20 inches in diameter) from the recycled water treatment plant at Oceanside WPCP to the Central Reservoir in Golden Gate Park;
7. Approximately 5 miles of proposed pipeline (8 to 16 inches in diameter) from the Central Reservoir to customers in Lincoln Park, the Presidio, and the Panhandle.

The San Francisco Public Utilities Commission, on behalf of the City and County of San Francisco, decided to carry out or approve the project on September 10, 2015. The effective date of project approval is October 5, 2015, which follows the expiration of the appeal period on the certified Final EIR. A copy of the documents may be examined at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 9413, in file no. 2008.0091E.

**DETERMINATION:**

1. An Environmental Impact Report has been prepared pursuant to the provisions of CEQA. It is available to the public and may be examined at the Planning Department at the above address.
2. A determination has been made that the project in its approved form will contribute to a significant effect on the environment.
3. Findings were made pursuant to the provisions of CEQA.
4. A statement of overriding considerations was adopted.
5. Mitigation measures were made a condition of project approval.

John Rahaim  
Planning Director



By Sarah B. Jones  
Environmental Review Officer

cc: Scott MacPherson, SFPUC  
Elaine Warren, San Francisco City Attorney's Office





State of California—Natural Resources Agency  
**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
**2015 ENVIRONMENTAL FILING FEE CASH RECEIPT**

RECEIPT #  
**38-2015-042**

STATE CLEARING HOUSE # (if applicable)  
 2008052133

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY  
 SAN FRANCISCO PLANNING DEPARTMENT

DATE  
 10/05/2015

COUNTY/STATE AGENCY OF FILING  
 SAN FRANCISCO

DOCUMENT NUMBER  
 2008.0091E

PROJECT TITLE  
 SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT

PROJECT APPLICANT NAME  
 TIMOTHY JOHNSTON

PHONE NUMBER  
 ( )

PROJECT APPLICANT ADDRESS  
 1650 MISSION ST, STE 400

CITY  
 SAN FRANCISCO

STATE  
 CA

ZIP CODE  
 94103

PROJECT APPLICANT (Check appropriate box):

- Local Public Agency     School District     Other Special District     State Agency     Private Entity

**CHECK APPLICABLE FEES:**

<input checked="" type="checkbox"/> Environmental Impact Report (EIR)	\$3,069.75	\$	3069.75
<input type="checkbox"/> Mitigated/Negative Declaration (MND)(ND)	\$2,210.00	\$	
<input type="checkbox"/> Application Fee Water Diversion (State Water Resources Control Board only)	\$850.00	\$	
<input type="checkbox"/> Projects Subject to Certified Regulatory Programs (CRP)	\$1,043.75	\$	
<input checked="" type="checkbox"/> County Administrative Fee	\$60.00	\$	60.00
<input type="checkbox"/> Project that is exempt from fees			
<input type="checkbox"/> Notice of Exemption (attach)			
<input type="checkbox"/> CDFW No Effect Determination (attach)			
<input type="checkbox"/> Other		\$	

**PAYMENT METHOD:**

Cash     Credit     Check     Other RAUW1600077    TOTAL RECEIVED \$ 3129.75

SIGNATURE

X

PRINTED NAME AND TITLE

FALLON LIM Deputy County Clerk

ORIGINAL - PROJECT APPLICANT

COPY - CDFW/ASB

COPY - LEAD AGENCY

COPY - COUNTY CLERK

FG753.5a (Rev. 12/13)



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Motion No. 19443

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

HEARING DATE: SEPTEMBER 3, 2015

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*Case No.:* 2008.0091E  
*Project Name:* San Francisco Westside Recycled Water Project  
*Zoning:* P (Public) Zoning District  
OS (Open Space) Height and Bulk District  
*Block/Lot:* 7281/007  
*Project Sponsor:* San Francisco Public Utilities Commission  
c/o Scott MacPherson  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, CA 94102  
*Staff Contact:* Audrey Desmuke – (415) 575-9136  
[audrey.desmuke@sfgov.org](mailto:audrey.desmuke@sfgov.org)

**ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING FINDINGS REJECTING ALTERNATIVES AS INFEASIBLE, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION, MONITORING, AND REPORTING PROGRAM, RELATING TO THE SAN FRANCISCO PUBLIC UTILITY'S PROPOSED PROJECT TO CONSTRUCT AND OPERATE ON THE WESTSIDE RECYCLED WATER PLANT PROJECT.**

### PREAMBLE

On January 17, 2008, the San Francisco Public Utilities Commission ("SFPUC") submitted an Environmental Evaluation Application to the Planning Department ("Department"), Case No. 2008.0091E, in connection with a project to construct and operate a recycled water facility on the west side of San Francisco. The San Francisco Westside Recycled Water Project ("SFRW Project" or "Project") would consist of a recycled water treatment plant at the SFPUC's Oceanside Water Pollution Control Plan ("WPCP") and within a portion of the adjacent California Army National Guard site, underground storage and distribution facilities. The plant would have an operational capacity to serve peak-day demands of up to 5 mgd (or 2 mgd annual average) to meet the current water demand in areas of western San Francisco that have substantial irrigation needs.

On June 5, 2008, and September 8, 2010, the Department issued a Notice of Preparation of an Environmental Impact Report ("NOP") for the Project, and, in response to comments received, revised the location of certain project elements and published a revised NOP on July 16, 2014.

materials and oral testimony presented on behalf of the SFPUC, the Planning Department staff, and other interested parties.

**MOVED**, that the Planning Commission hereby adopts findings under the California Environmental Quality Act, including rejecting alternatives as infeasible and adopting a Statement of Overriding Considerations, and adopts the MMRP attached as Exhibit A based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the Preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

In determining to approve the San Francisco Westside Recycled Water Project ("SFRW Project" or "Project") described in Section I, Project Description, below, the San Francisco Planning Commission ("Planning Commission" or "Commission") makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code.

This document is organized as follows:

**Section I** provides a description of the Project proposed for adoption, the environmental review process for the Project (San Francisco Westside Recycled Water Project Environmental Impact Report, Planning Department Case No., 2008.0091E, State Clearinghouse No. 2008052133) (the "Final EIR" or "EIR"), the approval actions to be taken and the location of records;

**Section II** identifies the impacts found not to be significant that do not require mitigation;

**Section III** identifies potentially significant impacts that can be avoided or reduced to less-than-significant levels through mitigation and describes the disposition of the mitigation measures;

**Section IV** identifies significant impacts that cannot be avoided or reduced to less-than-significant levels and describes any applicable mitigation measures as well as the disposition of the mitigation measures;

**Section V** evaluates the different Project alternatives and the economic, legal, social, technological and other considerations that support approval of the Project and the rejection of alternatives, or elements thereof, analyzed; and

**Section VI** presents a statement of overriding considerations setting forth specific reasons in support of the Commission's actions and rejection of the alternatives not incorporated into the Project.

- Develop a new water supply in San Francisco that is both reliable and drought resistant.
- Reduce the use of potable water and groundwater for irrigation and other nonpotable uses by supplying those demands with recycled water.

In addition, the Project is part of the SFPUC's adopted Water System Improvement Program ("WSIP") adopted by the SFPUC on October 30, 2008 (see Section C.1). The WSIP consists of over 70 local and regional facility improvement projects that would increase the ability of the SFPUC's water supply system to withstand major seismic events and prolonged droughts and to meet estimated water-purchase requests in the service areas. With the exception of the water supply goal, the overall WSIP goals and objectives are based on a planning horizon through 2030. The water supply goal to meet delivery needs in the SFPUC service area is based on a planning horizon through 2018. The overall goals of the WSIP for the regional water system are to:

- Maintain high-quality water.
- Reduce vulnerability to earthquakes.
- Increase water delivery reliability.
- Meet customer water supply needs.
- Enhance sustainability.
- Achieve a cost-effective, fully operational system.

The Project would help meet WSIP level-of-service goals and system performance objectives. These goals include providing a total of 10 mgd annual average of water supply from recycled water, groundwater, and conservation projects to meet retail demand in San Francisco. Of this amount, the WSIP project description indicated that approximately 4 mgd annual average would be derived from recycled water projects in San Francisco. This Project would provide up to 2 mgd of recycled water; currently identified customers are estimated to use 1.6 mgd. This Project would also enable implementation of the SFPUC's Groundwater Supply Project, approved by the SFPUC in December, 2013. The SFPUC's Groundwater Supply Project calls for installation of new groundwater wells to recover 2.5 to 3.0 mgd of groundwater in the first phase and conversion of existing irrigation wells in Golden Gate Park to potable use, providing 1.0 to 1.5 mgd of groundwater in the second phase. The second phase cannot occur until recycled water is available for Golden Gate Park landscaping or until another landscaping water source is identified. Thus the Project would also help meet the WSIP goal of providing approximately 4 mgd annual average of water supply from groundwater.

### **C. Environmental Review**

#### *1. Water System Improvement Program Environmental Impact Report*

The Draft EIR was circulated for public comment from March 18, 2015 through May 4, 2015. The Planning Commission held a public hearing at San Francisco City Hall on April 23, 2015 to hear oral comments and accept written comments on the Draft EIR. During the public review period, EP received written comments sent through the mail, fax, or email. A court reporter was present at the public hearing, transcribed the public hearing verbatim, and prepared a written transcript.

EP then prepared the C&R document, which provided written responses to each comment received on the Draft EIR. The C&R document was published on August 20, 2015 and included copies of all of the comments received on the Draft EIR and individual responses to those comments. The C&R provided additional, updated information and clarification on issues raised by commenters, as well as SFPUC and Planning Department staff-initiated text changes to address Project updates. The Planning Commission reviewed and considered the Final EIR, which includes the Draft EIR and the C&R document, and all of the supporting information. The Final EIR provided augmented and updated information presented in the Draft EIR, on the following topics: Project description, cultural resources, transportation and circulation, air quality, hydrology and water quality, biological resources, and Project alternatives. This augmentation and update of information in the Draft EIR did not constitute new information or significance that altered any of the conclusions of the EIR.

In certifying the Final EIR by Motion No. 19442, the Planning Commission determined that none of the factors are present that would necessitate recirculation of the Final EIR under CEQA Guidelines Section 15088.5. The Final EIR contains no information revealing (1) any new significant environmental impact that would result from the Project or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible Project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project; but that was rejected by the Project's proponents, or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The Commission finds that the Project is within the scope of the Project analyzed in the Final EIR and the Final EIR fully analyzed the Project proposed for approval. No new impacts have been identified that were not analyzed in the Final EIR.

#### **D. Approval Actions**

##### *1. San Francisco Planning Commission Actions*

On August 13, 2015, the Planning Commission certified the Final EIR.

The Planning Commission is adopting these CEQA Findings in support of making General Plan consistency findings, and issuing a Coastal Development Permit.

##### *2. San Francisco Public Utilities Commission Actions*

The SFPUC will take the following actions and approvals to implement the Project:

To the extent that the identified mitigation measures require consultation or approval by these other agencies, this Commission urges these agencies to assist in implementing, coordinating, or approving the mitigation measures, as appropriate to the particular measure.

**E. Contents and Location of Records**

The record upon which all findings and determinations related to the Project are based ("Record of Proceedings") includes the following:

- The Draft EIR and all documents referenced in or relied upon by the EIR. (The references in these findings to the EIR or Final EIR include both the Draft EIR and the Comments and Responses document.) The PEIR for the Phased WSIP Variant, which is incorporated by reference in the SFRW Project EIR.
- All information (including written evidence and testimony) provided by City staff to the SFPUC and Planning Commission relating to the EIR, the Project, and the alternatives set forth in the EIR.
- All information (including written evidence and testimony) presented to the SFPUC and the Planning Commission by the environmental consultant and sub-consultants who prepared the EIR or that was incorporated into reports presented to the Commission.
- All information presented at any public hearing or workshop related to the Project and the EIR.
- The Mitigation Monitoring and Reporting Program.
- All other documents available to the Commission and the public, comprising the administrative record pursuant to Public Resources Code Section 21167.6(e).

The Commission has relied on all of the information listed above in reaching its decision on the Project, even if not every document was formally presented to the Commission. Without exception, these documents fall into one of two categories. Many documents reflect prior planning or legislative decisions that the Commission was aware of in approving the Project. Other documents influenced the expert advice provided to Planning Department staff or consultants, who then provided advice to the Commission. For these reasons, such documents form part of the underlying factual basis for the Commission's decisions relating to the adoption of the Project.

The public hearing transcript, a copy of all letters regarding the Draft EIR received during the public review period, the administrative record, and background documentation for the Final EIR are available at the San Francisco Planning Department, 1650 Mission Street, San Francisco. **Jonas P. Ionin**, Commission Secretary, is the Custodian of Records for the Planning Department Materials concerning approval of the Project and adoption of these findings are contained in SFPUC files, SFPUC Project No. CUW30102 in the Bureau of Environmental Management, San Francisco Public Utilities Commission, 525 Golden Gate Avenue, San Francisco, California 94102. The Custodian of Records is **Scott**

In Sections II, III and IV below, the same findings are made for a category of environmental impacts and mitigation measures. Rather than repeat the identical finding dozens of times to address each and every significant effect and mitigation measure, the initial finding obviates the need for such repetition because in no instance is the Commission rejecting the conclusions of the Final EIR or the mitigation measures recommended in the Final EIR for the Project.

## **II. LESS-THAN-SIGNIFICANT IMPACTS THAT DO NOT REQUIRE MITIGATION**

Under CEQA, no mitigation measures are required for impacts that are less than significant (Public Resources Code, Section 21002; CEQA Guidelines, Sections 15126.4, subdivision (a)(3), 15091). Based on the evidence in the whole record of this proceeding, the Commission finds that the implementation of the Project either does not apply or will result in no impacts in the following areas: (1) Population and Housing: displace existing housing units or people or require new housing; (2) Transportation and Circulation: change air traffic patterns; (3) Noise: expose people to airplane noise or be substantially affected by existing noise levels; (4) Air Quality: create objectionable odors; (5) Recreation: create a need for new facilities; (6) Utilities and Service Systems: conflict with solid waste regulations; (7) Public Services: create a need for new or altered facilities; (8) Biological Resources: conflict with local policies protecting biological resources, such as trees, or a habitat conservation plan or other similar plan; (9) Geology and Soils: change existing topography or unique geologic features of the site; (10) Hydrology and Water Quality: expose housing to flooding hazard, impede or redirect flood flows, or expose people or structures to harm from flooding, seiche, tsunami or mudflow; (11) Hazardous Materials: create a safety hazard from aircraft or fires; (12) Mineral and Energy Resources: result in loss of mineral resource or availability of a resource recovery site; and (13) Agricultural Resources: all issues. These subjects are not further discussed in these findings.

The Commission further finds that implementation of the Project will not result in any significant impacts in the following areas and that these impact areas therefore do not require mitigation:

### **Land Use**

- **Impact LU-1:** The Project would not physically divide an established community.
- **Impact LU-2:** The Project would not conflict with any applicable land use plans, policies, or regulations of any agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect.
- **Impact LU-3:** The Project would not impact the existing character of the vicinity.
- **Impact C-LU:** The Project would not have a cumulative impact on land use.

### **Aesthetics**

- **Impact AE-1:** The Project would not have an adverse effect on a scenic vista, scenic resource, or the existing visual character or quality of the site and its surroundings.

- **Impact C-TR:** The Project, in combination with past, present, and reasonably foreseeable future projects, would not substantially contribute to cumulative traffic increases on local and regional roads.

#### Noise and Vibration

- **Impact NO-1:** The Project would not result in substantial groundborne vibration or groundborne noise levels.
- **Impact NO-2:** Project operations would not result in the exposure of persons to, or generation of, noise levels in excess of standards or a substantial increase in ambient noise levels in the Project vicinity.
- **Impact NO-3:** Construction of the Project would not result in a substantial temporary increase in ambient noise levels at the closest residential receptors, and would not expose persons to substantial noise levels in excess of standards established in the Noise Ordinance (Article 29 of the Police Code).
- **Impact C-NO:** The Project would not have significant cumulative noise impacts.

#### Air Quality

- **Impact AQ-1:** The Project would not create objectionable odors that would affect a substantial number of people.
- **Impact AQ-3:** The Project's construction activities would generate TACs, including DPM, but would not expose sensitive receptors to substantial pollutant concentrations.
- **Impact C-AQ:** The Project could result in cumulative air quality impacts associated with criteria pollutant and precursor emissions and health risks, but the Project's contribution would not be cumulatively considerable.

#### Greenhouse Gas Emissions

- **Impact C-GG-1:** The Project would generate greenhouse gas emissions during Project construction and operation, but not at levels that would result in a significant impact on the environment or conflict with any policy, plan, or regulation adopted for the purpose of reducing greenhouse gas emissions.

#### Wind and Shadow

- **Impact WS-1:** The Project would not alter wind in a manner that substantially affects public areas.
- **Impact WS-2:** The Project would not create new shadow in a manner that could substantially affect outdoor recreation facilities or other public areas.



- **Impact GE-1:** The Project would not expose people or structures to substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, seismic groundshaking, or seismically induced ground failure.
- **Impact GE-2:** The Project would not result in substantial soil erosion or the loss of topsoil.
- **Impact GE-3:** The Project is not located on a geologic unit or soil that is unstable, or that could become unstable as a result of the Project.
- **Impact C-GE:** The Project would not have a significant cumulative impact related to geologic hazards.

#### Hydrology and Water Quality

- **Impact HY-1:** Project construction would not violate any water quality standards or waste discharge requirements or otherwise degrade water quality.
- **Impact HY-2:** Project operation would not contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems, provide substantial an additional sources of polluted runoff, or, with the exception of potentially violating water quality standards, otherwise substantially degrade water quality.
- **Impact HY-3:** The Project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.
- **Impact HY-4:** The Project would not alter the existing drainage pattern of the area in a manner that would result in substantial erosion, siltation, or flooding on or off the site.
- **Impact C-HY-1:** The Project would not have a significant cumulative hydrology and water quality impact.

#### Hazards and Hazardous Materials

- **Impact HZ-1:** Project construction would not result in a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.
- **Impact HZ-2:** The Project would be constructed on a site identified on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 but excavation activities would not expose workers and the public to adverse effects from release of hazardous materials.
- **Impact HZ-3:** Reconfiguration of the chemical building interior would not expose workers and the public to hazardous building materials including asbestos-containing materials, lead-

Based on the results of the background research, geoarchaeological assessment, and survey results, there is generally, throughout the CEQA Area of Potential Effect, a low potential for uncovering archaeological resources during Project construction. However, it is possible that previously unrecorded and buried (or otherwise obscured) archaeological deposits could be discovered during Project construction. Excavation, grading, and the movement of heavy construction vehicles and equipment could expose and cause impacts on unknown archaeological resources, which would be a *significant* impact. The impact would be reduced to a less-than-significant level through mitigation measure M-CP-2, which requires avoidance measures or appropriate treatment of cultural resources if accidentally discovered.

- *Mitigation Measure M-CP-2, Accidental Discovery of Archaeological Resources*

**Impact CP-3: The Project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. (Less than Significant with Mitigation)**

Ground-disturbing activities associated with the construction of the recycled water treatment plant would extend about 23 feet into the Colma Formation, a geologic unit with a high paleontological sensitivity. Vertebrate fossils, including parts of mammoths and bison, have been found in the Colma Formation in San Francisco. Given the sensitivity of the Colma Formation and the depth of excavation, the Project could adversely impact paleontological resources at the water treatment plant site, a *significant* impact. The impact would be reduced to a less-than-significant level through mitigation measure M-CP-3, which requires the contractor to stop all ground disturbance within 50 feet if a paleontological resource is encountered and to implement actions to investigate the discovery and recover fossil remains by a qualified professional before ground-disturbing activities can resume.

- *Mitigation Measure M-CP-3, Accidental Discovery of Paleontological Resources*

**Impact CP-4: The proposed Project could accidentally disturb human remains, including those interred outside of formal cemeteries. (Less than Significant with Mitigation)**

Based on the background research, geological assessment, and survey results, there is a low potential for Project construction to uncover human remains, except for the Project area adjacent to the Golden Gate Cemetery (see Impact CP-5). Although no known human burials have been identified within the Project site, the possibility of encountering human remains cannot be entirely discounted. Earthmoving activities associated with Project construction could result in direct impacts on previously undiscovered human remains. Therefore, the disturbance to human remains could be a *significant* impact. The impact would be reduced to a less-than-significant level through mitigation measure M-CP-4, which requires avoidance measures or the appropriate treatment of human remains if accidentally discovered.

- *Mitigation Measure M-CP-4, Accidental Discovery of Human Remains*

**Impact CP-5: Construction of the Project along Clement Street from 36th Avenue to 39th Avenue on the south side of Lincoln Park could disturb human remains associated with the historic-period Golden Gate Cemetery. (Less than Significant with Mitigation)**

behavior during the breeding season, including mortality of individual birds, such as red-shouldered hawk, red-tailed hawk, Cooper's hawk, or American kestrel, a *significant* impact. Implementation of mitigation measure M-BI-1a would reduce potential impacts on special-status birds to a less-than-significant level by requiring surveys of the Project site to identify nests and protection of nesting birds.

Vegetation clearing (including tree removal) at the Oceanside WPCP and the Central Pump Station could result in direct mortality of special-status bats. Direct mortality of special-status bats would be a *significant* impact. Mitigation measure BI-1b would require surveys of the Project site within two weeks of tree removal. With implementation of M-BI-1b, the impact on roosting bats would be reduced to less than significant.

Due to the proximity of aquatic habitats to the Lake Merced, North Lake, and Central Pump Station well facility sites, western pond turtle and California red-legged frog could utilize upland habitat where the Project construction activities will occur. If California red-legged frog or western pond turtle are present, they could be injured or killed, a *significant* impact. Mitigation measure M-BI-1c would mitigate the effect by requiring pre-construction surveys within 14 days of the construction activity. With implementation of mitigation measure M-BI-1c, the impact would be less than significant.

- *Mitigation Measure M-BI-1a, Nesting Bird Protection Measures*
- *Mitigation Measure M-BI-1b, Avoidance and Minimization Measures for Special-Status Bats*
- *Mitigation Measure M-BI-1c, Avoidance and Minimization Measures for California Red-Legged Frog and Western Pond Turtle*

### **Cumulative Impacts**

#### **Cultural Resources**

**Impact C-CP: The Project could result in cumulatively considerable impacts related to historical, archaeological, paleontological resources or human remains. (Less than Significant with Mitigation)**

Cumulative projects in the Project vicinity could adversely affect the same cultural resources affected by the Project and the Project could make a considerable contribution to a cumulative cultural resource impact, a *significant* impact. The Project's impacts, however, are site specific and implementation of site-specific mitigation measures M-CP-2, M-CP-3, M-CP-4 and M-CP-5 would reduce Project impacts such that the Project's contribution to this cumulative impact would be less than significant.

- *Mitigation Measure M-CP-2, Accidental Discovery of Archaeological Resources*
- *Mitigation Measure M-CP-3, Accidental Discovery of Paleontological Resources*
- *Mitigation Measure M-CP-4, Accidental Discovery of Human Remains*
- *Mitigation Measure M-CP-5, Archeological Monitoring Program*

overriding considerations described in Section VI below. This finding is supported by substantial evidence in the record of this proceeding.

The WSIP PEIR and the SFPUC's Resolution No. 08-0200 related to the WSIP water supply decision identified three significant and unavoidable impacts of the WSIP: *Impact 5.4.1-2- Stream Flow: Effects on flow along Alameda Creek below the Alameda Creek Division Dam*; *Impact 5.5.5-1-Fisheries: Effects on fishery resources in Crystal Springs reservoir (Upper and Lower)*; and *Impact 7-1-Indirect growth inducing impacts in the SFPUC service area*. Mitigation measures that were proposed in the PEIR were adopted by this Commission for these impacts; however, the mitigation measures could not reduce all the impacts to a less than significant level, and these impacts were determined to be significant and unavoidable. The SFPUC has already adopted the mitigation measures proposed in the PEIR to reduce these impacts when it approved the WSIP in its Resolution No. 08-0200. The SFPUC also adopted a Mitigation Monitoring and Reporting Program as part of that approval. The findings regarding the three impacts and mitigation measures for these impacts set forth in Resolution No. 08-0200 are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings.

Subsequent to the certification of the PEIR, the Planning Department has conducted more detailed, site-specific review of two of the significant and unavoidable water supply impacts identified in the PEIR. In the case of *Impact 5.5.5-1*, the Project-level fisheries analysis in the Lower Crystal Springs Dam Improvement Project Final EIR modifies the PEIR impact determination based on more detailed site-specific data and analysis and determined that impacts on fishery resources due to inundation effects would be less than significant. Project-level conclusions supersede any contrary impact conclusions in the PEIR. The SFPUC adopted CEQA Findings with respect to the approval of the Lower Crystal Springs Dam Improvement Project in Resolution No. 10-0175. The CEQA Findings in Resolution No. 10-0175 related to the impacts on fishery resources due to inundation effects are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings.

In the case of *Impact 5.4.1-2*, the project level analysis in the Calaveras Dam Replacement project Final EIR modifies the PEIR determination and concludes that the impact related to stream flow along Alameda Creek between the diversion dam and the confluence with Calaveras Creek (PEIR Impact 5.4.1-2) will be less than significant based on more detailed, site-specific modeling and data. Project-level conclusions supersede any contrary impact conclusions in the PEIR. The SFPUC adopted CEQA Findings with respect to the approval of the Calaveras Dam Improvement Project in Resolution No. 11-0015. The CEQA Findings in Resolution No. 11-0015 related to the impacts on fishery resources due to inundation effects are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings.

The remaining significant and unavoidable water supply impact listed in Resolution No. 08-0200 is as follows, relating to *Impact 7-1*:

**Potentially Significant and Unavoidable WSIP Water Supply and System Operation Impact**

- **Growth:** Indirect growth-inducement impacts in the SFPUC service area.

The WSIP aims to provide a total of 10 mgd annual average of water supply from recycled water, groundwater, and conservation projects to meet retail demand in San Francisco. Of this amount, the WSIP project description indicated that approximately 4 mgd annual average would be derived from recycled water projects in San Francisco. This Project would provide up to 2 mgd of recycled water; currently identified customers are estimated to use 1.6 mgd. Also, this Project would enable implementation of the SFPUC's Groundwater Supply Project, approved by the SFPUC in December, 2013. The SFPUC's Groundwater Supply Project calls for installation of new groundwater wells to recover 2.5 to 3.0 mgd of groundwater in the first phase and conversion of existing irrigation wells in Golden Gate Park to potable use, providing 1.0 to 1.5 mgd of groundwater in the second phase. The second phase cannot occur until recycled water is available for Golden Gate Park landscaping or until another landscaping water source is identified. Thus the Project would also help meet the WSIP goal of providing approximately 4 mgd annual average of water supply from groundwater.

This increase in water supply would improve the SFPUC's ability to deliver water to its customers in San Francisco during both drought and non-drought periods. The Project will help the SFPUC to diversify its water supply portfolio, which largely consists of imported surface water. It would add up to 2 mgd from recycled water to the SFPUC water supply, and enable implementation of the second phase the SFPUC's Groundwater Supply Project, which would provide 1.0 to 1.5 mgd of groundwater to the SFPUC's potable water supply. The proposed Project is a fundamental component of the SFPUC's WSIP and is needed to fully meet WSIP goals and objectives, in particular those for seismic reliability, delivery reliability, and water supply reliability.

## **B. Alternatives Rejected and Reasons for Rejection**

The Commission rejects the alternatives set forth in the Final EIR and listed below because the Commission finds that there is substantial evidence, including evidence of economic, legal, social, technological, and other considerations described in this section in addition to those described in Section VI below under CEQA Guidelines 15091(a)(3), that make such Alternatives infeasible. In making these infeasibility determinations, the Commission is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." The Commission is also aware that under CEQA case law the concept of "feasibility" encompasses (i) the question of whether a particular alternative promotes the underlying goals and objectives of a project, and (ii) the question of whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

Under the No Project Alternative, the SFRW Project would not be constructed or operated. The proposed recycled water treatment, storage, and distribution facilities would not be constructed and 1.6 mgd of recycled water would not be produced or delivered to customers to offset potable demand. Existing irrigation demand at Golden Gate Park, Lincoln Park, and the Presidio, as well as lake refill would continue to be met with existing potable sources and groundwater. The two existing irrigation wells in Golden Gate Park that are part of the second phase of the SFPUC's Groundwater Supply Project would

at Harding Road and Herbst Road. Other aspects of the Project would remain unchanged and the Project would be able to produce the same 5 mgd peak flow amount, or 2 mgd annual average amount of recycled water.

This Alternative reduces impacts on cultural resources in several ways. As a result of decreasing the area of construction activities slightly by consolidating the treatment and storage facilities to one area at the San Francisco Zoo overflow parking lot instead of at the Oceanside WPCP and Central Reservoir sites, the impacts on unknown archaeological resources and human remains would be reduced. This Alternative would eliminate the potential impacts to paleontological resources because it would avoid construction in the Colma Formation below the Oceanside WPCP site. As a result of reducing impacts on cultural resources, the Alternative would make less of a contribution to cumulative impacts on cultural resources.

The daily impact on air quality would be less under Alternative B than the Project. By construction sequencing and staggering construction activities, Alternative B would reduce the amount of fugitive dust and criteria pollutants emitted at one time, thereby reducing the potential to exceed regulatory thresholds based on emissions per day. However, the total amount of construction would not be reduced and the total amount of air pollution would be the same as for the Project.

Alternative B would reduce impacts on biological resources. Fewer impacts could occur to nesting birds because trees would not need to be removed between the Oceanside WPCP and the California National Guard property. Also, vegetation clearing at the Central Reservoir site would be avoided as would disturbance of trees on Route 35/Skyline Boulevard and Sunset Avenue. Pipeline construction that would instead occur on Wawona Street and 34th Avenue would disturb few trees. Alternative B also would reduce impacts on roosting bats by reducing construction near trees in the vicinity of the Oceanside WPCP, Lake Merced, and the Central Pump Station site where bats are thought most likely to roost. Finally, the elimination of construction near Lake Merced, along Route 35/Skyline Boulevard, and near Harding and Herbst Roads, and elimination of most construction around the Central Reservoir site, would reduce impacts on the Western Pond turtle and California red-legged frog, which may be found in upland habitat in these areas. The only remaining areas where these species may be found, at Metson and Lloyd Lakes in Golden Gate Park would have minimal construction nearby, limited to installation of pipeline distribution lines. As a result of reduced impacts on biological resources under Alternative B, the contribution to cumulative impacts to biological resources also would be reduced as compared to the Project.

This Alternative also would increase certain impacts as compared to the Project and result in different impacts than the Project in the areas of noise, traffic, and energy use. Alternative B would increase construction and operational noise levels in the vicinity of the San Francisco Zoo by moving the construction activities and facilities approximately 900 feet closer to Zoo facilities as compared to the Project. Increased noise could negatively impact Zoo animals. Operational noise impacts might be reduced through noise reduction berms.

Shifting the location of construction of the recycled water treatment plant could increase truck traffic along the Great Highway and potentially require lane detours. Also, relocating distribution pipelines from

implementing the Project. Finally, the Project Design Alternative would result in minimal to no benefit to the environment. All Project impacts, with the exception of the WSIP-related impact to growth are mitigable. On the other hand, the Project Design Alternative would cause energy waste and it would have the same WSIP-related impact to growth. For all of these reasons, the Commission rejects the Project Design Alternative as infeasible.

*Alternative C: Reduced Project Alternative*

The Reduced Project Alternative would eliminate recycled water supply to Lincoln Park and the Presidio. Under the Reduced Project Alternative, a new underground storage reservoir and pump station would not be constructed at the Central Reservoir site and distribution pipelines north of the Central Reservoir would be eliminated. The size of the recycled water treatment plant and storage at the Oceanside WPCP would be reduced somewhat and the construction duration would be shorter. As a result of these changes from the Project, the recycled water treatment plant would have a reduced peak-day capacity of 3.8 mgd instead of 5 mgd and an annual average capacity of 1.7 mgd instead of 2.0 mgd.

This Alternative reduces impacts on cultural resources in several ways. First, as a result of eliminating recycled water supply to Lincoln Park, significant potential impacts on human remains that may be associated with the former Golden Gate Cemetery site (e.g. Lincoln Park) would be avoided. Second, construction of a smaller recycled water supply treatment plant, eliminating new storage and pumping facilities at the Central Reservoir site, and eliminating distribution pipelines north of the Central Reservoir reduces the area of excavation, reducing potential exposure to unknown archeological resources and unknown human remains. Third, constructing a smaller recycled water treatment plant reduces potential impacts to paleontological resources that may be found in the Colma Formation as less excavation in that area would be required. Finally, by reducing cultural resource impacts, the contribution to cumulative impacts on cultural resources also would be reduced.

Alternative C would not reduce the daily impact on air quality, but because total construction activities are reduced, the total volume of air pollution emitted during construction is less under Alternative C than the Project.

Alternative C would reduce impacts on biological resources. Fewer impacts could occur to nesting birds, California red-legged frog and western pond turtle as a result of reduced construction activities at the Central Reservoir site where these species could be impacted. As a result of reduced impacts on biological resources under Alternative C, this alternative would make less of a contribution to cumulative impacts to biological resources as compared to the Project.

Alternative C also would reduce energy usage as compared to the Project because it would eliminate the need to pump recycled water to Lincoln Park and the Presidio from the Central Reservoir site. Alternative C would also reduce the contribution to the WSIP's indirect growth inducing impact by reducing the amount of water that could be supplied to a growing population.

Alternative C: Reduced Project Alternative would meet the Project objectives, which are to diversify the SFPUC's water supplies by developing recycled water, develop a new water supply in San Francisco that

the WSIP goals and objectives, which rely directly on the up to 2 mgd of local recycled water supply on the west side of San Francisco that the Project would provide to fulfill systemwide level of service objectives. The total average yield under normal operations for the Reduced Project Alternative would be 1.7 mgd, causing the SFPUC to fall short of the 2 mgd annual water supply designed for the Project and the WSIP identified supply need of 4 mgd from local recycled water supply by 2018. Although the SFPUC originally envisioned that the 4 mgd of recycled water would supply customers on the west side of San Francisco and now the SFPUC expects the west side recycled water demand to be somewhat reduced, the SFPUC has not revised its originally WSIP goal of obtaining 4 mgd from recycled water and is exploring recycled water supply options on the east side of the City. Thus, if the Project were sized below the Project size of 2 mgd annual average, and designed not to serve Lincoln Park and the Presidio, some viable recycled water supply customers on the west side of San Francisco would not be able to make use of recycled water and instead would need to continue to use groundwater or imported surface water for irrigation and other nonpotable uses. Such a situation would be contrary to the WSIP goal of diversifying water supply options and improving use of new water resources, such as recycled water. For these reasons, the Commission rejects the Reduced Yield Alternative as infeasible.

## **VI. STATEMENT OF OVERRIDING CONSIDERATIONS**

Pursuant to CEQA Section 21081 and CEQA Guidelines Section 15093, the Commission hereby finds, after consideration of the Final EIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological and other benefits of the Project as set forth below, independently and collectively outweighs the significant and unavoidable impacts and is an overriding consideration warranting approval of the Project. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Commission will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this section, and in the documents found in the Record of Proceedings, as defined in Section I.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Commission specifically finds that there are significant benefits of the Project in spite of the unavoidable significant impacts, and therefore makes this Statement of Overriding Considerations. The Commission further finds that, as part of the process of obtaining Project approval, all significant effects on the environment from implementation of the Project have been eliminated or substantially lessened where feasible. All mitigation measures proposed in the Final EIR for the Project are adopted as part of this approval action. Furthermore, the Commission has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technical, legal, social, and other considerations.

The Project will have the following benefits:

- The Project will expand and diversify the SFPUC's water supply portfolio to increase system reliability, particularly for retail customers in San Francisco. The Project provides an additional 2



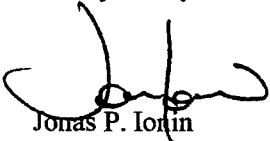
- The WSIP will substantially improve use of new water sources and drought management, including use of groundwater, recycled water, conservation, and transfers. A critical part of the WSIP is to provide water from new sources other than from imported surface water from the Hetch Hetchy Valley or watersheds in Alameda County and the Peninsula. This Project is important to meeting the WSIP goal of providing local recycled water in San Francisco.
- The WSIP projects are designed to meet applicable federal and state water quality requirements. This Project, which will produce recycled water by treating sanitary sewage with microfiltration/ultrafiltration, reverse osmosis, and ultraviolet light disinfection, will provide recycled water that meets or exceeds the California Department of Public Health requirements for disinfected tertiary recycled water.
- The WSIP will diversify water supply options during non-drought and drought periods. The Project supports this WSIP objective by providing up to 2 mgd of local recycled water during both drought and non-drought periods.

Having considered these benefits, including the benefits discussed in Section I above, the Commission finds that the benefits of the Project and the Project's furtherance of the WSIP goals and objectives outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

### DECISION

That based upon the Record, the submissions of the SFPUC, the Department and SFPUC staff, and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **ADOPTS** findings under the California Environmental Quality Act, including rejecting alternatives as infeasible, adopting a Statement of Overriding Considerations, and **ADOPTS** a Mitigation Monitoring and Reporting Program, attached as **Exhibit A**.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on September 3, 2015.

  
Jonas P. Iorin  
Commission Secretary

AYES: Fong, Wu, Antonini, Hillis, Johnson, Moore, Richards

NAYS:

ABSENT:

ADOPTED: September 3, 2015



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. M-19442

**Hearing Date:** September 3, 2015  
**Case No.:** 2008.0091E  
**Project:** San Francisco Westside Recycled Water Project  
**Project Location:** Various Locations in Western San Francisco  
**Project Sponsor:** San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
San Francisco, CA 94102  
**Staff Contact:** Timothy Johnston – (415) 575-9035  
[Timothy.Johnston@sfgov.org](mailto:Timothy.Johnston@sfgov.org)

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

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415.558.6378

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Planning  
Information:  
415.558.6377

### ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED SAN FRANCISCO WESTSIDE RECYCLED WATER PROJECT.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2008.0091E, San Francisco Westside Recycled Water Project (hereinafter, "Project"), located in San Francisco, based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department ("Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
  - A. The Department determined that an Environmental Impact Report ("EIR") was required for the Project and provided public notice of that determination by publication in a newspaper of general circulation, and in accordance with CEQA Guidelines Section 15082, prepared and circulated a first and then a revised Notice of Preparation ("NOP") to interested entities and individuals to begin the formal CEQA scoping process for the Project on June 5, 2008, and September 8, 2010, respectively. These prior NOPs resulted in scoping meetings held on June 16 and 17, 2008, and on September 23, 2010. Following the 2010 NOP scoping period, the SFPUC in response to public feedback evaluated alternative possible sites, resulting in a revised Project proposal for which the Planning Department issued a revised NOP/Initial Study (2014 IS) on July 16, 2014 with the scoping period ending on August 15, 2014. The NOP was distributed to interested parties that had received the initial NOPs, public agencies, additional interested parties, and landowners/occupants located in the

vicinity of the Project facilities, and was posted on the Planning Department's website and placed in the legal classified section of the San Francisco Chronicle.

The San Francisco Planning Department received nine comments on the scope of the EIR either at the scoping meeting or in writing following the 2014 scoping meeting. The comment inventories for all three NOPs are included in the Scoping Report in Appendix A of the Draft EIR. Appendix A also includes the 2014 IS.

- B. On March 18, 2015, the Department published the Draft Environmental Impact Report ("DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment for a 45-day period, and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice and other interested parties.
  - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the Project site by Department staff on March 18, 2015. The Notice of Availability was also made available at the main public library in San Francisco.
  - D. On March 18, 2015, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse. The DEIR was posted on the Department's website.
  - E. A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on March 18, 2015.
2. The Planning Commission held a duly-advertised public hearing on the DEIR to accept written or oral comments on April 23, 2015. The public hearing transcripts are in the Project record. The period for acceptance of written comments ended on May 4, 2015.
  3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, and prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period. The Department provided additional, updated information and clarification on issues raised by commenters, as well as SFPUC and the Planning Department, to address Project updates since publication of the DEIR. This material was presented in a Responses to Comments document ("RTC"), published on August 19, 2015, distributed to the Commission on August 20, 2015, and all parties who commented on the DEIR, and made available to others upon request at the Department and on the Department's website.
  4. A Final Environmental Impact Report ("FEIR") has been prepared by the Department, consisting of the Draft Environmental Impact Report, any consultations and comments

received during the review process, any additional information that became available, and the RTC document, all as required by law.

5. Project files on the FEIR have been made available for review by the Commission and the public. These files, are available for public review at the Department at 1650 Mission Street, and are part of the record before the Commission. Jonas Ionin is the custodian of the records. Copies of the DEIR and associated reference materials, as well as the RTC document, are also available for review at public libraries in San Francisco, as well as on the Department's website.
6. The Commission, in certifying the completion of said FEIR, hereby does find that that none of the factors are present that would necessitate recirculation of the Final EIR under CEQA Guidelines Section 15088.5. The Final EIR contains no information revealing (1) any new significant environmental impact that would result from the Project or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible Project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project, but that was rejected by the Project's proponents, or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. This Commission concurs in that determination.

The Commission finds that the Project is within the scope of the Project analyzed in the Final EIR and the Final EIR fully analyzed the Project proposed for approval. No new impacts have been identified that were not analyzed in the Final EIR.

7. The Commission further finds, in certifying the completion of said FEIR, that the Project described in the FEIR is a component of the SFPUC's adopted Water Supply Improvement Program ("WSIP") for which the Planning Commission certified a Program Environmental Impact Report on October 30, 2008 (Case No. 2005.0159E) and the SFPUC approved by Resolution No. 08-0200; as part of the WSIP, the Commission finds that the Project will contribute to a significant and unavoidable impact related to indirect growth-inducement impacts in the SFPUC service area.
8. On September 3, 2015, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
9. The Planning Commission hereby does find that the Final Environmental Impact Report concerning File No. 2008.0091E, San Francisco Westside Recycled Water Project, reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Responses to Comments document contains no significant revisions to the DEIR or information that would necessitate recirculation of the FEIR under CEQA Guidelines Section 15088.5, and hereby does CERTIFY THE

**Motion No. M-19442**  
**Hearing Date: September 3, 2015**

**Case No. 2008.0091E**  
**San Francisco Westside Recycled Water Project**

COMPLETION of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of September 3, 2015.



Jonas Ionin  
Commission Secretary

AYES: 6

NOES: 0

ABSENT: Wu

ADOPTED: 9/3/15

FILE NO. 100341

ORDINANCE NO.

89-10

1 [Water Revenue Bond Issuance – Not to Exceed \$1,737,724,038]

2

3 Ordinance approving the issuance and sale of water revenue bonds by the San  
4 Francisco Public Utilities Commission not to exceed \$1,737,724,038 to finance various  
5 projects under the Water System Improvement Program and the Capital Improvement  
6 Program, including but not limited to the Commission's Advanced Meter Infrastructure  
7 System, pursuant to amendments to the Charter of the City and County of San  
8 Francisco enacted by the voters on November 5, 2002, as Proposition E; and ratifying  
9 previous actions taken in connection therewith.

10

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

12

13 Section 1. Findings. The Board of Supervisors (the "Board") of the City hereby finds  
14 and declares as follows:

15

16 A. On November 5, 2002, the voters of the City and County of San Francisco (the  
17 "City") approved Proposition E, which among other things, authorized the Commission to  
18 issue revenue bonds, including notes, commercial paper or other forms of indebtedness,  
19 when authorized by ordinance approved by a two-thirds vote of the Board of Supervisors, for  
20 the purpose of reconstructing, replacing, expanding, repairing or improving water facilities or  
21 clean water facilities or combinations of water and clean water facilities under the jurisdiction  
22 of the Commission; and,

23

24 B. On October 30, 2008 the Commission reviewed and considered the Final  
25 Program Environmental Impact Report (PEIR) prepared for the Commission's Water System  
Improvement Program (the "WSIP"), and certified by the Planning Commission in Planning  
Commission Motion No. 17734, and adopted the findings required by the California

26

1 Environmental Quality Act (CEQA) including a statement of overriding considerations and  
2 monitoring and reporting program in its Resolution No. 08-0200; and

3 C. By Resolution 09-0102 adopted on June 23, 2009 (the "Commission  
4 Resolution") the Commission has determined to issue water revenue bonds to finance a  
5 portion of certain capital projects relating to the WSIP and, pursuant to Section 8B.124 of the  
6 Charter, has formally requested this Board of Supervisors to authorize the issuance and sale  
7 of water revenue bonds for such purposes; and,

8 D. In order to finance the costs of the WSIP, and other Capital Improvement  
9 Projects, including but not limited to the Commission's Advanced Meter Infrastructure System  
10 (the other Capital Improvement Projects and the Advanced Meter Infrastructure System are  
11 referred to as the "Non WSIP Projects"), the Board now desires to authorize the issuance and  
12 sale of water revenue bonds for such purposes; and,

13 E. On August 4, 2009, this Board passed its Ordinance No. 189-09 approving the  
14 issuance and sale of water revenue bonds (the "Water Revenue Bonds") from time to time by  
15 the Commission pursuant to Proposition E of 2002 and in accordance with the Commission  
16 Resolution, in a principal amount not to exceed \$1,310,307,119, representing the difference  
17 between \$2,949,924,182 previously approved total appropriations and \$1,628,000,000 under  
18 Proposition A, to finance and refinance Projects that are within the Commission's Water  
19 System Improvement Program ("WSIP Projects"), which ordinance became effective on  
20 September 12, 2009; and

21 F. In order to finance the Non-WSIP Projects, the Board is concurrently considering  
22 with this ordinance, supplemental WSIP related appropriations totaling \$1,448,149,320, other  
23 Capital Improvement Program related appropriations totaling \$24,203,614 and financing costs  
24 totaling \$203,371,088, desires to additionally authorize the use of proceeds of any Water  
25

1 Revenue Bonds previously authorized pursuant to Ordinance No. 189-09 to finance and  
2 refinance Non-WSIP Projects; and

3 G. On July 27, 2009, City Planning Department issued a final Certificate of  
4 Determination/Exemption from Environmental Review for the AMI Project. The City Planning  
5 Department found that the project is exempt from environmental review under the California  
6 Environmental Quality Act. A copy of the Certificate of Determination is on file with the Clerk  
7 of the Board of Supervisors in File No. 091094.

8 Section 2. Approval of the Water Revenue Bonds. The Board hereby approves the  
9 issuance and sale of the Water Revenue Bonds from time to time by the Commission  
10 pursuant to Proposition E and in accordance with the Commission Resolution in an aggregate  
11 principal amount not to exceed \$1,737,724,038, representing \$1,647,249,198 in supplemental  
12 WSIP related appropriations and financing costs, \$28,474,840 in other Capital Improvement  
13 Program related appropriations and financing costs, and \$62,000,000 for the AMI Project  
14 including financing costs, at a maximum rate or rates of interest of not to exceed twelve  
15 percent (12%) per annum to finance a portion of the design, acquisition and construction of  
16 various capital projects in furtherance of the WSIP and the Non-WSIP projects. The  
17 Commission is hereby authorized to determine the timing, amount and manner of sale of each  
18 series of Water Revenue Bonds issued pursuant to this authorization; provided however, the  
19 Commission shall return to the Board prior to the issuance of any such Bonds to obtain  
20 approval by ordinance or resolution of the Board of any related financing or disclosure  
21 documents prepared in connection with the issuance of such obligations.

22 Section 3. General Authority. The Controller, Treasurer, the City Attorney and other  
23 officers of the City and their duly authorized deputies and agents are hereby authorized and  
24 directed, jointly and severally, to take such actions and to execute and deliver such  
25 certificates, agreements, requests or other documents, as they may deem necessary or



1 desirable to facilitate the issuance, sale and delivery of the Water Revenue Bonds, to obtain  
2 bond insurance or other credit enhancements with respect to the Water Revenue Bonds, to  
3 obtain surety, to obtain title and other insurance with respect to the facilities to be financed,  
4 and otherwise to carry out the provisions of this Ordinance.

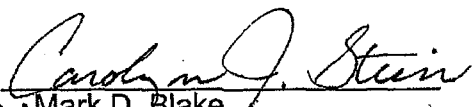
5 Section 4. Ratification of Prior Actions. All actions authorized and directed by this  
6 Ordinance and heretofore taken are hereby ratified, approved and confirmed by this Board.

7 Section 5. File Documents. All documents referred to as on file with the Clerk of the  
8 Board are in File Nos. 100341.

9 Section 6. Effective Date. Pursuant to Section 14.102 of the Charter, this Ordinance  
10 shall take effect thirty (30) days after its adoption.

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

By:   
for : Mark D. Blake  
Deputy City Attorney



City and County of San Francisco  
**Tails**  
**Ordinance**

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

**File Number:** 100341

**Date Passed:** April 20, 2010

Ordinance approving the issuance and sale of water revenue bonds by the San Francisco Public Utilities Commission to finance various projects under the Water System Improvement Program and the Capital Improvement Program, including but not limited to the Commission's Advanced Meter Infrastructure System, pursuant to amendments to the Charter of the City and County of San Francisco enacted by the voters on November 5, 2002, as Proposition E; and ratifying previous actions taken in connection therewith.

April 13, 2010 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

April 20, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar and Mirkarimi

Excused: 1 - Maxwell

File No. 100341

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/20/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

  
Mayor Gavin Newsom

Date Approved

1 [Water Revenue Bond Issuance]

2  
3 Ordinance approving the issuance and sale of water revenue bonds by the  
4 San Francisco Public Utilities Commission (the "Commission") to finance various  
5 projects under the Water System Improvement Program pursuant to amendments to  
6 the Charter (the "Charter") of the City and County of San Francisco (the "City") enacted  
7 by the voters on November 5, 2002 as Proposition E ("Proposition E"); and ratifying  
8 previous actions taken in connection therewith.

9  
10 Note: Additions are *single-underline italics Times New Roman*;  
11 deletions are ~~*strikethrough italics Times New Roman*~~.  
12 Board amendment additions are double underlined.  
13 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. Findings. The Board of Supervisors (the "Board") of the City hereby finds  
16 and declares as follows:

17 A. On November 5, 2002, the voters of the City and County of San Francisco (the  
18 "City") approved Proposition E, which among other things, authorized the Commission to  
19 issue revenue bonds, including notes, commercial paper or other forms of indebtedness,  
20 when authorized by ordinance approved by a two-thirds vote of the Board of Supervisors, for  
21 the purpose of reconstructing, replacing, expanding, repairing or improving water facilities or  
22 clean water facilities or combinations of water and clean water facilities under the jurisdiction  
23 of the Commission; and,

24 B. On October 30, 2008 the Commission reviewed and considered the Final  
25 Program Environmental Impact Report (PEIR) prepared for the Commission's Water System  
Improvement Program (the "WSIP"), and certified by the Planning Commission in Planning

1 Commission Motion No. 17734, and adopted the findings required by the California  
2 Environmental Quality Act (CEQA) including a statement of overriding considerations and  
3 monitoring and reporting program in its Resolution No. 08-0200; and,

4 C. By Resolution 09-0102 adopted on June 23, 2009 (the "Commission  
5 Resolution") the Commission has determined to issue water revenue bonds to finance a  
6 portion of certain capital projects relating to the WSIP and, pursuant to Section 8B.124 of the  
7 Charter, has formally requested this Board of Supervisors to authorize the issuance and sale  
8 of water revenue bonds for such purposes; and,

9 D. In order to finance the costs of the WSIP, the Board now desires to authorize the  
10 issuance and sale of water revenue bonds (the "Water Revenue Bonds") by the Commission  
11 pursuant to said Section 8B.124; and,

12 E. This Board has previously approved WSIP related appropriations totaling  
13 \$2,949,924,182, which amount is composed of the sum \$1,628,000,000 representing  
14 \$507,815,000 revenue bonds issued and \$1,120,185,000 remaining authorization under  
15 Proposition A and ~~\$1,321,924,182~~1,310,307,119 representing revenue bonds to be issued  
16 under Proposition E, in either case, to fund construction and financing costs for the WSIP, and  
17 all such documents are on file with the Clerk of this Board.

18 Section 2. Approval of the Water Revenue Bonds. The Board hereby approves the  
19 issuance and sale of the Water Revenue Bonds from time to time by the Commission  
20 pursuant to Proposition E and in accordance with the Commission Resolution in an aggregate  
21 principal amount not to exceed ~~\$1,321,924,182~~1,310,307,119, representing the difference  
22 between \$2,949,924,182 previously approved total appropriations and \$1,628,000,000 under  
23 Proposition A, at a maximum rate or rates of interest of not to exceed twelve percent (12%)  
24 per annum to finance a portion of the design, acquisition and construction of various capital  
25 projects in furtherance of the WSIP. The Commission is hereby authorized to determine the

1 timing, amount and manner of sale of each series of Water Revenue Bonds issued pursuant  
2 to this authorization; provided however, the Commission shall return to the Board prior to the  
3 issuance of any such Bonds to obtain approval by ordinance or resolution of the Board of any  
4 related financing or disclosure documents prepared in connection with the issuance of such  
5 obligations.

6 Section 3. Affirmation of Existing Bond Covenants. The Board hereby confirms  
7 Section 5.01(b) of the Amended and Restated Indenture dated as of August 1, 2002, as  
8 amended and supplemented, between the Commission and U. S. Bank National Association  
9 (the "Indenture"), which sets forth the disposition of Revenues (as defined in the Indenture)  
10 applicable to the Bonds (as defined in the Indenture) and covenants with the holders of the  
11 Bonds that the Revenues shall be appropriated and expended as set forth in Section 5.01(b)  
12 of the Indenture. The Board also hereby declares that the City will comply with all of the  
13 terms, provisions and covenants contained in the Indenture, including the covenants to  
14 establish, fix, prescribe and collect rates, fees and charges sufficient to enable the  
15 Commission to comply with the terms, conditions and covenants of the Indenture.

16 Section 4. Proposition P. Pursuant to Proposition P approved by the voters of the City  
17 in November 2002, this Ordinance and the Water Revenue Bonds are subject to, and  
18 incorporate by reference, the provisions of Section 5A.30 et. seq. ("Public Utilities Revenue  
19 Bond Oversight Committee") of Chapter V of the San Francisco Administrative Code. In  
20 accordance with the provisions of Proposition P, to the extent permitted by law, one-twentieth  
21 of one percent of the gross proceeds of the Water Revenue Bonds shall be deposited in a  
22 fund established by the Controller's Office and appropriated by the Board at the direction of  
23 the Public Utilities Revenue Bond Oversight Committee (RBOC) established by Proposition P  
24 to cover the costs of said committee; provided that any amounts so paid from the proceeds of  
25 Bonds that have not been spent by RBOC in connection with such Bonds (as contemplated by

1 Article 5A.31(c) of the Administrative Code) within 36 months of the date of issuance of such  
2 Bonds shall be returned to the Commission for deposit into the Improvement Fund (as defined  
3 in the Indenture) and expended by the Commission to acquire and construct Improvements.

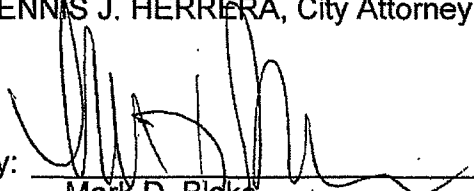
4 Section 5. General Authority. The Controller, Treasurer, the City Attorney and other  
5 officers of the City and their duly authorized deputies and agents are hereby authorized and  
6 directed, jointly and severally, to take such actions and to execute and deliver such  
7 certificates, agreements, requests or other documents, as they may deem necessary or  
8 desirable to facilitate the issuance, sale and delivery of the Water Revenue Bonds, to obtain  
9 bond insurance or other credit enhancements with respect to the Water Revenue Bonds, to  
10 obtain surety, to obtain title and other insurance with respect to the facilities to be financed,  
11 and otherwise to carry out the provisions of this Ordinance.

12 Section 6. Ratification of Prior Actions. All actions authorized and directed by this  
13 Ordinance and heretofore taken are hereby ratified, approved and confirmed by this Board.

14 Section 7. File Documents. All documents referred to as on file with the Clerk of the  
15 Board are in File Nos. 090886.

16 Section 8. Effective Date. Pursuant to Section 14.102 of the Charter, this Ordinance  
17 shall take effect thirty (30) days after its adoption.

18  
19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21  
22 By:   
23 Mark D. Blake  
24 Deputy City Attorney  
25



City and County of San Francisco

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

Tails

Ordinance

File Number: 090886

Date Passed:

Ordinance approving the issuance and sale of water revenue bonds by the San Francisco Public Utilities Commission to finance various projects under the Water System Improvement Program pursuant to amendments to the Charter of the City and County of San Francisco enacted by the voters on November 5, 2002, as Proposition E; and ratifying previous actions taken in connection therewith.

July 28, 2009 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

August 4, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090886

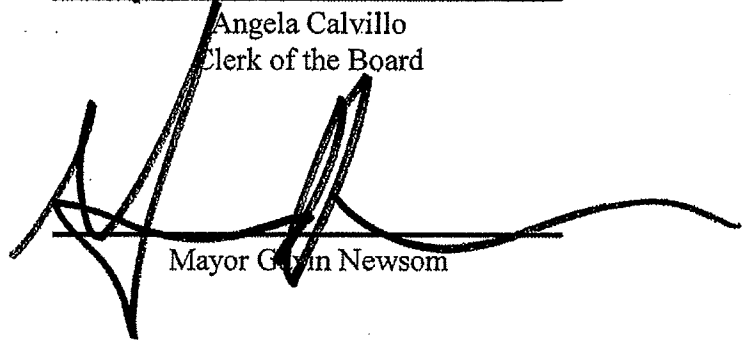
I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on August 4, 2009  
by the Board of Supervisors of the City and  
County of San Francisco.



Angela Calvillo  
Clerk of the Board

8/12/2009

Date Approved



Mayor Gavin Newsom