

File No. 121194

Committee Item No. 5

Board Item No. 1

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date January 16, 2013

Board of Supervisors Meeting

Date February 5, 2013

Cmte Board

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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Utilities Commission Resolution No. 12-0227 |
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Completed by: Alisa Miller Date January 11, 2013
 Completed by: V Young Date 1-24-13

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
 The complete document can be found in the file.

[Administrative Code - Water Enterprise Capital Cost Recovery Payment Surcharge Fund]

Ordinance amending Chapter 10, Article XIII of the Administrative Code to create the Public Utilities Water Enterprise Capital Cost Recovery Payment Surcharge Fund.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are *strike-through italics Times New Roman*. Board amendment additions are double-underlined; Board amendment deletions are ~~striketrough normal~~.

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

Section 1: The San Francisco Administrative Code is hereby amended by adding Section 10.100-225, to read as follows:

SECTION 10.100-225. PUBLIC UTILITIES WATER ENTERPRISE CAPITAL COST RECOVERY PAYMENT SURCHARGE FUND.


(a) Establishment of Fund. The Water Enterprise Capital Cost Recovery Payment Surcharge Fund is established as a category eight fund for the purpose of receiving capital cost recovery payment surcharge proceeds collected from wholesale water customers by the San Francisco Public Utilities Commission. Section 5.03.F of the July, 2009 "Water Supply Agreement Between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County" approved in San Francisco Public Utilities Commission Resolution Number 09-0069 adopted on April 28, 2009 allows the San Francisco Public Utilities Commission's wholesale water customers to prepay the balance of "Existing Regional Asset" capital costs. California Water Code section 81438(b) authorizes the San Francisco Public Utilities Commission to collect a surcharge from its wholesale water customers to pay required debt service and other costs associated with the issuance of revenue bonds by the Bay Area Water Supply and Conservation Agency for the purpose of funding the

1 advance prepayment of Existing Regional Asset costs to San Francisco. Section 3.03(b) of the January
2 1, 2013 "Prepayment and Collection Agreement between the City and County of San Francisco and the
3 Bay Area Water Supply and Conservation Agency" requires the creation of a restricted reserve fund for
4 the use and administration of Capital Cost Recovery Payment Surcharge proceeds as set forth in
5 subsections (b) and (c).

6 (b) Use of the Fund. Money received into the fund shall be used exclusively for the deposit
7 and remittance of Capital Cost Recovery Payment Surcharge proceeds by the San Francisco Public
8 Utilities Commission to the Trustee for the Bay Area Water Supply and Conservation Agency revenue
9 bonds in accordance with the terms of the January 1, 2013 Prepayment and Collection Agreement
10 referenced in subsection (a) above.

11 (c) Administration of Fund. The fund shall be maintained from July 1, 2013 through July 1,
12 2036 the termination date of the Wholesale Water Revenue Prepayment and Collection
13 Agreement.

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

16 By: 
17 JOSHUA MILSTEIN
18 Deputy City Attorney

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25 Mayor Lee
BOARD OF SUPERVISORS

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
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January 11, 2013

TO: Budget and Finance Committee
FROM: Budget and Legislative Analyst *[Signature]*
SUBJECT: January 16, 2013 Budget and Finance Committee Meeting

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Files 12-1194 and 12-1203

Department:
 San Francisco Public Utilities Commission

EXECUTIVE SUMMARY

Legislative Objective

File 12-1203: The proposed resolution is for (1) the approval and execution of the Wholesale Water Revenue Prepayment and Collection Agreement between the Bay Area Water Supply and Conservation Agency (BAWSCA) and the San Francisco Public Utilities Commission (PUC) and (2) execution of the PUC Tax Certificate pursuant to BAWSCA's proposed issuance of revenue bonds to fund the wholesale customers' prepayment of their outstanding obligation for the regional water system's existing regional assets. The proposed Wholesale Water Revenue Prepayment and Collection Agreement is expected to commence on January 22, 2013 and will terminate on the earlier of July 1, 2036 or the date on which the BAWSCA revenue bonds are paid off.

File 12-1194: The proposed ordinance would amend the City's Administrative Code Section 10.100-18 to establish a Category 8 Water Enterprise Capital Cost Recovery Payment Surcharge Fund (Fund) to be used for the deposit and remittance of the Capital Cost Recovery Payment Surcharge by the PUC to the Bond Trustee for debt service of BAWSCA's revenue bonds.¹ The Fund is proposed to be maintained from July 1, 2013 through July 1, 2036.

Key Points

- On July 1, 2009, the San Francisco Public Utilities Commission (PUC) and 26 of its suburban wholesale customers ("wholesale customers"), acting through the Bay Area Water Supply and Conservation Agency (BAWSCA), executed the 25-year Water Supply Agreement which allocates PUC's annual capital and operating costs for water provision from the regional water system to suburban wholesale customers and City retail customers.
- Upon execution of the 2009 Water Supply Agreement, the wholesale customers owed the retail customers \$397,022,959 for the regional water systems' existing regional assets. PUC and BAWSCA agreed upon a payoff schedule by the wholesale customers that amortized the total over the Water Supply Agreement's 25-year term at an annual interest rate of 5.13%.
- In order to capitalize on lower interest rates, the wholesale customers are proposing to have BAWSCA issue revenue bonds on their behalf, as authorized by AB 2167, and use the revenue bond proceeds to prepay the remaining unpaid principal balance for the existing regional assets, as permitted under Section 5.03.F of the Water Supply Agreement. To date, the wholesale customers have paid approximately \$34,754,993 of the \$397,022,959 owed to retail customers, and owe the balance of approximately \$362,267,966.
- The proposed Wholesale Water Revenue Prepayment and Collection Agreement would require PUC to (a) accept prepayment of the approximately \$362,267,966 owed by the wholesale customers; and (b) collect a surcharge from participating wholesale customers' water bills to pay debt service on BAWSCA's revenue bonds; and (c) establish a restricted reserve fund for the use and administration of the surcharge proceeds; and (d) other provisions. In addition, the Wholesale Water Revenue Prepayment and Collection Agreement requires BAWSCA to (a) reimburse the PUC for administrative costs to collect the surcharge and administer the fund; and (b) indemnify the PUC for costs which might result due to BAWSCA's erroneous determination of the surcharge, violation of the agreement alleged by the wholesale customers, and determination by the U.S.

¹ Associated costs include fees for financial advisors, legal counsel, filing and printing, advertising, underwriters, rating agency fees, capitalized interest, and a Bond Reserve Fund all of which will be included in the surcharge amount.

Treasury Department that the tax-exempt bonds are taxable, unless deemed taxable due to the PUC's violation of the Tax Certificate.

Fiscal Impact

- PUC would incur minimal administrative costs for the imposition of the proposed surcharge on the wholesale customers and administration of the Fund. According to Mr. Charles Perl, PUC's Deputy Chief Financial Officer, because PUC's billing and collection system has already been established to collect payment for regular water bills, billing and collecting the surcharge would not require additional equipment, systems or labor. Mr. Perl noted that additional staff time would be expended for reporting and remitting the surcharge payments to the Bond Trustee which he estimates to require three hours of staff time per month or 1.7% of a FTE which totals approximately \$798 a year, which would be absorbed by the PUC's existing budget. Under the proposed Wholesale Water Revenue Prepayment and Collection Agreement, PUC would be reimbursed in full by BAWSCA for all costs incurred by the PUC due to U.S. Treasury regulations related to the use of the tax-exempt bond proceeds.
- Under the proposed Wholesale Water Revenue Prepayment and Collection Agreement, BAWSCA would prepay to the PUC the balance of \$362,267,966 from the bond proceeds. Although the proposed prepayment would cause PUC to forego future interest earnings of an estimated \$248,784,593 from 2013 through 2034, BAWSCA has the right to prepay the balance owed on capital assets under the existing Water Supply Agreement.
- According to a December 21, 2012, BAWSCA Bond Summary report produced by Goldman Sachs (BAWSCA's lead bond underwriter), the debt service that would be collected and deposited into the proposed Water Enterprise Capital Cost Recovery Payment Surcharge Fund by the PUC would be approximately \$2,074,021 a month, which exceeds the \$50,000 amount required by Section 10.100-1 (b) of the Administration Code enabling any earned interest to be credited to the Fund.

Policy Consideration

- According to the Wholesale Water Revenue Prepayment and Collection Agreement, the termination date of the agreement is the earlier of: (a) July 1, 2036 or (b) the date on which the BAWSCA revenue bonds are paid in full. Since the purpose of the proposed Water Enterprise Capital Cost Recovery Payment Surcharge Fund is to collect and remit surcharges for bond repayment the Fund should not be active after the termination date of the Wholesale Water Revenue Prepayment and Collection Agreement as no surcharges will be collected or remitted after this date.
- Therefore, the Budget and Legislative Analyst recommends amending the proposed ordinance by deleting line 10 and 11 on page 2 and replacing it with the following language: "(c) *Administration of Fund. The fund shall be maintained from July 1, 2013 through the termination date of the Wholesale Water Revenue Prepayment and Collection Agreement.*"

Recommendations

- Approve the proposed resolution for the approval and execution of the Wholesale Water Revenue Prepayment and Collection Agreement (File 12-1203).
- Amend the proposed ordinance (File 12-1194) by deleting line 10 and 11 on page 2 and replacing it with the following language: "(c) *Administration of Fund. The fund shall be maintained from July 1, 2013 through the termination date of the Wholesale Water Revenue Prepayment and Collection Agreement.*"
- Approve the proposed ordinance as amended (File 12-1194).

MANDATE STATEMENT & BACKGROUND

Mandate Statement

In accordance with City Charter Section 9.118(a), any contract entered into by a department, board or commission having anticipated revenue to the City and County of one million dollars or more shall be subject to the approval of the Board of Supervisors.

In accordance with City Charter Section 9.107, the Board of Supervisors is authorized to provide for the issuance of revenue bonds which can only be issued by a voter-approved proposition.

Pursuant to Section 8B.127 of the City Charter, the Public Utilities Commission has the authority to enter into agreement for the purchase of water, the sale of water to wholesale customers; and agreement necessary to implement Joint Powers Agreements with any wholesale customer.

The 2009 Water Supply Agreement

On July 1, 2009, the Water Supply Agreement was executed between the San Francisco Public Utilities Commission (PUC) and 26 of its suburban wholesale customers ("wholesale customers") in Alameda, San Mateo and Santa Clara Counties, acting through the Bay Area Water Supply and Conservation Agency (BAWSCA), for a 25-year term. The Water Supply Agreement allocates PUC's annual capital and operating costs for the regional water system to suburban wholesale customers and City retail customers.²

The allocation of PUC's operating and capital costs is based on annual proportional water use. According to Mr. Charles Perl, PUC's Deputy Chief Financial Officer, the City's retail customers pay approximately one-third of the annual capital and operating expenses, and the suburban wholesale customers pay approximately two-thirds.

Under the 1984 Master Water Sales Contract that preceded the 2009 Water Supply Agreement, the PUC paid for the construction of the water system's regional capital assets by issuing 30-year revenue bonds. The retail customers paid the debt service for these bonds over the 30-year term while the wholesale customers paid for their share of the water system's assets over the assets' lifetime (ranging from 50 to 100 years), which resulted in the wholesale customers paying a smaller amount per year over a longer period of time (approximately 6% of the assets' value each year). When the former contract expired, the wholesale customers still owed the retail customers for assets that had not been fully depreciated.

Upon execution of the 2009 Water Supply Agreement, the amount that the wholesale customers still owed to the retail customers for the regional water systems' existing capital assets totaled \$397,022,959. PUC and BAWSCA agreed upon a payoff schedule that amortized the total amount over the 25-year term of the Water Supply Agreement from 2010 through 2034 at an annual interest rate of 5.13%. However, in order to capitalize on lower interest rates, the wholesale customers are proposing to have BAWSCA issue revenue bonds that have an interest

² Retail customers include residents, businesses and industries located within the boundaries of the City.

rate of approximately a 3.35% and use the bond proceeds to prepay the remaining unpaid principal balance for the existing regional assets, as permitted under Section 5.03.F of the Water Supply Agreement.

To date, the wholesale customers have paid approximately \$34,754,993, of the \$397,022,959, and owe the balance of approximately \$362,267,966.

Assembly Bill 2167

AB 2167 took effect on January 1, 2013, adding a section to the California Water Code Section 81438(b) that authorized BAWSCA to (a) borrow money, incur indebtedness, and issue notes and bonds, including taxable and tax-exempt revenue bonds, to prepay the unpaid principal balance relating to the existing regional assets as defined in the 2009 Water Supply Agreement; and (b) impose rates, fees, and charges on wholesale customers to pay debt service on any bonds issued to pay for the unpaid principal balance provided in the Water Supply Agreement.

AB 2167 authorizes the City and County of San Francisco to (a) accept BAWSCA's prepayment for existing regional assets and to (b) collect any fees or charges on BAWSCA's behalf.

DETAILS OF PROPOSED LEGISLATION

File 12-1203

This proposed resolution is for the approval and execution of the Wholesale Water Revenue Prepayment and Collection Agreement between the Bay Area Water Supply and Conservation Agency (BAWSCA) and the PUC which requires PUC to:

- (1) Acknowledge the receipt of a prepayment from BAWSCA, on behalf of the wholesale customers, as payment for the water system's existing regional assets as set forth in the Water Supply Agreement;
- (2) Execute the PUC Tax Certificate pursuant to BAWSCA's proposed issuance of revenue bonds to fund the prepayment;
- (3) Impose and collect a surcharge on participating wholesale customers' water bills to pay debt service on the revenue bonds;³
- (4) Provide a monthly collection report and annual report to BAWSCA, accounting for all payments collected, remittances to the Trustee, and prepayment expenditures; and
- (5) Establish a restricted reserve fund for the use and administration of surcharge proceeds.

In addition, the agreement requires BAWSCA to:

- (1) Reimburse the PUC for administrative costs related to the imposition, collection and reimbursement of surcharges on behalf of BAWSCA which is detailed in Table 1 below; and

³ Participating wholesale customers are those customers who authorized BAWSCA to make the prepayment on their behalf.

(2) Indemnify the PUC for all costs which may result from (a) BAWSCA's erroneous determination of the surcharge amount, (b) violation of the agreement alleged by the wholesale customers, bond holders or third parties, or a (c) determination by the Department of the Treasury that the tax-exempt bonds are actually taxable, unless deemed taxable due to the PUC's violation of the Tax Certificate.

The prepayment is the balance of \$362,267,966 that the wholesale customers owe the retail customers for funding the existing capital assets of the regional water system. The prepayment will be made by BAWSCA, on behalf of 26 wholesale customers, to the PUC who will use the prepayment proceeds to reimburse the retail customers through lower water rates. Upon receipt of the prepayment, the 25-year prepayment schedule set forth in the Water Supply Agreement would be replaced with an updated schedule.

The revenue bonds that BAWSCA is proposing to issue would include a combination of approximately \$275,000,000 tax-exempt revenue bonds and \$87,000,000 in taxable revenue bonds.⁴ The Federal Treasury regulates how tax-exempt bonds can be expended whereas taxable bonds can be used for any lawful purpose.

Pursuant to the Tax Certificate that would be executed upon approval of the proposed resolution, the PUC agrees to comply with the Federal Treasury regulations. The PUC can use the tax-exempt bond proceeds of the prepayment to (1) finance capital improvements to the *regional* water system, (2) finance capital improvements to the *local* water system, and (3) defease/refund certain PUC Water Bonds (see Table 3 below).

Because the prepayment is essentially a reimbursement by the wholesale customers to the retail customers for paying for the regional water system's existing capital assets with a 30-year bond, the prepayment would only be used to offset the retail customer's share of regional and local capital improvements and debt service as mentioned above, which would benefit the retail customers by reducing their water rates. Accordingly, PUC is proposing to use the taxable bond proceeds to increase the Retail Customer's Fund Balance (see Table 3 below).

Under the proposed Wholesale Water Revenue Prepayment and Collection Agreement, BAWSCA would determine the surcharge rate that PUC would bill and collect from participating wholesale customers on BAWSCA's behalf.⁵ PUC would include this surcharge in each participating members' water bill.

Once collected, the surcharges would be separated from water bill revenues and would be deposited into the proposed Public Utilities Water Enterprise Capital Cost Recovery Payment Surcharge Fund (File 12-1194)

⁴ BAWSCA must issue taxable bonds because one of the wholesale customers, the California Water Service Company (Cal Water), is an investor-owned water utility and not a municipal entity.

⁵ This agreement would not affect the methodology by which PUC can charge retail customers for water as set forth in the WSA.

File 12-1194

The proposed ordinance would amend the City's Administrative Code Section 10.100-18 to establish a Category 8 Water Enterprise Capital Cost Recovery Payment Surcharge Fund (Fund) to be used exclusively for the deposit and remittance of the Capital Cost Recovery Payment Surcharge by the PUC to the Bond Trustee for the amount of the debt service and other costs associated with the issuance of BAWSCA's revenue bonds.⁶ The Fund is proposed to be maintained from July 1, 2013 through July 1, 2036.

Pursuant to the Wholesale Water Revenue Prepayment and Collection Agreement, no later than the 15th day of each month, PUC would transfer all surcharge proceeds received through the end of the proceeding calendar month, including all earned interest and late fees, to the Bond Trustee who will then pay the bond holders.

As defined by Section 10.100-1 of the City's Administrative Code, Category 8 Funds allow individual City departments to (a) automatically appropriate funds deposited into the Category 8 Fund for expenditures consistent with the specified purposes and uses, (b) credit any interest earned on the principle in the Category 8 Fund to said Fund, provided that the balance exceeds \$50,000, and (c) carry forward any unexpended and unencumbered balance remaining at the end of the fiscal year into the upcoming fiscal year.

According to Mr. Perl, PUC has proposed a Category 8 Fund, which is self-appropriating, because PUC is collecting the Capital Cost Recovery Payment Surcharge, which are BAWSCA funds, on behalf of BAWSCA, and remitting these funds to the Bond Trustee each month, as required by the Prepayment and Collection Agreement.

FISCAL IMPACTSFile 12-1203

The PUC would incur costs related to the use of the tax-exempt bond proceeds under the Federal Treasury Regulations as shown in Table 1 below. According to Mr. Perl there are also costs for yield reduction or arbitrage rebate payments as well as the cost of responding to an IRS audit related to the tax-exempt bonds; however, as Mr. Perl noted, these costs could not be quantified at this time because it would be dependent on the scope of the audit. Pursuant to the Wholesale Water Revenue Prepayment and Collection Agreement between the PUC and the Bay Area Water Supply and Conservation Agency (BAWSCA), all of these expenses would be reimbursed in full by BAWSCA to the PUC.

⁶ Associated costs include fees for financial advisors, legal counsel, filing and printing, advertising, underwriters, rating agency fees, capitalized interest, and a Bond Reserve Fund all of which will be included in the surcharge amount.

Table 1
PUC Costs for Spending Tax-Exempt Bond Proceeds

Costs	Amount
Escrow Agent Fees ⁷	\$2,000- \$3,000 per year
Legal and Financial Advisor's Fees	\$50,000 one-time fee
Arbitrage Rebate Liability Reports	\$5,000 - \$10,000 per report every 5 years

According to Mr. Perl, because PUC's billing and collection system has already been established to collect payment for regular water bills, billing and collecting the surcharge would not require additional equipment, systems or labor. Mr. Perl noted that additional staff time would be needed for reporting and remitting the surcharge payments to the Bond Trustee which he estimates to require three hours of staff time per month or 1.7% of a FTE (3 hours divided by 173 hours a month), which totals approximately \$798 a year.⁸ Mr. Perl further noted that the \$798 for labor does not require additional budgeted costs; it requires labor costs that are currently being incurred but redirected to this effort.

Under the existing Water Supply Agreement, the wholesale customers owe PUC \$397,022,959 for capital assets, amortized over the 25-year term of the Water Supply Agreement from 2010 through 2034. To date, the wholesale customers have paid principal payments to the PUC of approximately \$34,754,993 resulting in a balance of approximately \$362,267,966. As shown in Attachment I, the wholesale customers' total principal and interest payments to the PUC over the 25-year term are \$705,338,038.

Under the proposed Wholesale Water Revenue Prepayment and Collection Agreement, the wholesale customers would prepay to PUC the balance of \$362,267,966 from proceeds of revenue bonds that BAWSCA will issue on behalf of the wholesale customers. Although the proposed prepayment would cause PUC to forego future interest earnings of an estimated \$230,215,985 from 2014 through 2034, the wholesale customers have the right to prepay the balance owed on capital assets under the existing Water Supply Agreement.

PUC would use the prepayment of approximately \$362,267,966 to reduce any needed increases to the retail customers' water rates through FY 2021-22, as shown in Table 2 below.

⁷ An escrow account would be established in order to use the prepayment for defeasance/refunding of PUC Water Bonds as shown in Table 3 below.

⁸ According to the FY 2013-14 Annual Appropriations Ordinance, the average cost for a citywide FTE including fringe benefits is \$140,866. \$140,866 multiplied by 1.7% = \$2,395. Retail customers would pay one-third of this cost or approximately \$798 and wholesale customers would pay two-thirds or approximately \$1,597.

Table 2
Comparison of Percent Water Rate Increase and Average Monthly Bill for Retail Customers With and Without the Prepayment

Fiscal Year	Water Rate Increase with Prepayment	Average Monthly Bill for Water Only	Water Rate Increase without Prepayment	Average Monthly Bill for Water Only	Variance in Water Rates with Prepayment	Change in Monthly Bill with Prepayment
2012-13	12.5%	\$35.20	12.5%	\$35.20	0%	\$0.00
2013-14	6.5%	\$37.50	6.5%	\$37.50	0.0%	\$0.00
2014-15	12%	\$42.00	26% ¹	\$47.25	-14.0%	(\$5.25)
2015-16	12%	\$47.04	12.5%	\$53.16	-0.5%	(\$6.12)
2016-17	10%	\$51.74	4%	\$55.28	6.0%	(\$3.54)
2017-18	8%	\$55.88	4%	\$57.49	4.0%	(\$1.61)
2018-19	8%	\$60.35	8%	\$62.09	0.0%	(\$1.74)
2019-20	8%	\$65.18	8%	\$67.06	0.0%	(\$1.88)
2020-21	8%	\$70.40	8%	\$72.43	0.0%	(\$2.03)
2021-22	9%	\$76.73	6%	\$76.77	3.0%	(\$0.04)
2022-23	9%	\$83.64	7%	\$82.15	2.0%	\$1.49
2023-24	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2024-25	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2025-26	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2026-27	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2027-28	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2028-29	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2029-30	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2030-31	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2031-32	0%	\$83.64	0%	\$82.15	0.0%	\$1.49
2032-33	2%	\$85.31	2%	\$83.79	0.0%	\$1.52

¹ Without the prepayment, retail water rates for FY 2014-15 would increase by 26% primarily as a result of approximately \$60,000,000 of additional debt service coming due in FY 2014-15 from the issuance of Water Bonds funding the Water System Improvement Program (WSIP) and other Water System capital projects. The prepayment would offset the retail customer's share of debt service payments, thereby reducing their water rates.

The PUC would use the prepayment to reduce the retail customers' water rates by:

(1) Depositing a portion of the prepayment into the retail customers' Water Enterprise Fund balance which directly reduces retail customer's rates;⁹

⁹ Retail customers' water rates are calculated based on the balance remaining in the retail customer's portion of the PUC Water Enterprise Fund. The revenue from retail customers' water bills are deposited into this Fund which is used to pay their portion of the regional water system's operating and capital costs (including debt service). If there is a large balance remaining in the Fund after paying operating and capital costs, the water rate increase in the next year is reduced.

(2) Funding a portion of the retail customer's share of expenditures for planned local and regional capital projects; and

(3) Paying down debt on Water Bonds which would have been paid for by retail customers through higher water rates.

Table 3 below shows a breakdown of PUC's proposed use of BAWSCA's prepayment proceeds.

Table 3
PUC Proposed Use of BAWSCA Financing Prepayment Proceeds (000's)

	Total	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Retail Customer Fund Balance	\$86,880	\$86,880						
Regional Capital Projects	30,134	6,254	11,575	12,305				
Local Capital Projects	135,986	28,651	51,585	55,750				
Defeasance of Water Bonds	109,000		16,639	18,956	24,589	17,688	21,210	9,918
Total	\$362,000	\$121,785	\$79,799	\$87,011	\$24,589	\$17,688	\$21,210	\$9,918

Source: San Francisco Public Utilities Commission

File 12-1194

According to a December 21, 2012 Bay Area Water Supply and Conservation Agency (BAWSCA) Bond Summary report issued by Goldman Sachs (BAWSCA's lead bond underwriter), the annual debt service that would be collected and deposited into the proposed Water Enterprise Capital Cost Recovery Payment Surcharge Fund by the PUC would be approximately \$24,888,262 or \$2,074,021 a month, which exceeds the \$50,000 amount required in Section 10.100-1(b) of the Administration Code enabling any earned interest to be credited to Fund.¹⁰ Attachment II shows the annual revenue bond principal and interest payments to be deposited into the Fund and remitted monthly to the Bond Trustee.

Pursuant to the Wholesale Water Revenue Prepayment and Collection Agreement, the PUC would invest the proceeds in the Surcharge Fund through the City and County of San Francisco Treasurer's Office at the Treasurer's pooled deposits and investments yield to calculate investment earnings on the surcharge payments which, as of November 2012, yielded an average rate of 1.17%. According to Mr. Richard Morales, PUC's Debt Manager, it would be difficult to estimate how much interest would accrue in the Fund from the surcharge payments each month because wholesale customers may pay the surcharge on different days of the month varying the amount of money and time spent in the Fund.

¹⁰ \$24,888,262 is a pro forma, annual average debt service amount based on current market conditions.

POLICY CONSIDERATION**The proposed Category 8 Water Enterprise Capital Cost Recovery Payment Surcharge Fund's sunset date should correspond with the termination date of the Wholesale Water Revenue Prepayment and Collection Agreement.**

According to the Wholesale Water Revenue Prepayment and Collection Agreement, the termination date of the agreement is the earlier of: (a) July 1, 2036 or (b) the date on which: (i) the BAWSCA revenue bonds are paid in full, (ii) BAWSCA notifies PUC to stop collecting the surcharge, and (iii) all surcharges are collected or transferred to the appropriate parties; or (c) the date that all parties agree, in writing, to terminate the agreement early. The sole purpose of the proposed Water Enterprise Capital Cost Recovery Payment Surcharge Fund is to collect and remit surcharges for bond repayment; therefore the Fund should not be active after the termination date of the Wholesale Water Revenue Prepayment and Collection Agreement as no surcharges will be collected or remitted after this date.

Therefore, the Budget and Legislative Analyst recommends amending the proposed ordinance by deleting line 10 and 11 on page 2 and replacing it with the following language: "*(c) Administration of Fund. The fund shall be maintained from July 1, 2013 through the termination date of the Wholesale Water Revenue Prepayment and Collection Agreement.*"

RECOMMENDATIONS

1. Approve the proposed resolution for the approval and execution of the Wholesale Water Revenue Prepayment and Collection Agreement (File 12-1203).
2. Amend the proposed ordinance (File 12-1194) by deleting line 10 and 11 on page 2 and replacing it with the following language: "*(c) Administration of Fund. The fund shall be maintained from July 1, 2013 through the termination date of the Wholesale Water Revenue Prepayment and Collection Agreement.*"
3. Approve the proposed ordinance as amended (File 12-1194).

Attachment I

2009 Water Supply Agreement 25 Year Payoff Schedule

Fiscal Year	Principal	Interest	Annual Payment
2010	\$8,033,383	\$20,180,139	\$28,213,522
2011	\$8,455,324	\$19,758,197	\$28,213,521
2012	\$8,899,428	\$19,314,094	\$28,213,522
2013	\$9,366,858	\$18,846,664	\$28,213,522
2014	\$9,858,839	\$18,354,683	\$28,213,522
2015	\$10,376,659	\$17,836,862	\$28,213,521
2016	\$10,921,678	\$17,291,843	\$28,213,521
2017	\$11,495,324	\$16,718,198	\$28,213,522
2018	\$12,099,099	\$16,114,423	\$28,213,522
2019	\$12,734,586	\$15,478,935	\$28,213,521
2020	\$13,403,452	\$14,810,070	\$28,213,522
2021	\$14,107,449	\$14,106,072	\$28,213,521
2022	\$14,848,422	\$13,365,099	\$28,213,521
2023	\$15,628,314	\$12,585,208	\$28,213,522
2024	\$16,449,169	\$11,764,353	\$28,213,522
2025	\$17,313,137	\$10,900,384	\$28,213,521
2026	\$18,222,485	\$9,991,037	\$28,213,522
2027	\$19,179,594	\$9,033,928	\$28,213,522
2028	\$20,186,974	\$8,026,547	\$28,213,521
2029	\$21,247,265	\$6,966,256	\$28,213,521
2030	\$22,363,247	\$5,850,274	\$28,213,521
2031	\$23,537,844	\$4,675,677	\$28,213,521
2032	\$24,774,136	\$3,439,386	\$28,213,522
2033	\$26,075,361	\$2,138,160	\$28,213,521
2034	\$27,444,932	\$768,590	\$28,213,522
Total	\$397,022,959	\$308,315,079	\$705,338,038

Source: 2009 Water Supply Agreement Revised Attachment K-3 and K-4.

Attachment II

Bay Area Water Supply and Conservation Agency 2013 Revenue Bonds 21 Year Payoff Schedule
(Pro Forma)

Year (Beginning October 1, 2013)	Principal	Interest	Annual Payment
2013		\$10,095,068	\$10,095,068
2014	\$10,615,000	\$14,595,279	\$25,210,279
2015	\$10,785,000	\$14,428,775	\$25,213,775
2016	\$11,110,000	\$14,101,401	\$25,211,401
2017	\$11,460,000	\$13,750,500	\$25,210,500
2018	\$11,835,000	\$13,376,284	\$25,211,284
2019	\$12,320,000	\$12,893,277	\$25,213,277
2020	\$12,840,000	\$12,377,251	\$25,217,251
2021	\$13,390,000	\$11,826,287	\$25,216,287
2022	\$13,970,000	\$11,242,517	\$25,212,517
2023	\$14,590,000	\$10,626,228	\$25,216,228
2024	\$15,240,000	\$9,975,297	\$25,215,297
2025	\$15,925,000	\$9,287,971	\$25,212,971
2026	\$16,655,000	\$8,562,386	\$25,217,386
2027	\$17,415,000	\$7,798,254	\$25,213,254
2028	\$18,220,000	\$6,993,858	\$25,213,858
2029	\$19,085,000	\$6,129,256	\$25,214,256
2030	\$19,990,000	\$5,223,260	\$25,213,260
2031	\$20,940,000	\$4,273,968	\$25,213,968
2032	\$21,935,000	\$3,279,178	\$25,214,178
2033	\$22,975,000	\$2,236,738	\$25,211,738
2034	\$24,065,000	\$1,144,495	\$25,209,495
Total	\$335,360,000	\$204,217,527	\$539,577,527
Average¹			\$24,888,262

Source: Goldman Sachs, Bond Debt Service Report for the Bay Area Water Supply and Conservation Agency, December 21, 2012

¹The average is calculated using a 21.68 year term because the estimated delivery date is January 22, 2013 and the first payment date is October 1, 2013 which is less than a full year (8 months and 9 days).



AGENDA ITEM

Public Utilities Commission

City and County of San Francisco



DEPARTMENT Financial Services AGENDA NO. 10
 MEETING DATE December 11, 2012

Water Enterprise Resolution Authorization: Regular Business
Project Manager: Todd Rydstrom

Approve and Execute a Wholesale Water Revenue Prepayment and Collection Agreement with the Bay Area Water Supply and Conservation Agency (“BAWSCA”) and the associated SFPUC Tax Certificate pursuant to BAWSCA’s proposed issuance of the 2013 Series A and 2013 Series B (Taxable) Revenue Bonds (Capital Cost Recovery Prepayment Program)

Summary of Proposed Commission Action:	Discussion and possible action to approve and execute a Wholesale Water Revenue Prepayment and Collection Agreement and the associated SFPUC Tax Certificate pursuant to the Bay Area Water Supply and Conservation Agency’s (“BAWSCA”) proposed issuance of the 2013 Series A and 2013 Series B (Taxable) Revenue Bonds (Capital Cost Recovery Prepayment Program), subject to Board of Supervisors approval pursuant to Charter Section 9.118. The impact of this prepayment will benefit Retail Water Ratepayers through lower-than-otherwise Water retail bills over the near-term, though foregone interest income from Wholesale Customers will occur over the next 21 years.
Background:	<p>In July 2009, the San Francisco Public Utilities Commission (“SFPUC”) and its 27 suburban wholesale customers (the “Wholesale Customers”) entered into the 25-year Water Supply Agreement (WSA), which replaced the prior Master Water Sales Contract. Twenty-six (26) of these agencies authorized the Bay Area Water Supply and Conservation Agency (“BAWSCA”) to negotiate that agreement on their behalf.</p> <p>The WSA allocates annual capital and operating expenses between the SFPUC’s Retail Customers and Wholesale Customers based on proportional annual water use, including debt-funded (through revenue bonds) and cash-funded regional water system capital improvements serving both retail and Wholesale Customers. WSA section 5.03 requires the Wholesale Customers to repay “Existing Regional Asset” costs (assets in service prior to the effective date of the WSA) through level annual payments over the term of the WSA at an interest rate of 5.13% (the “Capital Cost Recovery Payments”), resulting in an annual revenue stream of \$28M including interest. WSA section 5.03.F allows the Wholesale Customers to prepay all or a portion of these Capital Cost Recovery Payments at any time, with a minimum payment of \$10M. The Wholesale Customers’ total obligation to the SFPUC as of June 30, 2013 is approximately \$362M.</p>

BAWSCA obtained passage of AB 2167 (approved September 7, 2012 and effective January 1, 2013) as Water Code sections 81436-38 authorizing BAWSCA, on behalf of the Wholesale Customers, to issue taxable and tax-exempt revenue bonds to fund the prepayment of all Capital Cost Recovery Payment amounts owed to the SFPUC under the WSA. AB 2167 also authorized the SFPUC to impose a surcharge on Wholesale Customer bills to recover debt service costs on BAWSCA's behalf.

Issuance of bonds by BAWSCA also helps Wholesale Customers through projected lower borrowing costs given today's interest rate environment compared with the 5.13% interest rate included in the 2009 WSA. The SFPUC receives a lump sum payment (the prepayment proceeds) at the time of bond closing of approximately \$362M, the obligation amount in lieu of the annual \$28M revenue stream over the remaining 21-year term of the WSA.

This prepayment benefits Retail Water Customers over the next few years because it allows for lower rate increases than would have otherwise been necessary to pay for the planned investment and related debt service costs for the Water System Improvement Program (WSIP). However, the Retail Customers will experience a decrease in interest earnings over the remaining term of the WSA on any prepayment made by Wholesale Customers. Regardless, the WSA provides the contractual right for early repayment for Wholesale Customers.

The main benefit to the Wholesale Customers upon the issuance of BAWSCA's bonds is interest cost savings. Whereas, the main benefit to the SFPUC's Retail Water Ratepayers is savings over the near-term, such that projected rate increases in FY 2014-15 and FY 2015-16 will be noticeably lower than would otherwise have been needed (see table below). This is achieved by using Wholesale Customer prepayment proceeds to fund planned Retail Water Customer capital investment and debt service on previously issued Retail Water Customer revenue bonds.

Average % Retail Water Rate Increase		
	Without Prepayment	With Prepayment
FY 2014-15	26.0%	12.0%
FY 2015-16	12.5%	12.0%
FY 2016-17	4.0%	10.0%
FY 2017-18	4.0%	8.0%
FY 2018-19	8.0%	8.0%
FY 2019-20	8.0%	8.0%
FY 2020-21	8.0%	8.0%
FY 2021-22	6.0%	9.0%
FY 2022-23	7.0%	9.0%

Prepayment and Collection Agreement; SFPUC Tax Certificate

The proposed Prepayment and Collection Agreement with BAWSCA requires the SFPUC to: (1) covenant, through a Tax Certificate and related Spending Plan, that the use of tax-exempt prepayment proceeds will comply with IRS Federal Treasury Regulations, and (2) collect a surcharge on the Wholesale Customers' water bills that will be paid to BAWSCA's bond trustee and used to pay debt service on BAWSCA's bonds.

Due to the term of the Prepayment and Collection Agreement, and the Spending Plan covenants (including Board of Supervisors' appropriation authority and the creation of the BAWSCA Capital Prepayment Fund) , the Board approval of the Prepayment and Collection Agreement under Charter Section 9.118 is required.

Of the anticipated \$362M of prepayment proceeds to be received by the SFPUC, approximately \$275M will be funded from tax-exempt bond proceeds. Pursuant to IRS Federal Treasury Regulations governing the use of tax-exempt bond proceeds, these prepayment proceeds can be used to fund certain capital-related expenditures and/or refund/defease certain outstanding SFPUC bonds. The balance of the BAWSCA's prepayment proceeds (approximately \$87M) will be funded from taxable bond proceeds, the use of which are not subject to IRS Federal Treasury Regulations. As such, these proceeds may be used by the SFPUC for any lawful purposes, including uses consistent with Proposition 218 (for example, the planned replenishment of fund balance reserves to backfill lower balances stemming from less water sales) and are not restricted to capital-related expenditures.

Proposed SFPUC Spending Plan

Allowable types of Water Enterprise expenditures that would align benefits of the prepayment to Retail Water Ratepayers were evaluated by Bond Counsel and the City Attorney's Office to ensure compliance with IRS Federal Treasury Regulations for tax-exempt bond proceeds, as well as Proposition 218. The following table summarizes the SFPUC's proposed Spending Plan for the BAWSCA prepayment proceeds that complies with IRS Federal Tax Regulations, as well as Proposition 218.

Proposed SFPUC Spending Plan (\$000s) (Preliminary)

<i>Water Enterprise Retail Customer Fund Balance*</i>	\$86,880
<i>Water Enterprise Capital Project Expenditures:</i>	
Retail Share of Regional Pay-Go Capital**	\$30,134
Local Capital**	\$135,986
<i>Bond Refundings</i>	
Refund/Defease Retail Share of Water Bonds**	\$109,000
Total	\$362,000

*Taxable prepayment proceeds

**Tax-exempt prepayment proceeds

Approximately \$166M of the tax-exempt proceeds will be used to: (1) fund the retail customer share of the Water Enterprise's regional pay-go capital projects from FY 2012-13 to FY 2014-15, and (2) fund the Water Enterprise's local capital projects from FY 2012-13 to FY 2014-15. Approximately \$109M of the tax-exempt proceeds will be used to refund/defease the retail share of certain outstanding non-callable SFPUC Water Bonds. Approximately \$87M of taxable bond proceeds will be deposited into the Water Enterprise's Retail Customer Fund Balance Reserves in FY 2012-13.

This proposed Spending Plan is designed to maximize benefits to Retail Water Ratepayers through lower-than-otherwise Water retail bills over the near-term. The prepayment results in the SFPUC foregoing \$28M in annual Wholesale Customer revenues for the next 21 years (the remaining term of the WSA), where the ability to prepay is a contractual right of Wholesale Customers. The net impact to Retail Water Ratepayers is lower rate increases in FY 2014-15 and FY 2015-16, followed by slightly higher rate increases or no change in increases. The tradeoff of near-term Retail rate relief, however, comes with less interest earnings than would have otherwise occurred on any unpaid balance due from the Wholesale Customers over the remaining term of the WSA.

The SFPUC's 10-Year Financial Plan for FY 2012-13 through FY 2021-22, adopted by the Commission on February 14, 2012, anticipated the potential for an early repayment by the Wholesale Customers. At that time, \$50M prepayment was projected and assumed in the 10-Year Financial Plan for FY 2012-13 through FY 2021-22 to provide Retail Water Ratepayer relief in FY 2014-15.

Timing

BAWSCA anticipates issuing its bonds in January 2013, after the execution of the Prepayment and Collection Agreement.

On August 28, 2012 the Commission adopted Resolution No. 12-0153 authorizing the reimbursement of certain capital-related costs of the Water Enterprise from proceeds of BAWSCA's planned revenue bond financing for purposes of complying with certain provisions of the Internal Revenue Code of 1986, as amended.

The Board will be asked to establish a BAWSCA Bond Surcharge Fund for the purpose of the SFPUC being able to impose, collect and remit a new Surcharge on participating Wholesale Customers, as proposed in the Prepayment and Collection Agreement.

The Prepayment and Collection Agreement

The Prepayment and Collection Agreement ("Agreement") between the SFPUC and BAWSCA is an integral component of BAWSCA's bond financing. The Agreement sets forth terms and provisions related to the SFPUC's application of the prepayment proceeds; the imposition, collection and remittance of surcharges to the Wholesale Customers by the SFPUC to make payments on BAWSCA's Revenue Bonds; and remedies for collection of unpaid surcharges if requested by BAWSCA. The Agreement generally provides that BAWSCA will cover all of the

	SFPUC's administrative costs, including collection costs, escrow and investment management fees. The Agreement also requires BAWSCA to indemnify the SFPUC for attorney's fees and auditor's costs in the event that the Internal Revenue Service characterizes the use of the tax-exempt bond proceeds under the Spending Plan to be taxable despite the SFPUC's compliance with the terms of the SFPUC Tax Certificate and the Spending Plan.
Result of Inaction:	A delay or denial in approving this agenda item will adversely impact the SFPUC's ability to timely realize contractually allowed prepayment of capital-related expenditure reimbursements from Wholesale Water Customers for the benefit of Retail Water Ratepayers, which in turn delays any near-term Retail Water Customer rate relief, and may affect the Wholesale Customers' interest rate savings by delaying the sale of BAWSCA's bonds.
Recommendation:	SFPUC staff recommends that the Commission adopt the attached resolution.
Attachments:	SFPUC Resolution Prepayment and Collection Agreement SFPUC Tax Certificate SFPUC Presentation

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 12-0227

WHEREAS, The San Francisco Public Utilities Commission (the "Commission") and its suburban wholesale customers in Alameda, Santa Clara and San Mateo counties (the "Wholesale Customers") previously entered into a Water Supply Agreement (the "Water Supply Agreement"), dated July 1, 2009, under which the Wholesale Customers agreed to make periodic payments to the Commission over the term of the Water Supply Agreement at an interest rate of 5.13% for the Wholesale Customers' share of "Existing Regional Asset" costs; and,

WHEREAS, Section 5.03.F of the Water Supply Agreement allows the Wholesale Customers to prepay all or a portion of Existing Regional Asset costs ; and,

WHEREAS, The Wholesale Customers are members of the Bay Area Water Supply and Conservation Agency, a special purpose district under California law; and,

WHEREAS, Under Assembly Bill 2167 effective January 1, 2013, BAWSCA may issue tax-exempt and taxable revenue bonds (the "Bonds"), the proceeds of which would be used by the Wholesale Customers to prepay all of their Existing Regional Asset costs as an authorized prepayment under the Water Supply Agreement (the "Prepayment"); and,

WHEREAS, Assembly Bill 2167 authorizes the Commission to act as a collection agent on BAWSCA's behalf to recover payments on the Bonds through the imposition of surcharges on Wholesale Customer water bills through a Prepayment and Collection Agreement negotiated between BAWSCA and the Commission; and,

WHEREAS, The Commission staff and BAWSCA have submitted to the Commission a form of Prepayment and Collection Agreement pursuant to which the Commission will act as agent to BAWSCA with respect to the collection of surcharges which will serve as security for the repayment of any BAWSCA Bonds; and,

WHEREAS, BAWSCA desires to cause the issuance of its bonds to prepay all or a portion of its Existing Regional Asset costs and the Commission desires to cooperate with BAWSCA to ensure that a portion of such obligations can be issued on a tax-exempt basis; and,

WHEREAS, In order to comply with federal tax law, the Commission is required to use the tax-exempt proceeds of the Prepayment to pay for Water Enterprise capital-related expenditures and for the refunding/defeasing of certain outstanding bonds of the Water Enterprise, as memorialized in a tax certificate and spending plan; and,

WHEREAS, The Commission reasonably expects that the proceeds of the tax-exempt Bonds to be issued by BAWSCA will be used to fund in accordance with the terms of the tax certificate and spending plan; and,

WHEREAS, Resolution 12-0153, passed by the Commission on August 28, 2012, authorized reimbursement of certain expenditures for capital costs from proceeds of future bonded indebtedness related to Wholesale Customer Prepayment, for purposes of complying with certain provisions of the Internal Revenue Code of 1986, as amended; now, therefore be it

RESOLVED, by the San Francisco Public Utilities Commission, as follows:

Section 1. The Commission finds and determines that the foregoing recitals are true and correct.

Section 2. The proposed form of Prepayment and Collection Agreement submitted to this Commission, and the terms and conditions thereof, is hereby approved, subject to Board of Supervisors approval pursuant to Charter Section 9.118. In order to implement any prepayment authorized herein, the General Manager or his designee is hereby authorized to enter into the form of Prepayment and Collection Agreement with BAWSCA, substantially in the form presented to this meeting and on file with the Secretary of the Commission, with such changes and additions as the General Manager may approve upon consultation with the City Attorney, each such approval to be evidenced conclusively by the delivery to the trustee of such agreement. The Secretary of the Commission is directed to file a copy of said form of Prepayment and Collection Agreement with the minutes of this meeting.


Section 3. Subject to Board of Supervisors approval, the General Manager of the Commission or his designee, and all other appropriate officers, employees, representatives and agents of the Commission, including all other appropriate officers, employees, representatives and agents thereof are hereby authorized and directed to do everything necessary or desirable to cause the execution and delivery of the Prepayment and Collection Agreement and to execute such certificates and other documents as he deemed necessary or desirable in connection with the issuance and sale of the BAWSCA prepayment bonds, including but not limited to, the establishment and creation of a special category 8 fund under Chapter 10 of the Administrative Code for the deposit of surcharge proceeds in accordance with terms of the Prepayment and Collection Agreement; provided however the General Manager shall not be authorized to take such actions inconsistent with the terms of this Resolution, including any actions that would cause the Commission to assume additional risks not contemplated herein.

Section 4. The General Manager of the Commission is hereby authorized to submit legislation to the Board of Supervisors of the City, and urge the Board to consider and approve the form of Prepayment and Collection Agreement pursuant to Charter Section 9.118. The General Manager of the Commission is hereby authorized to submit legislation to the Board of Supervisors of the City, and urge the Board to establish a BAWSCA Bond Surcharge Fund for the purpose of the SFPUC being able to impose, collect and remit a new Surcharge on participating Wholesale Customers, as proposed in the Prepayment and Collection Agreement.

Section 5. All actions heretofore taken by the officials, employees and agents of the Commission with respect to the execution and delivery of the Prepayment and Collection Agreement are hereby approved, confirmed and ratified.

Section 6. This Resolution shall take effect from and after its adoption by the Commission.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of December 11, 2012.



Secretary, Public Utilities Commission

PREPAYMENT AND COLLECTION AGREEMENT

between

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

and

THE CITY AND COUNTY OF SAN FRANCISCO

Dated as of January 1, 2013

Relating to

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY
REVENUE BONDS (CAPITAL COST RECOVERY PREPAYMENT PROGRAM),
2013 SERIES A AND 2013 SERIES B (TAXABLE)

PREPAYMENT AND COLLECTION AGREEMENT

This PREPAYMENT AND COLLECTION AGREEMENT, dated as of January 1, 2013 (the "Agreement"), is entered into by and between BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (the "Agency"), a public agency duly formed and existing under the laws of the State of California, and THE CITY AND COUNTY OF SAN FRANCISCO ("San Francisco"), acting by and through its Public Utilities Commission (the "SFPUC"), a San Francisco city department duly established and constituted under the San Francisco Charter:

WITNESSETH:

WHEREAS, the Agency is a public agency formed and existing pursuant to the Bay Area Water Supply and Conservation Agency Act, Division 31 of the Water Code of the State of California (the "Act"); and

WHEREAS, in accordance with the Act, twenty-four public entities in San Mateo County, Alameda County and Santa Clara County, the California Water Services Company and Stanford University are members of the Agency (the "Members"); and

WHEREAS, the Members have entered into the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County, dated July 2009 (the "WSA"), providing for the sale of water by San Francisco to the Members; and

WHEREAS, pursuant to section 5.03.B of the WSA, the Members are obligated to make payments to San Francisco to provide capital cost recovery for Existing Assets as defined in the WSA (referred to in this Agreement as "Capital Cost Recovery Payments"); and

WHEREAS, section 5.03.F of the WSA provides that the Members, acting through the Agency, may prepay the remaining principal balance of the Capital Cost Recovery Payments, in whole or in part (a "Prepayment"); and

WHEREAS, certain Members ("Participating Members") have authorized the Agency to make a Prepayment on behalf of such Members; and

WHEREAS, pursuant to the Act, the Agency is authorized to issue revenue bonds to finance all or a portion of any Prepayment; and

WHEREAS, in accordance with the Act, the Agency may impose charges, including charges in the form of surcharges on water sold by San Francisco to Participating Members (the "Surcharges"), in order to provide for payment of such revenue bonds; and

WHEREAS, in conjunction with the execution and delivery of this Agreement, the Agency is issuing its Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment), 2013 Series A and 2013 Series B (Taxable) (collectively, the "Series 2013 Bonds"), to finance the Prepayment pursuant to a Revenue Bond Indenture and a First Supplemental Indenture, each dated as of January 1, 2013 (collectively, the "Indenture"),

and each by and between the Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, the Series 2013 Bonds will be special, limited obligations of the Agency payable solely from Revenues, as such term is defined in the Indenture, including certain surcharges imposed by the Agency on Participating Members pursuant to California Water Code Section 81438(a)(2) (the "Surcharges"); and

WHEREAS, neither San Francisco nor the SFPUC shall be liable for the payment of the Series 2013 Bonds, nor shall San Francisco or the SFPUC be obligated to pledge any of its income, receipts, funds or other assets or properties to the repayment of the Series 2013 Bonds, the sole source of repayment for such obligations being the Revenues pledged under the Indenture as described above; and

WHEREAS, the Agency wishes to apply a portion of the proceeds of the Bonds to effect a Prepayment of a portion of the Capital Cost Recovery Payments pursuant to Section 5.03.F of the WSA; and

WHEREAS, in accordance with California Water Code section 81438(b), the Agency has requested that San Francisco provide certain services relating to the billing and collection of the Surcharges as described in this Agreement and in consideration of the Prepayment and for other good and valuable consideration delivered in connection herewith, San Francisco has agreed to provide such services; and

WHEREAS, an updated schedule setting forth the Capital Cost Recovery Payments that remain due pursuant to the terms of the WSA following the Prepayment described in this Agreement is attached hereto as Schedule B and has been approved by the General Manager of the SFPUC and the General Manager/Chief Executive Officer of the Agency to be substituted for Attachment K-3 and Attachment K-4 to the WSA pursuant to WSA Sections 5.03.F and 8.04.A.2; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Agreement do exist, have happened and have been performed in due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. The terms defined in this Section shall, for all purposes of this Agreement have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms used and not

otherwise defined herein shall have the meaning ascribed thereto in the Indenture or the WSA, as context requires.

Act

“Act” means the Bay Area Water Supply and Conservation Agency Act (being Division 31 of the California Water Code, as amended) and all laws amendatory thereof or supplemental thereto.

Agency

“Agency” means the Bay Area Water Supply and Conservation Agency and its successors and assigns.

Agency Tax Certificate

"Agency Tax Certificate" means the Tax Certificate dated [____], 2013, executed and delivered by the Agency in connection with the issuance and delivery of the Series 2013 Bonds, as the same may be amended or supplemented in accordance with its terms.

Agreement

“Agreement” means this Prepayment and Collection Agreement, dated as of January 1, 2013, by and between the Agency and San Francisco, as originally executed and as it may from time to time be supplemented or amended pursuant to the provisions hereof.

Bonds

“Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program) authorized by, and at any time Outstanding pursuant to, the Indenture.

Capital Cost Recovery Payment

“Capital Cost Recovery Payment” means a payment obligated to be made to San Francisco pursuant to Section 5.03.B of the WSA to provide capital cost recovery for “Existing Assets”.

Code

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

Collection Report

“Collection Report” has the meaning ascribed to such term in Section 3.06 of this Agreement.

Fiscal Year

"Fiscal Year" means the period from July 1 to June 30 of the succeeding year.

Fixed Charge

"Fixed Charge" means any Surcharge (or portion thereof) established without reference to the volume of water sales to the Participating Member attributable to the then-current Fiscal Year.

Indenture

"Indenture" means the Revenue Bond Indenture, dated as of January 1, 2013, by and between the Agency and the Trustee, as originally executed and as it may from time to time be supplemented or amended pursuant to the provisions thereof.

Individual Water Sales Contract

"Individual Water Sales Contract" means the contracts entered into by the respective Members and San Francisco identified in Article 9 of the WSA that incorporate the terms of the WSA, set forth certain terms pursuant to which the respective Members each purchase wholesale water from San Francisco and describe certain other customer-specific matters relating to the sale and delivery of water by San Francisco to the respective Members, as such contracts may be amended from time to time pursuant to their terms.

Member

"Member" means any member of the Agency as determined from time to time pursuant to the Act.

Non-Participating Member

"Non-Participating Member" means a Member on whose behalf the Agency has not made a Prepayment. As of the date of this Agreement, the Non-Participating Members are _____.

Non-Participating Member Capital Cost Recovery Payment Collection Amount

"Non-Participating Member Capital Cost Recovery Payment Collection Amount" means, for each Fiscal Year, the aggregate amount collected by San Francisco with respect to Non-Participating Member Capital Cost Recovery Payment Obligations.

Non-Participating Member Capital Cost Recovery Payment Obligation

"Non-Participating Member Capital Cost Recovery Payment Obligation" means, for each Non-Participating Member for each Fiscal Year, the Capital Cost Recovery Payment to be paid by such Non-Participating Member calculated as if the Prepayment had not been made and

taking into account the balance in the subaccount of the Non-Participating Members Balancing Subaccount.

Original Capital Cost Recovery Payment

“Original Capital Cost Recovery Payment” means the respective annual Capital Cost Recovery Payments as set forth in WSA attachments K-3 and K-4 immediately preceding the Prepayment described in this Agreement. The schedule of such payments is attached hereto as Schedule A.

Outstanding

“Outstanding” has the meaning ascribed to such term in the Indenture.

Participating Members

“Participating Members” means a Member on whose behalf the Agency has made a Prepayment, and such Member’s successors and assigns.

Prepayment

“Prepayment” means a prepayment made by the Agency to San Francisco on behalf of one or more Participating Members of a Capital Cost Recovery Payment.

Remaining Capital Cost Recovery Payments

“Remaining Capital Cost Recovery Payments” means the remaining Capital Cost Recovery Payments due on and after July 1, 2013 pursuant to the terms of the WSA following the Prepayment described in this Agreement. Such payments are reflected in Schedule B attached hereto, which has been approved by the General Manager of the SFPUC and the General Manager/Chief Executive Officer of the Agency to be substituted for Attachment K-3 and Attachment K-4 to the WSA pursuant to Sections 5.03.F and 8.04.A.2 of the WSA. The Remaining Capital Cost Recovery Payments are the product of the Original Capital Cost Recovery Payments and the Non-Prepayment Percentage.

San Francisco

“San Francisco” means the City and County of San Francisco, acting by and through its Public Utilities Commission.

Series 2013 Bonds

“Series 2013 Bonds” means collectively the Series 2013A Bonds and the Series 2013B Bonds.

Series 2013A Bonds

“Series 2013A Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series A, as described in the Indenture.

Series 2013B Bonds

“Series 2013B Bonds” means the Bay Area Water Supply and Conservation Agency Revenue Bonds (Capital Cost Recovery Prepayment Program), 2013 Series B (Taxable), as described in the Indenture.

SFPUC

“SFPUC” means the Public Utilities Commission of the City and County of San Francisco and its successors and assigns.

SFPUC Tax Certificate

“SFPUC Tax Certificate” means the Tax Certificate dated [_____], 2013, executed and delivered by San Francisco in connection with the issuance and delivery of the Series 2013 Bonds, as the same may be amended or supplemented in accordance with its terms.

Surcharge

“Surcharge” means a charge imposed by the Agency with respect to the Bonds and collected from a Participating Member pursuant to California Water Code Section 81438(a)(2).

Surcharge Rate

“Surcharge Rate” means any volumetric rate determined solely by the Agency applicable to water sales to Participating Members in calculating a Volumetric Charge.

Trustee

“Trustee” means The Bank of New York Mellon Trust Company, N.A., acting as trustee under the Indenture, or its successor thereunder.

Volumetric Charge

“Volumetric Charge” means any Surcharge determined for a Fiscal Year with reference to the volume of water deliveries to the Participating Member in such Fiscal Year.

WSA

“WSA” means the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County dated July 2009 among San Francisco and the Members, as amended and supplemented from time to time.

ARTICLE II

PREPAYMENT

SECTION 2.01. Prepayment; Remaining Capital Cost Recovery Payments. In connection with the execution of this Agreement, the Agency has transferred to San Francisco and San Francisco hereby acknowledges receipt of \$[] as the Prepayment of a portion of the Capital Cost Recovery Payments owing to San Francisco under the WSA. Upon the receipt of said Prepayment by San Francisco, Attachment K-3 and Attachment K-4 to the WSA shall be replaced, pursuant to Sections 5.03.F and 8.04.A.2 of the WSA, by Schedule B to this Agreement, including the Remaining Capital Cost Recovery Payments set forth therein. Schedule B to this Agreement is hereby approved by the General Manager of the SFPUC and the Chief Executive Officer of the Agency, including for purposes of Section 5.03.F of the WSA.

SECTION 2.02. Application of Prepayment Proceeds. San Francisco hereby covenants and agrees that it will comply with the provisions of the SFPUC Tax Certificate, which is incorporated herein as if fully set forth herein, and that all expenditures of proceeds of the Prepayment by San Francisco shall be made in accordance with the terms of the SFPUC Tax Certificate. In addition, San Francisco hereby agrees that the expenditure of the proceeds of the Prepayment will not in and of itself result in a higher Wholesale Revenue Requirement than would otherwise have been the case and, to that end, will only expend Prepayment proceeds to defease bonds in accordance with the provisions of the SFPUC Tax Certificate and on projects or portions of projects that would otherwise have been funded from revenues derived from San Francisco's retail customers in accordance with the provisions of the SFPUC Tax Certificate.

ARTICLE III

IMPOSITION, COLLECTION AND REMITTANCE OF SURCHARGES

SECTION 3.01. Imposition and Determination of Surcharges; Delivery Data and Projections.

(a) All Surcharges shall be solely imposed by the Agency. All Fixed Charges and Surcharge Rates shall be determined solely by the Agency, and San Francisco has no responsibility to determine any Fixed Charge or Surcharge Rate or to incorporate the Agency's Surcharge determination into the process and schedule for determination of the Wholesale Revenue Requirement under the WSA. The Agency may impose Surcharges as Fixed Charges, Volumetric Charges or a combination of Fixed Charges and Volumetric Charges. The Agency shall deliver a written schedule to San Francisco at least 45 days prior to the beginning of each Fiscal Year showing the amount of the Surcharge that the Agency seeks to impose for such Fiscal Year effective on the first day of such Fiscal Year, whether as Fixed Charges, Volumetric Charges, or a combination thereof. In the event that the Agency does not provide the written schedule of Surcharges to San Francisco at least 45 days prior to the beginning of the next Fiscal Year, the Agency's schedule of Surcharges for the prior Fiscal Year may remain in effect in the

next Fiscal Year until San Francisco is able to incorporate the new Surcharge amount in the next available monthly wholesale water billing cycle. The Agency's written schedule of Surcharges shall include separate determinations of Surcharges to be paid by each Participating Member, including the Surcharges to be paid by each of the California Water Service Company's distinct service areas. With respect to Fixed Charges, the schedule shall include the Agency's determination of the Fixed Charges to be collected each month from each Participating Member. With respect to Volumetric Charges, the schedule shall include the Agency's determination of the Surcharge Rate applicable to each Participating Member.

(b) If the Agency determines that such imposition or adjustment is necessary in order for the Agency to comply with Section 6.05 of the Indenture, the Agency may impose or adjust Fixed Charges or Surcharge Rates as of the first day of any calendar month upon at least 45 days prior written notice to San Francisco.

(c) San Francisco covenants to provide the Agency each month with San Francisco's year-to-date water deliveries to Members and projected year-end water sales to Members. San Francisco further agrees to provide the Agency, by no later than the annual meeting held in February of each year pursuant to Section 8.03 of the WSA, with forward-looking projections of water sales and deliveries to Members covering no less than a one-year period.

SECTION 3.02. Billing of Surcharge Amounts by San Francisco.

(a) Beginning with water sales in Fiscal Year 2013-14, San Francisco shall, in accordance with the Act, include in the first wholesale water bill for the largest amount delivered each month to Participating Members (with respect to California Water Service Company, the first wholesale water bill delivered to each distinct service area) pursuant to the WSA and the respective Individual Water Sales Contracts a separately identified Surcharge in the amount determined pursuant to Section 3.01(a).

(b) The total amount of Fixed Charges for a given Fiscal Year shall be billed by San Francisco by no later than June 30 of such Fiscal Year.

(c) With respect to Volumetric Charges, San Francisco shall calculate the amount of the Surcharge due from each Participating Member for each billing period by multiplying the Surcharge Rate, as provided by the Agency, by the volume of water purchased by such Participating Member (including each distinct service area for the California Water Service Company) in such billing period.

(d) San Francisco shall notify the Agency of any changes in its billing practices that could materially affect the collection of Surcharges from Participating Members no later than sixty (60) days prior to implementation of such changes.

SECTION 3.03. Collection and Deposit of Surcharges; Transfers of Surcharge Proceeds to the Trustee.

(a) San Francisco shall, in accordance with the Act, collect payments for Surcharges imposed on Participating Members by the Agency in the same manner as it collects charges for water pursuant to the WSA and the respective Individual Water Sales Contracts.

(b) All Surcharge collections shall be separate and apart from collections by San Francisco from Agency Members for water sales under the WSA and from any other amounts collected on behalf of the Agency from any Members, provided that nothing shall prohibit San Francisco from commingling such amounts for investment purposes. All proceeds of the Surcharges collected by San Francisco shall be held in trust and placed in a restricted fund until remitted to the Trustee pursuant to the terms of this Agreement. San Francisco shall have no rights or interest in the Surcharge Payments or related investment proceeds deposited in the restricted fund, and may in no event set off any such amounts against obligations of the Agency or its Members to San Francisco.

(c) By no later than the fifteenth (15th) day of each calendar month, San Francisco shall transfer all Surcharge payments received through the end of the preceding calendar month, plus any investment earnings on the investment of received Surcharge payments posted into the fund held by San Francisco through such date, and including any late payment fees collected by San Francisco that are based on the billed Surcharge amounts, to the Trustee for deposit in the Revenue Fund established by the Trustee pursuant to the Indenture. For the purpose of calculating investment earnings, San Francisco may use the most recent month's earned income yield reported for the San Francisco Pooled Investment Fund less estimated annual investment management fees. Estimated annual investment management fees shall be equivalent to the amount of the total investment management fees charged in the preceding fiscal year.

(d) San Francisco hereby confirms that the Surcharges do not constitute "Revenues" within the meaning of the Amended and Restated Indenture, dated as of August 1, 2002, by and between the SFPUC and U.S. Bank National Association, as trustee, as amended.

SECTION 3.04. Enforcement; Allocation of Partial Payments.

(a) San Francisco shall promptly notify the Agency of any delinquencies in the payment of Surcharge amounts owed by Participating Members. The Agency shall have primary responsibility to enforce payment of Surcharges billed to Participating Members by San Francisco. Alternatively, if requested by the Agency, San Francisco will pursue available remedies for any non-payment or partial payment of such amounts, in the same manner that San Francisco enforces payment of other charges for water sales and pursues remedies for non-payment or partial payment thereof. The remedies available for non-payment include, but are not limited to, the imposition of late payment fees based on the amount of the wholesale water bill, including the amount of Surcharge billed to each Participating Member, as authorized by California Water Code Section

81438(b) and in the same manner applicable to retail water customers as set forth in the SFPUC's Water Enterprise Rate Schedules and Rules and Regulations Governing Water Service to Customers, as may be amended from time to time. No provision of this Agreement shall require San Francisco to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties in this Agreement or to incur legal or other collection costs without reasonable assurance of Agency reimbursement therefor. This Section 3.04 shall not, in any manner, limit the Agency's ability to pursue directly against defaulting Participant Members remedies for any non-payment or partial payment of any Surcharges; provided however the Agency shall not take any action which would impair the rights of San Francisco under the WSA, or the obligation of Members to make payments to San Francisco for purchases of water and other services under the WSA.

(b) In the event a Participating Member remits a partial payment of an amount billed by San Francisco on any single bill for delivery of water that includes a Surcharge, San Francisco may, subject to Section 3.04(c), apply the proceeds of such partial payment first to pay amounts payable to San Francisco under the WSA and second to pay the applicable Surcharge.

(c) Notwithstanding anything to the contrary in Section 3.04(b), if a Participating Member remits a partial payment of amounts due with respect to a bill that includes a Surcharge and specifies that such payment is being reduced because the Participating Member contests the validity, accuracy or any other aspect of a charge billed by San Francisco excepting the Surcharge (including, but not limited to, WSA charges relating to the Interim Supply Limitation, the Environmental Enhancement Surcharge, drought based rates and penalties and meter reading disputes), the proceeds of the Participating Member's partial payment will be applied toward the remainder of the amounts billed, including the Surcharge, as if such contested amounts had not been billed and none of the proceeds of the partial payment shall be applied to, or reserved to pay, such contested amounts.

SECTION 3.05. Capital Cost Recovery Payments by Non-Participating Members.

If any Member elects to not participate in the Prepayment funded by proceeds from the Series 2013 Bonds, San Francisco shall continue to bill and collect Non-Participating Member Capital Cost Recovery Payment Obligations from Non-Participating members consistent with section 5.03.B of the WSA and, if applicable, reflect in wholesale rates under the WSA adjustments between Non-Participating Members and Participating Members (each as a group) to effectuate an allocation of Remaining Capital Cost Recovery Payments between Participating Members and Non-Participating Members based on the actual water usage of each group, all in accordance with such specific procedures as may be agreed to by San Francisco and the Agency.

SECTION 3.06. Agency's Payment of Fees Incurred by San Francisco.

The Agency agrees to reimburse San Francisco for the following fees and charges, or to make such payments on behalf of San Francisco, incurred in connection with San Francisco's imposition, collection and reimbursement of Surcharges on behalf of the Agency:

- (a) fees paid by the SFPUC with respect to the creation and maintenance of an escrow fund, including but not limited to escrow agent fees, used for deposit of Prepayment proceeds to defease prior bonds issued by the SFPUC;
- (b) any yield reduction payments determined to be necessary to comply with the rules of the Code and any Treasury Regulations regarding yield restrictions;
- (c) any arbitrage rebate payments due to the United States Department of the Treasury, including accrued past due interest and any penalties associated with the rebate requirement referenced in Article 5 of the SFPUC Tax Certificate;
- (d) all costs and expenses associated with the calculation of the rebate requirement using the information provided to the Agency by San Francisco in Section 3.07 for the term of the Series 2013 Bonds; and
- (e) the costs of responding to any routine audit by the Internal Revenue Service related to the Series 2013 Bonds.

Payment for the aforementioned expenses may be made directly or as an adjustment to the amount of the WSA balancing account, or as otherwise agreed to between the Agency and the SFPUC.

SECTION 3.07. Reports and Accounting of Surcharge Billing, Collection and Expenditure of Proceeds by San Francisco. San Francisco agrees to make the following reports available to the Agency:

- (a) A Collection Report by the 15th day of each month containing the following information: (i) an accounting of Surcharge amounts collected from each Participating Member preceding two calendar months; (ii) an accounting of Capital Cost Recovery Payments billed to and collected for each Non-Participating Member during the preceding two calendar months; (iii) an accounting of remittances to the Trustee for the preceding two calendar months; and (iv) an accounting of the amount of Surcharge payments not yet remitted to the Trustee.
- (b) An annual report by August 15 of each year containing the following information: (i) an accounting of all balancing accounts and other funds relating to Capital Cost Recovery Payments maintained by San Francisco with respect to each Non-Participating Member; (ii) an accounting of San Francisco's expenditures of proceeds of the Prepayment and the purposes or projects financed with such expenditures; (iii) account statements and other documentation relating to the investment of Surcharge payments and other Capital Cost Recovery Payments; and (iv) an accounting of any

transfers of funds relating to the Surcharge or Non-Participating Member Capital Cost Recovery Payment True-Up Amounts from San Francisco to the Agency and from the Agency to San Francisco.

(c) The reports required by this section may be delivered by any transmission method selected by San Francisco and acceptable to the Agency.

ARTICLE IV

NOTICES, MODIFICATION AND AMENDMENT, TERMINATION

SECTION 4.01. Notices. Except as otherwise provided herein, it shall be sufficient service or giving of notice, request, complaint, demand or other paper if the same shall be duly mailed by registered or certified mail, postage prepaid, or sent by electronic means, addressed to the appropriate party as provided below. Any such entity by notice given hereunder may designate any different addresses to which subsequent notices, certificates or other communications shall be sent, but no notice directed to any one such entity shall be thereby required to be sent to more than two addresses.

If to the Agency:

Bay Area Water Supply and Conservation Agency
155 Bovet Road
Suite 650
San Mateo, CA 94402
Attention: General Manager / Chief Executive Officer
E-Mail: ajensen@bawasca.org
Facsimile: (650) 349-8395

If to San Francisco:

San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102
Attention: General Manager
E-Mail: hkelly@sfgwater.org
Facsimile: [_____]

SECTION 4.02. Modifications, Amendments and Waivers. This Agreement may not be modified or amended, or any provision thereof waived, except as permitted in the Indenture and in a writing signed by all the parties to this Agreement and with the written consent of the Trustee.

SECTION 4.03. Termination. This Agreement shall terminate on earlier of: (a) July 1, 2036; and (b) the date on which: (i) no Bonds remain Outstanding under the Indenture, (ii) the Agency has notified San Francisco in writing that no additional Surcharges will be imposed, and (iii) all amounts to be collected or transferred pursuant to the terms hereof for

water delivered prior to such date have been collected from and transferred to the applicable parties. This Agreement may terminate prior to such date only as permitted in the Indenture and pursuant to a writing signed by all the parties to this Agreement. The obligations imposed on the parties to this Agreement shall survive the expiration of the WSA.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 5.02. Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Agency and San Francisco hereby declare that each would have executed and delivered this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 5.03. Entire Agreement. This Agreement contains the entire and only agreement among all the parties to this Agreement with respect to (a) the interest of San Francisco in the proceeds of the Surcharge, and (b) San Francisco's obligations to the Agency in connection with the Surcharge and all proceeds of the Surcharge.

SECTION 5.04. Waiver of Personal Liability. No Board of Directors member, Commissioner, officer, agent or employee of the Agency or San Francisco shall be individually or personally liable for any payment required hereunder; but nothing herein contained shall relieve any such Board of Directors member, Commissioner, officer, agent or employee of the Agency or San Francisco from the performance of any official duty provided by law or by this Agreement.

SECTION 5.05. Indemnity by Agency. The Agency agrees to indemnify and save San Francisco and its officers, agents and employees harmless from any and all costs, claims, expenses, losses judgments, suits, damages or liabilities, including fees and expenses of its attorneys or auditors, ("claims") arising out of the following:

(a) the Agency's determination of the Surcharge amount, whether based on Fixed Charges, Volumetric Charges or a combination thereof, due to any error or omission in making any computation or instruction provided to San Francisco in connection with the Surcharge determination, except an error resulting from the provision of incorrect information by San Francisco;

(b) violations of this Agreement alleged by Members, bond holders or third parties, except for claims arising out of San Francisco's negligence, willful misconduct or breach of the express terms and conditions of this Agreement; or

(c) a Department of the Treasury (or department thereof) determination that the Series 2013A Bonds are taxable obligations notwithstanding the Commission's compliance with the terms of the SFPUC Tax Certificate, or an assertion by the IRS (including during the course of an IRS examination of the 2013A Bonds) that the 2013 A bonds may constitute taxable obligations, notwithstanding the Commission's compliance with the terms of the SFPUC Tax Certificate.

SECTION 5.06. Force Majeure. San Francisco shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of an unavoidable delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including Acts of God or of the public enemy or terrorists, acts of a government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market.

SECTION 5.07. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 5.08. Effect on WSA. Nothing contained in this Agreement shall limit, constrain, or in any way affect the rates which San Francisco may charge for water sold to Retail Customers (as defined in the WSA) or the methodology by which such rates are determined. This Agreement shall not be construed to alter, modify or otherwise effect the terms of the WSA, and in the event of a conflict between the terms of this Agreement and the WSA, the terms of the WSA shall control.

SECTION 5.09. Effect of Agency Tax Certificate. The Agency has provided the final Agency Tax Certificate to San Francisco prior to the execution of this Agreement. The Agency agrees that the terms of the Agency Tax Certificate will not create liabilities or obligations to San Francisco that are different from or in excess of those assumed by San Francisco in this Agreement or in the SFPUC Tax Certificate.

SECTION 5.10. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their officers thereunto duly authorized as of the day and year first written above.

BAY AREA WATER SUPPLY AND
CONSERVATION AGENCY

THE CITY AND COUNTY OF
SAN FRANCISCO, acting by and through
its Public Utilities Commission

By: _____
General Manager / Chief Executive Officer

Authorized by BAWSCA Board Res. No.
2012-06 dated November 15, 2012

By: _____
Harlan L. Kelly, Jr.
General Manager

Authorized by Commission Resolution
No. _____ Dated _____

Attest: _____
Donna Hood
Commission Secretary

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Joshua Milstein
Deputy City Attorney

SCHEDULE A
ORIGINAL CAPITAL COST RECOVERY PAYMENTS

SCHEDULE B

CAPITAL COST RECOVERY PAYMENTS FOLLOWING PREPAYMENT

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0069

WHEREAS, on October 30, 2008 the Commission approved the Water System Improvement Program ("WSIP") in Commission Resolution No. 08-0200; and

WHEREAS, on October 30, 2008 the Commission also endorsed selected Water Supply Elements for a new Water Supply Agreement ("Agreement") to be negotiated between the SFPUC and the wholesale water customers as part of its approval of the Phased WSIP in Commission Resolution No. 08-0201; and

WHEREAS, in Resolution No. 08-0201 the Commission found that the Water Supply Elements were consistent with the Phased WSIP approved in Resolution No. 08-0200; and

WHEREAS, on October 30, 2008 the Commission reviewed and considered the Final Program Environmental Impact Report (PEIR) prepared for the WSIP, and certified by the Planning Commission in Planning Commission Motion No. 17734, and adopted findings required by the California Environmental Quality Act (CEQA) including a statement of overriding considerations and a mitigation monitoring and reporting program in its Resolution No. 08-0200, all of which are incorporated herein as part of this Resolution by this reference thereto; and

WHEREAS, the existing 1984 Settlement Agreement and Master Water Sales Contract (1984 Agreement) between the SFPUC and its wholesale water customers expires on June 30, 2009; and

WHEREAS, in accordance with the Commission's direction in Resolution 08-0201, SFPUC staff has negotiated and recommended a new Water Supply Agreement; and

WHEREAS, the Water Supply Agreement sets forth the terms by which the SFPUC will produce, and the wholesale water customers will purchase, water from the San Francisco Regional Water system for a term of 25-years, including terms for (1) recovery of Regional WSIP new asset capital costs using the cash method in proportion to water use from the Regional Water System by retail and wholesale customers and existing asset capital costs from wholesale customers pursuant to a fixed payment schedule; (2) the allocation of Water Enterprise Regional operation and maintenance expenses in proportion to water use from the Regional Water System by retail and wholesale customers where feasible; (3) the continued validity of the 184 mgd wholesale customer Supply Assurance as required by the 1984 Agreement; (4) the creation of separate wholesale and retail interim supply limitations to be in effect until December 2018 as set forth in the Phased WSIP approved by this Commission; (5) enforcement of the interim supply limitation set forth in the Phased WSIP approved by the Commission, including the imposition of an Environmental Enhancement Surcharge to be used for environmental restoration in the SFPUC watersheds; (6) provisions related to intrasystem water transfers; and (7) provisions for both drought and emergency rate increases; and

WHEREAS, the Agreement implements the terms of the Phased WSIP approved by this Commission, implements the Water Supply Elements endorsed in Resolution 08-0201, and results in no changes from the WSIP approved in Resolution 08-0200; and

WHEREAS; the Commission has reviewed the information contained in the Final PEIR as relevant to this approval of the Agreement and has reviewed the CEQA findings contained in Resolution 08-0200; now, therefore, be it

RESOLVED, the Commission has reviewed and considered the Final PEIR and record as a whole, finds that the Final PEIR is adequate for its use as the decision-making body for the action taken herein to approve the Agreement and hereby adopts and incorporates the CEQA findings contained in Resolution No. 08-0200, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, by this reference thereto as though set forth in this Resolution; and be it further

RESOLVED, the Commission finds that this approval of the Agreement is within the scope of the WSIP and activities evaluated in the Final PEIR; and be it further

RESOLVED, the Commission further finds that since the Final PEIR was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the Final PEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final PEIR; and be it further

RESOLVED, the Commission urges the wholesale customers to implement the California Urban Water Conservation Council's Best Management Practices in an effort to further advance Bay Area-wide conservation efforts, especially in light of the fact that said Best Management Practices need to be implemented in order to access State funding; and be it further

RESOLVED, the Commission directs the General Manager to provide timely information to the public on water usage by each wholesale customer, and will post said usage information on the SFPUC website on a monthly basis; and be it further

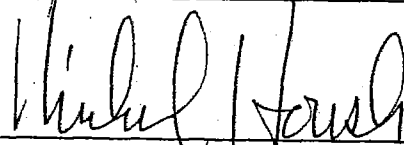
RESOLVED, the Commission will consider such factors as per capita water use and historical use when establishing each wholesale customer's Interim Supply Allocation; and be it further

RESOLVED, the Commission will use every effort to determine the carrying capacity of its source watersheds, adjusted to account for the uncertainties of climate change, to ensure that appropriate decisions about future allocations are made that ensure full protection of our increasingly fragile ecosystems; and be it further

RESOLVED, the Commission hereby approves the Agreement, subject to nonsubstantive corrections and clarifications approved by the General Manager in consultation with the Bay Area Water Supply and Conservation Agency General Manger/CEO, and authorizes the General Manager to (1) execute the Agreement on behalf of the SFPUC; and (2) negotiate and approve Individual Water Sales Contracts with wholesale customers whose contracts will expire, in substantial accordance with the form attached; and be it further

RESOLVED, the Commission directs staff to take all steps necessary to secure the approval of the Agreement by the wholesale customers; and recommends that the wholesale customers approve the Agreement.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of _____ April 28, 2009



Secretary, Public Utilities Commission.

Assembly Bill No. 2167

CHAPTER 251

An act to add Article 2.5 (commencing with Section 81436) to Chapter 4 of Division 31 of the Water Code, relating to water.

[Approved by Governor September 7, 2012. Filed with Secretary of State September 7, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2167, Hill. Bay Area Water Supply and Conservation Agency: financial matters.

Under existing law, the City and County of San Francisco operates the Hetch Hetchy Project as a regional water delivery system, supplying water to persons and entities in San Francisco and the Counties of Alameda, San Mateo, and Santa Clara. Existing law, the Bay Area Water Supply and Conservation Agency Act, governs the formation and operation of the Bay Area Water Supply and Conservation Agency (BAWSCA) by 24 public entities that purchase water from San Francisco. The act authorizes the agency to borrow money, incur indebtedness, and issue notes and bonds, including revenue bonds, as specified. The act authorizes the agency to make proceeds of bonds authorized by the act available to other local public agencies on mutually satisfactory terms and conditions to assist in the construction, reconstruction, or improvement of works designed and intended in whole or in part to furnish water to the members of the agency, whether those works are carried out jointly by the agency and other local public agencies, or solely by those other public agencies. The act further authorizes the agency to impose reasonable rates, fees, and charges on specified entities that are sufficient to generate revenue to pay the principal and interest on any bonds issued by the agency.

This bill would authorize the agency to prepay the unpaid principal balance relating to existing capital assets as of June 30, 2009, on behalf of BAWSCA members, as defined, as provided in a prescribed water supply agreement. This bill would authorize the agency to acquire from the City and County of San Francisco the right to receive all or a portion of the amounts payable by BAWSCA members under that water supply agreement and authorize the City and County of San Francisco to sell to the agency its right to receive these amounts. This bill would authorize the agency to request that the City and County of San Francisco continue to collect amounts in accordance with the water supply agreement and to transfer these amounts to the agency on a periodic basis. This bill would require the agency to use these amounts to pay debt service on prescribed bonds issued by the agency for specified uses authorized by this bill and to satisfy all other obligations of the agency related to those bonds. This bill would also authorize the agency to impose

rates, fees, and charges as prescribed to pay debt service on bonds issued for the specified uses authorized by this bill and to satisfy all other obligations of the agency related to those bonds and would require that the City and County of San Francisco collect any of those rates, fees, and charges, as specified, if requested by the agency. This bill would also permit the agency to distribute any of these amounts not needed for the purposes of those bonds to BAWSCA members, as prescribed.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 81436) is added to Chapter 4 of Division 31 of the Water Code, to read:

Article 2.5. Additional Financing Authority

81436. For the purposes of this article, the following definitions shall apply:

(a) "BAWSCA members" means Stanford University, the California Water Service Company, and eligible public entities as defined by Section 81305.

(b) "July 2009 Water Supply Agreement" means the water supply agreement by and between the City and County of San Francisco and the BAWSCA members, as amended or supplemented.

81436.5. The agency may prepay all or a portion of any unpaid principal balance relating to the existing capital assets as of June 30, 2009, on behalf of BAWSCA members, as provided in the July 2009 Water Supply Agreement.

81437. (a) (1) The agency may acquire from the City and County of San Francisco the right to receive all or a portion of the amounts payable by BAWSCA members under the July 2009 Water Supply Agreement.

(2) The City and County of San Francisco may sell to the agency its right to receive amounts payable by BAWSCA members under the July 2009 Water Supply Agreement.

(b) (1) If the agency acquires, and the City and County of San Francisco sells, the right to receive amounts payable pursuant to subdivision (a), if requested by the agency, the City and County of San Francisco shall continue to collect amounts payable by BAWSCA members under the July 2009 Water Supply Agreement in accordance with the terms of that agreement and the City and County of San Francisco shall transfer amounts so collected to the agency on a monthly basis or on a periodic basis agreed to by the agency and the City and County of San Francisco.

(2) The agency shall apply amounts received pursuant to this subdivision to pay debt service on any bonds issued by the agency for a use authorized by Section 81437.5 and to satisfy all other obligations of the agency related to these bonds.

(3) The agency may distribute any amounts received pursuant to this subdivision not needed for the purposes of this subdivision to BAWSCA members. The agency may condition any distribution pursuant to this paragraph upon BAWSCA members' agreement to waive any right of prepayment respecting any amounts purchased that the member may have under the July 2009 Water Supply Agreement.

81437.5. In addition to the uses authorized in Section 81434, the agency may use proceeds of bonds issued pursuant to this division as follows:

(a) For the construction, reconstruction, or improvement of any works carried out by the agency on behalf of a BAWSCA member.

(b) For the purpose of assisting in the repayment of any existing capital assets, if those assets were designed and intended in whole or in part to furnish water to BAWSCA members, whether those assets were carried out jointly by the agency and other local public agencies, or solely by those other public agencies.

(c) To make a prepayment, as described in Section 81436.5, or an acquisition, as described in Section 81437.

(d) To pay the costs of issuance of the bonds and to fund reserve funds securing the bonds.

81438. (a) In addition to the authority granted in Section 81435, the agency may do all of the following:

(1) Impose reasonable rates, fees, and charges on BAWSCA members for any program or service provided or work performed by the agency.

(2) Impose rates, fees, and charges on BAWSCA members and any entity that subsequently serves a BAWSCA member's service area in an amount as shall be necessary, together with other available sources of funds, to pay debt service on any bonds issued by the agency for a use authorized by Section 81437.5 and to satisfy all other obligations of the agency related to these bonds, including, but not limited to, funding and maintaining reserve funds and complying with financial covenants.

(3) Distribute any amounts collected that are not needed for the purposes of this article to BAWSCA members.

(b) If requested by the agency, the City and County of San Francisco shall collect any rates, fees, and charges imposed by the agency pursuant to this section as a surcharge under the July 2009 Water Supply Agreement. These amounts shall be collected in a manner, and with remedies for nonpayment, specified in an agreement between the agency and the City and County of San Francisco.

Miller, Alisa

From: Tang, Katy
Sent: Thursday, January 10, 2013 4:22 PM
To: Miller, Alisa
Subject: co-sponsor

Hi Alisa:

Carmen would like to be co-sponsor of these two items appearing in budget committee on 1/16:

- 121194 - Administrative Code - Water Enterprise Capital Cost Recovery Payment Surcharge Fund (Mayor) -- introduced 12/11, under 30-day hold
- 121203 - Prepayment and Collection Agreement - Bay Area Water Supply and Conservation Agency (Mayor)

Thanks!

Katy Tang
Legislative Aide
Office of Supervisor Carmen Chu
Phone: (415) 554-7462
City Hall, Room 268
www.sfgov.org/chu

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *EM* Mayor Edwin M. Lee *EL*
RE: Administrative Code – Water Enterprise Capital Cost Recovery Payment
Surcharge Fund
DATE: December 11, 2012

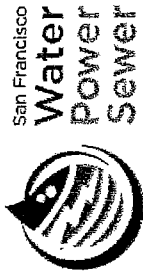
Attached for introduction to the Board of Supervisors is the ordinance amending Chapter 10, Article XIII of the San Francisco Administrative Code to create the Public Utilities Water Enterprise Capital Cost Recovery Payment Surcharge Fund.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

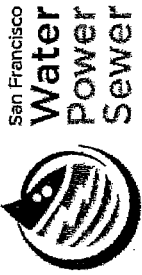
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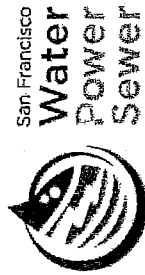
Wholesale Water Customer Prepayment Bonds

- Prepayment Benefits
 - Wholesale Water Customers - Cost savings
 - SFPUC - Lower rate increases for Retail Water Ratepayers in the near term
- Approval of Prepayment and Collection Agreement and associated SFPUC Tax Certificate
- Commission approved December 11, 2012



Wholesale Water Customer Prepayment Bonds

- Provides Retail Ratepayer relief over the near-term, though longer-term lower interest earnings result
- 26 Wholesale Water Customers
- \$362M owed to SF Retail Customers for Capital Costs
- BAWSCA to issue bonds on behalf of Wholesale Customers
- Wholesale Customers benefit from lower interest costs
- Permitted under 2009 Water Supply Agreement

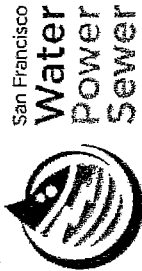


Prepayment Provides Near-Term Retail Ratepayer Relief

Projected Average Monthly Water Bill			
Fiscal Year	With Prepayment	Without Prepayment	Monthly Change with Prepayment
FY 2012-13	\$35.20	\$35.20	\$0.00
FY 2013-14	\$37.50	\$37.50	\$0.00
FY 2014-15	\$42.00	\$47.25	(\$5.25)
FY 2015-16	\$47.04	\$53.16	(\$6.12)
FY 2016-17	\$51.74	\$55.28	(\$3.54)
FY 2017-18	\$55.88	\$57.49	(\$1.61)
FY 2018-19	\$60.35	\$62.09	(\$1.74)
FY 2019-20	\$65.18	\$67.06	(\$1.88)
FY 2020-21	\$70.40	\$72.43	(\$2.03)
FY 2021-22	\$76.73	\$76.77	(\$0.04)
FY 2022-23	\$83.64	\$82.15	\$1.49
FY 2023-24	\$83.64	\$82.15	\$1.49

Prepayment Provides Near-Term Retail Ratepayer Relief

Projected Average % Retail Rate Increase	Projected Average % Retail Rate Increase	
	Without Prepayment	With Prepayment
FY 2014-15	26.0%	12.0%
FY 2015-16	12.5%	12.0%
FY 2016-17	4.0%	10.0%
FY 2017-18	4.0%	8.0%
FY 2018-19	8.0%	8.0%
FY 2019-20	8.0%	8.0%
FY 2020-21	8.0%	8.0%
FY 2021-22	6.0%	9.0%
FY 2022-23	7.0%	9.0%



Use of Prepayment Proceeds

- Tax-Exempt Proceeds (estimated \$275M) subject to IRS Federal Treasury Regulations
- Allowable Expenditures:
 - Water Enterprise Capital Projects
 - Refunding / Defeasance of Outstanding Water Bonds

SFPUC Spending Plan (\$000s) (Preliminary)

<i>Water Enterprise Retail Customer Fund Balance*</i>	\$86,880
<i>Water Enterprise Capital Project Expenditures:</i>	
Retail Share of Regional Pay-Go Capital**	\$30,134
Retail Share of Local Capital**	\$135,986
<i>Bond Refundings</i>	
Refund / defease Retail Share of Water Bonds**	\$109,000
Total	\$362,000

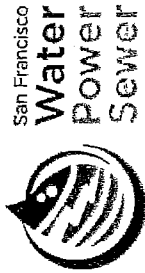
*Taxable prepayment proceeds

**Tax-exempt prepayment proceeds



Prepayment and Collection Agreement

- Establishes requirement for SFPUC to serve as billing and collection agent on behalf of BAWSCA
- Surcharge added to current Wholesale Water Bill and remitted to trustee to pay debt service on bonds
- BAWSCA to cover all SFPUC administrative costs, including collection costs
- Separate Ordinance creating Surcharge Fund under Chapter 10 of San Francisco Administrative Code



BAWSCA Transaction Schedule

Approval Schedule

Board of Supervisors

January 2013

BAWSCA Bond Sale (estimated)

Pricing

January 31, 2013

Closing and Repayment
to SFPUC

February 27, 2013



Questions?

