[San Francisco Public Utilities Commission Water Revenue Bond and Other Forms of Indebtedness Issuance - Not to Exceed $358,985,453]

Ordinance authorizing the issuance and sale of tax-exempt or taxable Water Revenue Bonds and other forms of indebtedness (as described below) by the San Francisco Public Utilities Commission ("Commission") in an aggregate principal amount not to exceed $358,985,453 to finance the costs of various capital water projects benefitting the Water Enterprise pursuant to amendments to the Charter of the City and County of San Francisco enacted by the voters on November 5, 2002, as Proposition E; authorizing the issuance of Water Revenue Refunding Bonds and the retirement of outstanding Water Enterprise Commercial Paper; declaring the Official Intent of the Commission to reimburse Itself with one or more issues of tax-exempt bonds or other forms of indebtedness; and ratifying previous actions taken in connection therewith, as defined herein.

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

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

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

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

B. The Commission adopted the Amended and Restated Water Indenture dated as of January 1, 2002, as further amended and supplemented from time to time ("Indenture"), between the Commission and U. S. Bank National Association and in connection therewith, has from time to time issued revenue bonds to finance projects benefitting the Water Enterprise; and

C. Pursuant to Section 43.5 of the San Francisco Administrative Code ("Article V"), enacted by Ordinance No. 203-98 adopted by the Board on June 8, 1998, and signed by the Mayor of the City on June 19, 1998, as amended by Ordinance No. 270-06, adopted on October 24, 2006 by the Board and signed by the Mayor on October 31, 2006, the Board established a procedure pursuant to which the Commission may issue short-term indebtedness, including the issuance of commercial paper in anticipation of the issuance of its revenue bonds; and

D. Pursuant to Ordinance No. 311-08, adopted by the Board of Supervisors on December 16, 2008, and Resolution No. 09-175, adopted by this Commission on October 27, 2009, the Water Enterprise's commercial paper program ("Water CP Program") was increased to an aggregate principal amount of $500,000,000, and the Commission has caused its Water Enterprise Commercial Paper to be issued from time to time; and

E. By Resolution 23-0038, adopted by the Commission on February 14, 2023 ("Commission Resolution") the Commission has determined to issue Water Revenue Bonds ("Water Revenue Bonds") and other forms of indebtedness (including without limitation State Revolving Fund (SRF) Loans as described below), as well as interim funding vehicles such as commercial paper, revolving credit agreements, bond anticipation notes or other forms of notes, which interim funding vehicles will be issued in advance of being paid off by either Water Revenue Bonds and other forms of indebtedness (including without limitation SRF Loans) to finance the costs of various capital projects benefitting the Water Enterprise (the "Capital Improvement Projects" such projects being more fully described in the Commission Resolution), pursuant to Proposition E, and has formally requested this Board to authorize the issuance and sale of Water Revenue Bonds and other forms of indebtedness for such purposes, such Commission Resolution being on file with the Clerk of the Board in File No. 230665; and

F. In order to finance the costs of the Capital Improvement Projects, the Board now desires to authorize the issuance and sale of Water Revenue Bonds and other forms of indebtedness, as described above, for such purposes, including obtaining SRF Loans and/or grants from the State Water Resources Control Board; and

G. The Commission has paid, beginning no earlier than 60 days prior to the adoption of this Ordinance and will pay, on and after the date hereof, certain expenditures ("Expenditures") in connection with the acquisition, construction and/or equipping of the Capital Improvement Projects; and

H. This Board is concurrently considering with this Ordinance, related supplemental appropriation ordinances for fiscal year ending 2023, including expenditures of the proceeds of the Water Revenue Bonds and other forms of indebtedness (including, without limitation and for illustrative purposes only, SRF Loans, commercial paper, revolving credit agreements, and bond anticipation notes); and

I. This Board, on behalf of the Commission, adopts this Ordinance as official action of the Commission in order to comply with Treasury Regulation §1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of

Commission expenditures incurred prior to the date of issue of the Water Revenue Bonds and other forms of indebtedness (including, without limitation and for illustrative purposes only, SRF Loans, commercial paper, revolving credit agreements, and bond anticipation notes).

Section 2. Authorization to Issue Water Revenue Bonds and other forms of indebtedness. The Board hereby authorizes the issuance and sale of taxable or tax-exempt Water Revenue Bonds or other forms of indebtedness (including without limitation SRF Loans, commercial paper, revolving credit agreements and bond anticipation notes) in one or more series from time to time by the Commission pursuant to Proposition E and in accordance with the Commission Resolution, in an aggregate principal amount not to exceed $358,985,453 (inclusive of financing costs), bearing a maximum rate or rates of interest of not to exceed twelve percent (12%) per annum, to finance a portion of the costs of the design, acquisition and construction of the Capital Improvement Projects. Without limiting the foregoing, the Commission shall be authorized to incur state and federal at such time, in such amounts, and upon such other terms and conditions as the Commission may deem advantageous, and to approve any financing documentation related thereto consistent with this Ordinance. The Commission is hereby further authorized to determine the timing, amount and manner of sale (i.e., competitive or negotiated) of each series of Water Revenue Bonds, bond anticipation notes, revolving credit agreements, or commercial paper, pursuant to this authorization; provided however, the Commission's authorization to issue Water Revenue Bonds, bond anticipation notes, revolving credit agreements, or commercial paper is subject to approval by the Commission of the form of substantially final offering document related to such obligations (if any) and the approval of any related agreements, financing documents and the filing with its Board and the Clerk of the Board any certifications required by Proposition E prior to the issuance of any bonds or incurrence of any indebtedness herein authorized. The Commission shall also file, within 30 days of closing any Water Revenue

Bond or other form of indebtedness (including SRF Loans or other federal loans and bond anticipation notes) transactions) authorized hereby, with the Clerk of the Board of Supervisors a report showing the results of the transaction, including (i) principal amount sold and method of sale, (ii) true interest cost, (iii) final maturity, (iv) the facilities constructed and/or improved, and (v) a statement about the remaining bonding authorization under this Ordinance ("Bond Report"), provided that the failure to file such Bond Report shall not affect the validity of any debt authorized hereunder.

Section 3. Authorization to Issue Water Revenue Refunding Bonds; Commercial Paper Retirement. Notwithstanding Section 2 immediately above, the Board further authorizes and approves the issuance by the Commission of Water Revenue Refunding Bonds ("Refunding Bonds") without limitation as to principal amount, in one or more series on one or more dates, at a maximum interest rate or rates of interest not to exceed twelve percent (12%) per annum, provided that each such Refunding Bond issue is permitted under the applicable policies and procedures of the City and authorized by Section 9.109 of the Charter (including related ordinances and resolutions of the Board). The Refunding Bonds may be issued as taxable or tax-exempt obligations, or any combination thereof. Refunding Bonds authorized hereunder shall be subject to the further following conditions, that: (i) three percent (3%) net present value debt service savings or greater is achieved to ensure ratepayer savings (exclusive of any issuance to refund commercial paper, revolving credit notes, or bond anticipation notes); (ii) that the maturity of the refunded bonds is not extended; (iii) this authorization is subject to a 5-year term through June 30, 2028, at which time this Board may consider an extension; (iv) principal payments and term may be adjusted, where permitted under federal and state tax law, only if and when the underlying capital asset funded through said refunded bonds has a useful life not in excess of any limit permitted under federal and state tax law than the refunded term; and (v) the Commission shall within 30 days of any executed refunding transaction provide a refunding savings report ("Bond Refunding Savings Report") prepared by its municipal advisors (that reflects at least a three percent (3%) net present value debt service savings) to the Board, together with a copy of the final Official Statement (if any) with respect to such series of Refunding Bonds, provided that the failure to deliver such Bond Refunding Savings Report shall in no way affect the validity of any Refunding Bonds. Notwithstanding the foregoing, the Commission is authorized to issue Refunding Bonds that do not meet all of the foregoing conditions provided that the Commission makes a finding, by resolution, that significant non-economic factors exist that justify the waiver of the three percent (3%) net present value debt service savings test and other conditions set forth above. Such non-economic factors may include, by way of illustration and not limitation, eliminating onerous covenants and obsolete provisions contained in the Commission's indenture or other security documents, or restructuring a series of bonds in response to then-current market conditions. In furtherance of the purpose of managing the Commission outstanding indebtedness, the General Manager is hereby authorized and directed, in consultation the City Attorney, from Available Water Enterprise Revenues to retire outstanding Water Enterprise Commercial Paper at such times and in such amounts advantageous to the Commission.

Section 4. Declaration of Official Intent. The Board, on behalf of the Commission, hereby declares the official intent of the Commission to reimburse the Commission with proceeds of the Water Revenue Bonds or other forms of indebtedness (including SRF Loans or other federal loans, commercial paper, revolving credit notes, or bond anticipation notes) for the Expenditures with respect to the Capital Improvement Projects made on and after a date that is no more than 60 days prior to the adoption of this Ordinance. The Commission reasonably expects on the date hereof that it will reimburse the Expenditures with proceeds of the Water Revenue Bonds or other forms of indebtedness (including, without limitation and for illustrative purposes only, SRF Loans, commercial paper, revolving credit notes or bond anticipation notes). Each said Expenditure was and will be either (A) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (B) a cost of issuance with respect to such obligations, (C) a nonrecurring item that is not customarily payable from current revenues, or (D) a grant to pay a party that is not related to or an agent of the issuer so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Commission. The Commission will make a reimbursement allocation, which is a written allocation by the Issuer that evidences the Commission's use of proceeds of the Water Revenue Bonds or other forms of indebtedness to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the component of the Capital Improvement Projects is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Commission recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.

Section 5. General Authority. The Controller, Treasurer, the City Attorney and other officers of the City, including the Director of the Office of Public Finance, and their duly authorized deputies and agents are hereby authorized and directed, jointly and severally, to take such actions and to execute and deliver such certificates, agreements, requests or other documents, as they may deem necessary or desirable to facilitate the issuance, sale and delivery of the Water Revenue Bonds or other forms of indebtedness, including Refunding Bonds, and to obtain bond insurance or other credit or liquidity enhancements with respect to any such obligations, and otherwise to carry out the provisions of this Ordinance. The

Commission is hereby directed to provide the final form to the Clerk of the Board of any disclosure document prepared in connection with the execution of any Water Revenue Bonds, other forms of indebtedness, or Refunding Bonds, and the final executed Installment Sale Agreement or other document reflecting the incurrence of an SRF Loan or other federal loan, within 30 days of the closing of such transactions provided that the failure to deliver such document shall not affect the validity of the obligations authorized hereunder. The Commission is further directed as a part of the two-year budget review to provide to this Board of Supervisors a written report about Water Revenue Bonds authorized hereunder, detailing the total amount authorized, the total amount sold, the remaining authorized but unissued amount, and the bond authorization no longer necessary due to changes in projects and project financing.

Section 6. Ratification of Prior Actions. All actions authorized and directed by this Ordinance in connection with the issuance of the Water Revenue Bonds, other forms of indebtedness (including, without limitation and for illustrative purposes only, SRF Loans, federal loan, commercial paper, revolving credit notes, or bond anticipation notes) or Refunding Bonds and heretofore taken are hereby ratified, approved and confirmed by this Board.

Section 7. File Documents. All documents referred to as on file with the Clerk of the Board are in File No. 230665.

Section 8. Effective Date. Pursuant to Charter Section 8B.124, this Ordinance shall take effect thirty (30) days after its adoption.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: <u>/s/ Mark D. Blake</u>
Mark D. Blake
Deputy City Attorney

City and County of San Francisco
Tails
Ordinance

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

File Number: 230665 **Date Passed:** July 25, 2023

Ordinance authorizing the issuance and sale of tax-exempt or taxable Water Revenue Bonds and other forms of indebtedness (as described below) by the San Francisco Public Utilities Commission ("Commission") in an aggregate principal amount not to exceed $358,985,453 to finance the costs of various capital water projects benefitting the Water Enterprise pursuant to amendments to the Charter of the City and County of San Francisco enacted by the voters on November 5, 2002, as Proposition E; authorizing the issuance of Water Revenue Refunding Bonds and the retirement of outstanding Water Enterprise Commercial Paper; declaring the Official Intent of the Commission to reimburse itself with one or more issues of tax-exempt bonds or other forms of indebtedness; and ratifying previous actions taken in connection therewith, as defined herein.

June 14, 2023 Budget and Appropriations Committee - RECOMMENDED

July 11, 2023 Board of Supervisors - CONTINUED ON FIRST READING

Ayes: 10 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Safai, Stefani and Walton
Excused: 1 - Ronen

July 18, 2023 Board of Supervisors - PASSED ON FIRST READING

Ayes: 10 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Ronen, Safai, Stefani and Walton
Noes: 1 - Preston

July 25, 2023 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Ronen, Safai, Stefani and Walton
Noes: 1 - Preston

File No. 230665

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/25/2023 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo

Angela Calvillo
Clerk of the Board

London Breed

London N. Breed
Mayor

7/28/23

Date Approved