

[Authorizing Grant Agreements - Terms of 20 Years after Project Completion - Public Utilities Commission Green Infrastructure Grant Program]

**Ordinance extending for an additional two years through July 1, 2024, the delegation of authority under Charter, Section 9.118, to the General Manager of the San Francisco Public Utilities Commission (“SFPUC”), previously authorized by Ordinance No. 26-19 and extended and modified by Ordinance No. 101-20, to enter into grant agreements under the SFPUC’s Green Infrastructure Grant Program with terms of up to 20 years after the Project Completion Date, as defined by the Grant Agreements.**

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 ~~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. Background.

(a) San Francisco has a combined sewer system that collects and treats both wastewater and stormwater in the same network of pipes. The San Francisco Public Utilities Commission (“SFPUC” or “Commission”) has a multi-faceted program to maximize the detention and retention of stormwater.

(b) Green infrastructure uses vegetation, soils, and other elements and practices that mimic nature to soak up and store stormwater. Green infrastructure is a cost-effective, resilient approach for managing wet weather impacts that provides many benefits. Green infrastructure reduces and treats stormwater at its source, while delivering environmental, social, and economic benefits.

1 (c) The SFPUC wants to encourage owners of parcels containing large, impervious  
2 areas – such as concrete parking lots and asphalt-covered playgrounds – to install green  
3 infrastructure on their parcels to reduce the amount of stormwater entering the SFPUC’s  
4 sewer system and thereby improve system performance.

5 (d) To that end, on November 13, 2018, the SFPUC, by Resolution No. 18-0189,  
6 approved a Green Infrastructure Grant Program, adopted Green Infrastructure Grant Program  
7 Guidelines (the “Guidelines”), and authorized the SFPUC General Manager to award grants to  
8 property owners to construct green infrastructure, such as permeable pavement, rain  
9 gardens/bioretenction, and vegetated roofs, and remove impervious surfaces, on their parcels.  
10 On February 25, 2020, the SFPUC, by Resolution No. 20-0045, updated the funding  
11 disbursement procedures in the Guidelines. On July 27, 2021, the SFPUC, by Resolution No.  
12 21-0122, updated the Guidelines to increase the maximum cost per acre of stormwater  
13 managed from \$765,000 to \$930,000. And finally, on March 22, 2022, the SFPUC, by  
14 Resolution No. 22-0058, updated the Guidelines to reflect compliance with City Administrative  
15 Code Chapter 21G, revise grant team experience and co-benefit eligibility criteria, increase  
16 the cap on planning and design costs, and revise other program requirements. A copy of the  
17 current version of the Guidelines is on file with the Clerk of the Board of Supervisors in File  
18 No. 220537. Under the Guidelines, grantees must meet the following six eligibility criteria:

19 (1) Project Size: The proposed project must manage stormwater runoff from  
20 a minimum of 0.5 acres of impervious surface.

21 (2) Project Location: The proposed project must be located on a parcel  
22 connected to a SFPUC-owned and operated sewer system.

23 (3) Performance: The proposed project must capture runoff from the 90th  
24 percentile 24-hour storm, equivalent to three quarters of an inch total depth. The 90th  
25

1 percentile 24-hour storm represents an amount of precipitation that 90% of all rainfall events  
2 do not exceed, as compared to the historical period of record.

3 (4) Grant Team Experience: The grant team must include the property  
4 owner, an identified grant or project manager, and a licensed engineer or landscape architect  
5 registered in the State of California. The proposed project team must collectively demonstrate  
6 a history of successfully implementing projects, have experience designing, constructing,  
7 and/or maintaining green infrastructure, and be in good standing on any currently active  
8 Green Infrastructure Grant Program projects.

9 (5) Concept Design: The applicant must submit a conceptual design plan  
10 drawing approximately equivalent to a 10% level of design that satisfies specific criteria set  
11 forth in the Guidelines.

12 (6) At Least Two Co-Benefit Opportunities: Green infrastructure projects  
13 provide a variety of co-benefit opportunities, in addition to reducing the amount of stormwater  
14 runoff that enters the SFPUC sewer system. Projects are required to demonstrate at least  
15 two of the following co-benefits: environmental justice; public access, open space, and  
16 recreation; community engagement, collaboration, and placemaking; education and  
17 watershed stewardship; green infrastructure job training; water supply; climate resilience; and  
18 biodiversity. Specific criteria for each co-benefit is set forth in the Guidelines.

19 (e) Under the Guidelines, grantees may receive up to \$930,000 per impervious acre  
20 of stormwater area managed by the green infrastructure project, up to a maximum of  
21 \$2,000,000 per grant.

22 (f) To receive funding under the Green Infrastructure Grant Program, a grantee  
23 must enter into a Green Infrastructure Grant Agreement ("Grant Agreement"), a template of  
24 which is on file with the Clerk of the Board of Supervisors in File No. 220537. The SFPUC  
25 has determined that the useful life of the type of green infrastructure eligible for funding under

1 the Green Infrastructure Grant Program is approximately 20 years. Ongoing maintenance of  
2 green infrastructure is critical for these projects to function properly and benefit the SFPUC  
3 sewer system for the useful life of these assets. Accordingly, the Grant Agreement requires  
4 the grantee to maintain the green infrastructure for 20 years, authorizes the SFPUC to  
5 conduct periodic inspections of the grantee's construction, operation, and maintenance of the  
6 project, and provides the SFPUC with remedies against the grantee if the grantee fails to  
7 maintain the project for 20 years. The Grant Agreement also requires the grantee to execute  
8 and record a deed restriction on the title of the property to notify future owners that the 20-  
9 year maintenance obligation runs with the land.

10 (g) In approving the Green Infrastructure Grant Program, the Commission  
11 delegated authority to the SFPUC General Manager to negotiate, award, and execute Grant  
12 Agreements with terms of up to 20 years after the Project Completion Date, as defined by the  
13 Grant Agreements, and recommended that the Board of Supervisors adopt an ordinance  
14 delegating its authority under Charter Section 9.118, to execute the Grant Agreements for  
15 terms in excess of 10 years, to the SFPUC General Manager.

16 (h) By Ordinance No. 26-19 (File No. 181113), the City delegated authority to the  
17 SFPUC General Manager through July 1, 2020, to enter into Grant Agreements under the  
18 SFPUC Green Infrastructure Grant Program provided that (1) the term of the grant agreement  
19 does not exceed 20 years and (2) the Commission approves each grant award at a public  
20 hearing. By Ordinance No. 101-20 (File No. 200454), the City extended the delegated  
21 authority for an additional two years, through July 1, 2022, and removed the requirement that  
22 each grant award be approved by the Commission at a public hearing. Since 2019, the  
23 Commission has awarded eleven grants totaling just under \$8,000,000 for green infrastructure  
24 projects.

1 (i) By this ordinance, the Board of Supervisors has determined to extend the  
2 authority delegated to the SFPUC General Manager in Ordinance No. 26-19, as extended and  
3 modified by Ordinance No. 101-20, for an additional two years, through July 1, 2024.

4 (j) The previous ordinances stated that the term of the Grant Agreements would be  
5 up to 20 years, without clarifying that the 20-year period starts after the Project Completion  
6 Date, as defined by the Grant Agreements, a copy of which was referenced in, and was on file  
7 with the Board of Supervisors for, both previous ordinances. The term of the Grant  
8 Agreements also includes the time it takes to construct the green infrastructure. This  
9 ordinance states the term of the Grant Agreements more precisely.

10  
11 Section 2. Delegation of Authority Under Charter Section 9.118 to SFPUC General  
12 Manager.

13 (a) Delegation of Authority. Pursuant to its authority under Charter Section 9.118,  
14 the Board of Supervisors delegates authority to the SFPUC General Manager to enter into  
15 Grant Agreements under the Green Infrastructure Grant Program, in substantially the form on  
16 file with the Clerk of the Board of Supervisors in File No. 220537, for a term in excess of 10  
17 years, so long as the term does not exceed 20 years after the Project Completion Date, as  
18 defined by the Grant Agreements. The Board of Supervisors further authorizes the SFPUC  
19 General Manager to enter into any amendments or modifications to the Grant Agreements  
20 that do not extend the terms of the agreements beyond 20 years after the Project Completion  
21 Date, as defined by the Grant Agreements, and that the SFPUC General Manager  
22 determines, in consultation with the City Attorney, are in the best interest of the City, do not  
23 materially decrease the City's rights or materially increase the City's obligations or liabilities,  
24 are necessary or advisable to effectuate the purposes and intent of the Green Infrastructure  
25 Grant Program, and are in compliance with all applicable laws, including the Charter.

1 (b) Declaration of Existing Law and Ratification. Ordinance Nos. 26-19 and 101-20  
2 state that the term of the Grant Agreements shall not exceed 20 years, without specifying that  
3 the 20-year period starts after the Project Completion Date, as defined by the Grant  
4 Agreements. The updated language in this ordinance, stating the Grant Agreement term  
5 more precisely, is more descriptive of the law as enacted in the previous ordinances; in that  
6 sense, it is declaratory of existing law, rather than a change in law. If, however, this updated  
7 language is considered to constitute a change in law, the Board of Supervisors ratifies the  
8 prior actions of the SFPUC General Manager consistent with the delegation of authority as  
9 clarified by this ordinance.

10 (c) Reporting Requirement. Starting with the quarter beginning July 1, 2022,  
11 SFPUC shall submit quarterly written reports to the Clerk of the Board of Supervisors  
12 summarizing all Grant Agreements SFPUC has entered into during the prior quarter pursuant  
13 to the authority granted under subsection 2(a) of this ordinance and shall post the reports on  
14 its website. SFPUC shall submit each report no later than 30 days following the completion of  
15 the quarter that is the subject of the report.

16 (d) Sunset Dates.

17 (1) The authority delegated under subsection 2(a) of this ordinance shall  
18 apply only to Grant Agreements, and amendments or modifications of Grant Agreements,  
19 executed before July 1, 2024, and shall expire by operation of law on July 1, 2024.

20 (2) The reporting requirements provided for under subsection 2(b) of this  
21 ordinance shall expire by operation of law upon submission of the quarterly report covering  
22 the quarter ending June 30, 2024.

23  
24 Section 3. Directions to Clerk.  
25

1 The Clerk of the Board of Supervisors is hereby directed to place a copy of this  
2 ordinance in File No. 181113 for Ordinance No. 26-19 and File No. 200454 for Ordinance No.  
3 101-20, and to make a notation cross-referencing this ordinance where Ordinance No. 26-19  
4 and Ordinance No. 101-20 appear as legislation passed on the Board of Supervisors website.  
5

6 Section 4. Effective Date; Retroactivity.

7 (a) This ordinance shall become effective 30 days after enactment. Enactment  
8 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or  
9 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors  
10 overrides the Mayor's veto of the ordinance.

11 (b) Upon its effective date, this ordinance shall be retroactive to July 1, 2022.  
12

13 APPROVED AS TO FORM:  
14 DAVID CHIU, City Attorney

15 By: /s/  
16 NICHOLAS T. NIRO  
Deputy City Attorney

17 n:\legana\as2022\2200424\01600515.docx  
18  
19  
20  
21  
22  
23  
24  
25