

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW
APPROVING A MINIMUM PURCHASE TRANSFER FROM
THE CITY OF MOUNTAIN VIEW TO THE CITY OF EAST PALO ALTO

WHEREAS, the City and County of San Francisco Public Utilities Commission (SFPUC) operates the Regional Water System, which delivers water to water supply agencies in Alameda, San Mateo, and Santa Clara Counties (collectively, the Parties); and

WHEREAS, in April 2003, water supply agencies in Alameda, San Mateo, and Santa Clara Counties (Wholesale Customers) established the Bay Area Water Supply and Conservation Agency (BAWSCA), as authorized by Water Code Section 81300, *et seq.*; and

WHEREAS, the Parties are subject to a Water Supply Agreement (Agreement), adopted in July 2009 and most recently amended and restated in November 2018; and

WHEREAS, the Parties have identified intrasystem water transfers as one potential solution to long-term water reliability needs among the Wholesale Customers; and

WHEREAS, in June 2017, the City of Mountain View (Mountain View) and the City of East Palo Alto (East Palo Alto) executed a water rights transfer agreement in which East Palo Alto agreed to pay Mountain View \$5 million for the permanent transfer of all rights, title, and interest to 1.0 million gallons per day (MGD) of Mountain View's Individual Supply Guarantee (Supply Guarantee). This transfer is referred to herein as the "2017 Supply Transfer"; and

WHEREAS, in 2017, Mountain View and East Palo Alto were interested in transferring 1.0 MGD of Mountain View's Minimum Annual Purchase Quantity (Minimum Purchase) to East Palo Alto in conjunction with the 2017 Supply Transfer; however, at the time, there was no procedure in the Agreement to effectuate such a transfer without amending the Agreement; and

WHEREAS, in January 2019, BAWSCA initiated discussions amongst the Wholesale Customers and the SFPUC to negotiate a procedure that would allow future Supply Guarantee transfers to be paired with Minimum Purchase transfers; and

WHEREAS, on January 26, 2021, the SFPUC adopted the 2021 Amended and Restated Water Supply Agreement (2021 Agreement), which includes the new procedure

by which Wholesale Customers with Supply Guarantees may participate in expedited combined transfers of Supply Guarantee plus Minimum Purchase without creating new or different risks to the water supply and financial interests of Wholesale Customers not participating in such transfers; and

WHEREAS, the 2021 Agreement has been or will be presented to the governing body of each Wholesale Customer and, if approved, will permit Wholesale Customers with a Supply Guarantee to transfer and accept Minimum Purchase in conjunction with Supply Guarantee, if certain requirements are satisfied; and

WHEREAS, Mountain View continues to be subject to the full volume of Minimum Purchase it was subject to before the 2017 Supply Transfer to East Palo Alto; and

WHEREAS, in 2020, Mountain View and East Palo Alto began discussing a possible Minimum Purchase transfer that aligned with the procedures for expedited combined transfers of Supply Guarantee plus Minimum Purchase in the 2021 Agreement; and

WHEREAS, on April 20, 2021, East Palo Alto approved conversion of the 2017 Supply Transfer into a Minimum Purchase transfer of up to 1.0 MGD, in increments of 0.25 MGD or another amount, subject to East Palo Alto's approval of each incremental transfer. As part of this action, East Palo Alto agreed to negotiate and execute an agreement to accept the first incremental transfer of 0.25 MGD Minimum Purchase from Mountain View; and

WHEREAS, East Palo Alto and Mountain View are negotiating an agreement to effectuate and set forth the terms and conditions of the first incremental 0.25 MGD Minimum Purchase transfer from Mountain View to East Palo Alto; and

WHEREAS, one of the conditions negotiated between Mountain View and East Palo Alto is that, in exchange for the first incremental 0.25 MGD of Minimum Purchase transfer, Mountain View will provide East Palo Alto with a right of first refusal for drought water transfers, pursuant to Attachment H of the 2021 Agreement, in the same volume of approved Minimum Purchase transferred; and

WHEREAS, in conjunction with consideration of the 2021 Agreement, East Palo Alto and Mountain View propose the Wholesale Customers and San Francisco approve, in advance, conversion of the 2017 Supply Transfer into a Supply Transfer that includes a Minimum Purchase transfer of up to 1.0 MGD, in 0.25 MGD increments, provided the terms and conditions outlined below are met; and

WHEREAS, if Mountain View and East Palo Alto's 2017 Supply Transfer is converted to include a Minimum Purchase transfer, it will be counted toward the total

Minimum Purchase that may be transferred pursuant to Section 3.04.C.1 of the 2021 Agreement; and

WHEREAS, this parallel action requires the calculation of Temporary Modified Minimum Annual Purchase Quantities (Temporary Minimums) set out in Attachment E-1 in the 2021 Agreement; however, the transferor, Mountain View, remains responsible for imputed sales associated with each incremental 0.25 MGD Minimum Purchase transferred to East Palo Alto, up to 1.0 MGD, until the terms and conditions outlined below are satisfied; and

WHEREAS, in accordance with the water transfer provisions of the 2021 Agreement, Mountain View and East Palo Alto will coordinate with San Francisco and BAWSCA, when timely, to document the Temporary Minimums in Attachment E-1 and the Minimum Purchases in Attachment E and to amend each cities' Individual Water Sales Contract with San Francisco; and

WHEREAS, the proposed action is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it involves an administrative activity that does not result in a direct change to the environment (see 14 CCR Section 15378(b)(5)) and would not result in a direct or reasonably foreseeable indirect physical change in the environment (see 14 CCR Section 15060(c)(2)); and

WHEREAS, in the event the amendment is considered a "project," it would be subject to the categorical exemption for operation, repair, and maintenance of existing facilities (see 14 CCR Section 15301), and the amendment does not implicate substantial changes that involve a new significant environmental effect (see 14 CCR Section 15162(a));

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain View as follows:

1. The City Council hereby approves, in advance, the conversion of Mountain View and East Palo Alto's 2017 Supply Transfer into a combined Supply Guarantee plus Minimum Purchase transfer if all of the following terms and conditions are satisfied:

a. The Minimum Purchase transfer will occur in increments of 0.25 MGD, up to a maximum of 1.0 MGD. Each increment of 0.25 MGD must be approved by Mountain View's and East Palo Alto's city councils.

b. For each incremental transfer, BAWSCA will calculate a Temporary Minimum for East Palo Alto that is equal to East Palo Alto's five-year average water use

from the SFPUC for the most recent nondrought years prior to the 2017 Supply Transfer, plus incremental volumes of 0.25 MGD as follows:

(1) Temporary Minimum No. 1 (East Palo Alto's five-year average water use from the SFPUC for the most recent nondrought years prior to the 2017 Supply Transfer plus 0.25 MGD incremental transfer): $1.840 \text{ MGD} + 0.25 \text{ MGD} = 2.09 \text{ MGD}$.

(2) Temporary Minimum No. 2 (prior Temporary Minimum plus 0.25 MGD incremental transfer): $2.09 \text{ MGD} + 0.25 \text{ MGD} = 2.340 \text{ MGD}$.

(3) Temporary Minimum No. 3 (prior Temporary Minimum plus 0.25 MGD incremental transfer): $2.340 \text{ MGD} + 0.25 = 2.590 \text{ MGD}$.

(4) Temporary Minimum No. 4 (prior Temporary Minimum plus 0.25 MGD incremental transfer): $2.590 \text{ MGD} + 0.25 \text{ MGD} = 2.840 \text{ MGD}$.

c. East Palo Alto will not be required to pay imputed sales associated with any of the Temporary Minimums. Mountain View will maintain responsibility for paying imputed sales associated with its Minimum Quantity as set forth in Attachment E.

d. Once East Palo Alto has met each Temporary Minimum for three consecutive years, one increment of 0.25 MGD of Mountain View's Minimum Purchase will be transferred to East Palo Alto, subject to prior agreement by East Palo Alto's and Mountain View's city councils as described in subsection a. above. The new Minimum Purchases will be included in Attachment E and in both cities' Individual Water Sales Contracts.

e. Each incremental transfer is subject to Section 3.04, unless otherwise specified above.

2. The City Council hereby authorizes the City Manager, or designee, to negotiate and execute an agreement with East Palo Alto to transfer 0.25 MGD Minimum Purchase from Mountain View to East Palo Alto according to the following terms and conditions:

a. Mountain View will offer East Palo Alto a right of first refusal for drought water transfers pursuant to Attachment H of the Agreement.

b. The right of first refusal for drought water transfers will apply to the same total volume of the Minimum Purchase transfer and can be increased if future incremental transfers are agreed to.

c. The transfer agreement between Mountain View and East Palo Alto will remain in effect as long as the Agreement remains in effect.

EF/EP/6/RESO
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