

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW
APPROVING AN AMENDMENT TO THE AMENDED AND RESTATED WATER
SUPPLY AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND WHOLESALE CUSTOMERS IN ALAMEDA COUNTY, SAN MATEO COUNTY,
AND SANTA CLARA COUNTY

WHEREAS, water supply agencies in Alameda, San Mateo, and Santa Clara Counties have purchased water from the City and County of San Francisco (San Francisco) for many years; and

WHEREAS, the 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, the Parties entered into the "Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers in San Mateo County, Santa Clara County and Alameda County" in 1984 (1984 Settlement Agreement and Master Water Sales Contract); 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, upon expiration of the 1984 Settlement Agreement and Master Water Sales Contract, the Parties entered into the "Water Supply Agreement between San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County" (Water Supply Agreement or WSA) on July 1, 2009, authorized by SFPUC Resolution No. 09-0069, dated April 28, 2009; and

WHEREAS, in 2017, the Wholesale Customers directed BAWSCA to act as the Wholesale Customers' authorized representative in discussions and negotiations with San Francisco to amend the Water Supply Agreement to address a number of substantive issues, and these negotiations resulted in the Parties' adoption of the Amended and Restated Water Supply Agreement (Amended and Restated Water Supply Agreement) in 2018, authorized by SFPUC Resolution No. 18-0212, dated December 11, 2018; and

WHEREAS, on February 12, 2019, the Mountain View City Council, by Resolution No. 18279, approved the Amended and Restated Water Supply Agreement; and

WHEREAS, under Article 3 of the Amended and Restated Water Supply Agreement, the SFPUC agrees to deliver water to the Wholesale Customers up to the amount of 184 million gallons per day (MGD), referred to as the "Supply Assurance," and the Wholesale Customers have allocated shares of the Supply Assurance among themselves, referred to as Individual Supply Guarantees (Supply Guarantees); and

WHEREAS, Section 3.04 of the Amended and Restated Water Supply Agreement enables a Wholesale Customer that has a Supply Guarantee to transfer a portion of its Supply Guarantee to one or more other Wholesale Customers, subject to several conditions; and

WHEREAS, under Section 3.07 of the Amended and Restated Water Supply Agreement, four Wholesale Customers (Alameda County Water District and the cities of Milpitas, Mountain View, and Sunnyvale, collectively, the "Minimum Purchase Customers"), may purchase water from sources other than the SFPUC, but they are each obligated to purchase a specific minimum annual quantity of water from the SFPUC, referred to as a "Minimum Purchase requirement"; and

WHEREAS, if a Minimum Purchase Customer does not meet its Minimum Purchase requirement in a particular fiscal year, it must pay the SFPUC for the difference between its metered water purchases during the fiscal year and its minimum annual purchase quantity set forth in Attachment E of the Amended and Restated Water Supply Agreement; and

WHEREAS, the Amended and Restated Water Supply Agreement does not currently allow a Minimum Purchase Customer to transfer a portion of its Minimum Purchase requirement and the associated financial obligation to another Wholesale Customer; and

WHEREAS, in September 2017, BAWSCA and the Water Management Representatives (WMRs) of the BAWSCA member agencies began reviewing the issue of Minimum Purchase Quantities, as described in Section 3.07.C of the Water Supply Agreement, and discussing the creation of a process to transfer Minimum Purchase Quantities; and

WHEREAS, throughout 2017 and 2018, the WMRs held multiple meetings during which the agencies currently subject to Minimum Purchase requirements and the other Wholesale Customers shared their interests and concerns regarding changes to the Minimum Purchase requirements and allowing transfers of Minimum Purchase; and

WHEREAS, at the time the Amended and Restated Water Supply Agreement was approved, the Parties expressed a collective interest in working together to develop a process for the expedited and permanent transfer of Minimum Purchase; and

WHEREAS, in 2019, the Wholesale Customers directed BAWSCA to draft a proposed amendment to the Amended and Restated Water Supply Agreement to provide a procedure for expedited and permanent transfers of Minimum Purchase that safeguards the financial and water supply interests of Wholesale Customers not participating in such transfers; and

WHEREAS, the Parties recognize that, both before and after the most recent Statewide drought, after meeting drought-related conservation mandates, several BAWSCA member agencies were unable to meet their respective Minimum Purchase requirements described in Article 3.07 of the Amended and Restated Water Supply Agreement, which requires payment for water up to the required Minimum Purchase level, even if such water is not delivered and used; and

WHEREAS, several of the Wholesale Customers with Minimum Purchase requirements might be interested in transferring a portion of their Minimum Purchase Quantity within their respective Supply Guarantees to reduce the financial obligation to pay for imputed sales for Minimum Purchase water that is not used; and

WHEREAS, with its Alternative Water Supply Program, the SFPUC is in the early stages of planning for 15 projects to support the Wholesale and Retail Customers' ability to respond to climate change and address future water supply challenges and vulnerabilities, such as regulatory changes, earthquakes, disasters, emergencies, and increases in population and employment; and

WHEREAS, the City of San Jose (San Jose) and the City of Santa Clara (Santa Clara) are temporary, interruptible Wholesale Customers of the SFPUC Regional Water System, and both cities wish to become permanent Wholesale Customers; and

WHEREAS, pursuant to Section 4.06 of the Amended and Restated Water Supply Agreement, by December 31, 2028, San Francisco must complete any necessary California Environmental Quality Act (CEQA) review and must decide whether or not to make San Jose and Santa Clara permanent Wholesale Customers of the Regional Water System with a combined Supply Guarantee of 9 MGD allocated equally between the two cities as well as how much water in excess of 9 MGD San Francisco will supply to San Jose and Santa Clara; and

WHEREAS, Section 4.06 of the Amended and Restated Water Supply Agreement provides: "San Francisco will make San Jose and Santa Clara permanent customers only

if, and to the extent that, San Francisco determines that Regional Water System long-term water supplies are available”; and

WHEREAS, according to SFPUC’s September 2020 Alternative Water Supply Planning Quarterly Update (Quarterly Update) and reaffirmed in the December 2020 Quarterly Update: “[f]or San Jose and Santa Clara to become permanent customers, an additional 9 MGD of new, year-round supplies would be needed to meet historic demand levels and up to 15.5 MGD would be needed to meet planned demand through 2040”; and

WHEREAS, according to its September Quarterly Update, SFPUC is planning with the “intention to be able to make San Jose and Santa Clara permanent customers,” but is prioritizing instream flow obligations to meet existing permanent customer demands, including drought supplies; and

WHEREAS, SFPUC has budgeted \$264 million over the next 10 years to fund water supply projects; and

WHEREAS, SFPUC, San Jose, Santa Clara, and BAWSCA are actively working together to consider water supply projects that may offer potential sources of supply to support San Jose and Santa Clara as permanent Wholesale Customers; and

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

WHEREAS, a Minimum Purchase Customer might be more inclined to transfer a portion of its Supply Guarantee to another Wholesale Customer under Section 3.04 of the Amended and Restated Water Supply Agreement if it was able to include a simultaneous transfer of a portion of its Minimum Purchase requirement and the associated financial obligation; and

WHEREAS, allowing simplified permanent intrasystem transfers of portions of Minimum Purchase and Supply Guarantee will facilitate the development of new water supplies by SFPUC that are necessary to support San Jose and Santa Clara as permanent Wholesale Customers; and

WHEREAS, the Parties have developed a process to allow for the transfer of a Wholesale Customer’s Minimum Purchase in conjunction with a Supply Guarantee transfer pursuant to Section 3.04, which ensures that such transfers will not result in new or different risks to the water supply and financial interests of Wholesale Customers not participating in a transfer; and

WHEREAS, the Parties agree that the total aggregate amount of Minimum Purchase Quantity that may be transferred by all of the Wholesale Customers subject to Minimum Purchase requirements as first specified in Attachment E of the Amended and Restated Water Supply Agreement, over the course of one or multiple transfers, is limited to 6 MGD; and

WHEREAS, if demand for Minimum Purchase transfers exceeds 6 MGD in the future, the Parties agree to consider further amending Section 3.04 of the Amended and Restated Water Supply Agreement to increase the total aggregate cap on the amount of Minimum Purchase that may be transferred; and

WHEREAS, a proposed transfer that does not meet the requirements of Section 3.04 of the Amended and Restated Water Supply Agreement, as amended by this Resolution, may be presented as an amendment to the Amended and Restated Water Supply Agreement pursuant to Section 2.03 of the Amended and Restated Water Supply Agreement; and

WHEREAS, the Parties agree to consider a proposal by the City of Mountain View (Mountain View) and the City of East Palo Alto (East Palo Alto) to amend the Amended and Restated Water Supply Agreement to allow for the conversion of Mountain View's 2017 sale of 1 MGD of Supply Guarantee to East Palo Alto into a transfer of 1 MGD of Mountain View's Supply Guarantee that includes Minimum Purchase Quantity to East Palo Alto, over a period of time, and in a manner that protects the other Wholesale Customers' financial and water supply interests; and

WHEREAS, if such a conversion is approved by the Parties, the 1 MGD of Mountain View's Minimum Purchase would be counted towards the total aggregate 6 MGD cap on Minimum Purchase transfers; and

WHEREAS, the Parties now desire to adopt an amendment to the Amended and Restated Water Supply Agreement to permit Wholesale Customers with a Supply Guarantee to transfer, or accept a transfer, of both a portion of a Wholesale Customer's Supply Guarantee and its Minimum Purchase; and

WHEREAS, an updated Amended and Restated Water Supply Agreement, reflecting this amendment, in the form negotiated by BAWSCA, was presented to and approved by SFPUC on January 26, 2021 (2021 Amended and Restated Water Supply Agreement); and

WHEREAS, the amendment considered now is not a "project" for the purposes of 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 that:

1. The City Council approves the modifications included in the attached “2021 Amended and Restated Water Supply Agreement Between the City and County of San Francisco Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County,” dated January 2021 (2021 Amended and Restated Water Supply Agreement).

2. The City Manager is authorized and directed to sign the 2021 Amended and Restated Water Supply Agreement, in the form previously approved by the San Francisco Public Utilities Commission.

EF/EP/6/RESO
703-06-22-21r