

RESOLUTION NO. 2022- ____

RESOLUTION APPROVING THE “2021 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”; AND AUTHORIZE THE CITY MANAGER TO EXECUTE SUCH AGREEMENT WHEN FINAL EXECUTION COPIES ARE PREPARED AND DISTRIBUTED BY THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (BAWSCA)

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 or Commission) operates the Regional Water System, which delivers water to communities in Alameda, San Mateo, and Santa Clara Counties, as well as to customers within San Francisco (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 (collectively referred to as the “Wholesale Customers” or “BAWSCA member agencies”) 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, 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 (ISG); and

WHEREAS, Section 3.04 of the Amended and Restated Water Supply Agreement enables a Wholesale Customer that has an ISG to transfer a portion of its ISG 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 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 Quantity requirements and the other Wholesale Customers shared their interests and concerns regarding changes to the Minimum Purchase Quantity requirements and allowing transfers of Minimum Purchase Quantities; 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 Quantities; 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 Quantities 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 ISGs to reduce the financial obligation to pay for imputed sales for Minimum Purchase water that is not used; 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 Individual Supply Guarantee (ISG) of 9 million gallons per day (MGD) allocated equally between the two cities, as well as how much water in excess of 9 MGD it will supply to San Jose and Santa Clara; and

WHEREAS, BAWSCA and SFPUC have identified intra-system 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 ISG 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 intra-system transfers of portions of Minimum Purchase Quantity and ISG 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 Quantity in conjunction with an ISG 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 specified in 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 Quantity 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 Quantity 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 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 or indirect physical 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 is covered by the "common sense exemption" because there is no possibility that the activity in question may have a significant effect on the environment (see 14 CCR Section 15061(b)(3)).

NOW, THEREFORE, BE IT RESOLVED that the San Bruno City Council hereby:

- Approves the "2021 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"; and authorizes the City Manager to execute such Agreement when Final Execution copies are prepared and distributed by the Bay Area Water Supply and Conservation Agency (BAWSCA).

Dated: May 24, 2022

ATTEST:

Vicky Hasha, Deputy City Clerk

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I, Vicky Hasha, Deputy City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 24th day of May 2022 by the following vote:

AYES: Councilmembers: _____

NOES: Councilmembers _____

ABSENT: Councilmembers: _____