

RESOLUTION NO. 2022- ____

**RESOLUTION APPROVING A MINIMUM WATER PURCHASE TRANSFER BETWEEN
THE CITY OF EAST PALO ALTO AND THE CITY OF MOUNTAIN VIEW REGARDING
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**

WHEREAS, the City and County of San Francisco ("San Francisco") Public Utilities Commission ("SFPUC" or "Commission") 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 (collectively, the "Wholesale Customers") established the Bay Area Water Supply and Conservation Agency ("BAWSCA"), as authorized by Water Code Section 81300 *et seq.*; and

WHEREAS, in November of 2018, San Francisco and the Wholesale Customers (the "Parties") entered into the Amended and Restated Water Supply Agreement ("WSA"); and

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

WHEREAS, in 2017, the City of Mountain View ("Mountain View") and the City of East Palo Alto ("East Palo Alto") were interested in transferring 1.0 million gallons per day ("MGD") of Mountain View's Minimum Annual Purchase Quantity ("Minimum Purchase") to East Palo Alto, however, at the time, there was no procedure in the WSA to effectuate such a transfer without amending the WSA; and

WHEREAS, in 2017, Mountain View and 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, interest to 1.0 MGD of Mountain View's Individual Supply Guarantee (ISG) to East Palo Alto; and

WHEREAS, in August 2018, BAWSCA and San Francisco provided the Wholesale Customers a revised Attachment C to the Water Supply Agreement reflecting the updated ISG amounts for Mountain View and East Palo Alto, as a result of the 1.0 MGD transfer of ISG from Mountain View to East Palo Alto; and

WHEREAS, Mountain View continues to be subject to a Minimum Purchase of 8.93 MGD and the financial obligation of paying for imputed sales for the portion of Minimum Purchase that it does not use; and

WHEREAS, in 2020, Mountain View and East Palo Alto began discussing a possible future transfer of a portion of Mountain View's Minimum Purchase to East Palo Alto; and

WHEREAS, on January 26, 2021, the SFPUC adopted the 2021 Amended and Restated Water Supply Agreement ("2021 WSA"), which includes a new procedure by which Wholesale Customers with ISGs may participate in permanent expedited transfers of a portion of Minimum Purchase and ISG, 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 WSA has been or will be presented to the governing body of each Wholesale Customer, and if approved, will permit Wholesale Customers with an ISG to transfer and accept a portion of another Wholesale Customer's Minimum Purchase, if certain requirements are satisfied; and

WHEREAS, on April 20, 2021, East Palo Alto approved the conversion of the 1.0 MGD of Mountain View's ISG sold to East Palo Alto in 2017 into a transfer of up to 1.0 MGD of Mountain View's Minimum Purchase to East Palo Alto, in increments of 0.25 MGD or other amount, subject to the City Council's approval of an agreement for each incremental transfer and the approval of the Wholesale Customers and San Francisco; and

WHEREAS, on June 8, 2021, Mountain View approved the conversion of the 1.0 MGD of Mountain View's ISG sold to East Palo Alto in 2017 into a transfer of up to 1.0 MGD of Mountain View's Minimum Purchase to East Palo Alto, in increments of 0.25 MGD, subject to the City Council's approval of an agreement for each incremental transfer and the approval of the Wholesale Customers and San Francisco; and

WHEREAS, East Palo Alto and Mountain View are authorized and prepared to execute a negotiated agreement memorializing the terms and conditions of a 0.25 MGD transfer of Mountain View's Minimum Purchase to East Palo Alto; and

WHEREAS, as noted below, one of the conditions of the negotiated agreement between Mountain View and East Palo Alto is that, in exchange for the 0.25 MGD of Minimum Purchase transfer, Mountain View will provide East Palo Alto with an immediate Right-of-First Refusal for drought water transfers at the same volume as the Minimum Purchase transfer, pursuant to Appendix H of the 2021 WSA; and

WHEREAS, in conjunction with consideration of the 2021 WSA, East Palo Alto and Mountain View propose the Wholesale Customers and San Francisco approve, in advance, the terms and conditions for converting up to 1.0 MGD of Mountain View's ISG purchased by East Palo Alto in 2017 into a transfer of 1.0 MGD of Mountain View's Minimum Purchase to East Palo Alto, in 0.25 MGD increments, if Mountain View and East Palo Alto mutually agree to such incremental transfers in the future and provided the conditions outlined below are met; and

WHEREAS, if up to 1.0 MGD of Mountain View's ISG purchased by East Palo Alto in 2017 is converted into a transfer of up to 1.0 MGD of Mountain View's Minimum Purchase to East Palo Alto, up to 1.0 MGD of Minimum Purchase, in 0.25 MGD increments, will be counted towards the total Minimum Purchase that may be transferred pursuant to Section 3.04.C.1 of the 2021 WSA; and

WHEREAS, this parallel action continues to require the calculation of a Temporary Modified Minimum Annual Purchase Quantity, set out in Attachment E-1 in the 2021 WSA; however, the transferor, Mountain View, is responsible for the imputed sales associated with transfers 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 WSA, Mountain View and East Palo Alto will coordinate with San Francisco and BAWSCA to document Temporary Modified Minimum Annual Purchase Quantities when timely, and amendments to each cities' Individual Water Sales Contract with San Francisco.

NOW, THEREFORE, BE IT RESOLVED that the San Bruno City Council hereby approves a Minimum Water Purchase Transfer Agreement between the City of East Palo Alto and the City of Mountain View regarding 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.

Dated: May 24, 2022

ATTEST:

Melissa Thurman, 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: _____