

HAYWARD CITY COUNCIL

RESOLUTION NO. 22-_____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AND RESTATED WATER SUPPLY AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO AND WHOLESALE CUSTOMERS

WHEREAS, water supply agencies in Alameda, San Mateo, and Santa Clara Counties, including Hayward, 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 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”) 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, on February 5, 2019, this Council, by Resolution No. 19-025 approved the Amended and Restated Water Supply Agreement to address a number of substantive issues; 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, BAWSCA and the Water Management Representatives of the BAWSCA member agencies have developed a proposed amendment to the Amended and Restated Water Supply Agreement to allow for expedited and permanent transfer of Minimum Purchase Quantities 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, 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, 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 improve long-term supply reliability; and

WHEREAS, the Parties agree that the total aggregate amount of Minimum Purchase Quantity that may be transferred by all 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 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, an updated Amended and Restated Water Supply Agreement, reflecting this amendment, in the form negotiated by BAWSCA (2021 Amended and Restated Water Supply Agreement), was presented to, and approved by SFPUC on January 26, 2021, pursuant to SFPUC Resolution No. 21-0009; 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)).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves the modifications included in the "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 26, 2021 (2021 Amended and Restated Water Supply Agreement), a copy of which is on file in the Office of the City Clerk.

BE IT FURTHER RESOLVED that 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.

