

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member _____

RESOLUTION APPROVING AMENDMENTS TO THE 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, including the City of Hayward, have purchased water from the City and County of San Francisco (San Francisco) for many years (collectively, “the Parties”); and

WHEREAS, the San Francisco Public Utilities Commission (SFPUC) Water Enterprise operates the Regional Water System, which delivers water to 26 entities serving communities in Alameda, San Mateo and Santa Clara Counties, as well as to customers within San Francisco; 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; 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”) on July 1, 2009, authorized by SFPUC Resolution No. 09-0069; and

WHEREAS, on September 25, 2018, the City Council of the City of Hayward adopted Resolution 18-202, authorizing the Bay Area Water Supply and Conservation Agency (BAWSCA) to represent the City of Hayward in negotiations with SFPUC to amend certain provisions of the Water Supply Agreement, and each of the other 25 entities that are members of BAWSCA similarly delegated negotiating authority to BAWSCA; and

WHEREAS, BAWSCA as submitted periodic reports to the City of Hayward on progress during the negotiations and detailed briefings on all significant elements of the amendments; and

WHEREAS, the Parties now desire to adopt an amended and restated Water Supply Agreement in order to:

- (1) Adjust the provisions of the Water Shortage Allocation Plan regarding the initial allocation of water between San Francisco Retail and Wholesale water customers during shortages;

- (2) Extend the December 31, 2018 deadline for the SFPUC to complete a water supply planning process and decide whether or not to (a) grant permanent customer status to the cities of San Jose and Santa Clara, dedicating a permanent share of the SFPUC water supply to these two wholesale customers, who currently have temporary, interruptible status; and (b) increase the 184 mgd Supply Assurance created as a permanent dedication of water supply in the 1984 “Settlement Agreement and Master Water Sales Contract” and carried forward into the 2009 Water Supply Agreement (collectively “the 2018 Decisions”);
- (3) Require the SFPUC to adhere to a formal program to engage with BAWSCA on the SFPUC’s ten-year Capital Improvement Program development;
- (4) Change the classification of certain Hetch Hetchy Water and Power capital projects, adjusting the amount of capital funding to be provided towards these projects by the Parties and the SFPUC Power Enterprise through the term (June 30, 2034) of the Water Supply Agreement;
- (5) Modify provisions related to the SFPUC’s administration of the Wholesale Capital Fund to more closely align with the historic rate of capital project spending by the SFPUC and prevent volatility in the annual determination of the Wholesale Revenue Requirement;
- (6) Extend the estimated timing of the completion of the Water System Improvement Program to reflect the currently adopted program completion date;
- (7) Clarify the cost allocation and water accounting provisions used for the Regional Water System’s Groundwater Storage and Recovery Project; and

WHEREAS, in addition to the substantive modifications set forth above, the amended and restated Water Supply Agreement also includes a number of non-substantive updates and revisions to incorporate previously approved modifications; and

WHEREAS, the proposed amendments are not a “project for the purposes of the California Environmental Quality Act (CEQA) as they involve an administrative activity that does not result in a direct change to the environment (see 14 CCR Section 15378(b)(b)), 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, according to the provisions of the Water Supply Agreement, if the proposed amendments would not change the structure or affect the fundamental rights of wholesale customers, they can be executed with the approval of two-thirds of the wholesale customers or the number of wholesale customers representing seventy-five percent of the quantity of water delivered by San Francisco; and

WHEREAS, BAWSCA has determined that the proposed amendments do not change the fundamental rights of wholesale customers; and

WHEREAS, an amended and restated Water Supply Agreement, in the form negotiated by BAWSCA, was presented to and adopted by the SFPUC on December 11, 2018.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves the modifications included in the 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 November 2018 (Amended and Restated Water Supply Agreement).

BE IT FURTHER RESOLVED that the City Manager is authorized and directed to sign the Amended and Restated Water Supply Agreement, in the form previously approved by the San Francisco Public Utilities Commission.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward