

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE  
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND  
EXECUTE 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 AND APPROVING THE  
UPDATED TIER 2 DROUGHT RESPONSE IMPLEMENTATION  
PLAN**

**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 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 Sections 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 its 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 in 2018 authorized by SFPUC Resolution No. 18-0212, dated December 11, 2018; and

**WHEREAS**, on October 2, 2018, City Council authorized the City Manager's Office to negotiate and execute the 2019 Amended and Restated Water Supply Agreement, and such agreement was approved in May 22, 2019; and

**WHEREAS**, pursuant to WSA Section 3.07, four Wholesale Customers (Alameda County Water District and the Cities of Milpitas, Mountain View, and Sunnyvale, collectively, the "Original 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**, historically, 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 WSA Attachment E; and

**WHEREAS**, some Original Minimum Purchase Customers pay the SFPUC for water that is not delivered due to either insufficient potable demand within their service area or conservation efforts during drought rationing; and

**WHEREAS**, as part of the 2018 negotiations, the Wholesale Customers and the SFPUC resolved to work promptly to identify a resolution to this as part of a future contract amendment; and

**WHEREAS**, in 2019, the Wholesale Customers directed BAWSCA to draft a proposed amendment to the 2018 WSA to provide a procedure for expedited and permanent transfers of minimum annual purchase quantities that safeguards the financial and water supply interests of Wholesale Customers not participating in such transfers and these negotiations resulted in the Parties' adoption of the Amended and Restated Water Supply Agreement in 2021, authorized by SFPUC Resolution No. 21-009, dated January 26, 2021; and

**WHEREAS**, on April 12, 2022 City Council approved the Amended and Restated Water Supply Agreement (2021 WSA); and

**WHEREAS**, the 2021 WSA provided a significant, but incomplete solution to address the Original Minimum Purchase Customer's concerns with the minimum purchase quantities through a transfer process; and

**WHEREAS**, 2021 WSA Section 3.11.C. provides that the SFPUC may reduce the amount of water available to the Wholesale Customers in response to a drought; and

**WHEREAS**, 2021 WSA Section 3.11.C. provides that the Tier 1 Shortage Plan (Attachment H to the WSA) will be used, during system-wide shortages of 20% or less, to allocate water from the Regional Water System between Retail and Wholesale Customers ; and

**WHEREAS**, 2021 WSA Section 3.11.C. further provides that the SFPUC will honor allocations of water among the Wholesale Customers (Tier 2 Allocations) unanimously agreed to by all Wholesale Customers or provided by BAWSCA; and

**WHEREAS**, in 2021, the SFPUC and BAWSCA implemented the Tier 1 and Tier 2 Plans for the first time; and

**WHEREAS**, throughout 2022 and 2024, the Wholesale Customers convened at least once per month, most often for half-day in-person workshops, to negotiate an update to the method for sharing water made available from the SFPUC during shortages caused by drought (Tier 2 Plan); and

**WHEREAS**, each Wholesale Customer appointed a lead negotiator to represent the interests of its agency in the negotiations; and

**WHEREAS**, during the Tier 2 Plan negotiations, the Original Minimum Purchase Customers renewed discussions among the Wholesale Customers to identify a comprehensive and final solution to concerns about the minimum purchase quantities; and

**WHEREAS**, during the Tier 2 Plan negotiations, the Wholesale Customers identified, and the SFPUC agreed to, changes to the Tier 1 Plan that would facilitate agreement on the updated Tier 2 Plan; and

**WHEREAS**, in June 2023, following several years of discussions regarding the Minimum Purchase Requirements, the SFPUC proposed amending the 2021 WSA to reset the existing minimum annual purchase quantities to align with current water consumption trends, while protecting investment in the RWS; and

**WHEREAS**, in 2024, the SFPUC, the Original Minimum Purchase Customers, and BAWSCA held multiple meetings to identify amendments that would address challenges related to the Minimum Purchase Requirements; and

**WHEREAS**, once the SFPUC and the Original Minimum Purchase Customers discussed amendments to the Minimum Purchase Requirements, the Original Minimum Purchase Customers presented proposals to the broader Wholesale Customer group to secure their support; and

**WHEREAS**, in 2024, the Wholesale Customers came to a final agreement on a package that includes an updated Tier 2 Plan, amendments to the minimum purchase quantity requirements, and amendments to the Tier 1 Plan; and

**WHEREAS**, with its Alternative Water Supply Program, the SFPUC is in the early stages of planning for 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 Original Minimum Purchase Customers are particularly well-suited to develop local, drought resilient supplies, which improve the reliability of the San Francisco Regional Water System (RWS) for all users; and

**WHEREAS**, under 2021 WSA Section 3.06.D, the Parties agree that they will diligently apply their best efforts to use both surface water and groundwater sources located within their respective service areas and available recycled water to the maximum feasible extent, taking into account the environmental impacts, the public health effects, and the effects on supply reliability of such use, as well as the cost of developing such sources; and

**WHEREAS**, each Wholesale Customer recognizes the importance of local water supplies in improving regional water supply reliability and commits to develop and use available local water supplies within their service areas, consistent with Section 3.06.D of the WSA; and

**WHEREAS**, the City of Mountain View approved a Recycled Water Feasibility Study Update Draft Report on March 22, 2022 with seven staff recommendations, including: (1) working with the City of Palo Alto and the Santa Clara Valley Water District on the first phase of an advanced water purification system to improve recycled water quality, (2) planning and siting a recycled water storage reservoir in the City of Mountain View's North Bayshore Area to improve system performance and reliability, and (3) building-out the recycled water distribution system to serve all of North Bayshore and a portion of NASA Ames; and

**WHEREAS**, the City of Sunnyvale approved an updated Recycled Water Master Plan on September 24, 2024 and directed staff to look into expanding the recycled water system, which currently includes 22 miles of recycled water pipelines, two recycled water pump stations, and a recycled water storage tank with a 2.5-million-gallon capacity; and

**WHEREAS**, the City of Milpitas continues to promote the use of recycled water to existing and new customers along the recycled water pipeline within the city, and has committed to developing local groundwater supplies to help meet projected long term water demand; and

**WHEREAS**, since 1995, the Alameda County Water District has invested over \$300 million in water supply reliability initiatives to enhance local water supplies and reduce its dependence on imported supplies, including water conservation, conjunctive use groundwater management, brackish groundwater desalination, and groundwater banking; and

**WHEREAS**, as of January 2025, the SFPUC has budgeted \$298.3 million over the next ten years to fund water supply projects; and

**WHEREAS**, the Parties now desire to approve an amendment to the 2021 WSA to reduce the minimum annual purchase quantities to 80% of average purchases from the most recent four (4) non-drought years and establish a continuing, periodic review of the minimum annual purchase quantities on a 10-year schedule; and

**WHEREAS**, the amendment will also establish a Rebound Year minimum annual purchase quantity calculation for the first year following a waiver of the Minimum Purchase Requirements; and

**WHEREAS**, the amendment further provides that Imputed Sales will not apply to an Original Minimum Purchase Customer that does not meet its individual Minimum Purchase Requirements if the collective SFPUC purchases from all Original Minimum Purchase Customers are equal to or greater than the total collective minimum annual purchase quantity; and

**WHEREAS**, the Parties also desire to adopt an amendment to the Tier 1 Plan to provide that excess use charges will not apply to Wholesale Customers that exceed their individual annual shortage allocation if the Wholesale Customers' collective SFPUC purchases are less than the total Tier 1 allocation; and

**WHEREAS**, the amendment further provides that if the collective Wholesale Customers' SFPUC purchases exceed total Tier 1 allocation, excess use charges will be applied to each Wholesale Customer that exceeded its individual annual allocation, proportional to the collective Wholesale Customer's overuse of the total Tier 1 allocation; and

**WHEREAS**, the Parties also desire to adopt an amendment to the 2021 WSA to include the following substantive modifications:

- a) update references in Section 2.03.C regarding BAWSCA's authority to amend attachments;
- b) extend the timing of the completion of the WSIP to reflect the currently adopted program completion date (Section 3.09);
- c) correct a reference to a SFPUC resolution number in Section 9.07;
- d) update "Imputed Sales" definition in Attachment A to reference Attachment E;
- e) update "Level of Service Goals and Objectives" definition in Attachment A to reflect updated and expanded Level of Service Goals and Objectives adopted by the SFPUC in November 2023; and

**WHEREAS**, the SFPUC approved these amendments and authorized the execution of a 2025 Amended and Restated Water Supply Agreement incorporating these amendments on May 13, 2025 pursuant to SFPUC Resolution No. 25-0074; 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

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT THE CITY COUNCIL:

1. Authorizes the City Manager to negotiate and execute the 2025 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; and
2. Approves the updated Tier 2 Drought Response Implementation Plan.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk