



CITY COUNCIL & GVMID BOARD OF DIRECTORS AGENDA REPORT

Meeting Date: May 19, 2022
From: Director of Public Works/City Engineer
Subject: City of Mountain View Minimum Purchase Transfer to City of East Palo Alto

Community Goal/Result Ecological Sustainability

Purpose

To obtain Council and Board approval of the City of Mountain View's transfer of a portion of their minimum purchase requirement from the City and County of San Francisco to the City of East Palo Alto. This action is consistent with the community's goals of efficient water use.

Recommendation

1. The City of Brisbane City Council adopt a Resolution Approving a Minimum Purchase Transfer from the City of Mountain View to the City of East Palo Alto.
2. The Guadalupe Valley Municipal Improvement District Board of Directors adopt a Resolution Approving a Minimum Purchase Transfer from the City of Mountain View to the City of East Palo Alto.

Background

This action is related to the action recommended in the May 19, 2022 staff report titled, "2021 Amended and Restated Water Supply Agreement with the City and County of San Francisco (CCSF)". In this immediately preceding item, City Council and GVMID Board were recommended to approve an amendment to the water supply agreement (WSA) so that suburban customers of CCSF with minimum purchase requirements (i.e., "take or pay" clause) could transfer these requirements to other customers bound by the WSA. A detailed discussion of why this change is appropriate and necessary is found in the referenced staff report.

In 2017, Mountain View transferred one million gallons per day of its Individual Supply Guarantee (ISG) from CCSF to the City of East Palo Alto. At the time of this transfer, the WSA did not allow for transfers of minimum purchase requirements (MPR) among the suburban wholesale customers. Based on the assumption that a majority of the wholesale customers will approve an amendment to the WSA allowing the transfer of MPR, Mountain View and East Palo Alto have agreed to convert the ISG transfer to an MPR transfer.

Because the Mountain View/East Palo Alto original transfer occurred before the pending amendment to allow MPR transfers, the conversion of that transfer to MPR must be considered and approved separately by the wholesale customers.

Discussion

The challenge with MPR requirements is that they are exactly what they are called – an agency with an MPR is required to pay for that full amount of water whether or not it actually consumes that amount. When the MPRs may not be transferred there are two parties harmed; the party subject to the MPR has to pay for water it did not use, and any party in need of additional water for development sees an unused volume of water that they cannot purchase because it is locked into an agreement.

The recommended resolutions are drafted to specifically apply to the East Palo Alto/Mountain View transfer, and keep the same requirements of the WSA amendment that protect the water supply interest and financial interest of the member agencies. Equally important, the resolutions provide an effective way to transfer water that is in keeping with State law requiring the efficient use of water.

Fiscal Impact

There is no anticipated impact as a result of Council and Board approving this item.

Measure of Success

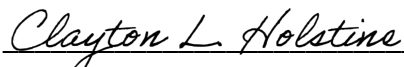
An approval for two willing BAWSCA agencies to complete a transfer of MPR water.

Attachments

- 1. City of Brisbane Resolution
- 2. GVMID Resolution



Randy Breault, Public Works Director



Clay Holstine, City Manager

RESOLUTION NO. 2022-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
APPROVING A MINIMUM PURCHASE TRANSFER FROM THE CITY OF
MOUNTAIN VIEW TO THE CITY OF EAST PALO ALTO**

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 to be included on Attachment E-1, transferred Minimum Annual Purchase Quantities to be included on Attachment E, when timely, and amendments to each cities' Individual Water Sales Contract with San Francisco.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE RESOLVES AS FOLLOWS:

The City Council approves, in advance, the conversion of up to 1.0 MGD of Mountain View's ISG, sold to East Palo Alto in 2017 into a transfer of 1.0 MGD of Mountain View's ISG plus up to 1.0 MGD of Mountain View's Minimum Purchase to East Palo Alto, in 0.25 MGD increments, if all of the following terms and conditions are satisfied:

- a. Mountain View will transfer up to 1.0 MGD of its Minimum Purchase to East Palo Alto, in increments of 0.25 MGD, subject to the Mountain View City Council's and the East Palo Alto City Council's approval of an agreement for each incremental transfer.
- b. For each incremental transfer, a Temporary Modified Minimum Annual Purchase Quantity will be calculated for East Palo Alto that is equal to the City's five-year average water use from the SFPUC for the most recent non-drought years prior to the 2017 ISG purchase, plus the incremental transfer amount(s).
- c. For each incremental transfer, Mountain View will maintain, and be responsible for paying any imputed sales for, its Minimum Purchase requirement in effect at that time,

as set forth in Attachment E of the WSA, including up to 1.0 MGD ISG transfer to East Palo Alto, until East Palo Alto's water use meets the Temporary Modified Minimum Annual Purchase Quantity for three consecutive years.

- d. East Palo Alto will not be required to pay imputed sales associated with the Temporary Modified Minimum Annual Purchase Quantity for any incremental transfer of the 1.0 MGD of Mountain View's Minimum Purchase requirement.
- e. For each incremental transfer, once East Palo Alto has met the Temporary Modified Minimum Annual Purchase Quantity for three consecutive years, the incremental portion of Mountain View's Minimum Purchase transferred to East Palo Alto will become East Palo Alto's Minimum Purchase, and Mountain View's Minimum Purchase will be reduced by an equivalent amount. East Palo Alto's new Minimum Purchase will be included in Attachment E and both cities' Individual Water Sales Contracts will be updated to reflect this transfer.
- f. With exception of the incremental transfers that are the subject of this resolution and the agreement between East Palo Alto and Mountain View described herein, any additional transfers of Minimum Purchase, either from another Wholesale Customer or from Mountain View in excess of the 1.0 MGD, are subject to Section 3.04 of the 2021 WSA.

Coleen Mackin, Mayor

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the ____ day of _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

RESOLUTION NO. 2022-__

ATTEST:

Ingrid Padilla, City Clerk

RESOLUTION NO. GVMID 2022-__

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GUADALUPE
VALLEY MUNICIPAL IMPROVEMENT DISTRICT
APPROVING A MINIMUM PURCHASE TRANSFER FROM THE CITY OF
MOUNTAIN VIEW TO THE CITY OF EAST PALO ALTO**

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 to be included on Attachment E-1, transferred Minimum Annual Purchase Quantities to be included on Attachment E, when timely, and amendments to each cities' Individual Water Sales Contract with San Francisco.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT RESOLVES AS FOLLOWS:

The Board of Directors approves, in advance, the conversion of up to 1.0 MGD of Mountain View's ISG, sold to East Palo Alto in 2017 into a transfer of 1.0 MGD of Mountain View's ISG plus up to 1.0 MGD of Mountain View's Minimum Purchase to East Palo Alto, in 0.25 MGD increments, if all of the following terms and conditions are satisfied:

- a. Mountain View will transfer up to 1.0 MGD of its Minimum Purchase to East Palo Alto, in increments of 0.25 MGD, subject to the Mountain View City Council's and the East Palo Alto City Council's approval of an agreement for each incremental transfer.
- b. For each incremental transfer, a Temporary Modified Minimum Annual Purchase Quantity will be calculated for East Palo Alto that is equal to the City's five-year average water use from the SFPUC for the most recent non-drought years prior to the 2017 ISG purchase, plus the incremental transfer amount(s).
- c. For each incremental transfer, Mountain View will maintain, and be responsible for paying any imputed sales for, its Minimum Purchase requirement in effect at that time,

as set forth in Attachment E of the WSA, including up to 1.0 MGD ISG transfer to East Palo Alto, until East Palo Alto's water use meets the Temporary Modified Minimum Annual Purchase Quantity for three consecutive years.

- d. East Palo Alto will not be required to pay imputed sales associated with the Temporary Modified Minimum Annual Purchase Quantity for any incremental transfer of the 1.0 MGD of Mountain View's Minimum Purchase requirement.
- e. For each incremental transfer, once East Palo Alto has met the Temporary Modified Minimum Annual Purchase Quantity for three consecutive years, the incremental portion of Mountain View's Minimum Purchase transferred to East Palo Alto will become East Palo Alto's Minimum Purchase, and Mountain View's Minimum Purchase will be reduced by an equivalent amount. East Palo Alto's new Minimum Purchase will be included in Attachment E and both cities' Individual Water Sales Contracts will be updated to reflect this transfer.
- f. With exception of the incremental transfers that are the subject of this resolution and the agreement between East Palo Alto and Mountain View described herein, any additional transfers of Minimum Purchase, either from another Wholesale Customer or from Mountain View in excess of the 1.0 MGD, are subject to Section 3.04 of the 2021 WSA.

Coleen Mackin, Chair

* * * *

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Guadalupe Valley Municipal Improvement District held on the ____ day of _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

RESOLUTION NO. GVMID 2022-__

ATTEST:

Ingrid Padilla, Clerk of the Board