



## CITY COUNCIL & GVMID BOARD OF DIRECTORS AGENDA REPORT

**Meeting Date:** May 19, 2022  
**From:** Director of Public Works/City Engineer  
**Subject:** 2021 Amended and Restated Water Supply Agreement with the City and County of San Francisco (CCSF)

**Community Goal/Result** Ecological Sustainability

### **Purpose**

To obtain Council and Board approval of a proposed amendment to the Water Supply Agreement (WSA) with CCSF. 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 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.
2. The Guadalupe Valley Municipal Improvement District (GVMID) Board of Directors adopt a Resolution Approving 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.

### **Background**

The City of Brisbane and GVMID obtain 100% of their water from the Hetch Hetchy Regional Water Supply System (RWS) pursuant to a 1984 "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", and to a subsequent negotiated Water Supply Agreement and amendments thereto.

The majority of the suburban purchasers have an Individual Supply Guarantee (ISG), which represents their allocation of the 184 million gallons per day (MGD) of water available from the RWS. Four of the purchasers also have a Minimum Purchase Requirement (MPR), which is a "take or pay" clause. In other words, regardless of the actual purchase amount, those purchasers with an MPR pay for that specified amount of water. The existing WSA does not allow a purchaser to transfer any portion of its MPR to another purchaser.

## Discussion

At first glance, this seems to be a simple issue – just allow for the transfer of MPR volumes. However, the manner in which CCSF annually calculates cost relies upon the anticipated income from MPR water. The Bay Area Water Conservation Agency (BAWSCA) staff and the staff members of the suburban purchasers assigned to the BAWSCA Water Management Representative (WMR) technical committee have been working on the proposed amendment since 2017 to ensure that permanent transfers of MPR volume do not result in new or different risks to the water supply and financial interest of those wholesale customers not participating in the transfer.

Example calculations to confirm this goal was met are not particularly arcane, but are quite detailed in nature. The members of the WMR (Brisbane is represented by the Public Works Director and Deputy Director-Utilities) have all reviewed and agreed unanimously to the proposed amendment. The proposed amendment has also been presented on multiple occasions to chief executives and legal counsel of all twenty-six BAWSCA agencies.

In addition to protecting the water supply interest and financial interest of the member agencies, the amendment provides 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 amendment to the existing WSA that allows for water transfers between BAWSCA agencies.

## Attachments

1. Minimum Purchase FAQ sheet
2. City of Brisbane Resolution
3. GVMID Resolution
4. Redline showing changes to Section 3.04, 3.07 and 2.03 of the Amended and Restated Water Supply Agreement
5. 2021 Amended and Restated Water Supply Agreement with Attachments



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Randy Breault, Public Works Director



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Clay Holstine, City Manager



# PROPOSED CONTRACT AMENDMENT Regarding the Minimum Annual Purchase Quantity

DECEMBER 2021

## KEY AMENDMENT BENEFITS

- ✓ Provides an Expedited Process for Certain Types of Transfers
- ✓ Removes a Barrier to Maximizing Local Supplies
- ✓ Allows for Increased Purchases of RWS Supplies Resulting in a Reduced Unit Cost of Water to All Wholesale Customers
- ✓ Overcomes a Hurdle for Greater Use of Existing RWS Supply
- ✓ Protects the Financial and Water Supply Interests of All Wholesale Customers

## MINIMUM ANNUAL PURCHASE QUANTITY (MGD):

ACWD	7.648
Milpitas	5.341
Mountain View	8.930
<u>Sunnyvale</u>	<u>8.930</u>
Total:	30.849

### What Contract is Being Amended and Who Are the Parties?

The 2018 Amended and Restated Water Supply Agreement between the City and County of San Francisco and the Wholesale Customers in Alameda, San Mateo, and Santa Clara Counties (WSA).

**What Does the WSA Govern?** The WSA governs the supply of 184 million gallons of water per day (MGD), on an annual average basis, from the San Francisco Regional Water System (RWS) to the Wholesale Customers. The WSA also establishes rules and requirements for water purchases and transfers between the Wholesale Customers.

**Why is This Amendment Proposed?** In 2019, the Wholesale Customers directed BAWSCA to draft a proposed WSA amendment to provide a procedure for expedited and permanent transfers of Minimum Annual Purchase Quantity (Minimum Purchase) requirements, while safeguarding the financial and water supply interests of Wholesale Customers not participating in such transfers.

**What is a Minimum Purchase Requirement?** When the WSA was developed, four agencies with access to sources of supply not available to either San Francisco or the other Wholesale Customers at the time were required to purchase a “minimum annual quantity of water” from the RWS. Those four multi-source agencies are Alameda County Water District (ACWD), Milpitas, Mountain View, and Sunnyvale (Minimum Purchase Agencies).

These four Minimum Purchase Agencies are subject to a “take or pay” Minimum Purchase requirement, which guarantees an ongoing financial stake in the RWS and ensures financial stability for all Wholesale Customers as well as San Francisco retail customers that rely on the RWS. The total Minimum Purchase requirement is 30.849 MGD. Any change to the Minimum Purchase requirement necessitates an amendment to the WSA.

**Why Amend the Minimum Purchase Requirement?** The Wholesale Customers desire to remove obstacles to water transfers between individual member agencies. One such obstacle is the Minimum Purchase requirements. Establishing a means by which a Minimum Purchase requirement could be linked to a proposed water transfer would effectively remove that obstacle.

**What Does the Proposed Minimum Purchase Amendment Do?** The proposed amendment provides a contractual vehicle for Wholesale Customers with an Individual Supply Guarantee (ISG) to participate in a paired, expedited, and permanent transfer of a portion of ISG and Minimum Purchase.

**Is There a Limit to the Quantity of Minimum Purchase That Can Be Transferred?** Only 6 MGD of the total Minimum Purchase requirement may be transferred pursuant to this “pre-approved” pathway.

Additionally, Minimum Purchase Agencies may transfer no more than 50% of their total Minimum Purchase requirement. A future WSA amendment may increase these caps if demand for additional transfers exceeds these limits.

**What Are the Benefits of the Minimum Purchase Amendment?** The proposed amendment offers several benefits and solutions for the Wholesale Customers:

- ✓ Removes an existing barrier for a Minimum Purchase Agency to reduce the financial liability associated with the cost of imputed sales for Minimum Purchase water that is not use.
- ✓ Overcomes a hurdle for greater use of current RWS supply by enabling additional transfers between eligible Wholesale Customers.
- ✓ Increased purchases from the RWS result in reduced unit costs for all Wholesale Customers.
- ✓ Water transfers between Wholesale Customers offer potential water supply to meet needs for new developments within the BAWSCA service area.
- ✓ As indicated by the San Francisco Public Utilities Commission (SFPUC), maximizing the use of existing supplies through transfers facilitates the development of new supplies necessary to support San Jose and Santa Clara as permanent customers.

**Will the Proposed Amendment Result in New or Increased Risks to the Wholesale Customers?**

No. The proposed amendment protects the financial and water supply interests of Wholesale Customers not participating in transfers.

- ✓ The total Minimum Purchase remains the same regardless of transfers.
- ✓ Transferees must pay imputed sales for any transferred Minimum Purchase that is unused once the transfer becomes effective.
- ✓ Transferees must prove long-term demand for the transferred Minimum Purchase, beyond their average use over the five years prior to the transfer, for a period of three consecutive years before taking on a permanent Minimum Purchase requirement.
- ✓ Absent unchecked unlawful conduct, there is no new or different water supply reliability risk to non-participating agencies given (1) existing water use and (2) legal and contractual obligations.
- ✓ Absent unchecked unlawful conduct, there is no new or different financial risk as a result of this proposed amendment in the event of significant economic downturn based on (1) available transfer market and water use patterns and (2) current risks based on existing contract provisions that will remain unchanged by the proposed amendment.

**What Are the Risks of Not Approving the Minimum Purchase Amendment?** Neglecting to adopt the proposed amendment may hinder SFPUC's ability to implement new water supply projects necessary to (1) support San Jose and Santa Clara as permanent customers and (2) offset Bay Delta Plan/Tuolumne River Voluntary Agreement implementation. The development of new water supplies will be subject to CEQA. Showing that existing water available in the RWS is underutilized could hinder environmental approvals.

Without this proposed amendment, any transfer of a portion of Minimum Purchase among Wholesale Customers would require a new amendment to the WSA adopted by each Wholesale Customer's governing body in a separate action. This significant barrier to implementing transfers may prevent Minimum Purchase Agencies from pursuing these more challenging water transfers, reduce opportunities to provide cost-effective water supplies to new developments within the service area, and discourage maximum use of local supplies and conservation.

**RESOLUTION NO. 2022-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE  
APPROVING 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**

**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 or Commission) 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" or "BAWSCA member agencies") 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**, 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 (Amended and Restated Water Supply Agreement) in 2018, authorized by SFPUC Resolution No. 18-0212, dated December 11, 2018; and

**WHEREAS**, in 2019 this Council approved the Amended and Restated Water Supply Agreement; 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**, in September 2017, BAWSCA and the Water Management Representatives (WMRs) of the BAWSCA member agencies began reviewing the issue of Minimum Purchase Quantities, as described in Section 3.07.C of the Water Supply Agreement, and discussing the creation of a process to transfer Minimum Purchase Quantities; and

**WHEREAS**, throughout 2017 and 2018, the WMRs held multiple meetings during which the agencies currently subject to Minimum Purchase Quantity requirements and the other Wholesale Customers shared their interests and concerns regarding changes to the Minimum Purchase Quantity requirements and allowing transfers of Minimum Purchase Quantities; and

**WHEREAS**, at the time the Amended and Restated Water Supply Agreement was approved, the Parties expressed a collective interest in working together to develop a process for the expedited and permanent transfer of Minimum Purchase Quantities; and

**WHEREAS**, in 2019, the Wholesale Customers directed BAWSCA to draft a proposed amendment to the Amended and Restated Water Supply Agreement to provide a procedure for expedited and permanent transfers of Minimum Purchase Quantities that safeguards the financial and water supply interests of Wholesale Customers not participating in such transfers; and

**WHEREAS**, the Parties recognize that, both before and after the most recent statewide drought, after meeting drought-related conservation mandates, several BAWSCA member agencies were unable to meet their respective Minimum Purchase requirements described in Article 3.07 of the Amended and Restated Water Supply Agreement, which

requires payment for water up to the required Minimum Purchase level even if such water is not delivered and used; and

**WHEREAS**, several of the Wholesale Customers with Minimum Purchase requirements might be interested in transferring a portion of their Minimum Purchase Quantity within their respective ISGs to reduce the financial obligation to pay for imputed sales for Minimum Purchase water that is not used; and

**WHEREAS**, with its Alternative Water Supply Program, the SFPUC is in the early stages of planning for fourteen 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 City of San Jose (San Jose) and the City of Santa Clara (Santa Clara) are temporary, interruptible Wholesale Customers of the SFPUC Regional Water System and both cities wish to become permanent Wholesale Customers; and

**WHEREAS**, pursuant to Section 4.06 of the Amended and Restated Water Supply Agreement, by December 31, 2028, San Francisco must complete any necessary California Environmental Quality Act (CEQA) review and must decide whether or not to make San Jose and Santa Clara permanent Wholesale Customers of the Regional Water System with a combined Individual Supply Guarantee (ISG) of 9 million gallons per day (MGD) allocated equally between the two cities, as well as how much water in excess of 9 MGD it will supply to San Jose and Santa Clara; and

**WHEREAS**, Section 4.06 of the Amended and Restated Water Supply Agreement provides: "San Francisco will make San Jose and Santa Clara permanent customers only if, and to the extent that, San Francisco determines that Regional Water System long term water supplies are available;" and



**WHEREAS**, according to SFPUC's December 2021 Alternative Water Supply Planning Quarterly Update (Quarterly Update), "[f]or San Jose and Santa Clara to become permanent customers of the SFPUC, an additional 9 MGD of new, year-round supplies would be needed to meet historic demand levels and up to 15.5 MGD would be needed to meet planned demand through 2045;" and

**WHEREAS**, according to its December Quarterly Update, SFPUC is planning with the "intention to be able to make San Jose and Santa Clara permanent customers," but is prioritizing instream flow obligations to meet existing permanent customer demands, including drought supplies; and

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

**WHEREAS**, SFPUC, San Jose, Santa Clara, and BAWSCA are actively working together to consider water supply projects that may offer potential sources of supply to support San Jose and Santa Clara as permanent Wholesale Customers; 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**, a Minimum Purchase Customer might be more inclined to transfer a portion of its ISG to another Wholesale Customer under Section 3.04 of the Amended and Restated Water Supply Agreement if it was able to include a simultaneous transfer of a portion of its Minimum Purchase requirement and the associated financial obligation; 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 support San Jose and Santa Clara as permanent Wholesale Customers; and

**WHEREAS**, the Parties have developed a process to allow for the transfer of a Wholesale Customer's Minimum Purchase Quantity 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**, the Parties agree that the total aggregate amount of Minimum Purchase Quantity that may be transferred by all of 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**, the Parties agree to consider a proposal by the City of Mountain View (Mountain View) and the City of East Palo Alto (East Palo Alto) to amend the Amended and Restated Water Supply Agreement to allow for the conversion of Mountain View's 2017 sale of 1 MGD of ISG to East Palo Alto into a transfer of 1 MGD of Mountain View's ISG that includes Minimum Purchase Quantity to East Palo Alto, over a period of time, and in a manner that protects the other Wholesale Customers' financial and water supply interests; and

**WHEREAS**, if such a conversion is approved by the Parties, the 1 MGD of Mountain View's Minimum Purchase Quantity would be counted towards the total aggregate 6 MGD cap on Minimum Purchase Quantity transfers; and

**WHEREAS**, the Parties now desire to adopt an amendment to the Amended and Restated Water Supply Agreement to permit Wholesale Customers with an ISG to transfer, or accept a transfer, of both a portion of a Wholesale Customer's ISG and its Minimum Purchase Quantity; 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, THE CITY COUNCIL OF THE CITY OF BRISBANE RESOLVES AS FOLLOWS:**

1. The Council 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 2021 (2021 Amended and Restated Water Supply Agreement).

2. 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.

\_\_\_\_\_  
Coleen Mackin, Mayor

\* \* \* \*

RESOLUTION NO. 2022-\_\_

**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:

ATTEST:

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Ingrid Padilla, City Clerk

**RESOLUTION NO. GVMID 2022-\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT APPROVING 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**

**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 or Commission) 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" or "BAWSCA member agencies") 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**, 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 (Amended and Restated Water Supply Agreement) in 2018, authorized by SFPUC Resolution No. 18-0212, dated December 11, 2018; and

**WHEREAS**, in 2019 this Board approved the Amended and Restated Water Supply Agreement; 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**, in September 2017, BAWSCA and the Water Management Representatives (WMRs) of the BAWSCA member agencies began reviewing the issue of Minimum Purchase Quantities, as described in Section 3.07.C of the Water Supply Agreement, and discussing the creation of a process to transfer Minimum Purchase Quantities; and

**WHEREAS**, throughout 2017 and 2018, the WMRs held multiple meetings during which the agencies currently subject to Minimum Purchase Quantity requirements and the other Wholesale Customers shared their interests and concerns regarding changes to the Minimum Purchase Quantity requirements and allowing transfers of Minimum Purchase Quantities; and

**WHEREAS**, at the time the Amended and Restated Water Supply Agreement was approved, the Parties expressed a collective interest in working together to develop a process for the expedited and permanent transfer of Minimum Purchase Quantities; and

**WHEREAS**, in 2019, the Wholesale Customers directed BAWSCA to draft a proposed amendment to the Amended and Restated Water Supply Agreement to provide a procedure for expedited and permanent transfers of Minimum Purchase Quantities that safeguards the financial and water supply interests of Wholesale Customers not participating in such transfers; and

**WHEREAS**, the Parties recognize that, both before and after the most recent statewide drought, after meeting drought-related conservation mandates, several BAWSCA member agencies were unable to meet their respective Minimum Purchase requirements described in Article 3.07 of the Amended and Restated Water Supply Agreement, which requires payment for water up to the required Minimum Purchase level even if such water is not delivered and used; and

**WHEREAS**, several of the Wholesale Customers with Minimum Purchase requirements might be interested in transferring a portion of their Minimum Purchase Quantity within their respective ISGs to reduce the financial obligation to pay for imputed sales for Minimum Purchase water that is not used; and

**WHEREAS**, with its Alternative Water Supply Program, the SFPUC is in the early stages of planning for fourteen 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 City of San Jose (San Jose) and the City of Santa Clara (Santa Clara) are temporary, interruptible Wholesale Customers of the SFPUC Regional Water System and both cities wish to become permanent Wholesale Customers; and

**WHEREAS**, pursuant to Section 4.06 of the Amended and Restated Water Supply Agreement, by December 31, 2028, San Francisco must complete any necessary California Environmental Quality Act (CEQA) review and must decide whether or not to make San Jose and Santa Clara permanent Wholesale Customers of the Regional Water System with a combined Individual Supply Guarantee (ISG) of 9 million gallons per day (MGD) allocated equally between the two cities, as well as how much water in excess of 9 MGD it will supply to San Jose and Santa Clara; and



**WHEREAS**, Section 4.06 of the Amended and Restated Water Supply Agreement provides: "San Francisco will make San Jose and Santa Clara permanent customers only if, and to the extent that, San Francisco determines that Regional Water System long term water supplies are available;" and

**WHEREAS**, according to SFPUC's December 2021 Alternative Water Supply Planning Quarterly Update (Quarterly Update), "[f]or San Jose and Santa Clara to become permanent customers of the SFPUC, an additional 9 MGD of new, year-round supplies would be needed to meet historic demand levels and up to 15.5 MGD would be needed to meet planned demand through 2045;" and

**WHEREAS**, according to its December Quarterly Update, SFPUC is planning with the "intention to be able to make San Jose and Santa Clara permanent customers," but is prioritizing instream flow obligations to meet existing permanent customer demands, including drought supplies; and

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

**WHEREAS**, SFPUC, San Jose, Santa Clara, and BAWSCA are actively working together to consider water supply projects that may offer potential sources of supply to support San Jose and Santa Clara as permanent Wholesale Customers; 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**, a Minimum Purchase Customer might be more inclined to transfer a portion of its ISG to another Wholesale Customer under Section 3.04 of the Amended and Restated Water Supply Agreement if it was able to include a simultaneous transfer of a portion of its Minimum Purchase requirement and the associated financial obligation; 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 support San Jose and Santa Clara as permanent Wholesale Customers; and

**WHEREAS**, the Parties have developed a process to allow for the transfer of a Wholesale Customer's Minimum Purchase Quantity 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**, the Parties agree that the total aggregate amount of Minimum Purchase Quantity that may be transferred by all of 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**, the Parties agree to consider a proposal by the City of Mountain View (Mountain View) and the City of East Palo Alto (East Palo Alto) to amend the Amended and Restated Water Supply Agreement to allow for the conversion of Mountain View's 2017 sale of 1 MGD of ISG to East Palo Alto into a transfer of 1 MGD of Mountain View's ISG that includes Minimum Purchase Quantity to East Palo Alto, over a period of time, and in a

manner that protects the other Wholesale Customers' financial and water supply interests; and

**WHEREAS**, if such a conversion is approved by the Parties, the 1 MGD of Mountain View's Minimum Purchase Quantity would be counted towards the total aggregate 6 MGD cap on Minimum Purchase Quantity transfers; and

**WHEREAS**, the Parties now desire to adopt an amendment to the Amended and Restated Water Supply Agreement to permit Wholesale Customers with an ISG to transfer, or accept a transfer, of both a portion of a Wholesale Customer's ISG and its Minimum Purchase Quantity; 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, THE BOARD OF DIRECTORS OF THE GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT RESOLVES AS FOLLOWS:**

1. The Board 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 2021 (2021 Amended and Restated Water Supply Agreement).

2. The District 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.

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Coleen Mackin, Chair

\* \* \* \*

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors held on the \_\_\_\_ day of \_\_\_\_\_ 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Ingrid Padilla, Clerk of the Board

RESOLUTION NO. GVMID 2022-\_\_

**REDLINE COMPARING 2018 AMENDED AND RESTATED WATER SUPPLY AGREEMENT  
TO MINIMUM PURCHASE AMENDMENT: SECTIONS 3.04, 3.07, AND 2.03**

**3.04 Permanent Transfers of Individual Supply Guarantees and Minimum Annual Purchase Quantities**

A. A Wholesale Customer that has an Individual Supply Guarantee may transfer a portion of it to one or more other Wholesale Customers, as provided in this section.

B. Transfers of a portion of an Individual Supply Guarantee must be permanent, as opposed to temporary or time-limited. Notwithstanding the previous sentence, a portion of an Individual Supply Guarantee that has been transferred under this section may be included in another transfer under this section at a later date. The minimum quantity that may be transferred is 1/10th of a MGD.

C. Transfers of a portion of a Minimum Annual Purchase Quantity may be included in transfers of a portion of an Individual Supply Guarantee and are subject to the same requirements for Individual Supply Guarantee transfers in this section as well as the following conditions:

1. Transferor of Minimum Annual Purchase Quantity. A Wholesale Customer subject to the minimum annual purchase requirements of Section 3.07.C may transfer both a portion of its Individual Supply Guarantee and a portion of its Minimum Annual Purchase Quantity to one or more Wholesale Customers that have an Individual Supply Guarantee. The process by which such a transfer may be proposed and approved is set forth in subparts D and E of this section. A Wholesale Customer that had a Minimum Annual Purchase Quantity at the start of the Term of this Agreement may not cumulatively transfer, over the course of one or multiple transfers, more than half (50%) of its Minimum Annual Purchase Quantity as first specified in Attachment E at the start of the Term of this Agreement. Wholesale Customers that had a Minimum Annual Purchase Quantity at the start of the Term of this Agreement may not cumulatively transfer, over the course of one or multiple transfers, more than 6 MGD of the total aggregate Minimum Annual Purchase Quantity specified in Attachment E at the start of the Term of this Agreement. A Wholesale Customer that received a Minimum Annual Purchase Quantity through a transfer under this section may cumulatively transfer, over the course of one or multiple transfers, a portion of or all of the Minimum Annual Purchase Quantity it received pursuant to this section. The effect of such a transfer will be a reduction in the transferor's Individual Supply Guarantee, specified in Attachment C, and a reduction in the transferor's

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Minimum Annual Purchase Quantity, specified in Attachment E. The SFPUC and BAWSCA will update Attachments C and E to reflect such changes, pursuant to Section 3.04.F. The reduction in the transferor's permanent Minimum Annual Purchase Quantity shall become effective in the same fiscal year in which the transfer becomes effective.

2. Transferee of Minimum Annual Purchase Quantity. A Wholesale Customer that has an Individual Supply Guarantee may be the recipient, or transferee, of both a portion of Individual Supply Guarantee and a portion of Minimum Annual Purchase Quantity from another Wholesale Customer that has an Individual Supply Guarantee, whether or not the transferee is already subject to the minimum annual purchase requirements of Section 3.07.C. When such a transfer is approved and effective, the transferee will initially have a revised Individual Supply Guarantee and a Temporary Modified Minimum Annual Purchase Quantity, which will be reflected on Attachments C and E-1, respectively, pursuant to Section 3.04.F. A Temporary Modified Minimum Annual Purchase Quantity will become effective in the same fiscal year in which the transfer becomes effective. The transferee's Temporary Modified Minimum Annual Purchase Quantity will ultimately be replaced by a permanent Minimum Annual Purchase Quantity, as described in this sub-section, which will be reflected on Attachment E pursuant to Section 3.04.F.

3. Calculation of Temporary Modified Minimum Annual Purchase Quantity. The Temporary Modified Minimum Annual Purchase Quantity that a transferee receives from a transfer under this sub-section is the sum of (1) the average annual (fiscal year) quantity of water purchased by the transferee from the SFPUC (plus Imputed Sales, if applicable) in the most recent five previous non-drought fiscal years, plus (2) the relevant reduction in the transferor's Minimum Annual Purchase Quantity. For this calculation, the five previous non-drought fiscal years need not be consecutive. Notwithstanding the preceding sentences in this paragraph, if a transferee has an existing Temporary Modified Minimum Annual Purchase Quantity at the time of a new transfer under this sub-section, the transferee's new Temporary Modified Minimum Annual Purchase Quantity under the new transfer will be the sum of (1) the transferee's existing Temporary Modified Minimum Annual Purchase Quantity, plus (2) the relevant reduction in the transferor's Minimum Annual Purchase Quantity. Attachment E-2 contains sample calculations of the Temporary Modified Minimum Annual Purchase Quantity for transferees who are subject to, or not yet subject to, the minimum annual purchase requirements of Section 3.07.C.

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4. Duration and Expiration of Temporary Modified Minimum Annual Purchase Quantity.

a. Once a transfer under this sub-section is approved and effective, the transferee is required to purchase from the SFPUC its Temporary Modified Minimum Annual Purchase Quantity until the quantity of water delivered annually to the transferee by the SFPUC meets or exceeds the Temporary Modified Minimum Annual Purchase Quantity for three consecutive fiscal years. It may take many years for the quantity of water delivered to meet or exceed this amount. The transferee's Temporary Modified Minimum Annual Purchase Quantity is subject to waiver by the SFPUC as described in Section 3.07.C. However, even in the event of such a waiver, a fiscal year in which the transferee still purchases from the SFPUC an amount of water that meets or exceeds its Temporary Modified Minimum Annual Purchase Quantity will count as a fiscal year in which the transferee has met or exceeded its Temporary Modified Minimum Annual Purchase Quantity for the purposes of this paragraph.

b. Once the quantity of water delivered to the transferee by the SFPUC reaches the milestone described in the preceding paragraph, the transferee will no longer be subject to the Temporary Modified Minimum Annual Purchase Quantity. Instead, the transferee will have a new permanent Minimum Annual Purchase Quantity, which will equal the sum of (1) its previous Minimum Annual Purchase Quantity, if applicable, plus (2) the relevant reduction in the transferor's Minimum Annual Purchase Quantity. The transferee's new permanent Minimum Annual Purchase Quantity will be reflected on Attachment E, and its expired Temporary Modified Minimum Annual Purchase Quantity will be removed from Attachment E-1, pursuant to Section 3.04.F. Any other Temporary Modified Minimum Annual Purchase Quantities of the transferee will remain in effect on Attachment E-1.

D. Transfers of portions of Individual Supply Guarantees, including transfers of portions of Minimum Annual Purchase Quantities, are subject to approval by the SFPUC.

SFPUC review is limited to determining (1) whether a proposed transfer complies with the Act, and (2) whether the affected facilities in the Regional Water System have sufficient capacity to accommodate delivery of the increased amount of water to the proposed transferee.

E. The participants in a proposed transfer shall provide written notice to the SFPUC and BAWSCA specifying (1) the amount of the Individual Supply Guarantee proposed to be transferred, (2) the proposed effective date of the transfer, which shall not be less than 60 days

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after the notice is submitted to the SFPUC, and (3) the Individual Supply Guarantees of both participants resulting from the transfer. [If a proposed transfer includes the transfer of a portion of Minimum Annual Purchase Quantity, then the participants will provide additional written notice specifying \(4\) the amount of the Minimum Annual Purchase Quantity proposed to be transferred, \(5\) transferee's Temporary Modified Minimum Annual Purchase Quantity and permanent Minimum Annual Purchase Quantity under the transfer, and \(6\) the transferor's new Minimum Annual Purchase Quantity under the transfer.](#) The SFPUC may require that the participants in any proposed transfer provide additional information reasonably necessary to evaluate the operational impacts of the ~~transfer.~~proposed transfer and any additional information that will assist the SFPUC in its review of the proposed transfer. The SFPUC will not unreasonably withhold or delay its approval of a proposed transfer; if the SFPUC does not act on the written notice provided by the participants within 60 days, the transfer will be deemed to have been approved. An approved transfer becomes effective on the proposed effective date set forth in the written notice of the proposed transfer provided to the SFPUC and BAWSCA.

F. Within 30 days after the transfer has become effective, both the transferor and the transferee will provide written notice to the SFPUC and BAWSCA. By September 30 of each year during the Term, the SFPUC and BAWSCA will prepare an updated Attachment C, and updated Attachments E and E-1 where applicable, to reflect the effects of transfers occurring during the immediately preceding fiscal year. By September 30 of each year during the Term, the Individual Water Sales Contracts between San Francisco and any Wholesale Customers who are participants in a transfer under this Section will be amended with the written concurrence of San Francisco and those Wholesale Customers to reflect the effects of transfers occurring during the immediately preceding fiscal year, as necessary.

G. Amounts transferred will remain subject to pro rata reduction under the circumstances described in Section 3.02.C and according to the formula set forth in Attachment D.

H. A proposed transfer that does not satisfy the requirements of this section may be presented as an amendment to this Agreement pursuant to Section 2.03.



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**3.07 Restrictions on Purchases of Water from Others; Minimum Annual Purchases**

A. Each Wholesale Customer (except for Alameda County Water District and the cities of Milpitas, Mountain View and Sunnyvale) agrees that it will not contract for, purchase or receive, with or without compensation, directly or indirectly, from any person, corporation, governmental agency or other entity, any water for delivery or use within its service area without the prior written consent of San Francisco.

B. The prohibition in subsection A does not apply to:

1. recycled water;
2. water necessary on an emergency and temporary basis, provided that the Wholesale Customer promptly gives San Francisco notice of the nature of the emergency, the amount of water that has been or is to be purchased, and the expected duration of the emergency; or
3. water in excess of a Wholesale Customer's Individual Supply Guarantee.

C. Alameda County Water District and the cities of Milpitas, Mountain View and Sunnyvale may purchase water from sources other than San Francisco, provided that San Francisco shall require that each purchase a minimum annual quantity of water from San Francisco. ~~These minimum quantities~~ Minimum Annual Purchase Quantities are set out in Attachment E and shall also be included in the Individual Water Sales Contracts between San Francisco and each of these four Wholesale Customers. ~~The minimum purchase requirement in these Individual Water Sales Contracts~~ Pursuant to Section 3.04, certain Wholesale Customers may also be required to purchase Temporary Modified Minimum Annual Purchase Quantities, set out in Attachment E-1, from San Francisco. Attachment E will be updated pursuant to Section 3.04 to reflect any reduction in existing Minimum Annual Purchase Quantities and any addition of new Minimum Annual Purchase Quantities when Temporary Modified Minimum Annual Purchase Quantities expire and are removed from Attachment E-1; Individual Water Sales Contracts between San Francisco and any Wholesale Customers who are participants in a transfer under Section 3.04 will similarly be amended, as necessary. After the end of each fiscal year, the SFPUC will send a written notice to each Wholesale Customer that is subject to the minimum annual purchase requirements of this section with a copy to BAWSCA. The notice will include: (1) the quantity of water delivered to the Wholesale Customer during the previous fiscal year; (2) whether or not the Wholesale Customer met its minimum annual purchase

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requirement under this section; (3) any Imputed Sales charged to the Wholesale Customer; and (4) the status of any Temporary Modified Minimum Annual Purchase Quantity of the Wholesale Customer, if applicable. The minimum annual purchase requirements set out in Attachments E and E-1 will be waived during a Drought or other period of water shortage if the water San Francisco makes available to these Wholesale Customers is less than its ~~minimum purchase quantity~~-Minimum Annual Purchase Quantity, and may be waived during a state of emergency declared by the Governor of California that impacts water supply use or deliveries from the Regional Water System.

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**2.03 Amendments**

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**C. Amendments to Attachments.** The following attachments may be amended with the written concurrence of San Francisco and BAWSCA on behalf of the Wholesale Customers:

<u>Attachment</u>	<u>Name</u>
<u>C</u>	<u>Individual Supply Guarantees (amendments reflecting section 3.04 transfers only)</u>
<u>E</u>	<u>Minimum Annual Purchase Quantities (amendments reflecting section 3.04 transfers only)</u>
<u>E-1</u>	<u>Temporary Modified Minimum Annual Purchase Quantities</u>
G	Water Quality Notification and Communications Plan (2019 Update of 2017 Plan, Rev. 6)
J	Water Use Measurement and Tabulation
L-1	Identification of WSIP Projects as Regional/Retail
N-1	Balancing Account/Rate Setting Calculation Table
N-2	Wholesale Revenue Requirement Schedules
N-3	Schedule of Projected Water Sales, Wholesale Revenue Requirement and Wholesale Rates
P	Management Representation Letter
R	Classification of Existing System Assets (Subject to Section 5.11)

Amendments to these attachments shall be approved on behalf of San Francisco by the Commission and on behalf of BAWSCA by its Board of Directors, unless the Commission by resolution delegates such authority to the General Manager of the SFPUC or the Board of Directors by resolution delegates such authority to the General Manager/CEO of BAWSCA.