

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE MAKING OF A PREPAYMENT UNDER A WATER SUPPLY AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO AND RELATED MATTERS

WHEREAS, the City and County of San Francisco (“San Francisco”) and wholesale water customers of San Francisco in Alameda County, San Mateo County and Santa Clara County (the “Wholesale Customers”), including the City of Milpitas (the “City”), have entered into a Water Supply Agreement, dated July 2009 (the “WSA”), providing for the sale of water by San Francisco to the Wholesale Customers; and

WHEREAS, the City and other Wholesale Customers are members of the Bay Area Water Supply and Conservation Agency (“BAWSCA”); and

WHEREAS, pursuant to the terms of the WSA, the cost of water paid by the Wholesale Customers (including the City) includes a component designed to provide San Francisco capital cost recovery for existing regional assets (“ERA Payments”); and

WHEREAS, the WSA provides that the Wholesale Customers, acting through BAWSCA, may prepay the remaining principal balance of the ERA Payments, in whole or in part; and

WHEREAS, substantial savings over the term of the WSA may be achievable through the prepayment through BAWSCA (the “Prepayment”) of the ERA Payments to be made by Wholesale Customers participating in such Prepayment (the “Prepayment Participants”); and

WHEREAS, BAWSCA proposes to finance the Prepayment through an issuance of revenue bonds (the “Bonds”) by BAWSCA; and

WHEREAS, to pay debt service on the Bonds, to maintain required reserves and to satisfy BAWSCA’s other obligations related to the Bonds, BAWSCA will impose charges on Prepayment Participants, which may be in the form of surcharges on water sold by San Francisco to Prepayment Participants under the WSA (the “Surcharge”); and

WHEREAS, the Surcharge is expected to be payable by the Prepayment Participants to San Francisco (for delivery to BAWSCA) together with the Prepayment Participants’ other payments to San Francisco under the WSA; and

WHEREAS, the issuance of the Bonds and the making of the Prepayment are subject to a variety of conditions, including a determination by BAWSCA that savings for Prepayment Participants can be achieved thereby; and

WHEREAS, this City Council has determined that it is in the best interests of the City for the City to be a Prepayment Participant.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other

materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

- 2. The City hereby elects to be a Prepayment Participant and hereby authorizes BAWSCA to make the Prepayment on behalf of the City.
- 3. The Council of the City are each, acting individually, hereby authorized and directed to take, for and on behalf of the City, all such actions by the City as shall be necessary to enable BAWSCA to issue and sell the Bonds and make the Prepayment, including, without limitation, the following actions:
 - (A) Certify that the Prepayment has been duly authorized by the City and will not violate any law or agreement (including agreements respecting obligations providing for the issuance of debt secured by the revenues of the City’s water enterprise);
 - [(B) Certify that payment of the Surcharge by the City will constitute an operation and maintenance expense of the City’s water enterprise payable from the revenues of the City’s water enterprise prior to the payment of obligations payable from the net revenues of the City’s water enterprise.
 - (C) Certify that any information respecting the City and the City’s water enterprise and the financial and operating data respecting the City’s water enterprise included or incorporated by reference in the Official Statement delivered by BAWSCA in connection with the sale and issuance of the Bonds is true and correct; and
 - (D) Execute and deliver any continuing disclosure undertaking, or agreement to assist BAWSCA in connection with any BAWSCA continuing disclosure undertaking required in connection with the sale of the Bonds.
- 4. All actions heretofore taken by any officers, employees, or agents of the City with respect to the Prepayment and the Bonds are hereby approved, confirmed and ratified; and the City Manager and any such other officers, employees, or agents of the City as may be authorized by the City Manager are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, which they, or any of them, may deem necessary or desirable to carry out, give effect to and comply with the terms and intent of this Resolution.
- 5. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this . day of _____ 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney