

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AN AMENDMENT TO THE WATER SUPPLY AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO**

**WHEREAS**, the City and County of San Francisco, acting by and through its Public Utilities Commission, entered into a Water Supply Agreement with Wholesale Customers in Alameda County, San Mateo County and Santa Clara County in June 2009 (WSA); and

**WHEREAS**, Proposition F, the "Water Sustainability and Environmental Restoration Act," appeared on the San Francisco November 2012 ballot and, if it had been enacted, would have required the City of San Francisco to evaluate how to drain Hetch Hetchy Reservoir; and

**WHEREAS**, the San Francisco Charter acknowledges that the Hetch Hetchy Water System, including O'Shaughnessy Dam, is an irreplaceable asset such that San Francisco could not drain Hetch Hetchy Reservoir or abandon or decommission O'Shaughnessy Dam absent a Charter amendment as well as additional regulatory and administrative approvals; and

**WHEREAS**, the parties, at the time of entering into the WSA, contemplated that Hetch Hetchy Reservoir and O'Shaughnessy Dam were both integral parts of the Regional Water System and were considered Existing Assets as that term is used in the WSA, and were included in the calculation of the Wholesale Revenue Requirement; and

**WHEREAS**, the parties, at the time of entering into the WSA, also contemplated that the reliability and quality of the water to be delivered was premised on the shared assumption of the continued use of Hetch Hetchy Reservoir and O'Shaughnessy Dam as integral components of the Regional Water System; and

**WHEREAS**, the parties, at the time of entering into the WSA, did not contemplate that an alternate water delivery system created as a result of draining Hetch Hetchy Reservoir, or abandoning or decommissioning O'Shaughnessy Dam, would be considered part of a New Regional Assets described by the WSA; and

**WHEREAS**, the parties now desire to amend the WSA to reaffirm the water reliability and quality requirements set forth therein, and to acknowledge that Hetch Hetchy Reservoir and O'Shaughnessy Dam will continue to be used as integral components of the Regional Water System, unless both San Francisco and the Wholesale Customers approve any alternate water storage and delivery system to be used for delivery of water under the WSA; and

**WHEREAS**, said amendment to the WSA was approved by the San Francisco Public Utilities Commission on January 22, 2013 and its General Manager was authorized to execute it, provided the amendment is approved by the Wholesale Customers; and

**WHEREAS**, the City Manager recommends the approval of the attached amendment.

**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 attached amendment to the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County (Amendment) is approved.
- 3. The City Manager is authorized and directed to execute the Amendment, in the form attached hereto, on behalf of the City.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**WATER SUPPLY AGREEMENT**  
**between**  
**THE CITY AND COUNTY OF SAN FRANCISCO**  
**and**  
**WHOLESALE CUSTOMERS**  
**in**  
**ALAMEDA COUNTY, SAN MATEO COUNTY AND**  
**SANTA CLARA COUNTY**

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**AMENDMENT NO. 1**

THIS AMENDMENT modifies the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County ("Water Supply Agreement"), which is dated July, 2009.

WHEREAS, the Parties desire to amend the Water Supply Agreement to assure that the existing condition of Hetch Hetchy Reservoir is maintained unless the Parties agree to a further amendment to the Water Supply Agreement that meets certain conditions; and

WHEREAS, except for those changes expressly specified in this First Amendment, all other provisions, requirements, conditions, and sections of the Water Supply Agreement shall remain in full force and effect.

THE PARTIES AGREE to amend the Water Supply Agreement by adding a new Section 3.18 to Article 3, Water Supply.

**Section 3.18 Water Supply Agreement Amendment Required**

San Francisco may not change the existing condition of the Hetch Hetchy Reservoir by:

- (1) abandoning or decommissioning O'Shaughnessy Dam; or
- (2) draining Hetch Hetchy Reservoir, except for purposes of (i) repair, rehabilitation, maintenance, improvement, or reconstruction of O'Shaughnessy Dam or appurtenances, (ii) supplying water to the Bay Area during drought, or (iii) meeting water release requirements under the Raker Act, or federal or state law,

unless the parties enter into an amendment to the Water Supply Agreement, in full force and effect, adopted in accordance with Section 2.03.

The amendment shall state, or restate, as the case may be:

- A. The level of service goals for seismic reliability and delivery reliability adopted by the Commission in conjunction with such proposed changes to the Regional Water System, provided such goals are at least as protective of the Wholesale Customers as the level of service goals adopted by the Commission on October 30, 2008 in conjunction with the WSIP;
- B. The level of water quality to be delivered, which is currently provided for in Section 3.08, and
- C. The specific cost allocation procedures, written as an amendment to Article 5, which apply to (1) the abandonment or decommissioning of O'Shaughnessy Dam, or (2) the draining of Hetch Hetchy Reservoir, and (3) the development, operation and maintenance of New Regional Assets that may be required to replace water supplied by Hetch Hetchy Reservoir and delivered to the Bay Area.

In the event that the parties are not able to agree upon and approve an amendment to the Water Supply Agreement as set forth above, San Francisco may not abandon or decommission O'Shaughnessy Dam or drain Hetch Hetchy Reservoir.

IN WITNESS WHEREOF the parties have executed this Amendment by their duly authorized officers.

**CITY AND COUNTY OF SAN FRANCISCO**  
Acting by and through its Public Utilities  
Commission

**CITY OF MILPITAS,**  
a municipal corporation

By: \_\_\_\_\_  
Harlan L. Kelly, Jr.  
General Manager

By: \_\_\_\_\_  
Thomas C. Williams  
City Manager

Date: \_\_\_\_\_, 2013

Date: \_\_\_\_\_, 2013

Approved by Commission Resolution  
No. 13-0022, adopted January 22, 2013

ATTEST:

\_\_\_\_\_  
Donna Hood  
Secretary to Commission

\_\_\_\_\_  
Mary Lavelle  
City Clerk

Approved as to form:

Approved as to form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Donn W. Furman  
Deputy City Attorney

\_\_\_\_\_  
Michael J. Ogaz  
City Attorney