

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
AUTHORIZING THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY TO  
INITIATE, DEFEND AND SETTLE ARBITRATION RELATED TO THE WATER SUPPLY  
AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO**

**WHEREAS**, in April 2003, the City of Milpitas (City) and other water suppliers in Alameda, San Mateo and Santa Clara counties established the Bay Area Water Supply and Conservation Agency (BAWSCA) as authorized by Water Code Section 81300 *et seq.* pursuant to State legislation enacted in 2002 (AB 2058); and

**WHEREAS**, the City is represented on the BAWSCA Board of Directors; and

**WHEREAS**, the City Council has previously approved the Water Supply Agreement in 2009 between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County (Agreement); and

**WHEREAS**, the Agreement specifically delegates, pursuant to Section 8.04.A., Wholesale Revenue Requirement review to BAWSCA; and

**WHEREAS**, all questions and disputes related to the Agreement are subject to judicial determination, except for the following matters, specified in Section 8.01.A., which are subject to mandatory, binding arbitration: (1) the determination of the Wholesale Revenue Requirement, (2) San Francisco Public Utilities Commission's (SFPUC's) adherence to accounting practices and conduct of the Compliance Audit, and (3) the SFPUC's classification of new assets for the purposes of determining the Wholesale Revenue Requirement; and

**WHEREAS**, the Agreement, pursuant to Section 8.04.C., provides that the Wholesale Customers may, with the consent of BAWSCA, delegate the authority to initiate, defend and settle arbitration of the matters provided for in Section 8.01.A. set forth above; and

**WHEREAS**, the BAWSCA Board of Directors has requested that the City delegate this authority to initiate, defend and settle arbitration solely for those limited matters in the Agreement that must be resolved through binding arbitration in order to protect the financial interests of the Wholesale Customers by ensuring they pay no more than their fair share of regional water system costs; and

**WHEREAS**, BAWSCA has the capabilities required to serve in this capacity by virtue of the expertise and qualifications of BAWSCA staff and consultants in relevant disciplines including civil engineering, water supply planning, finance, economics, accounting, and law; and

**WHEREAS**, BAWSCA will also finance the costs associated with such binding arbitration.

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

1. City appoints BAWSCA, acting through its Board of Directors, or its authorized designee, as its authorized representative to initiate, defend and settle arbitration for the matters that are subject to mandatory, binding arbitration in 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.

2. This appointment shall continue through the term of the Agreement, June 30, 2034, or as extended or renewed, or until revoked by the City Council.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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

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

APPROVED AS TO FORM:

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Michael J. Ogaz, City Attorney