Council Meeting: April 9, 2013

SUBJECT: Approval, by a Separate Resolution, of an Amendment to the Water Service Agreement with the City and County of San Francisco.

BACKGROUND
In June 2009, the City of Sunnyvale entered into a Water Supply Agreement (WSA) with the City and County of San Francisco and Wholesale Customers in Alameda, San Mateo, and Santa Clara Counties. The WSA sets forth the terms by which the 26 Wholesale Customers will purchase water from the San Francisco Regional Water System (System), which includes the Hetch Hetchy Reservoir (Reservoir).

During the 2012 election cycle, a group named Restore Hetch Hetchy placed an initiative before San Francisco voters that would have required the City and County of San Francisco to develop plans to drain the Reservoir and restore Hetch Hetchy Valley. The initiative was defeated, but the Restore Hetch Hetchy group announced that it would continue to pursue this goal.

The Wholesale Customers use two-thirds of the water provided by the System and pay two-thirds of the costs of building, operating, and maintaining the System. However, none of these water customers may vote on San Francisco ballot measures. As a result, there is uncertainty as to how the parties would address changes to the System in the event of a future abandonment or decommissioning of O'Shaughnessy Dam, which forms the Reservoir, or a draining of the Reservoir itself.

EXISTING POLICY

GOAL EM-1 Adequate Water Supplies - Acquire and manage water supplies so that existing and future reasonable demands for water, as projected in the 20-year forecast, are reliably met.

• Policy EM-1.1 Water Supply - Manage water supply to meet demands for potable water through the effective use of water supply agreements.
DISCUSSION
The City of Sunnyvale receives approximately 50% of its drinking water supply from the City and County of San Francisco.

In order to provide long-term protection for the Wholesale Customers, the Bay Area Water Supply & Conservation Agency (BAWSCA) and the City and County of San Francisco have developed an administrative solution, an Amendment to the WSA, which addresses water-supply reliability, water quality, and cost-allocation. This Amendment will ensure that the existing condition of the Reservoir is maintained unless the parties agree to a further amendment to the WSA that meets certain conditions. Notably, the Amendment provides that if the parties do not agree on any such amendment, San Francisco may not drain the Reservoir or abandon or decommission O'Shaughnessy Dam.

The City and County of San Francisco, acting by and through its Public Utilities Commission, approved the Amendment on January 22, 2013 (copy of Resolution No. 13-0022 attached) and authorized its General Manager to execute the Amendment, pending approval by the requisite number of the Wholesale Customers.

FISCAL IMPACT
There is no fiscal impact associated with approving the attached Resolution and executing the WSA Amendment with the City and County of San Francisco.

PUBLIC CONTACT
Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City’s Web site.

ALTERNATIVES
1) Approve the attached Resolution approving an Amendment to the Water Supply Agreement with the City and County of San Francisco.

2) Do not approve an Amendment to the Water Supply Agreement with the City and County of San Francisco.
RECOMMENDATION
Staff recommends Alternative 1: Approve the attached Resolution, approving an Amendment to the Water Supply Agreement with the City and County of San Francisco.

Reviewed by:

[Signature]
John Stufflebean, Director, Environmental Services Department
Prepared by: Mansour Nasser, Water & Sewer Systems Division Manager

Approved by:

[Signature]
Gary M. Luebbers
City Manager

Attachments
A) Resolution approving an Amendment to the Water Supply Agreement with the City and County of San Francisco.
B) San Francisco Public Utilities Commission Resolution No. 13-0022
RESOLUTION NO. _______

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE 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 November, 2012 ballot and, if 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, the amendment ("the Amendment") to the WSA, a copy of which is attached hereto as Exhibit A, 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 Amendment.
NOW, THEREFORE, BE IT RESOLVED:

1. The 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 is approved.

2. The City Manager is authorized and directed to execute the Amendment, in the form attached hereto, on behalf of the City.

Adopted by the City Council at a regular meeting held on _____, 2013, by the following vote:

AYES: 
NOES: 
ABSTAIN: 
ABSENT: 

ATTEST: 

APPROVED:

__________________________________________
City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

__________________________________________
Joan A. Borger, 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

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.
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

By: _______________________________  
Harlan L. Kelly, Jr.  
General Manager

Date: _______________________________, 2013

CITY OF SUNNYVALE,  
a Municipal Corporation

By: _______________________________  
Gary Luebbers  
City Manager

Date: _______________________________, 2013

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

Donna Hood  
Secretary to Commission

Kathleen Franco Simmons  
City Clerk

Approved as to form:

DENNIS J. HERRERA  
City Attorney

Approved as to form:

By: _______________________________  
Donn W. Furman  
Deputy City Attorney

City Attorney

ATTEST:

Kathleen Franco Simmons  
City Clerk

Approved as to form:
WHEREAS, in Resolution 09-0069 the Commission approved 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"); and

WHEREAS, on April 28, 2009, the Wholesale Customers approved the Water Supply Agreement pursuant to Section 2.03; and

WHEREAS, the Water Supply Agreement sets forth the terms by which the SFPUC will produce, and the Wholesale Customers will purchase, water from the Hetch Hetchy Regional Water System for a term of 25-years beginning on July 1, 2009; and

WHEREAS, Hetch Hetchy Reservoir is the source for 85% of the water produced on average by the Regional Water System and delivered to 2.6 million water users in San Francisco, San Mateo, Santa Clara and Alameda counties; and

WHEREAS, the Water Supply Agreement requires that the Regional Water System be kept in good working order and repair consistent with prudent utility practice and that the SFPUC will collaborate with the Wholesale Customers on how best to address possible impacts to water supply; and

WHEREAS, on November 6, 2012, San Francisco voters considered and rejected an initiative ordinance, Proposition F, that would have required the City to prepare a two-phase plan evaluating how to drain the Hetch Hetchy Reservoir and identifying replacement water sources; and

WHEREAS, the parties have determined that there is uncertainty as to how the parties would address changes to the Regional Water System in the event of future abandonment or decommissioning of O'Shaughnessy Dam or draining of Hetch Hetchy Reservoir; and

WHEREAS, the parties have negotiated an amendment to the Water Supply Agreement to assure 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; now, therefore, be it

RESOLVED, the amendment to the Water Supply Agreement serves a substantial public interest and it is in the interest of the SFPUC to amend the Water Supply Agreement with the Wholesale Customers; and, be it further

RESOLVED, the Commission hereby authorizes the General Manager to negotiate and execute an Amendment to the Water Supply Agreement on behalf of the SFPUC in substantially the form set forth in this Resolution, provided that the amendment is approved by the Wholesale Customers pursuant to Water Supply Agreement Section 2.03; and be it further

RESOLVED, the Commission directs staff to take all steps necessary to secure the approval of the Amendment to the Agreement by the Wholesale Customers; and recommends that the Wholesale Customers approve the amendment to the Agreement.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of January 22, 2013.

[Signature]
Secretary, Public Utilities Commission