

RESOLUTION NO. ____ -14

**A RESOLUTION OF THE CITY COUNCIL OF
SUNNYVALE APPOINTING THE BAY AREA WATER
SUPPLY AND CONSERVATION AGENCY AS
AUTHORIZED REPRESENTATIVE OF CITY 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 Sunnyvale (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 has previously 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 (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 member agencies will also finance the costs associated with such binding arbitration; and

WHEREAS, the City desires to appoint BAWSCA to initiate, defend and settle arbitration on City's behalf as it concerns binding arbitration in the Water Supply Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

1. The City hereby 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, as extended or renewed, or until revoked by the City Council.

Adopted by the City Council at a regular meeting held on _____, 2014, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

City Attorney