TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER
DEPARTMENT: UTILITIES
DATE: DECEMBER 12, 2005

SUBJECT: DELEGATION OF AUTHORITY TO THE CITY MANAGER TO EXECUTE CERTAIN DOCUMENTS FOR THE CITY OF PALO ALTO UNDER THE SETTLEMENT AGREEMENT AND MASTER WATER SALES CONTRACT WITH SAN FRANCISCO WHEN THE CITY ACTS AS A SUBURBAN REPRESENTATIVE

REQUEST
Staff recommends that the City Council delegate to the City Manager or his designee the authority to represent the City of Palo when the City acts as a suburban representative in its water contract with the City and County of San Francisco.

BACKGROUND
In 1984, after seventeen years of litigation over water pricing and related issues, Palo Alto and the other agencies and water districts who purchase water from the City and County of San Francisco (San Francisco) entered into a Settlement Agreement and Master Water Sales Contract (Master Contract) with San Francisco. The agencies and water districts that purchase water from San Francisco are collectively referred to in the Master Contract as the Suburban Purchasers. The Suburban Purchasers are the same as the agencies represented on the board of directors of the Bay Area Water Supply and Conservation Agency (BAWSCA).

Section 8.13 of the Master Contract identifies a subset of five of the Suburban Purchasers to be designated as “suburban representatives.” The suburban representatives (SRs) are selected by the Suburban Purchasers, or, if the Suburban Purchasers fail to select them, the SRs are the five Suburban Purchasers that use the largest amount of water during the prior fiscal year. The City of Palo Alto has been one of the five SRs since the Master Contract was signed.

Under the terms of the Master Contract, SRs monitor the implementation of rate-setting protocols. The SRs are designated to receive information from San Francisco such as annual budgets, annual calculation of the estimated cost to be allocated to the Suburban Purchasers (“the
Suburban Revenue Requirement”), annual projection of bond sales, estimated annual water consumption by San Francisco and the Suburban Purchasers, any proposed changes to the annual rates or rate structure, and the calculations of the interim and final Suburban Revenue Requirement. San Francisco is also required to notify the SRs if it proposes an emergency rate increase, changes its accounts or accounting practices, proposes to calculate the Suburban Revenue Requirement using estimates in the event of financial data being unavailable, or proposes to amend the “Rules and Regulations Governing Water Service to Customers of San Francisco.”

Occasionally, the SRs are required to review and approve documents, typically memoranda of understanding with San Francisco, that generally pertain to three matters:

1. How the annual compliance audit for the suburban revenue requirement shall be conducted;
2. Whether the Suburban Purchasers should demand arbitration with San Francisco for monies owed; and
3. Agreements setting the amount of money owed to the Suburban Purchasers or to be paid to San Francisco as a result of arbitration proceedings.

DISCUSSION
The City of Palo Alto has been one of the five SRs since the Master Contract was executed in 1984. Currently, the other SRs are the City of Redwood City, the City of Hayward, the Alameda County Water District, and the California Water Service Company, Inc.

Prior to the formation of BAWSCA, the staff person assigned as Palo Alto’s representative to the Bay Area Water Users Association (BAWUA), BAWSCA’s predecessor, signed various documents for the City of Palo Alto as an SR. After BAWSCA was formed, the person that the City Council appointed to the BAWSCA board of directors signed documents for the City of Palo Alto as an SR. In one case, arbitration was demanded by the five SRs in June 2002 regarding the calculation of the Suburban Revenue Requirement for Fiscal Year 1999-2000. This case was ultimately resolved when a final settlement agreement was executed in March 2004. In that case, the proposed settlement was taken to the Council, which authorized the Mayor to execute the final settlement agreement [CMR:186:04].

Staff wishes to clearly identify the individual who is authorized to sign for the City of Palo Alto as an SR, and the scope of that authorization. For documents that are sent to the City Council for its approval, the Mayor is the appropriate signer. However, for administrative actions implementing previously established Council policy, such as the Master Contract, a staff person should be assigned. Since BAWSCA is made up of Suburban Purchasers, both the BAWSCA director appointed by the City Council and the City’s staff liaison to BAWSCA were considered. However, BAWSCA is not a party to the Master Contract and the City’s actions as a SR are distinct from those of its BAWSCA director.

Since most of the matters dealt with in the Master Contract by the SRs are administrative in nature and do not require further Council direction, staff recommends that the City Manager, and
not the Mayor, be authorized to sign for the City of Palo Alto as a suburban representative under the Master Contract. However, staff also recommends that approval of certain matters remain a Council responsibility. Actions such as agreeing to guidelines for the conduct of the annual compliance audit and demanding arbitration will be delegated to the City Manager. However, any arbitration settlement or amendment of the Master Contract itself would require Council approval. The City Manager will inform the Council of any actions he may take under this delegation of authority through an information report to the Council.

**POLICY IMPLICATIONS**
Designating the City Manager to sign for the City of Palo Alto as a suburban representative for the Master Contract does not change existing City policies.

**ENVIRONMENTAL REVIEW**
Authorizing a person to sign for the City of Palo Alto as a suburban representative for the Master Contract does not constitute a project under the California Environmental Quality Act, therefore, no environmental assessment is required.

**ATTACHMENTS**
Resolution

**PREPARED BY:** Jane Ratchye, Senior Resource Planner

**DEPARTMENT HEAD:**

CARL YEATS
Director, Administrative Services

**CITY MANAGER APPROVAL:**

EMILY HARRISON
Assistant City Manager