SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. V-B**

FROM: Steve Mack, General Manager

Meeting Date : April 5, 2012

SUBJECT: DISCUSSION/ACTION RE APPROVAL OF RESOLUTION 12-07 APPROVING AN AMENDED AGREEMENT WITH THE RUSSIAN RIVER COUNTY SANITATION DISTRICT (RRCSD) TO PROVIDE FOR THE TOILET DIRECT INSTALL PROGRAM AND OTHER RELATED WATER CONSERVATION PROGRAMS

RECOMMENDED ACTION: Approve Resolution 12-07 which authorizes the General Manager to execute an amended agreement with the Russian River County Sanitation District (RRCSD) in which RRCSD will provide administration for certain water conservation programs, including a direct-install toilet program.

FISCAL IMPACT: No impact, the amount of funding agreed to by RRCSD is essentially unchanged.

DISCUSSION:

In November 2010, the District entered into an agreement with the RRCSD in which the District joined the California Urban Water Conservation Coalition (CUWCC) in return for RRSCD paying for the District's participation costs for 10 years, provide $10,000 per year for conservation rebates, and provide Sonoma County Water Agency (SCWA, SCWA is the parent agency for RRCSD; RRCSD staff are essentially SCWA staff) staff assistance in participating in the MOU for 10 years, and in preparation of the water conservation elements of the 2010, 2015, and 2020 Urban Water Management Plans (UWMP) required by the California Department of Water Resources. RRCSD needed the District to participate in the CUWCC as a requirement to be eligible for a low interest loan from the State.

The District and RRCSD/SCWA have had this agreement in effect since November 2010. We have joined CUWCC and SCWA has provided one annual $10,000 payment and paid the District's annual dues for CUWCC. SCWA staff also provided technical support and editorial assistance in completing the 2010 Urban Water Management Plan.

Since the agreement inception there has been interest in participating in water conservation programs administered by SCWA, in particular the direct install toilet program. Approximately 23 toilet rebates have been approved during this period. During discussions with SCWA staff on how to make the direct install program available to District customers who are not customers of RRCSD (RRCSD customers already have this program available to them) we determined it would be better if SCWA retained administration of the direct install program. Because the handling of the funds would be different, a revised agreement is necessary.

The major change of this agreement is that SCWA retains the funds earmarked for funding District water conservation programs which are $10,000 per year. After the agreement time period is completed, funds remaining will be transferred to the District. We discussed the possibility of extending the agreement at that point if we wish to continue our relationship – that is a discussion for another day in the future. The agreement allows for the flexibility for District participation in other water conservation programs administered by SCWA.

Resolution No. 12-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT APPROVING RESOLUTION 12-07 WHICH AUTHORIZES THE GENERAL MANAGER TO EXECUTE AN AGREEMENT WITH RUSSIAN RIVER COUNTY SANITATION DISTRICT WHICH AMENDS A PREVIOUS AGREEMENT AND ALLOWS THE DISTRICT TO PROVIDE A WIDER RANGE OF WATER CONSERVATION PROGRAMS INCLUDING A DIRECT INSTALL TOILET PROGRAM.

WHEREAS, in November 2010 Sweetwater Springs Water District (District) approved an agreement with the Russian River County Sanitation District (RRCSD) in which the District agreed to join the California Urban Water Conservation Coalition (CUWCC) in return for receiving assistance with the District's water conservation program; and

WHEREAS, the experience of the District since the beginning of the program has shown that a wider range of conservation programs, as administered by the Sonoma County Water Agency (SCWA) under contract with RRCSD, would provide better service to District customers; and

WHEREAS, SCWA is in agreement with providing that administration, including administration of a direct-install toilet program for customers not provided sewer service by the RRCSD; and

WHEREAS, the amended agreement attached as Exhibit 1 provides for the changes in the water conservation program and relationship between the District, RRCSD and SCWA.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Sweetwater Springs Water District authorizes the General Manager to execute the agreement with RRCSD substantially in the form attached hereto as Exhibit 1.

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted and passed by the Board of Directors of the SWEETWATER SPRINGS WATER DISTRICT, Sonoma County, California, at a meeting held on April 5, 2012, by the following vote.

Director	Aye	No
Sukey Robb-Wilder	_____	_____
Jim Quigley	_____	_____
Rich Holmer	_____	_____
Gaylord Schaap	_____	_____
Victoria Wikle	_____	_____

_____
Sukey Robb-Wilder
President of the Board of Directors

_____
Attest: Julie A. Kenny
Clerk of the Board of Directors

1832313.1

"Working Today for Water Tomorrow"
The Sonoma County Water Agency's Integrated Management Policy for ISO 9001 and 14001 states that we are committing to always improving, achieving customer satisfaction, total regulatory compliance, environmental stewardship, and resource management.

Exhibit 1. First Amended Agreement for Funding of Sweetwater Springs Water District Water Conservation Program

This Agreement is between the **Russian River County Sanitation District**, a body corporate and politic of the State of California (hereinafter "District"), and **Sweetwater Springs Water District** (hereinafter "SSWD"). The Effective Date of this Agreement, as amended by this First Amendment, is November 2, 2010.

RECITALS

A. District has received a regulatory order to make costly improvements to the Guerneville Wastewater Treatment Plant and has applied for a low cost loan from the State Revolving Loan Fund (SRF).
B. State Water Resources Control Board, which administers the SRF, requires that SSWD have an approved water conservation program as a condition of approval for the loan application submitted by District.
C. State Water Resources Control Board indicates that approval of the California Urban Water Conservation Council (CUWCC) Memorandum of Understanding (MOU) by SSWD would fulfill the requirement for a water conservation program.
D. Approval of the loan from the State Water Resources Control Board will reduce financing costs for the District for installation of a new wastewater disinfection system.
E. SSWD is willing to approve the CUWCC MOU in order to enable the District to obtain low cost financing from the State Water Resources Control Board.
F. Sonoma County Water Agency operates the District under contract. References to "District" employees are understood to be Sonoma County Water Agency employees acting on behalf of the District.
G. Sonoma County Water Agency has personnel experienced with working with the CUWCC MOU and can provide assistance to SSWD in compliance with the MOU and the conservation-related aspects of the 2010, 2015, and 2020 Urban Water Management Plans.
H. District is willing to reimburse certain of SSWD's costs of complying with the CUWCC MOU in order to make participation in the MOU have no effect on SSWD water rates, while achieving cost savings for District.
I. District and SSWD first entered into this Agreement on November 2, 2010.
J. SSWD applied to join CUWCC MOU on October 7, 2010 (per SSWD Resolution 10-19) and was accepted by CUWCC in December 2010 in accordance with the requirements of the original Agreement, dated November 2, 2010.

K. As part of the original Agreement, District was to provide SSWD $10,000 per year for five years commencing on November 2, 2010 to fund SSWD's water conservation program. A water conservation program is a requirement of the CUWCC MOU.
L. SSWD has determined that it does not have sufficient resources to expand its water conservation program approved June 4, 2009 by SSWD Resolution 09-14 and has asked District to administer elements of the SSWD program as needed.
M. District and SSWD do mutually agree that having District administer elements of SSWD's water conservation program would be in the best interests of both parties and that no additional costs will be incurred by District or SSWD in doing so.
N. The First Amended Agreement revises each party's responsibilities to reflect these changes.
O. This First Amended Agreement supersedes all previous agreements between SSWD and the District.

AGREEMENT

SSWD and District agree as follows:

1. RECITALS

A. The above recitals are true and correct.

2. COORDINATION

A. SSWD shall coordinate work with District's Representative. Contact information:

District	SSWD
District Representative: Brian Lee	SSWD Representative: Stephen F. Mack
404 Aviation Boulevard	PO Box 48
Santa Rosa, CA 95403-9019	Guerneville, CA 95446
Phone: 707-547-1918	Phone: 707-869-4000
Email: Brian.Lee@scwa.ca.gov	Email: smack@sweetwatersprings.com

3. SSWD'S RESPONSIBILITIES

A. CUWCC MOU: Apply to join the CUWCC MOU and work to implement conservation programs consistent with CUWCC requirements for the duration of this Agreement. SSWD shall apply to join the CUWCC MOU within fourteen (14) calendar days after the Effective Date of this Agreement.

B. Water Conservation Program: Assist District as follows with administration of elements of SSWD's water conservation program as described in SSWD Resolution 09-14:

1) Direction: Provide District Representative with requested policy and other direction regarding high-efficiency fixture direct -installation program and other mutually-agreed upon water conservation program elements. This includes explicit direction to suspend program or authorize additional costs when notified by District that 80% of annual budget has been expended.
2) Additional Costs: If SSWD chooses to fund the program in excess of the $10,000 annual funding provided by District, SSWD will provide such funds to District prior to the funds being expended by District.

3) Annual Summary: Assist District with District's annual SRF reporting requirements as follows: At the end of each program year, SSWD shall send a written summary to District's Representative to document how water conservation funds provided by District were used.

C. Invoicing: Invoices submitted to District by SSWD shall be clearly marked with Agreement title, TW 10/11-034A, District's account number 653105-7247, and District's order number 7493-2.

D. Record Keeping: SSWD will maintain complete and accurate records of all SSWD costs and transactions associated with performance of SSWD's responsibilities under this Agreement in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such records will be available to District at all reasonable times for inspection and analysis.

4. DISTRICT'S RESPONSIBILITIES

A. CUWCC Dues: Make payments in accordance with Paragraph 5A of this Agreement.

B. Staffing: Provide up to 15 days per year for 10 years of Water Programs Specialist labor including, but not limited to:

1) CUWCC Best Management Practices (BMPs): Assist SSWD in implementation of CUWCC BMPs, applying for BMP exemptions as required, and in submitting required reports to CUWCC on behalf of SSWD.

2) UWMP: Provide technical assistance with water conservation reporting requirements for SSWD Urban Water Management Plans for years 2010, 2015, and 2020.

C. Funding and Administration of Water Conservation Program Elements: District shall incorporate SSWD customers into District's existing water conservation programs when mutually agreed upon, and fund SSWD's participation in District's water conservation program(s) as specified in Paragraph 5.B of the Agreement.

1) Monthly Reports: District shall provide SSWD with monthly reports on balance remaining in each year's water conservation budget. When 80% of the annual funds have been expended, District will notify SSWD in writing and will hold SSWD customer participation in District programs until District receives written authorization from SSWD to resume the program for that year.

D. Record Keeping: District will maintain complete and accurate records of all District costs and transactions associated with performance of District's responsibilities under this Agreement in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such records will be available to SSWD at all reasonable times for inspection and analysis.

5. FUNDING

A. CUWCC Dues:

1) District shall reimburse SSWD for the cost of its membership dues to the CUWCC in the amount of up to $4,000 per year for 10 years starting in year 2010. Reimbursement shall not exceed $40,000 over the 10-year term.

2) SSWD shall invoice District annually for reimbursement of CUWCC dues expenses incurred by SSWD. Upon receipt, review, and approval of invoice, District will pay SSWD for CUWCC dues expenses as authorized herein and itemized in said invoice(s).

B. Water Conservation Program:

1) In support of SSWD's Water Conservation Program, District shall commit $10,000 per year for 5 years starting in calendar year 2010. District funding shall not exceed $50,000 over the 5-year period.
2) Funds may be used by District to implement elements of SSWD's water conservation program where mutually agreed upon and/or SSWD may invoice District for the funds to cover the cost of SSWD's water conservation program. Funds shall not be used for District staff costs.
3) If the final monthly statement for any year shows a positive balance, District shall apply remaining funds to the following year's balance. At the end of the fifth year, District shall refund any unused funds to SSWD. Said unused funds may only be used by SSWD for water conservation activities.

6. ADDITIONAL REQUIREMENTS

A. Authority to Amend Agreement: Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Notwithstanding this authority, neither District nor SSWD is under any obligation to approve such amendments.

B. No Waiver of Breach: The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

C. Construction: To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

SSWD and District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement; the language of the Agreement will not be construed against one party in favor of the other. SSWD and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

D. No Third-Party Beneficiaries: Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

E. Applicable Law and Forum: This Agreement shall be construed and interpreted according to the substantive law of California regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

F. Captions: The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

G. Merger: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No

modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

H. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

I. Changed Conditions: Should new statewide water conservation requirements be developed during the term of this Agreement, should CUWCC membership dues increase to more than $4,000 per year, or should CUWCC cease to lead statewide water conservation policy, District and SSWD will negotiate in good faith to amend this Agreement to meet the new requirements.

7. MUTUAL INDEMNIFICATION

A. Each party shall defend, indemnify, hold harmless, and release the other, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including the parties, arising out of or in connection with the negligent performance or willful misconduct of the indemnifying party arising out of or in connection with this Agreement; provided, however, that a party shall not be entitled to indemnification under this section for any actions, claims, damages, liabilities, or expenses arising out of that party's gross negligence or willful misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for SSWD or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. TERM OF AGREEMENT

A. This Agreement shall expire ten (10) years after the Effective Date, unless terminated earlier in accordance with the provisions of Article 9.

9. TERMINATION OF AGREEMENT

A. This Agreement, as amended, may be terminated by either party for any reason upon ninety (90) calendar days' written notice by either party. District's right to terminate may be exercised by District's General Manager.

B. Notwithstanding Paragraph 9.A above, the District may terminate this Agreement upon three (3) calendar days' notice if the State Water Resources Control Board revokes the District's SRF loan.

C. Termination for Cause: If either party fails to fulfill its obligations under this Agreement, the other party shall provide written notice of the alleged breach of the Agreement. If a breach has occurred and such breach is not corrected or otherwise resolved with thirty (30) calendar days after receipt of the written notice, the non-breaching party may terminate this Agreement.

D. If termination is effected pursuant to this Article 9, neither party shall be required to continue to meet the obligations set forth in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

Reviewed as to substance:

_____

Agency's Department Head

Reviewed as to funds by District:

_____

Division Manager - Administrative Services

Reviewed as to form:

_____

County Counsel

Sweetwater Springs Water District

By: _____

Stephen F. Mack, General Manager

Date: _____

Russian River County Sanitation District

By: _____

Chair, Board of Directors

Date: _____

Attest:

_____

Clerk of the Board of Directors

Exhibit A

Five-Year Water Conservation Program Budget

Contract Year	Dates	Amount	District Funds Source	Reimbursement as of 04/01/2012
Year 1	Nov.2 - Dec. 31, 2010	$10K	FY2010/11 budget	$10K
Year 2	Jan 1 – Dec 31, 2011	$10K	FY2011/12 budget	0
Year 3	Jan 1 – Dec 31, 2012	$10K	FY2012/13 budget	0
Year 4	Jan 1 – Dec 31, 2013	$10K	FY2013/14 budget	0
Year 5	Jan 1 – Dec 31, 2014	$10K	FY2014/15 budget	0