SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

Meeting Date: July 6, 2017

SUBJECT: APPROVAL OF RESOLUTION 17-12 AUTHORIZING THE ENGAGEMENT OF BOND COUNSEL IN CONNECTION WITH A LOAN TO BE MADE TO THE DISTRICT BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICES, FOR THE FINANCING OF CIP 2017, PHASES 2 AND 3

RECOMMENDED ACTION: Approve Resolution 17-12 which authorizes the General Manager to execute a professional services agreement with Kronick Moskovitz, Tiedemann & Girard for provision of Bond Counsel services to complete a loan obligation with USDA, RUS for construction of Phases 2 and 3 of the 2017 CIP.

FISCAL IMPACT: The agreement has a not to exceed amount of $20,000 plus out of pocket expenses which will be funded by the proceeds of the loan obligation.

DISCUSSION:
The District has agreed to move forward with a USDA loan obligation to fund completion of Phases 2 and 3 of the 2017 CIP. Phases 2 and 3 of the 2017 CIP are replacement of approximately 4,600 ft of existing main and 58 services on Old River Rd at Morningside east to the eastern section of Foothill Drive near where Old River Road intersects with River Road, and includes Orchard Rd and Foothill Drive. The USDA loan obligation will have a total value of approximately $1.8 million and will have a 40 year amortization. The bond will cost the District approximately $70,000 per year.

The bond counsel will be the lead person for completion of the USDA bond

Staff interviewed 3 bond counsel firms recommended by USDA and Brandis Tallman which has done public financing for the District in the past. Staff is recommending the selection of Kronick, Moskovitz, Tiedemann, & Girard. Attached is background information on the firm.

We would be working with attorney Jonathan Cristy, who had worked on over 20 USDA financings in the last 15 years. He believes financing can be completed in three to four months if everything goes according to plan. Construction is slated to begin next spring or summer.

1. Firm Overview

Kronick Moskovitz Tiedemann & Girard ("Kronick") was established in 1959 with a focus on representing public agencies in the areas of water and natural resources law. Kronick's founders, Stanley Kronick and Adolph Moskovitz, first met in 1950 as staff attorneys for the U.S. Bureau of Reclamation, where they formulated a water allocation plan that resulted in revisions to California's water policy, which became the basis for the water and hydroelectric projects implemented by then Governor Edmund G. Brown. The complexity of legal and governance issues related to water quickly led Kronick into other areas of public agency law, intensifying our experience throughout the complicated network of regulatory agencies and at every level of the state and federal court systems, including the United States Supreme Court. As Kronick's expertise expanded, the diversity of its client base grew.

Today, Kronick is a full-service law firm of over 40 attorneys with offices in Sacramento and Los Angeles counties. Our firm represents a large and diverse mix of private business and public sector clients throughout California in over 25 areas of practice, including municipal and public agency, construction and public works, natural resources and water, environmental and land use, climate change, eminent domain and inverse condemnation, trial and appellate litigation, insurance coverage, public finance, taxation, business, and labor and employment.

Our clients include local and state government agencies, including cities, counties, joint powers authorities and joint powers insurance authorities, school and community college districts, special districts, and water districts. We also represent small to mid-sized businesses, publicly traded companies, hospitals and health systems, federally qualified health centers and rural health clinics, landowners, developers, and private individuals.

2. Public Finance

The firm's public finance group was formed in 1987 as an outgrowth of the firm's public agency law department. As bond counsel, the group has served cities, water agencies, school districts, community college districts, community services districts, and other special districts. To date, our public finance attorneys have acted as bond counsel for over 350 issues for more than 110 different public agencies.

Our public finance attorneys have experience with, and have provided bond counsel services in connection with, the structuring and issuance of numerous types of obligations, including but not limited to:

- General Obligation Bonds
- Mello-Roos Bonds
- Tax Allocation Bonds
- Tax and Revenue Anticipation Notes
- Certificates of Participation
- Revenue Bonds
- Lease Revenue Bonds
- Bond Anticipation Notes
- Refunding Bonds

RESOLUTION NO. 17-12

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT AUTHORIZING THE ENGAGEMENT OF BOND COUNSEL IN CONNECTION WITH A LOAN TO BE MADE TO THE DISTRICT BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICES (USDA/RUS) FOR THE FINANCING OF CIP 2017, PHASES 2 AND 3

WHEREAS, the Sweetwater Springs Water District (the "District") has completed the application process and been approved by the USDA/RUS (Rural Utility Services) for the issuance of loan obligations totaling approximately $1.8 million to finance construction of CIP 2017, Phases 2 and 3; and

WHEREAS, the Board of Directors wishes at this time to authorize the engagement of bond counsel to complete the issuance and delivery of these loan obligations.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sweetwater Springs Water District as follows:

Section 1. Engagement of Professional Services. The firm of Kronick, Moskovitz, Tiedemann & Girard is hereby retained as Bond Counsel in connection with the authorization, issuance and delivery of obligations representing a loan by the USDA, Rural Utility Services (RUS). The General Manager of the District is hereby authorized and directed on behalf of the District to execute an Agreement with Bond Counsel, attached hereto as Exhibit A.

Section 2. Effective Date. This Resolution shall take effect from and after the date of approval and adoption thereof.

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 July 6, 2017, by the following vote:

Director	Aye	No
Sukey Robb-Wilder	_____	_____
Tim Lipinski	_____	_____
Gaylord Schaap	_____	_____
Richard Holmer	_____	_____
Pip Marquez de la Plata	_____	_____

_____
Pip Marquez de la Plata
Acting President of the Board of Directors

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

SWEETWATER SPRINGS WATER DISTRICT

AGREEMENT FOR BOND COUNSEL SERVICES

(2017 Installment Purchase Agreement)

This Agreement is between Kronick, Moskovitz, Tiedemann & Girard, a Professional Corporation (hereinafter "KMTG"), and the Sweetwater Springs Water District (hereinafter the "District"). The subject matter of the representation governed by this Agreement is described in Paragraph 1.

1. **Scope of Services**. The District retains KMTG under this Agreement to provide such legal services as necessary for the authorization, issuance, and delivery of obligations (the "obligations") representing a loan (the "loan") to be made to the District by the United States of America, acting through the Rural Utilities Service, United States Department of Agriculture ("RUS"). The obligations are expected to be installment purchase obligations represented by certificates of participation.

In particular, KMTG shall provide the following bond counsel services:

(a) Consult with the District and its administrative officers and assist in the implementation of the loan.

(b) Prepare all resolutions of the District Board of Directors and the governing board of the counterparty to the installment purchase agreement and other legal documents necessary for the authorization, issuance, sale, and delivery of the obligations.

(c) Prepare transcripts of the proceedings for the authorization, issuance, and delivery of the obligations.

(d) Upon due and proper completion of the proceedings, deliver our final approving opinion confirming the validity of the obligations and opinions that interest on the Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, under existing statutes, regulations, rulings, and court decisions.

2. **Services Outside the Scope of this Agreement**. KMTG's duties in this engagement are limited to those set forth in Paragraph 1. Among other things, KMTG has not undertaken to do any of the following:

(a) Render services under this Agreement in connection with compliance by the District with covenants in the financing documents after the closing, including arbitrage rebate.

(b) Render services under this Agreement with respect to any litigation concerning the financing.

If the District requests KMTG to provide any such services, compensation therefor shall be made and calculated at KMTG's hourly rate schedule for the type of services requested (public finance or litigation) in effect at the time such services are rendered.

3. **Commencement of Services**. KMTG's obligation to provide legal services under this Agreement shall commence upon KMTG's receipt of a copy of this Agreement signed and dated by the District.

4. **Completion of Services**. KMTG's representation of the District with respect to the obligations will be concluded upon their issuance. Nevertheless, subsequent to issuance, KMTG will prepare and distribute to the participants in the transaction a transcript of the proceedings.

5. **Duties of KMTG and the District**

(a) Duties of KMTG. KMTG shall provide those legal services reasonably required to represent the District in the matters described in Paragraph 1 of this Agreement. KMTG shall also take reasonable steps to keep the District informed of significant developments and to respond to the District's inquiries.

(b) Duties of the District. The District shall cooperate with KMTG, keep them informed of developments, perform the obligations it has agreed to perform under this Agreement, and pay KMTG's bills in a timely manner.

6. **KMTG Personnel**. While one attorney at KMTG may be primarily responsible for completing the work that is within the scope of this Agreement, that attorney may also delegate work to other attorneys, paralegals, law clerks and office personnel within KMTG when it is determined that such delegation is appropriate in representation of the District's interests. If the District so requests, the District will be notified prior to any delegation and a decision will be made in consultation with the District.

7. **Disclaimer of Guarantee**. KMTG cannot guarantee the successful conclusion of any legal matter. KMTG has made no promises or guarantees to the District about the outcome of the District's matters, and nothing in this Agreement shall be construed as such a promise or guarantee.

8. **Compensation**. For the bond counsel services described in Paragraph 1, KMTG will bill fees at the hourly rates set forth below, up to a maximum amount of $20,000, together with any related out-of-pocket expenses

Billing Professional	Rate Per Hour
Attorneys	$350
Paralegals	150

Except as provided in Section 12 (Termination), the fees and costs for the services relating to the issuance of the obligations will be payable at the time of the delivery of the obligations to RUS, solely from the proceeds of the obligations.

9. **Statements**. KMTG shall send the District a statement for its fees and costs at the time of issuance of the Bonds.

10. **Legal Action Upon Default**. If the District does not pay the balance when due or breaches any other terms of this Agreement, KMTG may commence any legal action for collection of the balance due. The District and KMTG agree that all legal proceedings related to the subject matter of this Agreement shall be maintained in courts sitting within the State of California, County of Sacramento. The District and KMTG agree that the jurisdiction and venue for such proceedings shall lie exclusively with such courts. Further, the prevailing party in any such dispute shall be entitled to reasonable costs, including attorneys' fees.

11. **Arbitration of Fee Dispute**. If a dispute arises between KMTG and the District regarding KMTG's fees or costs under this Agreement and KMTG files suit in any court, or begins an arbitration proceeding other than through the State Bar or a local bar association under Business and Professions Code Sections 6200-6206, the District will have the right to stay that suit or arbitration proceeding by timely electing to arbitrate the dispute through the State Bar or a local bar association under Business and Professions Code Sections 6200-6206, in which event KMTG must submit the matter to that arbitrator.

12. **Termination**. This Agreement may be terminated by the District or KMTG, or modified by mutual consent, at any time. KMTG and the District each agree to sign any documents reasonably necessary to complete KMTG's discharge or withdrawal. If the District terminates this Agreement, then the District shall pay KMTG a fee determined by the extent of the services rendered by KMTG to the date of the termination at the hourly rates specified in Section 8 (Compensation) above, together with KMTG's out-of-pocket expenses, but not in excess of the amounts specified in Section 8 (Compensation).

13. **The District's Files**. At the District's request, upon the termination of services under this Agreement, KMTG will promptly release all of the District's papers and property to the District (subject to any applicable protective orders or non-disclosure agreements).

14. **Destruction of the District's File**. If the District does not request the return of the District's papers and property, KMTG will retain the District's file for a period of seven years from the date of delivery of the Bonds, after which time KMTG may have the District's file destroyed. The District acknowledges that it will not be notified prior to the destruction of its papers and property and consents to the same. If the District desires to have the District's file maintained beyond seven years after the District's matter is concluded, separate arrangements with KMTG must be made.

15. **Modification by Subsequent Agreement**. This Agreement may be modified only by a written instrument signed by both parties.

KMTG:

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,
A Professional Corporation

DATED:_____ By: _____
Jonathan P. Cristy

DISTRICT:

SWEETWATER SPRINGS WATER DISTRICT

DATED:_____ By: _____