SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

Meeting Date: August 2, 2018

SUBJECT: APPROVAL OF RESOLUTION 18-11 AUTHORIZ ING EXECUTION OF LEASE FOR 15370 RIVER ROAD FOR BACKUP GENERATOR LOCATION

RECOMMENDED ACTION: Approve Resolution 18-11 which authorizes the General Manager to execute a lease with Mark Miller, owner of the parcel at 15370 River Road, Gueneville, for the purpose of formalizing the location of the backup generator for the El Bonita Well Field, and provide direction to staff.

FISCAL IMPACT: The cost of the twenty year lease is approximately $10,429 or $521.45 per year.

DISCUSSION:

The District's backup generator for the El Bonita Well Field has been located at 15370 River Road since the mid 1990''s on the Old River Road side of the parcel. This well field provides all the water for the Guerneville System and backup power generation is needed nearly every time power to this area fails. The location includes a power connection to the El Bonita Well Field which goes under River Road and also traverses the parcel underground. The District has no formal agreement to use this location for this purpose; prior owners have either agreed to the District locating the backup generator there or have not expressed an opinion.

The current owner, Mark Miller, has expressed a desire to have a formal lease and to receive payment for the lease in the form of a water connection to the District. The current capacity charge for new connections to the District is $6,529 and the 2018 CIP which will be going down Old River Road has a unit cost for a water connection to the new main of $3900. In our discussions Mr. Miller has agreed to a 20 year lease. Exhibit A is the current state of the proposed lease which Mr. Miller is currently reviewing.

Having a secure location for the backup generator for the El Bonita Well Field is essential. The District's use of the part of the parcel it uses disrupts the use of that parcel and it is reasonable for the parcel owner to have a formal agreement with some compensation. The amount agreed to in the proposed lease averages $521.45 over 20 years.

Staff recommends approval of Resolution 18-11 which authorizes the General Manager to execute the proposed lease (shown as Exhibit A) in substantially similar form.

Resolution No. 18-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT AUTHORIZING THE GENERAL MANAGER TO EXECUTE A LEASE AGREEMENT WITH MARK MILLER FOR A BACKUP GENERATOR SITE FOR THE EL BONITA WELLFIELD

WHEREAS, the District has a well field at the El Bonita site that requires a backup generator and that generator needs to be located out of the normal floodzone and flood way; and

WHEREAS, the District has located the backup generator at 15370 River Road, Guerneville, across River Road from the El Bonita Well Field; and

WHEREAS, the current owner of 15370 River Road wishes a formal agreement for the location of the generator and for payment wants a connection of his parcel at 15370 River Road to the District's water system; and

WHEREAS, it is essential that the District has a secure location for the needed backup generator for the El Bonita Well Field; and

WHEREAS, the cost of the connection to the District's water system is approximately $10,429 (capacity charge and costs of the physical connection) and Mr. Miller has agreed that that amount is adequate for a twenty (20) year lease.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Sweetwater Springs Water District authorizes the General Manager to execute a twenty (20) year lease for the location of the El Bonita backup generator in substantially the same form as presented in Exhibit A in return for that parcel to have the District connection fees waived.

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 August 2, 2018, by the following vote.

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

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

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

LEASE AGREEMENT
SM Draft 7-20-2018

This Lease Agreement ("Agreement") is made on _____, 20__, by and between Mark Miller ("Lessor"), and Sweetwater Springs Water District, a county water district duly formed and organized under the California County Water District Law ("Lessee"). Lessor and Lessee are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Lessor is the owner in fee simple of certain real property located at 15370 River Road in Sonoma County, California, APN 070-120-018 and as further depicted in Exhibit A ("Property"); and

WHEREAS, Lessee desires to use a portion of the Property for the operation and maintenance of its El Bonita emergency generator facility ("Facility"); and

WHEREAS, Said Facility includes a section of land within the parcel along Old River Road for location of the Sweetwater Springs Water District El Bonita emergency generator, a power connection near the location of the emergency generator, and a power line from the power connection which traverses the property underground in the direction of the El Bonita Well Field; and

WHEREAS, Lessor and Lessee desire to execute a lease agreement to permit Lessee to operate the Facility on the Property pursuant to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

1. **Grant of Lease.** Lessor leases to Lessee and Lessee leases from Lessor the Property on the terms and conditions set forth in this Agreement.

2. **Initial and Renewal Term.** This Agreement shall be for a term of twenty (20) years beginning on _____ (the "Commencement Date"), unless earlier terminated pursuant to Section 3. This Agreement may be renewed or extended for twenty (20) additional years on such terms as may be agreed upon by Lessor and Lessee. Rent for the renewal term shall be agreed upon no later than ninety__ (90) days prior to the end of the initial term.

3. **Rent.** Lessor shall receive from the Sweetwater Springs Water District a water connection and Water District Capacity Charge payment valued at approximately Ten Thousand Four Hundred Twenty-Nine Dollars ($10,429) as the full rent for the duration of the Term.

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4. **Use.** Lessee may use the Property for the construction, operation, maintenance, demolition, reconstruction, restoration or replacement of the Facility and access and uses incidental thereto. Lessee's use of the Property shall be in full compliance with all applicable federal, state, and local laws, ordinances, regulations, codes, and specifications.

5. **Governmental Approvals.** Lessor shall fully cooperate with Lessee's efforts to obtain and maintain in effect any and all necessary governmental approvals. Lessee shall perform all other acts and pay all reasonable expenses necessary to obtain any approvals deemed necessary by Lessee. Lessor agrees not to oppose any requests for such approvals that are otherwise in compliance with all applicable federal, state, and local laws, ordinances, regulations, codes, and specifications and agrees to execute in a timely manner any documentation related to such approvals.

6. **Indemnification and Insurance.** Except to the extent of Lessor's sole negligence or willful misconduct, and to the fullest extent permitted by law, Lessee hereby agrees to indemnify, hold harmless, protect, defend (with counsel reasonably acceptable to Lessor) Lessor and Lessor's employees, agents, contractors, consultants, and volunteers, from and against any and all claims, causes of action, liabilities, losses, costs, and damages, arising out of or related to any act, omission, or neglect of Lessee or its officers, directors, employees, agents, consultants, and contractors, or arising from or related to Lessee's use of or activities on or about the Property or construction, maintenance, repair or operation of improvements at the Property.

7. **Title to and Ownership of Improvements.** Title to and ownership of all improvements erected, constructed or installed by Lessee shall remain with Lessee. Lessee, upon termination or expiration of this Agreement, shall, within one hundred and eighty (180) days, remove all above-ground improvements, fixtures and personal property erected, constructed or installed on the Property by Lessee and restore the Property to its original above-grade condition, reasonable wear and tear or other conditions beyond Lessee's control excepted.

8. **Quiet Possession.** Lessor promises that so long as Lessee performs its obligations under this Agreement, Lessee shall peaceably and quietly have, hold and enjoy the Property, and the Lessor shall not act in any manner which would interfere with or disrupt Lessee's business or frustrate Lessee's use of the Property. Lessor warrants that Lessor has the full power and authority to enter into and execute this Agreement. Notwithstanding the above, Lessor shall have access to the Property twenty-four hours per day, 7 days per week, in order to inspect the premises.

9. **Access and Utilities.** Lessee, at Lessee's expense, shall have the right to install utilities and to improve any existing utilities on the Property (including, without limitation, the installation of emergency power generators). Lessee shall be solely responsible for the safe and proper use and operation of any such utilities.

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10. **Assignment Prohibited.** A Party may not assign all or any part of its interest in this Agreement or in the Property without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

11. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, signed receipt requested, or by First Class United States mail, certified, return receipt requested, addressed as follows:

To Lessee: Sweetwater Springs Water District
P.O. Box 48
Guerneville, CA 95446

To Lessor: Mark Miller
[address]

Notice shall be deemed effective on the date personally delivered or if mailed, three (3) days after deposit in the mail. Either Party may at any time change its address for notices by giving written notice of such change to the other Party in the manner provided in this Section 14.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of California. Any legal action to enforce any provision of this Agreement shall only be brought in the Superior Court of the County of Sonoma, California.

13. **Amendment, Renewal, or Extension**.

This Agreement may be amended, renewed, or extended, only by mutual written agreement of Lessor and Lessee.

14. **Attorneys' Fees.**

Should any legal action be brought by either Party for breach of this Agreement or to enforce or interpret any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

15 **Entire Lease Agreement.**

This Agreement represents the entire agreement between the Parties and any oral statement or representation made to either Party by the other Party shall not be binding. This Agreement may not be amended unless both Parties hereto execute a written amendment.

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IN WITNESS WHEREOF, Sweetwater Springs Water District, has authorized the execution of this Agreement by its General Manager by Resolution adopted by its Board of Directors on _____, 2018, and the Parties have duly executed this Agreement.

SWEETWATER SPRINGS WATER DISTRICT

By: _____
Stephen Mack, General Manger

LESSOR, MARK MILLER

By: _____

_____

Attest:

_____
Julie Kenny, Board Secretary

Approved as to form:

_____
Robin Donoghue, General Counsel

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EXHIBIT A. Description of Real Property

2986186.1

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