SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. III-D**

FROM: Steve Mack, General Manager

Meeting Date: August 4, 2011

SUBJECT: APPROVAL OF RESOLUTION 11-19 APPROVING A SIDE LETTER WITH INTERNATIONAL UNION OF OPERATING ENGINEERS, STATIONARY LOCAL 39 AMENDING THE CURRENT MEMORANDUM OF UNDERSTANDING

RECOMMENDED ACTION: Approve Resolution 11-19 which approves a Side Letter amending certain provisions of the current Memorandum of Understanding (MOU) with the International Union of Operating Engineers, Stationary Local 39 (Union), including adoption of agency shop status.

FISCAL IMPACT: none**.**

DISCUSSION:

International Union of Operating Engineers, Stationary Local 39 (Union) represents 5 District employees, including Maintenance Workers, Office Receptionist, and Water System Operators. The current MOU with the Union was approved on September 2, 2010 and is effective through June 2015.

This spring, District members of the Union petitioned the District to become an agency shop. "Agency Shop" means that all eligible District employees will have to be members of the Union and pay dues to the Union, or pay a service fee to the Union which will be a similar cost. California Government Code Section 3502 provides for implementation of agency shop for public agencies upon a petition by 20% of eligible employees and completion of either negotiations with the public agency or a majority vote by the eligible employees. District staff negotiated with a Union representative the proposed language included in Exhibit A and a majority of the eligible District employees approved agency shop status in an election held on July 21, 2011.

The occasion of the agency shop election and resulting side letter was an opportunity to amend minor errors in the recently approved MOU including:

- Corrections to Section 13. On Call Pay – the amounts listed for current on call pay are off by $5, and Section 16.B. - the table identifying health benefit amounts has the wrong amount for the current Employee +1.
- Specifies the District work week as Monday 7:30 am to Monday 7:29 am. This is what we currently follow, but it hasn't been included in prior documents.
- Defines domestic partner as registered domestic partner to be consistent with the State law definition.
- Extends the opportunity to convert overtime pay to compensatory time to all employees who earn overtime.

RESOLUTION 11-19

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT APPROVING A SIDE LETTER WITH INTERNATIONAL UNION OF OPERATING ENGINEERS, STATIONARY LOCAL 39 (UNION) REVISING CERTAIN ASPECTS OF THE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE UNION AND AUTHORIZING THE GENERAL MANAGER TO SIGN SAID LETTER

WHEREAS, the Sweetwater Springs Water District (District) and the International Union of Operating Engineers, Stationary Local 39 (Union) have had a longstanding representational relationship regarding District employees which relationship is reflected, in part, in the terms and conditions of the five-year Memorandum of Understanding (MOU) which was approved on September 2, 2010, and is effective through June 2015; and

WHEREAS, the District members of the Union petitioned to become an agency shop in accordance with California Government Code 3502; and

WHEREAS, the District General Manager has met and conferred with Union representatives to develop appropriate agency shop language for insertion into the MOU; and

WHEREAS, a majority of District Union members voted to approve agency shop status on July 21, 2011; and

WHEREAS, District staff and Union members have found items in the approved MOU that are incorrect and need changing; and

WHEREAS, the District would also like to extend conversion of overtime hours to compensatory time; and

WHEREAS, the District General Manager has met and conferred with Union representatives to develop appropriate agency shop language for insertion into the MOU and to include in the Side Letter the other minor corrections and changes to the MOU; and

WHEREAS, the District Board of Directors finds that approving the proposed Side Letter is in the best interest of the District, its customers and its employees.

NOW, THEREFORE, BE IT RESOLVED, that:

The Side Letter, attached as Exhibit A, is hereby approved and the provisions of the Side Letter shall be effective as stated in the Letter.

BE IT FURTHER RESOLVED, that the District General Manager is hereby authorized to sign the attached Side Letter and to take such actions as are necessary to implement the provisions of this resolution.

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 4, 2011, by the following vote.

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

_____
Jim Quigley
President of the Board of Directors

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

1685217.1

Exhibit A.

Side Letter of Understanding

Between

Sweetwater Springs Water District

And

Stationary Engineers, Local 39

Effective August 15, 2011, the parties mutually agree that per the results of the Agency Shop election conducted on July 21, 2011 by Election Supervisor, Fire Chief, Steve Baxman, the following language shall replace Section 3, Union Security, to the Memorandum of Understanding between Sweetwater Springs Water District and International Union of Operating Engineers, Stationary Local 39.

Agency Shop/Fair Share Fee

a. General

1) As a condition of continued employment, all regular full-time employees, and all part-time (+1,040 hours per year) employees who are paid forty (40) or more hours salary during a bi-weekly pay period shall be a member of the Union (and pay dues to the Union) or pay an agency shop service fee to the Union in an amount determined as set forth in subsection (b) below.
2) No employee shall be required to pay the service fee during the first sixty (60) calendar days of employment.
3) The provisions of this Section shall remain in effect during the term of this Agreement and any mutually agreed upon extension of that term.
4) The employee's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues or service fees. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions (including health care deductions) have priority over Union dues and service fees.

b. Service Fee

The service fee required in subsection (a) shall be an amount not to exceed the Union's uniformly-applied initiation fee, periodic dues and general assessments. In computing such amounts, the Union shall exclude expenditures for members only benefits and Union expenditures for political and ideological purposes unrelated to collective bargaining, contract

administration and grievance adjustment. Any dispute as to the service fee or the amount thereof shall be directed solely to the Union, and the District shall not be a party to the dispute.

c. Payroll Deduction

Both the service fee and the Union dues shall be paid to the Union through payroll deductions.

d. Implementation**.**

Not later than thirty days after approval of this Agency Shop provision, the District shall deliver to each employee, subject to this Memorandum of Understanding who is not also a member of the Union, a notice advising that the District has entered into an Agency Shop agreement with the Union and that all employees subject to the Memorandum of Understanding must either join the Union, pay a service fee to the Union, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Union dues or a service fee, or a charitable contribution equal to the service fee.

The employee shall have 14 calendar days from the delivery of the authorization form, to fully execute the authorization of his/her choice and return said form to the District. If the form is not completed properly and returned within 14 calendar days, the District shall commence and continue a payroll deduction of service fees from the regular biweekly pay warrants of such employee.

Any employee hired by the District subject to this Memorandum of Understanding on or after the date of implementation of this Section shall be provided, through the employee's department or agency, with an authorization form listed above. Said employee shall have five working days following the initial date of employment to fully execute the authorization form of his/her choice and return said form.

If the form is not completed properly and returned within five working days, the District shall commence and continue a payroll deduction of service fees from the regular biweekly pay warrants of such employee. The effective date of Union dues, service fee deductions, or charitable contribution for such employees shall be the beginning of the first pay period after 60 days of employment

e. Religious Exemption

Any employee of the District, subject to this MOU, who is a member of a bona fide religion, body or sect which is recognized by the National Labor Relations Board as historically holding a conscientious objection to joining or financially supporting an employee organization shall, upon presentation of verification of active membership in such religion, body or sect, be permitted to make a charitable contribution equal to the service fee in lieu of Union membership or service fee payment. Declarations or applications for religious exemption and any other supporting documentation shall be forwarded to the Union within fifteen days of receipt by the District. The Union shall have fifteen days after receipt of a request for religious exemption to challenge any exemption granted by the District. If challenged, the deduction to charity shall commence, but

shall be held in escrow pending resolution of the challenge. Charitable contributions shall be by regular payroll deduction only. Deductions made pursuant to this section shall be made to the American Red Cross, United Way, Redwood Empire Food Bank, or Stewards of the Coast and Redwoods.

f. Disclosure and Reporting

The Union shall keep an adequate itemized record of its financial transactions and shall make available annually, to the District and to the employees covered by this Section within sixty (60) days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. The Union, if required to file financial reports under the Labor-Management Disclosure Act of 1959 covering employees governed by this Agreement, or if required to file financial reports under Section 3546.5 of the Government Code, shall instead provide the District with a copy of such financial reports.

g. Hold Harmless

The Union shall promptly refund to the District any amounts paid to the Union in error under this Section.

The Union expressly agrees to indemnify and hold the District harmless from any and all claims, demands, costs (including any costs incurred by the District in defense of a lawsuit), expenses, damages or other monetary losses arising out of or in any way connected with any action or inaction of the District in the adoption or administration of this Section. This hold harmless and indemnity agreement shall include but not be limited to employee legal actions of any sort or nature against the District based upon or related to this Section. Further, in the event that the District undertakes disciplinary action against an employee pursuant to this Section, this hold harmless and indemnity agreement shall cover all costs and expenses, including any costs incurred by the District in defense of a lawsuit.

h. Change of Law

In the event there is a change in the law whereby any provision hereof becomes invalid or if for any reason any provision of this Section is rendered unlawful by any published appellate court decision, this Section shall be forthwith deemed amended to comply with the change or decision in question.

Effective August 1, 2011, the parties mutually agree to the following language listed below to be added to or amend existing language in the Memorandum of Understanding with Sweetwater Springs Water District.

1. **Union Compensatory Time (add to Section 22, Subsection M):**

On request of Employee and approval by the General Manager, Employee may earn compensatory time in lieu of being paid for overtime worked. Such compensatory time shall accrue at the rate at which it is earned (i.e., one and one half times each regular overtime (OT) hour or two times each double OT hour), or fraction thereof, of overtime worked. Requests to use compensatory time shall be made the same manner as vacation use. Employee may only accrue up to twenty-four (24) hours of compensatory time in any calendar year. Compensatory time accrued but not used shall be paid off on or before December 31 of each year.

2. **Work Week Defined**

   Add to Section 11: The work week shall be Monday 7:30am through Monday

   7:29am.

3. **Health Benefits Section – Corrected Health Benefits Table** (page 6):

Effective January 1, 2011 and each January 1 thereafter thru 2015, the District shall contribute the below listed maximum amount per month for each employee for the purchase of medical and vision insurance, and share the cost of excess medical premium as explained in the table below:

Effective Date	Employee	Employee + 1	Employee + 2 or more
Jan. 1, 2011	$517	$1,003	$1,311
Jan. 1, 2012	$543	$1,064	$1,377
Jan. 1, 2013	$570	$1,117	$1,446
Jan. 1, 2014	$599	$1,173	$1,518
Jan. 1, 2015	$629	$1,232	$1,594
If the employee's medical and vision insurance premiums combined exceed the District contribution, then the District and the employee shall each pay half of the excess premium cost with the employee paying their half through payroll deduction.			

4. Change "Domestic Partner" to "Registered Domestic Partner" in Section 16, subsection H.

5. Add language to Section 16, subsection H, defining "Registered Domestic Partner" as defined in the Family Code, Section 297 which states:

(a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and , at the time of filing, all of the following requirements are met:

(1) Both persons have a common residence.

(2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

(3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(4) Both persons are at least 18 years of age.

(5) Either of the following:

(A) Both persons are members of the same sex.

(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

(6) Both persons are capable of consenting to the domestic partnership.

(c) "Have a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people may have a common residence if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

6. Section 13. **CORRECTED** ON CALL - ON CALL/SHIFT DIFFERENTIAL (page 4)

If an employee responds to an emergency call, the employee will be paid at overtime rates for hours over eight (8) in a day or forty (40) hours in a week worked. Scheduled on-call duty will be rotated among all operations staff. When an employee is on-call

he/she shall be provided a pager and cell phone, which will provide notification in the event of an emergency repair/maintenance work need. The pager and cell phone shall be kept in the on-call employee's possession during the entire on-call period of time. Notification of an emergency repair/maintenance work need may also be given verbally, in person or by telephone, by the General Manager, Field Manager, or Crew Supervisors.

Operations employees scheduled for on-call duty will be paid Thirty-five Dollars ($35.00) for each on-call weekday shift scheduled and Fifty Dollars ($50.00) for Friday and Sixty-five Dollars ($65.00) for each Saturday, Sunday and holiday on-call shift schedule.

Effective July 1, 2012, operations employees scheduled for on-call duty will be paid Forty Dollars ($40.00) for each on-call weekday shift scheduled and Fifty-five Dollars ($55.00) for Friday and Seventy Dollars ($70.00) for each Saturday, Sunday and holiday on-call shift scheduled.

When an employee is on-call he/she shall be free to utilize his/her time as desired, but must remain able to respond to an emergency situation within forty-five (45) minutes from the time said emergency call is received by them. (On-call employees shall be subject to the provisions of the Drug Free Workplace policy during the time they are on-call).

An on-call employee may trade with another operational employee so long as the General Manager, Field Manager, or Crew Supervisor is notified of the change prior to the commencement of the on-call duty shift.

7. Change Section 22, Subsection K. Flushing Differential to Section 22, Subsection L. Flushing Differential (currently two Subsection K's).

Date:_____

_____ _____

Jerry Kalmar, Business Manager

Stationary Engineers, Local 39

Steve Mack, General Manager

Sweetwater Springs Water District

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Richard J. Putz, Business Representative

Stationary Engineers, Local 39