



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Len Gorecki, Public Works Director

SUBJECT: Consideration and possible action to authorize the City Manager to execute Agreement File No. 320.8.X, in a form approved by the City Attorney, with Bellflower-Somerset Mutual Water Company, for the lease of water pumping allocation rights in Fiscal Year 2016-2017.

DATE: June 27, 2016

EXECUTIVE SUMMARY

This action would approve a water rights lease agreement with Bellflower-Somerset Mutual Water Company (BSMWC) for 680 acre-feet with flex in Fiscal Year (FY) 2016-17. The agreement will initially operate on a six-month term that begins July 1, 2016, and expires December 31, 2016. Following the term date, the agreement will continue on a month-to-month basis through the end of the fiscal year, provided BSMWC has leased water rights remaining for the year.

RECOMMENDATION TO CITY COUNCIL

- 1) Authorize the City Manager to execute Agreement File No. 320.8.X in a form approved by the City Attorney; or
- 2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

This lease will generate \$94,696.80 in revenue, of which \$54,868.44 will accrue to the General Fund and \$39,828.36 will accrue to the Municipal Water System (MWS).

DISCUSSION

The City, including the MWS, owns 1,380 acre-feet of water rights. On average, the MWS' historic service demand has been just under 700 acre-feet per year, leaving at minimum a 680 acre-feet surplus. Under the terms of a five-year agreement with BSMWC (AFN 320.8), the City has agreed to lease its surplus water rights to BSMWC, with the price per acre-foot increasing annually from the FY 2013-14 base year. In FY 2016-17, the fourth year of the five-year agreement, the price per acre-foot will be \$139.26, and staff proposes leasing 680 acre-feet with flex to BSMWC under AFN 320.8.X. Approving this lease agreement would generate up to \$94,696.80 in revenue for the City and the MWS.

**City of Bellflower
Agreement File No. 320.8.X
Bellflower-Somerset Mutual Water Company
Page 2 of 2**

The term of the lease agreement is contingent upon the potential sale of the MWS to a third-party buyer; selling the system would nullify any existing lease agreements between the City and BSMWC. The City is currently reviewing proposals from third-party buyers to purchase the MWS and does not anticipate a completion of sale in this calendar year. As a result, staff proposes limiting the terms of AFN 320.8.X to six months, terming on December 31, 2016. Should leased water rights remain unpumped after that date, the agreement has been written to remain in effect on a month-to-month basis through the end of FY 2016-17.

ATTACHMENT

Water Lease Agreement File No. 320.8.X..... 3

**LEASE AGREEMENT BETWEEN THE
CITY OF BELLFLOWER AND
BELLFLOWER-SOMERSET MUTUAL WATER COMPANY**

THIS LEASE is made and executed this ____ day of _____, 2016 (“Effective Date”), between CITY OF BELLFLOWER, a municipal corporation and general law city (“CITY”), and BELLFLOWER-SOMERSET MUTUAL WATER COMPANY, a California corporation operated as a mutual water company under California law (“LESSEE”).

1. **RECITALS.** This Lease is made with reference to the following facts and objectives:

- A. CITY and LESSEE are parties to the Water Sales Agreement and Agreement for Lease of Water Pumping Allocation Rights (Agreement File No. 320.8) pursuant to which LESSEE agrees to lease from CITY the right to extract any portion of CITY’S 1,380 acre-feet of water pumping allocation rights not required to meet the actual service and operational demands for the Municipal Water System; and
- B. Both CITY and LESSEE are parties in that certain water adjudication judgment entered in Los Angeles County Superior Court Case No. 786656, entitled *Central and West Basins Replenishment District v. Charles E. Adams, et al.*; and
- C. CITY has been certified by the Central Basin Watermaster to have a pumping allocation equal to or in excess of the amount herein leased to LESSEE; and
- D. LESSEE has determined its pumping allocation rights are not sufficient to meet its needs; and
- E. CITY wishes to lease to LESSEE 680 acre-feet with flex of CITY’S allowed pumping allocation rights; and
- F. LESSEE desires to lease from CITY pumping allocation rights of 680 acre-feet with flex (“Property”).

NOW, THEREFORE, pursuant to Agreement File No. 320.8, and in consideration of the Property and the mutual covenants contained herein, CITY leases said water rights to LESSEE on the following terms and conditions:

2. **LEASE; DESCRIPTION OF PROPERTY.** Pursuant to the terms, conditions and limitations in this Lease, CITY leases to LESSEE the right to extract water from the Central Basin to the extent of an agreed pumping allocation of 680 acre-feet with flex for Fiscal Year 2016-2017 and agrees to put the same to beneficial use.

3. **RENT.** LESSEE agrees to pay to CITY the sum of Ninety-four Thousand Six Hundred Ninety-six Dollars and Eighty Cents (\$94,696.80) for 680 acre-feet with flex at a rate of \$139.26 per acre-foot for Fiscal Year 2016-2017. CITY will invoice LESSEE within five (5) days after the Effective Date of this Agreement. Payment for Fiscal Year 2016-2017 must be made within fourteen (14) days after CITY transmits the invoice to LESSEE.

4. **PAYMENT OF ASSESSMENTS.** LESSEE must pay all pumping assessments levied on CITY's water rights to the extent same are leased by LESSEE pursuant to this Lease.

5. **TERM.** The initial term of this Lease will commence on July 1, 2016, and will remain and continue in effect until December 31, 2016, unless sooner terminated pursuant to the provisions of this Lease. Following the initial term, this Agreement may continue on a month-to-month basis through the end of CITY's Fiscal Year 2016-2017, provided LESSEE has leased water rights remaining and the CITY still maintains ownership of the Municipal Water System.

6. **USE OF PROPERTY.** Subject to the limitations listed below, LESSEE must exercise all Property leased hereunder, must pump the same on behalf of the CITY, and must put the same to beneficial use. The Property may not be used for any other purpose.

7. **CITY'S LIMITED WARRANTY.** CITY warrants that it has 680 acre feet of adjudicated right and it has not pumped and will not pump or permit or lease any other person to pump any part of said 680 acre feet annually during the term of this Lease.

8. **TERMINATION.** This Lease may be terminated as follows:

A. At the expiration of the term;

B. Upon mutual written agreement between the parties; or

C. Should LESSEE materially breach this Lease and fail to cure such breach within thirty (30) days of being notified by CITY regarding such breach to CITY's reasonable satisfaction.

9. **CONDITION OF PROPERTY UPON TERMINATION.** Upon termination of this Lease for any reason, LESSEE will vacate the Property.

10. **SALE OR TRANSFER BY CITY.** Should CITY, at any time during the term of this Lease, sell, lease, transfer, or otherwise convey all or any part of the Property to any transferee other than LESSEE, then such transfer will be under and subject to this Lease and all of LESSEE's rights hereunder.

11. **CONDEMNATION.** If all or part of the Property is acquired by eminent domain or purchase in lieu thereof, LESSEE acknowledges that it will have no claim to any compensation awarded for the taking of the Property or any portion thereof or for loss of or damage to LESSEE's improvements.

12. **FORCE MAJEURE.** Should performance of this Lease be prevented due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural

elements, or other similar causes beyond the Parties' control, then it will immediately terminate without obligation of either party to the other.

13. ASSIGNMENT AND SUBLETTING. This Lease may not be assigned, transferred, or sublet by LESSEE, court order, or through any other means. Any such purported transfer will be null and void.

14. INDEMNIFICATION.

A. LESSEE indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Lease, or its performance, except for such loss or damage arising from CITY's sole negligence or willful misconduct. Should CITY be named in any suit, or should any claim be against it, by suit or otherwise, whether the same be groundless or not, arising out of this Lease, or its performance, pursuant to this Lease, LESSEE will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify it for any judgment rendered against it or any sums paid out in settlement or otherwise.

B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and volunteers.

C. LESSEE expressly agrees that this hold harmless and indemnification provision is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion is held invalid, it is agreed that the balance will, notwithstanding, continue in full legal force and effect.

D. It is expressly understood and agreed that the foregoing provisions will survive termination of this Lease.

15. COMPLIANCE WITH LAW. LESSEE will, at its sole cost and expense, comply with all of the requirements of all federal, state, and local authorities now in force, or which may hereafter be in force, pertaining to the Property and will faithfully observe in the use of the Property all applicable laws. The judgment of any court of competent jurisdiction that LESSEE has violated any such ordinance or statute in the use of the Property will be conclusive of that fact as between CITY and LESSEE.

16. WAIVER OF BREACH. Any express or implied waiver of a breach of any term of this Lease will not constitute a waiver of any further breach of the same or other term of this Lease.

17. INSOLVENCY; RECEIVER. Either the appointment of a receiver to take possession of all or substantially all of the assets of LESSEE, or a general assignment by LESSEE for the benefit of creditors, or any action taken or offered by LESSEE under any insolvency or bankruptcy action, will constitute a breach of this Lease by LESSEE, and in such event this Lease will automatically cease and terminate.

18. NOTICES. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party will be in writing and will be deemed served when personally delivered to the party to whom they are directed, or in lieu of the

personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to:

LESSEE at: Bellflower-Somerset Mutual Water Company
 Attention: Ken Deck, Executive Director
 10016 East Flower Street
 Bellflower, CA 90706
 (562) 866-9980
 Ken@bsmwc.com

CITY at: City of Bellflower
 Attention: Jeffrey L. Stewart, City Manager
 16600 Civic Center Drive
 Bellflower, CA 90706

Either party may change its address for the purpose of this Section by giving written notice of the change to the other party.

19. ACCEPTANCE OF FACSIMILE SIGNATURES. The Parties agree that agreements ancillary to this Lease and related documents to be entered into in connection with this Lease will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

20. GOVERNING LAW. This Lease has been made in and will be construed in accordance with the laws of the State of California and exclusive venue for any action involving this Lease will be in Los Angeles County.

21. PARTIAL INVALIDITY. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease will remain in effect, unimpaired by the holding.

22. INTEGRATION. This instrument and its attachments constitute the sole agreement between CITY and LESSEE respecting the Property, the use of the Property by LESSEE, and the specified term, and correctly sets forth the obligations of CITY and LESSEE. Any Lease or representations respecting the Property or its licensing by CITY to LESSEE not expressly set forth in this instrument are void.

23. CONSTRUCTION. The language of each part of this Lease will be construed simply and according to its fair meaning, and this Lease will never be construed either for or against either party.

24. AUTHORITY/MODIFICATION. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Lease and to engage in the actions described herein. This Lease may be modified by written amendment. CITY's City Manager, or designee, may execute any such amendment on behalf of CITY.

25. COUNTERPARTS. This Lease may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

26. TRANSMITTAL TO WATERMASTER. City will transmit a copy of this Lease to the Central Basin Watermaster of the Water Replenishment District of Southern California upon its execution.

IN WITNESS WHEREOF the parties hereto have executed this Lease the day and year first hereinabove written.

CITY OF BELLFLOWER

**BELLFLOWER-SOMERSET
MUTUAL WATER COMPANY**

**Jeffrey L. Stewart,
City Manager**

**Ken Deck
Executive Director**

ATTEST:

**Mayra Ochiqui,
City Clerk**

APPROVED AS TO FORM:

**Karl H. Berger,
City Attorney**

Doc 343137