SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

MEETING DATE: September 4, 2014

Subject: DISCUSSION/ACTION RE DISTRICT ACQUISITION OF PROFESSIONAL ASSISTANCE WITH CELL TOWER NEGOTIATIONS

RECOMMENDED ACTION: Approve Resolution 14-18 which authorizes the General Manager to execute a contract for professional services from Sun-Kay Associates for assistance in leasing District property for cell and other communication tower locations after review of the agreement by District Counsel.

FISCAL IMPACT: unknown but positive

DISCUSSION:

The District has property at elevations and locations attractive to companies that provide communication services such as cell phones and radios. We currently have two leases for towers on Mount Jackson and recently went through a proposed lease experience at the Highland Treatment Plant site. Both of these leases terminate fairly soon and will need to be renegotiated.

Staff do not have much experience in the communications business, other than the activities related to the current leases and the proposed leases for the Highland site. We have spent some time investigating getting assistance. Sunkay Associates is the only firm we have found that does what we want – assist in getting appropriate cell locations rented by cell companies. Exhibit A is the Sunkay Marketing Agreement. Some characteristics

- No upfront costs – Sunkay receives 20% of the gross Site Lease revenues as long as the lease is in effect.
- Proactive leasing – Sunkay will actively try to lease properties versus waiting to be approached by communications firms.
- 24 month term – if this isn't working out, we won't be partners for very long.
- The agreement does not apply to existing leases. If we want their assistance with our existing leases, that would be a different agreement.

District Counsel has not had an opportunity to review the Site Marketing Agreement; we should allow her time to do that.

This appears to be a low risk contract with the possibility of revenue for the District that we won't otherwise receive. I recommend approval of Resolution 14-18.

RESOLUTION 14-18

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT APPROVING A SITE MARKETING AGREEMENT FOR PROFESSIONAL SERVICES FOR LEASING DISTRICT PROPERTY FOR CELL TOWER AND OTHER COMMUNICATION PURPOSES WITH SUNKAY ASSOCIATES AND AUTHORIZING THE GENERAL MANAGER TO SIGN AFTER LEGAL COUNSEL REVIEW OF THE AGREEMENT

WHEREAS, Sweetwater Springs Water District (District) has parcels that have the potential for use as cell tower or other communication purposes; and

WHEREAS, the District has need of consulting professional services for assistance in marketing those sites for those purposes; and

WHEREAS, District staff has investigated getting this type of assistance and has found Sunkay Associates to have the experience to provide the needed assistance; and:

WHEREAS, the site marketing agreement (Exhibit A) proposed by Sunkay appears to be fair to both parties; and

WHEREAS, the marketing agreement proposed by Sunkay needs review by District Legal Counsel.

NOW, THEREFORE, BE IT RESOLVED, that the General Manager is authorized to execute said Agreement on behalf of the District after review by District Legal Counsel.

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 September 4, 2014, by the following vote:

Director	Aye	No
Sukey Robb-Wilder	_____	_____
Tim Lipinski	_____	_____
Richard Holmer	_____	_____
Gaylord Schaap	_____	_____
Victoria Wikle	_____	_____

_____
Richard Holmer
President of the Board of Directors

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

Exhibit A.

SITE MARKETING SERVICES AGREEMENT

This SITE MARKETING SERVICES AGREEMENT (this "**Agreement**") is made and entered into as of this _____ day of _____, 2014 ("**Effective Date**"), by and between Sunkay Associates, LLC **("Sunkay")** and _____, (hereinafter "**Owner**").

Sunkay and Owner mutually desire for Sunkay to act as an intermediary in bringing new wireless communications facility opportunities to the Owner and in facilitating the closing of agreements between Owner and Wireless Operator, as hereinafter defined. The Owner owns the property or properties ("together, **Property**") located at _____.

Portions of the Property may be suitable or may be used for the installation of wireless communications facilities and equipment (individually a "**Site**", collectively "**Sites**"), each for use by one or more Wireless Operators. The Owner wishes to enter into leases to certain Sites with Wireless Operators for the specific purpose of installation and operation of its wireless communication facilities.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

1. **Grant of Marketing Rights:** Owner grants to Sunkay the ability to perform Site Marketing Services as described herein for the period of 24 months from the Effective Date. The purpose of the Site Marketing Services shall be to obtain a Qualifying Site Lease from a Wireless Operator. Both parties understand and agree that no fee or payment will be owed to Sunkay unless and until Sunkay has produced a Qualifying Site Lease. Owner agrees to be compensated under a Qualifying Site Lease through Owner Revenue (as hereinafter defined).

2. **Consulting Services:** Owner grants to Sunkay the ability to engage in Consulting Services, specifically in regards to the terms that will be contained in the eventual lease agreement, and any subsequent negotiations with the Wireless Operator.

3. **Site Lease Rent**: The Owner's share of revenue derived from any new Qualifying Site Lease that is procured by Sunkay shall be eighty percent (80%) of the gross Site Lease revenues actually received from Wireless Operators, for as long as the applicable Site Lease remains in existence ("**Owner Revenue**"). The Owner revenue shall be paid as Site Lease rent. Sunkay shall receive twenty percent (20%) of the gross Site Lease revenues actually received from Wireless Operators for as long as the applicable Site Lease remains in existence, including all renewal, extension, and holdover terms ("**Partner Revenue**"). Owner Revenue and Partner Revenue will be paid directly by the Wireless Operator through a payment direction form executed by both parties at the time of execution of the Site Lease.

4. **Term:** With respect to the Exclusive Marketing Rights and the Non-Exclusive Marketing Rights, the term of this Agreement shall commence on the Effective Date and expire twenty-four (24) months from this date.

5. **Non-circumvention:** During the term of this Agreement, the Owner will not attempt to do business with, or otherwise solicit employees, agents, or contractors of Wireless Operators found

or otherwise referred by Sunkay to the Owner for the purpose of circumventing Sunkay, the result of which shall be to prevent Sunkay from realizing Partner Revenue. This provision shall apply to both the Property owned or managed by Owner. If such circumvention shall occur, Sunkay shall be entitled to any Partner Revenue due pursuant to this Agreement relating to such transaction

6. **Assignment:** Sunkay may assign, mortgage, charge or otherwise deal with or dispose of Sunkay interest in and to this Agreement without the consent of the Lessor. Upon an assignment of its interest in this Agreement, Sunkay will be released from all obligations under this Agreement which fall due for performance on or after the date of assignment and the assignee will have no liability for any defaults of Sunkay accruing prior to the date of assignment.

7. **Capacity/Independent Contractor:** It is expressly agreed that Sunkay is acting as an independent contractor and not as an employee in providing the services of this Agreement. Sunkay and Owner acknowledge that this Agreement does not create a partnership or joint venture between them.

8. **Modification of Agreement:** Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

9. **Entire Agreement:** It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressed in it.

10. **Severability:** In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of the Agreement.

11. **Governing Law:** It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of California without regard to the jurisdiction in which any action or special proceeding may be instituted.

Owner Initials _____

IN WITNESS WHEREOF the parties have duly executed this Agreement this _____ day of _____, 2014.

Owner: _____

By: _____

Name:
Title:

Address:
Tel:
Fax:

SUNKAY ASSOCIATES, LLC

By: _____

Name: Eric Smithson
Title: Partner

Address: 1770 Morgans Avenue, San Marcos, CA 92078
Tel: 760.933.9103
Fax: 760.593.2403

Owner Initials _____

DEFINITIONS:

a. **Site Marketing Services** means the promotion to and communication with Wireless Operators by Sunkay regarding Owner's Property, Site, or Sites for the purpose of obtaining a corresponding Qualifying Site Lease from a Wireless Operator for a communications facility.
b. **Wireless Operator** shall mean any telecommunications carrier or tower developer, including employees, agents, or contractors, that is a current or prospective operator of a wireless station, facility or system using licensed and/or unlicensed radio frequency spectrum for any transmission, emission or reception of sounds, signals, signs, writing, images or intelligence of any nature. This definition shall include all related entities, subsidiaries, contractors, and agents of the Wireless Operator.
c. **Consulting Services** means any engagement of communication or negotiation between Sunkay and prospective or current Wireless Operators regarding a Site or Sites, including but not limited to lease negotiations, legal review of agreements, market evaluations, site location, lease area and equipment design.
d. **Property** shall have the meaning set forth in the Recitals and more specifically described on Schedule 1.
e. **Qualifying Site Lease** shall mean a Site Lease with respect to Owner's Property that is procured by Sunkay.
f. **Site Lease(s)** shall mean a lease, license, or other use agreement between Owner, as landlord, and Wireless Operator(s), as tenant, with respect to a Site.

Owner Initials _____

Schedule 1: Properties

Site #	Address 1	City	State	Zip	APN
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

Owner Initials _____