SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

MEETING DATE: January 8, 2015

SUBJECT: DISCUSSION/ACTION RE APPROVAL OF RESOLUTION 15-02 AUTHORIZING EXECUTION OF A LETTER AGREEMENT FOR THE EXTENSION OF THE MT JACKSON CELL TOWER LEASE

RECOMMENDED ACTION: Approve Resolution 15-02 which authorizes the General Manager to execute a letter agreement that sets out the terms for an extension of the lease of District property on Mt. Jackson for cell tower and other communication purposes,

FISCAL IMPACT: The lease will be extended until 2054 at the current rent with 3% annual escalators.

DISCUSSION:

The Mt Jackson cell tower site has an existing lease which terminates in December 2019 and for Fiscal Year 2015 provides the District with annual rent revenue of over $71,000. The current owner of the lease, Crown Castle has approached the District with a request to extend the lease up to 50 years. At the November Board meeting, the District retained Sunkay Associates to negotiate this lease with Crown Castle representatives. Attached is Exhibit A which is a letter agreement that outlines the key features that would be included in a lease extension:

- Extends the lease for 8 five-year renewal terms with an expiration date of December 31, 2054. (a 35 year extension, in effect)
- $6,750.00 signing bonus if we meet the signing time deadlines (pays for most of the Consultant fee).
- 3% annual increase in rent.
- Right of first refusal if District decides to sell interest in lease to another party.
- Five-year termination fee - if Crown Castle terminated the lease prior to end of first 5-year period, Crown Castle owes District entire 5-year lease amount.
- District agrees to assist with improvements to property at no cost to District.
- All other terms of the existing lease remain in effect.

The Mt Jackson lease is an important source of revenue for the District. The rent the District receives and other terms of the lease are above the normal market value because this is a very good site. Extending the lease on the above proposed terms plus the existing terms is good value for the District.

Exhibit A sets out the terms that Crown Castle wants to change in extending the lease. Upon approval, Crown Castle needs to provide a lease agreement that would need to be approved to make this lease extension happen. We see this coming back to the District for approval at the February or March meeting.

Staff recommend approval of Resolution 15-02.

RESOLUTION 15-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT APPROVING A LETTER AGREEMENT WHICH SET OUT MAJOR TERMS FOR EXTENDING THE CROWN CASTLE MT. JACKSON CELL TOWER SITE LEASE AND AUTHORIZING THE GENERAL MANAGER TO SIGN.

WHEREAS, Sweetwater Springs Water District (District) has an existing cell tower site lease with Crown Castle that Crown Castle has requested be extended; and

WHEREAS, consulting professional services Sunkay Associates have negotiated terms for a lease extension which are included in the Letter Agreement Exhibit A; and

WHEREAS, the principal terms are extending the lease for 35 years (until 2054) at existing lease terms; and:

WHEREAS, these terms are fair and results in continued important revenue to the District, and:

WHEREAS, the Letter Agreement when executed will be followed up with a formal lease extension.

NOW, THEREFORE, BE IT RESOLVED, that the General Manager is authorized to execute said Letter Agreement attached as Exhibit A.

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 January 8, 2015, by the following vote:

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

_____
Gaylord Schaap
President of the Board of Directors

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

December 12, 2014

Sweetwater Springs Water District
ATTN: Steve Mack
19755 Sweetwater Springs Rd.
Guerneville, CA 95446
760.213.8511

RE: Business Unit # 856159
Site Name 309/MT JACKSON

Dear Mr. Mack:

This letter agreement ("Letter Agreement") sets forth the terms of the agreement that is to be memorialized between CCATT LLC, a Delaware limited liability company ("Lessee") and Sweetwater Springs Water District, a California public agency formed under California Water Code Section 3000 et seq. ("Lessor"), to modify, among other things, the length of the term in the lease agreement between the Lessor and Lessee dated January 1, 2000, as may be amended ("Lease") for property located in Guerneville, Sonoma County, ("Property").

For and in consideration of Fifty Dollars ($50.00) to be paid by Lessee to Lessor within 30 days after full execution of this Letter Agreement, the parties agree as follows:

1. Lessor and Lessee will enter into an amendment to the Lease ("Lease Amendment") wherein the term of the Lease will be modified. The Lease currently provides, in section 2 that there is one (1) remaining renewal terms of five (5) years. That Lease section will be amended to provide that the remaining term of the Lease will be eight (8) renewal terms of five (5) years each. The new final Lease expiration date will be December 31, 2054.

2. In addition to the modification described above, the Lease Amendment will further modify the Lease to provide:

2a. Lessee agrees to pay Lessor the sum of Six Thousand and Seventy Five Hundred No/100 Dollars ($6,750.00) for executing and delivering the Letter Agreement to Lessee by no later than January 16, 2015, and executing and delivering the Lease Amendment to Lessee within thirty (30) days of receipt of the executable document(s) (the "Expedite Fee"). Lessor understands time is of the essence and if the signed Lease Amendment is not delivered to Lessee within the specified time period, Lessor forfeits the Expedite Fee. Lessor further agrees that if the Lease Amendment is not fully executed for any reason, Lessor forfeits the Expedite Fee. The Expedite Fee is a one-time payment due and payable within sixty (60) days of the full execution of the Lease Amendment.

2b. Commencing on January 1, 2016 and every year thereafter (each an "Adjustment Date"), the monthly rent shall increase by an amount equal to three percent (3%) of the monthly rent in effect for the month immediately preceding the Adjustment Date. Such rent escalations shall replace any rent escalations currently in the Lease.

2c. If Lessor receives an offer from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Lessor's interest in the Lease) to purchase fee title, an easement, a lease, a license, or any other interest in the Property, or Lessor's interest in the Lease, or an option for any of the foregoing, Lessor shall provide written notice to Lessee of said offer, and Lessee shall have a right of first refusal to acquire such interest on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Lessee's possessory or economic interest in the Property. If Lessor's notice covers portions of Lessor's parent parcel beyond the Property, Lessee may elect to acquire an interest in only the Property, and the consideration shall be pro-rated on an acreage

basis. Lessor's notice shall include the prospective buyer's name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, the proposed closing date and, if a portion of Lessor's parent parcel is to be sold, leased or otherwise conveyed, a description of said portion. If the Lessor's notice shall provide for a due diligence period of less than sixty (60) days, then the due diligence period shall be extended to be sixty (60) days from exercise of the right of first refusal and closing shall occur no earlier than fifteen days thereafter. If Lessee does not exercise its right of first refusal by written notice to Lessor given within thirty (30) days, Lessor may convey the property as described in the Lessor's notice. If Lessee declines to exercise its right of first refusal, then the Lease shall continue in full force and effect and Lessee's right of first refusal shall survive any such conveyance. Lessee shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of the Lease or as part of an assignment of the Lease. Such assignment may occur either prior to or after Lessee's receipt of Lessor's notice and the assignment shall be effective upon written notice to Lessor.

2d. If at any time prior to February 29, 2020: (a) Lessee exercises any of Lessee's rights to terminate the Lease, or (b) Lessee elects not to renew the Lease, Lessee shall pay a termination fee ("Termination Fee") equal to the amount of rent that Lessee would have owed to Lessor under the Lease, as amended, between the date of such early termination or election not to renew, as the case may be, and February 29, 2020. The Termination Fee will be due and payable in the same manner and on the same dates as set forth in the Lease. Notwithstanding the foregoing, Lessee will be released from any and all of its obligations under the Lease as of the effective date of such termination and shall not be required to pay the Termination Fee if Lessee terminates the Lease due to a Lessor default.

3. Furthermore, the Lease Amendment will modify the Lease to provide that if requested by Lessee, Lessor will execute, at Lessee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Property, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Lessee to utilize the Property for the purpose of constructing, maintaining and operating communications facilities. Lessor will agree to be named applicant if requested by Lessee. In furtherance of the foregoing, Lessor will appoint Lessee as Lessor's attorney-in-fact to execute all land use applications, permits, licenses and other approvals on Lessor's behalf.

4. Lessor shall cooperate in all ways, including but not limited to providing information, signing documents and seeking execution by third parties of documents that will remove, subordinate or satisfy any mortgages, deeds of trusts, liens or other encumbrances affecting the Property.

5. Upon receipt of this Letter Agreement evidencing Lessor's acceptance of the terms herein, Lessee shall submit this Letter Agreement to its property committee. If the Letter Agreement is approved by the property committee, Lessee shall prepare a Lease Amendment that incorporates the terms and conditions described in this Letter Agreement. In connection therewith, the parties acknowledge and agree that this Letter Agreement is intended to summarize the terms and conditions to be included in the Lease Amendment. Upon receipt of the Lease Amendment, Lessor hereby agrees to execute the Lease Amendment without any unreasonable delay.

6. Irrespective of whether the transaction contemplated by this Letter Agreement is consummated, Lessor and Lessee each will pay its own out-of-pocket expenses.

7. Notwithstanding anything to the contrary contained herein, Lessee has the complete right to terminate this Letter Agreement for any or no reason at any time prior to full execution of the Lease Amendment, without damages.

8. Lessor represents and warrants that Lessor is duly authorized and has the full power, right and authority to enter into this Letter Agreement and to perform all of its obligations under this Letter Agreement and to execute and deliver all documents, including but not limited to the Lease Amendment, required by this Letter Agreement. From the date of this Letter Agreement through the date that Lessor executes the Lease Amendment, Lessor shall use its best efforts to ensure that the foregoing representations and warranties shall remain true and correct and Lessor shall promptly notify Lessee if any representation or warranty is or possibly may not be true or correct. Lessor's representations, warranties and covenants shall survive following the full execution of the Lease Amendment.

If this Letter Agreement accurately sets forth our understanding regarding the foregoing, please so indicate by signing and returning to the undersigned the enclosed copy of this letter.

Lessor:	Lessee:
Sweetwater Springs Water District, a California public agency formed under California Water Code Section 3000 et seq.	CCATT LLC, a Delaware limited liability company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____