SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

Meeting Date: July 5, 2012

SUBJECT: DISCUSSION/ACTION RE CRYSTAL COMMUNICATIONS LEASE FOR DISTRICT MOUNT JACKSON PROPERTY

RECOMMENDED ACTION: Receive an update from the General Manager on the resolution of nonpayment issues with Crystal Communications lease for District Mount Jackson property.

FISCAL IMPACT: see discussion below.

DISCUSSION:

By letter agreement (Exhibit A, Draft Agreement), we have apparently resolved our issues with Crystal Communication regarding their late payment of rent for the lease for District property on Mount Jackson.

In prior months I had told you that Crystal Communications (Crystal) owed the District approximately $28,000 in late rent based on monthly rent of $1200 and was working to resolve the repayment issue. Crystal has been making its rent payments since January 2012 and we were having positive discussions toward resolving the entire late payment. One of the ideas for resolving this issue was to exchange a portion of the late rent for a narrow banded radio system which the District must switch to by January 2013 (although this date may be slipping).

In our discussions with Crystal it became apparent that the rent we thought was due the District was more than the rent required under the lease agreement. Section 3 of the agreement states, in part:

"Crystal shall be obligated to pay to SSWD fifty percent of the total of the subtenants' rents charged each month by Crystal to its subtenants, regardless of whether or not Crystal receives such payments from its subtenants……..When a change occurs related to the sub-tenants' rent amount to Crystal, the rent for this Lease will be adjusted accordingly and will become effective the date of the "sub-tenants' " agreement with Crystal. "

Crystal has been losing subtenants during the life of this agreement and, according to the agreement language quoted above, does not owe the District rent for subtenants after the subtenants no longer owe rent to Crystal. The agreement is silent on Crystal's duty to inform the District when subtenants leave. A total of three (of five) subtenants have left since the inception of the agreement, one almost immediately and the other two approximately one year apart. It appears that the current rent should be in the $681 range and that the amount owed the District is approximately $8,000-$12,000

depending on one's interpretation of when subtenants no longer owe rent to Crystal. Crystal acknowledges that there may have been some responsibility on their part to keep the District informed on when subtenants had left.

In our negotiations with Crystal, the District had received a proposal to replace the existing analog wide-band radio system with digital radios and narrow band equipment, including installation and FFC compliance submittals for approximately $26,000 and the original thinking had been that this would be used to defray the rent owed. It's now clear that the cost of the radio system exceeds the amount of rent due by a substantial amount. We have agreed that a fair financial settlement is to trade the radio system for the past due rent plus rent due for the remainder of this calendar year. Crystal would start paying rent again in January 2013. The amount of the rent due from July through December 2012 is approximately $4,000. In strict financial terms, the amounts in this exchange are that the District gets a new radio system worth approximately $26,000 for past due rent of $8,000-$12,000, plus future rent of $4,000 (perhaps $1,000 more if a subtenant is added). Other items we have agreed upon:

- Annual submission (in January) of a list of subtenants and current rent from those subtenants.
- A penalty of 10% for past due monthly rent.
- Clarification that the annual Consumer Price Index adjustment will be made using the All Urban Consumers Price Index for the San Francisco-Oakland-San Jose Metropolitan Area for the month of October and will be effective in the following January rent payment.

Given the ambiguities of the lease agreement with Crystal Communications, this is a very fair settlement. It's important to note that part of the rental agreement is Crystal's maintenance of our radio system at no additional cost – and they do this very well. We look forward to the continuation of our working relationship with Crystal, and a new, FCC compliant radio system and on-time rent payments.

July 24, 2012

Draft

Michelle Rodriguez
Crystal Communications
1601 Neptune Drive
San Leandro, CA 94577

Re: Letter Agreement Clarifying Terms of Lease between the Sweetwater Springs Water District and Crystal Communications dated January 1, 2009 and Past Due Rent in Exchange for Refitting the District with New Radios and Assisting with FCC Certification

This Letter Agreement ("Letter Agreement") acknowledges and confirms our prior discussions regarding the terms and conditions of the Lease Agreement ("Lease") dated January 1, 2009 between the Sweetwater Springs Water District ("District") and Crystal SMR Inc. dba Crystal Communications ("Crytsal"), collectively the "Parties".

Pursuant to Paragraph 3 of the Lease, Crystal is required to pay the District "total rent" consisting of (1) a base rent of $500 per month (adjusted annually by the consumer price index) and (2) a portion (50%) of the total rents charged to all Crystal subtenants.

The Parties acknowledge and agree that Paragraph 3 does not clearly provide adequate processes for implementing adjustments in the total rent and therefore it is necessary for the Parties to enter into this Letter Agreement for the purposes of clarifying existing language and implementing the intent of the Parties. The is Letter Agreement is also intended to remedy the failure of Crystal to timely pay rent for several months since the inception of the Lease, The Parties therefore mutually agree as follows:

1. Crystal will assist the District in meeting the Federal Communications Commission's narrow banding mandate by providing the District with the mobile communications system described in the letter from Crystal to the District dated July __ 2012 (NEED THIS) including mobile installation, mountaintop configuration, FCC compliant paperwork and training as further described in Attachment A.

2. All Total Rent, as defined below, due and payable to the District from Crystal pursuant to Paragraph 3 of the Lease for the period beginning on the Commencement Date through June 30, 2012 shall be deemed by the Parties to have been paid in full. In addition, Crystal shall have no obligation for the payment to the District of Total Rent for the period beginning on July 1, 2012 through December 31, 2012.

3. The Parties agree that beginning January 1, 2013, the total rent ("Total Rent") pursuant to Paragraph 3 of the Lease shall equal (a) a base rent of $521.16 per month ("Base Rent") as adjusted by the October 2012 CPI as defined in Section 4 of this Letter

Agreement, plus (b) an amount equal to fifty percent of the total rents charged to all Crystal subtenants as of November 1, 2012 ("Subtenant Rent").

4. On or before December 1, 2012, and on or before each December 1 thereafter during the term of the Lease, the Parties agree that (a) the Base Rent shall be adjusted annually by the most recent annual All Urban Consumers Price Index for the San Francisco-Oakland-San Jose Metropolitan Area for the month of October and (b) Crystal shall provide the District copies of leases with all Crystal subtenants at the Tower Site, including documentation evidencing the amount of total rents charged to all subtenants, and the amount of the Subtenant Rent shall be adjusted so as to equal fifty percent of the total rents charged to all Crystal subtenants. The adjustments shall go into effect beginning on the following January 1.

5. The Parties agree that the payment of Total Rent in a timely manner is an essential term of the Lease and to insure that payment is made on the first day of each month the Parties agree that, in addition to the Total Rent due, Crystal shall be assessed a late fee each month Total Rent, and any unpaid late fees, are not received by the District on or before the tenth day of each month. The late fee shall be calculated on the eleventh day of each month by multiplying the cumulative amount of all unpaid Total Rent, and any unpaid late fees, by 10% and shall be due immediately.

6. Except to the extent changes are provided for in this Letter Agreement, all other terms and conditions of the Lease shall remain in full force and effect.

7. This Letter Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument.

8. This Letter Agreement shall be interpreted pursuant to the laws of the State of California.

If the foregoing correctly sets forth your understanding of the terms of our understanding, please execute this Letter Agreement and return it to me at your earliest convenience.

Sincerely,

Stephen F. Mack
General Manager
Sweetwater Springs Water District

Accepted and agreed to this ___ day of _____, 2012:

Crystal Communications

_____
By: _____
Title: _____

Attachment A

1939731.1

CRYSTAL COMMUNICATIONS
Complete Wireless Solutions Provider

1601 Neptune Drive, San Leandro, CA 94577
(510) 895-9500 Fax (510) 895-5722

Budgetarty Quote for
SweetWater Springs Water District

Qty	Descriptions	Price each	Total
	Kenwood NEXEDGE NXR-710 High Performance Digital and Analog Repeater System		
	136-174 MHz, 50 watts Rack Mounted		
	DIGITAL FEATURES:		
	* NXDN Digital Air Interface * Conventional IP Network		
	* AMBE+2 VOCODER * 6.25 & 12.5 kHz Channels		
	* Mixed FM / Digital Operation * NXDN Scrambler Built-in		
	* 16 RAN Repeater Control Built-in * 1,000 GIDs Per Site		
	* 1,000 UIDs Per Site * Individual & Group Selective Call		
	* All Group Call * NXR Over-the-air Alias		
1	* Two year Kenwood Warranty	$ 2,150.00	$ 2,150.00
	Includes:		
1	Gain antenna with low loss coax and connectors	$ 2,625.00	$ 2,625.00
1	Labor Programming and set up of repeater	$ 250.00	$ 250.00
1	Labor Install repeater and new antenna at site	$ 2,850.00	$ 2,850.00
1	Project Management and System Design	$ 500.00	$ 500.00
1	FCC Licensing research and modification to Narrowband	$ 1,080.00	$ 1,080.00
1	Project Management and System Design	$ 500.00	$ 500.00
7	Kenwood NEXEDGE NX-200 Digital and Analog Portable Radios 136-174 MHz, 5 watts	$ 734.00	$ 5,138.00
	Includes:		
7	KRA-22M VHF Low-profile helical antenna	$ 13.70	$ 95.90
7	KNB-47L 1950 mAh, Li-ion Battery	$ 105.00	$ 735.00
	KBH-11 Spring Belt Clip		
	Universal Connector Cap		
	Instruction Manual		
	Premium 3 Year Radio Warranty (1 year accessories)		
7	Programming and Tuning	$ 45.00	$ 315.00
1	Single Rapid Rate Charger KSC-32	$ 70.00	$ 70.00
1	6-unit Rapid Rate Charger KSC-326K	$ 630.00	$ 630.00
7	Kenwood NEXEDGE NX-700 Digital and Analog Mobile Radios 136-174 MHz, 30 watts	$ 725.00	$ 5,075.00
	Includes:		
	KMC-35 Standard Microphone		
	Mounting Bracket		
	KCT-23M DC Cable		
	Blade Fuse		
	Instruction Manual		
	Premium 3 Year Radio Warranty (1 year accessories)		
7	Roof Mount Antenna System	$ 65.00	$ 455.00
7	Programming and Tuning	$ 45.00	$ 315.00
7	Field Installation at your location (and removals)	$ 225.00	$ 1,575.00
3	Travel to site and your location	$ 70.00	$ 210.00
1	Freight Charges	Equip Subtotal:	$ 16,973.90
	February 1, 2012	Sales Tax:	$ 1,485.22
	Michelle Rodriguez	Labor Subtotal:	$ 7,595.00
	Communications Manager	Freight:	$ 75.00
		Budgetary Total:	**$ 26,129.12**