SWEETWATER SPRINGS WATER DISTRICT

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

FROM: Steve Mack, General Manager

MEETING DATE: November 6, 2014

SUBJECT: DISCUSSION/ACTION RE PROFESSIONAL ASSISTANCE WITH NEGOTIATIONS FOR MT JACKSON CELL TOWER SITE

RECOMMENDED ACTION: Approve Resolution 14-23 which authorizes the General Manager to execute a contract for professional services from Sun-Kay Associates for assistance in negotiations for extending the lease at the Mount Jackson cell tower site.

FISCAL IMPACT: The not-to-exceed price of the contract is $7,500.

DISCUSSION:

Should the District decide to proceed with negotiations to extend the Mt Jackson cell tower site lease with Crown Castle, professional assistance will be very helpful in getting the best terms and price. Sunkay Associates have been approved to provide cell tower marketing services for sites other than the Mt Jackson site which 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. This is an important source of revenue, certain terms of the current lease are nonstandard, I believe, and professional assistance in keeping these terms going forward and getting the best deal possible for the District is important.

RESOLUTION 14-23

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES FOR EXTENDING THE CROWN CASTLE MT. JACKSON CELL TOWER SITE LEASE WITH SUNKAY ASSOCIATES 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, the District has need of consulting professional services for assistance in extending this lease; 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 professional services agreement (Exhibit A) proposed by Sunkay appears to be fair to both parties and has a not-to-exceed price of $7,500.

NOW, THEREFORE, BE IT RESOLVED, that the General Manager is authorized to execute said Agreement on behalf of the District for a not to exceed price of $7,500.

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 November 6, 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

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made this October 28, 2014 by and between **Sweetwater Springs Water District, P.O. Box 48, Guerneville, CA, 95446**, hereinafter referred to as the CLIENT, and **Sunkay Associates, 1770 Morgans Avenue, San Marcos, CA 92078**, hereinafter referred to as the CONSULTANT.

1. **BACKGROUND**: During the term of this Agreement, CONSULTANT will perform services in a professional consulting capacity as requested from time to time by the CLIENT, at such places and times as are set forth in the Statement of Work referenced in this Agreement Each Statement of Work, including the Statement attached hereto, shall become part of this Agreement when executed by both parties. In the event of any conflict between any Statement of Work and this Agreement, the terms of such Statement of Work shall prevail.

2. **RELATIONSHIP:**

(a) CLIENT retains complete right to accept or reject recommendations of CONSULTANT with respect to leases evaluated by CONSULTANT pursuant to this agreement.

~~(a)~~(b) _____CONSULTANT will serve as an independent contractor, and nothing contained herein will be construed to create the relationship of employer and employee or agent and principal between the CLIENT and CONSULTANT.

~~(a)~~(c) _____CONSULTANT acknowledges that he/she is not an employee of the CLIENT, and said CLIENT is not obligated nor charged with the responsibility of withholding income taxes from any compensation due the CONSULTANT, nor is the CLIENT obligated to pay Social Security taxes for the CONSULTANT, nor is the CONSULTANT entitled to any benefits to which he/she would be entitled if he/she were an employee.

~~(a)~~(d) _____CONSULTANT represents that he/she possesses the training, skills and expertise necessary to perform the consulting services required by this Agreement in a competent and professional manner.

(e) CONSULTANT will devote the amount of time to the affairs of the CLIENT as will be mutually agreeable to the parties hereto.

~~(e)~~(f) _____CONSULTANT reserves the right to perform services for more than one CLIENT at any time, and may be performing such services concurrently herewith.

~~(e)~~(g) _____CLIENT agrees to immediately cease all written and oral communications with Crown Castle and/or agents of Crown Castle upon acceptance of this Agreement. CONSULTANT will serve as the intermediary for all communication with Crown Castle and its affiliates and will update, and consult with, the CLIENT throughout the entire process until a successful transaction occurs.

3. **TERMINATION:** This Agreement commences on the date written above and shall terminate one year from this date on October 28, 2015 or upon the successful close of a transaction, whichever occurs first[RD1].

4. **PAYMENT:** In consideration of the satisfactory performance of the CONSULTANT, the CLIENT agrees to pay the CONSULTANT according to the Professional fees as determined by the executed Statement of Work.

5. **CONFIDENTIALITY:** Proprietary or confidential information made available to CONSULTANT or to which CONSULTANT becomes privy under this Agreement, shall not be disclosed to others, or used for any purposes except as required under this Agreement, without prior written permission by the CLIENT.

6. **WARRANTY:** CONSULTANT hereby warrants to the CLIENT that CONSULTANT shall, at all times, perform the services required by this Agreement with the highest level of competence, expertise, diligence, timeliness and loyalty as determined by standards established by other consultants providing similar services in the industry. This warranty is the only warranty contained in this Agreement and there are no other warranties contained herein, whether express or implied. CONSULTANT does not warrant or guarantee any specific outcome with regards to the negotiation of the CLIENT's lease(s).

7. **LIABILITY:**
   (a) CONSULTANT will self-insure his/her services and the services of his/her agents or employees. CONSULTANT hereby indemnifies and agrees to hold CLIENT, CLIENT's Board of Supervisors, agents and employees from and against any and all liability, losses, costs and expenses (including reasonable attorney's fees and costs of litigation) arising from or pertaining to any claim resulting from CONSULTANT's material breach of the provisions of this Agreement.

   ~~(a)~~(b) With regard to the services to be performed under this Agreement, the CONSULTANT shall not be liable to the CLIENT for any acts or omissions in the performance of said services on the part of CONSULTANT or on the part of the agents or employees of the CONSULTANT except when such acts or omissions are due to the sole negligence or willful misconduct of CONSULTANT, his/her agents or employees.

   ~~(a)~~(c) This indemnification obligation shall survive the expiration or earlier termination of this Agreement.

8. **PROPRIETARY RIGHTS:** CONSULTANT agrees that all correspondence, data, and reports created in relation to the work performed under this Agreement shall be the property of the CLIENT and may be used by the CLIENT for any purpose whatsoever without any claim on the part of the CONSULTANT for additional compensation, and will be delivered to the CLIENT or otherwise disposed of as the CLIENT directs.

9. **ARBITRATION:**

Any controversy arising under this Agreement, or any dispute related to its subject matter shall be submitted to arbitration in accordance with the California Code of Civil Procedure, Sections 1280 through 1284.2. The arbitrator utilized shall be Judicial Arbitration and Mediation Services, Inc. (J•A•M•S). The written determination of the arbitration shall be final, binding and conclusive on the parties. Discovery shall be available to the parties, and the provisions of the California Code of Civil Procedure, Section 1283.05 are hereby incorporated into and made applicable to this Agreement.

10. **MISCELLANEOUS:**

(a) This Agreement constitutes the entire agreement between the parties and supersedes any and all other agreements between the parties. No representation or promise, either oral or written, has been made except as specifically set forth herein. Should any part of this Agreement be declared invalid, such validity shall not affect the remainder of the Agreement.

~~(a)~~(b) This Agreement and the terms, conditions and obligations herein contained shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns, and shall be governed by the laws of the State of California unless the dispute in question arises out of a transaction performed in another State. In that event, that County shall have jurisdiction and the laws of that State shall govern this Agreement.

PROFESSIONAL SERVICES AGREEMENT
STATEMENT OF WORK

Period of Performance: October 28, 2014 – October 28, 2015 or upon the successful execution of a lease extension transaction.

Background:
Crown Castle ("Crown") is currently leasing space on the CLIENT property for use of its federally licensed communications business (i.e., cell site). The CLIENT is seeking assistance from the CONSULTANT in order to leverage its expertise in wireless telecommunications to negotiate optimal terms for a 30-50 year lease extension proposal from Crown. Further, the CONSULTANT will work closely with the CLIENT's legal firm, Meyers-Nave, to ensure the CLIENT's legal interests are protected.

Scope of Work:
- CONSULTANT will perform an analysis of the CLIENT's existing wireless telecommunications lease(s) and associated amendments.
- CONSULTANT will review the proposed lease extension Amendment from Crown.
- CONSULTANT's in-house telecom attorney will review and redline the proposed Amendment and will work closely with Meyers-Nave to ensure CLIENT's interests are protected.
- CONSULTANT will communicate and update the CLIENT during the entire process.

Professional Fees:
CONSULTANT has agreed to modify the standard fee of 3 months of final monthly rent paid by Crown to the CLIENT in favor of a flat, one-time $7,500 fee. This fee is all-inclusive. Payment to the CONSULTANT is due upon the successful execution of a lease extension.

CONSULTANT will be paid within 15 business days of the date of the execution of the final lease Amendment between Crown and the CLIENT.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CLIENT	**CONSULTANT**
By: _____	By: _____
Name: _____	Name: Nigel Paxton
Title: _____	Title: Partner, Sunkay Associates
Date: _____	Date: _____

2352611.1

CLIENT Initial _____