



MONTARA WATER AND SANITARY DISTRICT AGENDA

For Meeting Of: **December 6, 2018**

TO: BOARD OF DIRECTORS

FROM: Clemens Heldmaier, General Manager

**SUBJECT: Review and Possible Action Concerning
Approval of Cell Lease Negotiating Contract with
Communication Leasing Services Inc.**

The District owns two communication towers and receives a steady stream of income from cellular companies. So far District staff negotiated the agreements. Cell leases and the potential use of communication sites are a field that is flooded with professional scouts and negotiators for the communication companies. Professionals that are representing the property owner's interest are rare. District staff believes that advise by a consultant with insight into the Industry could be beneficial for MWSD.

The District has two existing contracts with providers that are established and in no urgent need for renegotiation. However, changes to equipment and uses could potentially serve to negotiate better terms going forward. The District also owns further sites that could be of potential interest for communication providers. One wireless group recently voiced interest in the District's Schoolhouse site.

Communication Leasing Services Inc. was recommended to the District by Coastside County Water District. The General Manager engaged with Communication Leasing Services Inc. in a limited scope agreement to negotiate a contract with a marine communication equipment provider. While the negotiations are still ongoing, we have been impressed with Communication Leasing Services Inc. knowledge and expert advice.

RECOMMENDATION:

Adopt Resolution No. _____, Resolution of the Montara Water and Sanitary District Approving and Authorizing Execution of Consulting Agreements for Leasing or otherwise Permitting use of District Property.

Attachment

RESOLUTION NO. _____

RESOLUTION OF THE MONTARA WATER AND SANITARY DISTRICT APPROVING AND AUTHORIZING EXECUTION OF CONSULTING AGREEMENT FOR LEASING OR OTHERWISE PERMITTING USE OF DISTRICT PROPERTY

(Communication Leasing Services, Inc.)

WHEREAS, the Montara Water and Sanitary District (“District”) is approached from time to time regarding leasing or otherwise obtaining use of District property; and

WHEREAS, the District desires expert advice in entering into agreements for such use; and

WHEREAS, Communication Leasing Services, Inc. represents that it is experienced and qualified to provide such services; and

WHEREAS, this Board has been presented with and reviewed an agreement with said company for such services and desires to approve and authorize execution thereof on behalf of the District;

NOW THEREFORE, be it resolved by the Board of the Montara Water and Sanitary District, a public agency in the County of San Mateo, California, as follows:

That certain agreement by and between Communication Leasing Services, Inc., with offices in Corte Madera, California, and the Montara Water and Sanitary District, a public Agency, entitled, “Communication Leasing Services, Inc. – Consulting Agreement,” on file in the District’s Administrative Offices, to which reference is hereby made for the full particulars thereof, is hereby approved and the District General Manager is hereby authorized and directed to execute said agreement for and on behalf of the District.

President, Montara Water and Sanitary District

COUNTERSIGNED:

Secretary, Montara Water and Sanitary District.

* * * *

I HEREBY CERTIFY that the foregoing Resolution No. _____ was duly and regularly adopted and passed by the Board of the Montara Water and Sanitary District, County of San Mateo, California, at a Regular Meeting thereof held on the 6th day of December 2018, by the following vote:

AYES, Directors:

NOES, Directors:

ABSENT, Directors:

Secretary, Montara Water and Sanitary District

Communication Leasing Services, Inc.
CONSULTING AGREEMENT

This CONSULTING AGREEMENT is made and entered into as of _____, __ 201__, by and between the Montara Water and Sanitary District, a Public Agency in the County of San Mateo, California with Administrative Offices located at 8888 Cabrillo Hwy., Montara, CA 94037 ("MWSD") and Communication Leasing Services, Inc., a California Corporation, having a place of business at 21 Tamal Vista Blvd., Suite 111, Corte Madera, CA 94925 ("CLS"). MWSD and CLS (collectively, "Parties") desire to enter into an agreement whereby CLS will provide the hereinafter described services for MWSD. The Parties agree as follows:

1.0. DEFINITIONS.

1.1. "Agreement" means this Consulting Agreement.

1.2. "Manager" means MWSD's General Manager or his or her designee.

1.3. "Services" means negotiations or other Services as described in Exhibit A, attached hereto and incorporated herein by this reference, to be performed by CLS on behalf of MWSD from time to time during the Term upon written request and under the direction of Manager. Manager's written requests may be transmitted by postage prepaid letter deposited with the U.S. Postal Service, facsimile or e-mail as Manager shall determine. The requests shall identify the site and description of the telecommunications facilities (including, as applicable, structures and equipment), the Telecommunications company or other entity, the Telecommunications Agreement related to Manager's request, a brief description of the Services to be performed and such other pertinent information determined by Manager. Services do not include legal services.

1.4. "Telecommunication Agreement(s)" means, agreement(s) or proposed agreement(s) between MWSD and telecommunication companies for the placement and use of equipment or structures on MWSD's property, including MWSD's land and improvements thereon.

2.0. SERVICES. For the term, MWSD hereby appoints CLS as its exclusive agent to perform the Services and CLS agrees to provide the Services to MWSD.

3.0. COMPENSATION. MWSD agrees to pay to CLS for the Services, the compensation as set forth on Exhibit A. CLS shall be responsible for all costs and expenses incidental to the performance of the Services, except as otherwise expressly set forth in Manager's written requests for Services.

4.0. OWNERSHIP. Notwithstanding anything to the contrary herein, CLS shall own any form of agreements that it creates or produces and other materials created or assembled by CLS and know-how necessary to conduct its business. MWSD agrees that any agreements, including this Agreement, and other tangible and intangible information used to conduct CLS's business, is proprietary to CLS and may not be used or disclosed by MWSD to any third party except as necessary for CLS to perform Services hereunder or as may be required under California's Public Records Act.

5.0. WARRANTIES AND DISCLAIMER. MWSD warrants that it is the owner of the sites that shall be described in Manager's written requests for Services and otherwise has all necessary right and authority to enter into this Agreement. CLS warrants to MWSD that all Services will be performed by CLS in a good and workmanlike manner. Services do not include legal services. Apart from the foregoing, CLS disclaims all express and implied warranties regarding the outcome of negotiations or other

transactions it conducts hereunder and does not guarantee such outcome; provided, that MWSD reserves all rights and authority to accept or reject any proposed result of CLS's negotiations or proposed transactions. CLS's officers and employees shall not be personally liable for the performance by CLS under this Agreement. The liability of CLS and its officers and employees under this Agreement shall be limited to Two Thousand Dollars (\$2,000.00) per written request or transaction.

6.0 TERM. This Agreement is effective as of the date first set forth above and will continue in effect for one year unless CLS has commenced Services under a Manager's written request prior to and continuing after the the expiration of the Term, in which case this Agreement shall remain in effect until completion of such Services and CLS's Fee is paid in full. The Term of this Agreement shall be renewed automatically for two consecutive additional one-year periods, unless either CLS or MWSD notifies the other Party in writing at least thirty days prior to the expiration of the Term then in effect that such Party will not extend the Term. Any rights or obligations which by their nature should survive termination or expiration of the Term(s) of this Agreement shall so survive.

7.0. GENERAL.

7.1. Governing Law; Venue. Any dispute regarding the interpretation, or validity of, or otherwise arising out of, this Agreement, or relating to the Services provided hereunder shall be subject to the exclusive jurisdiction of the courts, and governed by the laws, of the State of California.

7.2. Waiver. The failure of either Party to enforce at any time, or for any period of time, the provisions hereof shall not be construed to be a waiver of such provisions or of the right of such Party to enforce each such provision.

7.3. Assignment. No portion of this Agreement or any of CLS's rights (including, without limitation, the right of payment for Services) or obligations hereunder may be assigned or delegated by either Party.

7.4. Modifications. Any modification to this Agreement shall be in writing and signed by both MWSD and CLS.

7.5. Headings. Section or paragraph headings used in this Agreement are for reference purposes only and will not be used in the interpretation of this Agreement.

7.6. Insurance. CLS shall provide the following minimum insurance coverage: Workers' Compensation (if applicable) with not less than the statutory minimum; Employer's Liability in the amount of \$1,000,000 per accident for bodily injury or disease; Comprehensive General Liability in the amount of \$2,000,000 per occurrence for bodily injury (including death) and property damage (including loss of use thereof); and Automobile Liability in the amount of \$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to CLS's vehicle usage in performing services hereunder). MWSD, its governing Board, officers, employees, agents and consultants shall be named as additional insureds under the Comprehensive General and Automobile Liability coverage. CLS shall provide MWSD with certificate(s) of insurance and copies of policy declaration pages

evidencing the foregoing coverage, exceptions thereto, and the inclusion of the additional insureds.

7.7. Complete Agreement. This Agreement, including any exhibits attached hereto, constitutes the complete and exclusive statement of agreement between MWSD and CLS, and supersedes all proposals, oral or written, and all other communications between MWSD and CLS relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the above date.

Montara Water and Sanitary District ("MWSD")

By: _____
Clemens Heldmaier, General Manager

Communication Leasing Services, Inc. ("CLS")

By: _____
Aaron M. Levinson, President

EXHIBIT A
DESCRIPTION OF SERVICES, WORK PRODUCT AND COMPENSATION

A. Services to be provided by CLS upon written request by MWSD in accordance with the following table:

Item	Description
1	Audit site(s) to determine the capacity to house telecommunication equipment and the best location for the placement of such equipment from a property MWSD's perspective.
2	Negotiate Telecommunication Agreement(s) or re-negotiate existing and/or expiring Telecommunication Agreement(s) between MWSD and telecommunication carrier ("Negotiation Services")
3	Prepare Telecommunication Agreement pursuant to MWSD's requirements
4	Review proposed construction drawings and provide comments to MWSD
5	Management of on-going issues such as equipment additions/relocations or other issues as agreed upon by both MWSD and CLS
6	Audit existing telecommunication leases to ensure business terms favor MWSD and equipment installation conforms to lease or license.

B. CLS Fee: The compensation to CLS ("CLS Fee") shall be: Twenty percent (20%) of the amount due MWSD during the initial term of the Telecommunication Agreement including any negotiated option fees or upfront payments. MWSD agrees to pay CLS, the CLS Fee, as follows:

- i. In the case of a Telecommunication Agreement with an initial term of up to five (5) years in which MWSD receives payment in one sum annually, in advance, then MWSD shall pay the CLS Fee in two annual payments within ten (10) days from the date each payment is received by MWSD during the first 2 years the Telecommunication Agreement is in place. In the case of a Telecommunication Agreement with an initial term up to ten (10) years in which MWSD receives payment in one sum annually, in advance, then MWSD shall pay the CLS Fee in four annual payments within ten (10) days from the date each payment is received by MWSD during the first 4 years the Telecommunication Agreement is in place.
- ii. In the case of a Telecommunication Agreement with an initial term of up to five (5) years in which MWSD receives monthly payments, then MWSD shall pay the CLS Fee in twenty four (24) equal installments over the first twenty four (24) months of the Telecommunication Agreement due within ten (10) days from the date those twenty four (24) payments are received by MWSD pursuant to subject Telecommunication Agreement. In the case of a Telecommunication Agreement with an initial term up to ten (10) years in which MWSD receives monthly payments, then MWSD shall pay the CLS Fee in forty eight (48) equal installments over the first forty eight (48) months of the Telecommunication Agreement due within ten (10) days from the date those forty eight (48) payments are received by MWSD pursuant to subject Telecommunication Agreement.
- iii. In the case where a telecommunication company adds equipment to an existing site on MWSDs' property and MWSD had engaged CLS to manage the subject equipment addition, MWSD agrees to pay the CLS fee of Twenty percent (20%) of the difference between the existing rent immediately prior to the addition of equipment, and the revised rent negotiated by CLS (and approved by MWSD) from the time the equipment is added and additional rent is received by MWSD, for the following five (5) year time period. In this event, if the corresponding CLS Fee is under \$7,500.00, then the CLS Fee will be paid to CLS in one lump sum; if the CLS Fee is over this amount, then the CLS Fee will be paid in the timeframes described in Sections Bi and Bii above.
- iv. In the case where a Telecommunication Agreement on MWSDs' property reaches the end of its term and MWSD engages CLS to manage the renegotiation of a new succeeding Telecommunication Agreement, MWSD agrees to pay the CLS fee of Twenty percent (20%) of the difference between the existing rent immediately prior to the end of the term, and the revised rent negotiated by CLS (and approved by MWSD) from the commencement of the new term for the following five (5) year time period. In this event, if the corresponding CLS Fee is under \$7,500.00, then the CLS Fee will be paid to CLS in one lump sum; if the CLS Fee is over this amount, then the CLS Fee will be paid

in the timeframes described in Sections Bi and Bii above.

- v. CLS Fees for services other than those defined above (such as business term dispute resolution) will be determined and agreed upon in writing and in advance by Owner and CLS and CLS and shall be billed by CLS at the rate of \$250.00 per hour.
- C.** In the event MWSD sells any of its Sites, the balance of any unpaid CLS Fee due for any such sites shall accelerate and be paid to CLS on a lump sum basis upon close of escrow of sale of subject property. In the event a telecommunication carrier under a Telecommunication Agreement with MWSD stops paying its rent or license fee prior to the termination date of subject agreement, then the payment of any unpaid CLS Fees may be suspended until telecommunication carrier commences payment of rent or license fees to MWSD at which time MWSD shall resume payment of the CLS Fee in accordance with the terms of this Section "B" until the CLS Fee is paid in its entirety.