

RECEIVED

DEC 03 2014

PUBLIC SERVICE  
COMMISSION

MOUNTAIN WATER DISTRICT  
PIKE COUNTY, KY

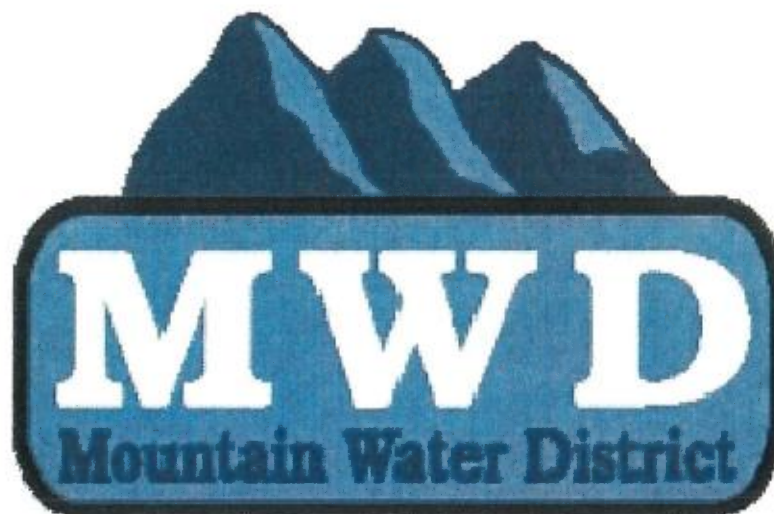
**PSC FIRST REQUEST FOR  
INFORMATION**

---

CASE NO. 2014-00342

Vol. 2 of 7

Question 4



**REQUEST NO. 4** : Provide all internal memorandum, correspondence, electronic mail, messages and other documents in which Mountain Water District officials analyzed, reviewed or discussed in contract negotiations with UMG.

**RESPONSE NO. 4** : Please find enclosed a list of correspondence, memorandum and various financial analysis that occurred from 2005 through 2014 in regard to the UMG Contracts with Mountain Water District. This list includes all communications with the commissioners, and UMG, through Daniel P. Stratton, Counsel for the District. He has not included various memos to file, which were his notes from various meetings with UMG over the years, which involved the District's contract negotiations. These are privileged and confidential notes and memorandums, which were not shared with the Board, or UMG. They are not being produced pursuant to KRE 503(6).

There maybe references to attached documents on various correspondences. Most of them have been attached to that correspondence, but inevitably in the compiling of this documentation, there may be a letter that does not have attached documents, which maybe located as an attachment to another document, or a contract itself. If it is not otherwise included, it has been misfiled and could not otherwise be located.

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**  
P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
[www.shmlaw.com](http://www.shmlaw.com)

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

March 29, 2005

Mr. Will Brown, Superintendent  
Mountain Water District  
P.O. Box 3157  
Pikeville, KY 41502

RE: . *Request for Statements for Qualifications and Price Proposals for Operations and Management of Facilities*

Dear Will:

Please find attached a timetable with blanks to be completed based on the schedule you deem appropriate. I have also made a few small modifications in the bid proposal itself as evidenced by the strike-thrus and underlined changes. Please review these and if satisfactory, I will put them in final form.

As to the timetable, I'm going to recommend that you allow at least thirty days between the time of final approval by the board and commencement of operations. While that may create some uncertainty among employees it gives the successful better time to conduct interviews and retain qualified employees, to convert over computer systems as may be required, and set up the necessary financials, etc. I know you're concerned about employee performance during a transitional period and rightfully so, but I believe more prep time in the beginning will allow for a smoother transition in the end, however I will defer to your judgment.

After you have had a chance to review everything, please give me a call.

Sincerely,



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/sdc

Enclosure

**MEMO**

**TO: MOUNTAIN WATER BOARD OF COMMISSIONERS**

**FROM: MANAGEMENT ADVISORY COMMITTEE**

**RE: REQUEST FOR STATEMENTS OF QUALIFICATION AND PRICE PROPOSALS FOR THE OPERATION, MAINTENANCE AND MANAGEMENT OF ALL FACILITIES**

**DATE: May 18, 2005**

At the Board meeting held on April 27, 2005, the Board authorized management to issue a request for statements of qualification and price proposals for the operation, maintenance and management of all facilities. Pursuant to said request, management appointed a management advisory committee of the following individuals: Brian Bentley, John Collins, Moss Keesee, Grondall Potter III, Mike Spears, Dan Stratton, Jack Sykes.

The committee's duties are set out under Article IV, Section A of the request for proposal. The committee has completed steps 1-5 and this report is to summarize our findings and conclusions to date.

The Request for Proposal was advertised in the Appalachian News Express and the Lexington Herald Leader on April 8, 2005.

As a result of the advertisements, the District received two proposals, the first from Utility Management Group (UMG), a startup management company out of Corbin, Kentucky and the second from Alliance Water Resources (AWR), a twenty-five year company who operates eight rural water systems, from Columbia, Missouri. Both groups attended a mandatory pre-proposal conference and inspection tour of the District's facilities on April 18, 2005 and were provided data and information necessary for a response.

Both groups provided a response by the April 25, 2005 deadline. UMG provided a complete response. AWR's initial response was incomplete and they said they did not believe that they had sufficient time to present a price proposal.

The committee met on May 4, 2005 to review and discuss the respective proposals. AWR had two open issues concerning pricing and requirement of maintaining existing personnel for the first six month period. It was agreed that additional time would be granted to both parties to supplement their responses, but particularly to allow AWR to submit a price proposal and address the issue of personnel.

Mike Spears was asked to develop a before and after balance sheet and income statement showing the impact of a contract of this nature on the District's financial statements. UMG was the only company to provide numbers at that time, so he was to use their numbers as a sample. See Exhibit A.

At that meeting, the committee graded the two proposals on five of the six criteria provided for in the request for proposal. Mike Spears abstained from this voting as he had not had an opportunity to review the materials. Based on the point system provided in the request for proposal the vote was as follows:

CRITERIA	TOTAL POINTS	UMG	AWR
1.) Completeness	5	27	13
2.) Qualifications	15	70	60
3.) Operating Plan	30	152	105
4.) Transition Plan	20	116	68
5.) References	15	86	72
6.) <u>Price (Not rated)</u>	<u>15</u>		
TOTAL	100	451	318

The committee met next on Friday, May 13, 2005 and reviewed the pricing proposals. While it initially appeared that AWR's proposal was substantially cheaper, an apples to apples comparison was made which reflected that the pricing was essentially the same, however, there was a premium of approximately \$350,000.00 for the first six months of the AWR contract that was not applicable to UMG. Mike Spears has prepared the attached Exhibit B outlining in detail the price differentiations between the two companies. There was not a vote on pricing as totals would not have otherwise changed as AWR fees were higher based on the additional fee for the first six months.

Other items discussed that the committee wanted to note for the Board were:

1) That the AWR contract also entailed certain inherent risks for future cost to the District that were not present with the UMG contract being cost of purchased water and electricity. Therefore if the actual costs exceed the projected budget numbers for these items this would be an additional expense to the District under the AWR proposal, but not the UMG proposal. This is UMG's incentive to operate efficiently.

2) The AWR contract provides pricing will be negotiated annually at a not-to-exceed price for the year. They provide a refund clause based on a 75/25% ratio. If at the end of the year AWR cost, plus it's 10% management fee, is less than the agreed price, Mountain Water District will receive 75% of the difference, which is AWR's incentive to reduce cost and allow the District to benefit. If, on the other hand, AWR exceeds its firm not-to-exceed price, then they must assume the difference. UMG has no such provision.

3) AWR does not have a provision to adjust the fee otherwise if no agreement can be reached. UMG has a cost adjuster based on the C.P.I. Index.

4) The transition period for AWR was eighteen months before they felt they could get everything operating under their system. UMG did not provide a specific time period for transition, but it would appear to be much shorter in that they are utilizing the existing staff in its entirety.

5) It would appear that AWR will substantially reduce staff (in order to get economies of scale) after the initial six-month period.

6) The employee's benefits package offered by UMG appears on average to be much more beneficial to the employees than the one proposed by AWR.

7) ARW's proposal would require the District to pay the current vacation and sick day balance per current policies. This liability is estimated to be up to \$450,000.00.

8) Customer service issues would be managed through AWR's central office, which would then require customers with billing and service issues to deal over the phone with a central office, as opposed to locally with UMG.

Based on all of the above, it is the recommendation of the management advisory team that UMG's proposal should be selected over the AWR proposal. If approved by the Board, the team would work on steps 6-8 as set forth in the request for proposal.

Respectfully submitted,

Daniel P. Stratton, Chairman

Exhibit A

Pg 1

**Mountain Water District**  
**Projected Balance Sheet**  
**End of First Fiscal Year of Operations w/ UMG Contract**  
**,000's Omitted**

**Assets**

Cash Unrestricted		\$	175
Accounts Receivable			698
Utility Plant and Equipment	70,000		
Less: Accum Depreciation	(18,976)		51,024
Restricted Cash (less Construction)			783
Prepaid expenses			209
Total Assets		\$	<u>52,889</u>

**Liabilities and Equity**

Liabilities

Accounts payable - UMG		\$	284
Customer Deposits			255
Payroll Liabilities			1
Notes Payable - KIA			6,457
Bonds Payable			9,277
Total Liabilities			<u>16,274</u>

Equity

Total Liabilities and Equity		\$	<u>52,889</u>
------------------------------	--	----	---------------

# Exhibit A

Pg 2

## Mountain Water District Projected Income Statement First Fiscal Year of Operations w/ UMG Contract ,000's Omitted

	<u>Current Customers</u>	<u>Projected New</u>	<u>Projected Customers</u>
<b>Revenues</b>			
Water and Sewer Revenues	\$ 7,491	\$ 434	\$ 7,925
Service Billings	-		
Late Payment Fees	156	9	165
Service Charges	21	1	22
Trip Fees	3	0	3
Total Revenues	7,671	445	8,116
<b>Expenses</b>			
UMG Contract	6,820		6,820
Board of Commissioners Salary	30		30
Regulatory Fees- PSC	16		16
Legal Fees	50		50
Financial Advisor to the board	24		24
Audit	25		25
Depreciation	1,700		1,700
Interest on Bonds	418		418
Interest on KIA Notes	162		162
Total Expenses	9,245	-	9,245
<b>Net Income</b>	<b>\$ (1,574)</b>	<b>\$ 445</b>	<b>\$ (1,129)</b>



# Exhibit A

Pg 3

## Mountain Water District Projected Increase(Decrease) in Operating Accounts First Fiscal Year of Operations w/ UMG Contract ,000's Omitted

Net Income per Income Statement	\$ (1,129)
Add back: Depreciation	1,700
Less: Principal payments on Bonds	(121)
Principal payments on KIA Notes	(305)
Transfer to Reserve Accounts	<u>(88)</u>
Projected Increase(Decrease) in Operating Cash	<u>\$ 57</u>

## Exhibit B

### Mountain Water District Cost Comparison between UMG and AWR Proposals

<u>ITEM DESCRIPTION</u>	<u>UMG</u>	<u>AWR</u>
Operating Costs	\$ 6,820,000	\$ 4,200,000 (1)
Power		515,000
Repair and Maintenance		350,000
Contractual		37,853
Insurance		125,000
Miscellaneous		60,000
Purchased Water		700,000
Short Term Debt		240,000
Reduction in Repair and Maintenance Budget		106,140
Sewage Treatment Costs		120,000
AWR budget reduction to 2004 Financials		155,697
<b>First Full Year of Operations Cost</b>	<u>\$ 6,820,000</u>	<u>\$ 6,609,690</u>
 <u>INITIAL ONE TIME COST TO CONTRACT IN AWR PROPOSAL</u>		
Premium in First 6 Months of Operation - AWR		\$ 350,000 (2)
District's Cost to buy Employee's Time		450,000 (3)
<b>Total One Time Cost to District</b>		<u>\$ 800,000</u>

- (1) This estimate is based on a plus/minus 10 % cost. This would create a Total Cost range of \$6,189,690 to \$7,029,690 per year.
- (2) This is additional cost that AWR feels the district might recoup over the life of the Contract.
- (3) This is cost to buy out employees time in excess of hours transferable to UMG Proposal.

**MOUNTAIN WATER DISTRICT**

P.O. BOX 3157  
PIKEVILLE, KY 41501  
606/631-9162-PHONE  
606/631-3087-FAX

**FACSIMILE TRANSMITTAL SHEET**

TO: DAN STRATTON	FROM: WILL BROWN
COMPANY: STRATTON, HOGG & MADDOX	DATE: MAY 26, 2005
FAX NUMBER: 606-437-7569	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER: 606-437-7800	SENDER'S REFERENCE NUMBER:
RE: RESOLUTION	YOUR REFERENCE NUMBER:

Dan:

Please read the attached and advise.

Thank you

CONFIDENTIALITY NOTICE

Rec. 5/26/05

# MOUNTAIN WATER DISTRICT

## RESOLUTION 05-05-013

### APPROVAL OF NEGOTIATIONS OF OPERATIONS, MAINTENANCE & MANAGEMENT PROPOSAL

**WHEREAS, THE BOARD OF COMMISSIONERS** of the Mountain Water District agreed and requested statements of qualifications and price proposals (RFQ/P) from capable governmental entities, non-profit corporations, or private companies, interested in providing operations, maintenance, and management services to the District by means of a contractual agreement, and,

**WHEREAS, THE BOARD OF COMMISSIONERS** of the Mountain Water District agreed and appointed an Advisory Committee, consisting of one Board member, one attorney, one certified public accountant, one engineer, one District administrative employee, one District salaried employee and one District hourly employee to review and assess the two proposals submitted to the Board from Alliance Water Resources, Columbia, Missouri, and Utility Management Group, Corbin, Kentucky. The Advisory Committee completed their review and assessment of these two proposals and submitted to the Board of Commissioners their recommendation, and,

**WHEREAS, THE BOARD OF COMMISSIONERS** of the Mountain Water District agrees to accept the recommendation of the Advisory Committee and approve entering into negotiations with Utility Management Group for the Operations, Maintenance & Management Agreement submitted to the Board of Commissioners by Utility Management Group, Corbin, Kentucky, and,

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Commissioners of the Mountain Water District votes to approve entering into negotiations with Utility Management Group for the Operations, Maintenance & Management Agreement submitted to the Board of Commissioners by Utility Management Group, Corbin, Kentucky.

**MOTION FOR ADOPTION** of this resolution was made the 25<sup>th</sup> day of May, 2005, by Commissioner Litafik and seconded by Commissioner Collins. Commissioner voting as follows:

Chairperson Akers	Aye
Commissioner Collins	Aye
Commissioner Litafik	Aye
Commissioner Spears	Aye
Commissioner Sullivan	Aye

**THEREUPON**, said motion was declared passed and the resolution adopted.

Dated this the 25<sup>th</sup> day of May, 2005.

---

Toni Akers, Chairperson

---

Terry Spears, Secretary

# Exhibit A

Pg 2

## Mountain Water District Projected Income Statement First Fiscal Year of Operations w/ UMG Contract ,000's Omitted

	<u>Current Customers</u>	<u>Projected New</u>	<u>Projected Customers</u>
<b>Revenues</b>			
Water and Sewer Revenues	\$ 7,491	\$ 434	\$ 7,925
Service Billings	-		
Late Payment Fees	156	9	165
Service Charges	21	1	22
Trip Fees	3	0	3
Total Revenues	<u>7,671</u>	<u>445</u>	<u>8,116</u>
<b>Expenses</b>			
UMG Contract	6,820		6,820
Board of Commissioners Salary	30		30
Regulatory Fees- PSC	16		16
Legal Fees	50		50
Financial Advisor to the board	24		24
Audit	25		25
Depreciation	1,700		1,700
Interest on Bonds	418		418
Interest on KIA Notes	162		162
Total Expenses	<u>9,245</u>	<u>-</u>	<u>9,245</u>
<b>Net Income</b>	<u>\$ (1,574)</u>	<u>\$ 445</u>	<u>\$ (1,129)</u>

## Exhibit B

### Mountain Water District Cost Comparison between UMG and AWR Proposals

<u>ITEM DESCRIPTION</u>	<u>UMG</u>	<u>AWR</u>
Operating Costs	\$ 6,820,000	\$ 4,200,000
Power		515,000
Repair and Maintenance		350,000
Contractual		37,853
Insurance		125,000
Miscellaneous		60,000
Purchased Water		700,000
Short Term Debt		240,000
Reduction in Repair and Maintenance Budget		106,140
Sewage Treatment Costs		120,000
AWR budget reduction to 2004 Financials		155,697
<b>First Full Year of Operations Cost</b>	<u><u>\$ 6,820,000</u></u>	<u><u>\$ 6,609,690</u></u>
 <u>INITIAL ONE TIME COST TO CONTRACT IN AWR PROPOSAL</u>		
Premium in First 6 Months of Operation - AWR		\$ 350,000 (1)
District's Cost to buy Employee's Time		450,000 (2)
<b>Total One Time Cost to District</b>		<u><u>\$ 800,000</u></u>

(1) This is additional cost that AWR feels the district might recoup over the life of the Contract.

(2) This is cost to buy out employees time in excess of hours transferable to UMG Proposal.

Crossing Criteria

U M G

A.

A. Completeness

$$\begin{array}{r|l} 5 & 27 \\ 4 & 4 \\ \hline 5 & 4 \\ \hline & 27 \end{array}$$

$$\begin{array}{r|l} 2 & 2 \\ 2 & 3 \\ \hline 2 & 2 \\ \hline & 13 \end{array}$$

B. Qualifications

$$\begin{array}{r|l} 5 & 13 \\ 12 & 15 \\ \hline 22 & 13 \\ \hline & 70 \end{array}$$

$$\begin{array}{r|l} 3 & 10 \\ 10 & 15 \\ \hline 17 & 12 \\ \hline & 60 \end{array}$$

C. Operating Plan

$$\begin{array}{r|l} 27 & 27 \\ 25 & 20 \\ \hline 28 & 25 \\ \hline & 152 \end{array}$$

$$\begin{array}{r|l} 10 & 20 \\ 15 & 25 \\ \hline 20 & 20 \\ \hline & 105 \end{array}$$

D. Transition Plan

$$\begin{array}{r|l} 20 & 18 \\ 20 & 20 \\ \hline 20 & 18 \\ \hline & 116 \end{array}$$

$$\begin{array}{r|l} 10 & 10 \\ 10 & 18 \\ \hline 10 & 10 \\ \hline & 68 \end{array}$$

E. References

$$\begin{array}{r|l} 13 & 14 \\ 15 & 15 \\ \hline 15 & 14 \\ \hline & 86 \end{array}$$

$$\begin{array}{r|l} 7 & 10 \\ 15 & 15 \\ \hline 15 & 10 \\ \hline & 72 \end{array}$$

F. Price



**E. RANKING OF CONTRACTORS/NEGOTIATION PROCEDURE**

1. The Management Assessment Advisory Team will begin the review of proposals on May 2<sup>nd</sup>, 2005. During the review and selection process, the Board will select one or more proposals deemed to be most responsive and may elect to conduct interviews with the Contractor(s) as part of the evaluation process. If such interviews are deemed appropriate, these will be conducted during the week of May 16, 2005. Subsequently, if on site visit(s) are deemed appropriate, these will be scheduled with the respondent as appropriate.
  
2. If these negotiations are not successful they will be terminated and the firm which received the next highest score will then be invited to negotiate, and so on. Once verbal agreement has been reached with a firm, the Board of Commissioners will then announce the name of the selected firm and conduct a special meeting to introduce representatives of the firm to the general public and invite public comment. Subsequently, the Board shall place the consideration of a service contract on a regular meeting agenda.
  
3. Presentation to Board on May 25, 2005 (tentative).

**V. CRITERIA FOR REVIEW AND EVALUATION OF PROPOSALS**

		<u>UMG</u>	<u>Altam</u>
<p>A) <u>Completeness of Submission</u> Submission include all information requested in the RFQ/P document.</p>	<b>5 points</b>	4	2
<p>B) <u>Qualifications</u> Contractor appears to be exceptionally well qualified to perform the services sought in the RFQ/P, and has extensive experience in providing services requested.</p>	<b>15 points</b>	13	12
<p>C) <u>Credibility of Proposed Operating Plan</u> Contractor's proposed system Operating Plan is Comprehensive, appears to meet all system requirements, and is conceptually reasonable, and realistic.</p>	<b>30 points</b>	25	20
<p>D) <u>Credibility of Proposed Transition Plan</u> The Contractor appears to fully understand the District's needs, made evident by suggestions for transition, improvements, and innovations. The methodology to deal appropriately with the transition from District operations to contractor operations and the method of</p>	<b>20 points</b>	18	10

staffing the facilities is realistic and will work well.

u.m.b  
All.  
14  
10

E) Professional References

Excellent references from existing or former rural client-communities past clients. **15 points**

F) Price Competitiveness

Price offered for the initial contract services period is very competitive and favors the District; and the price adjustment formula is fair and equitable. **15 points**

**VI. CONTENT & FORMAT OF STATEMENT OF QUALIFICATION**

The Contractor is required to address completely each time in this section, identifying the respective response with the corresponding letter, and number, as appropriate, such as Section VI, A1., A2., etc.

**A) In narrative form provide a Statement of Qualification. Specifically:**

1. Clearly identify the Contractor, providing the full corporate name, address, phone and fax numbers, and the name and date of organization or incorporation, indicate whether the entity is a unit of government, corporation, partnership, or other; provide the names of the board members, principal stock holders, or partners as appropriate; note the state and/or country of registration of the corporation; provide the Federal Employee identification Number.
2. Provide a brief narrative history of the Contractor's experience dealing specifically with complete operation, maintenances, and general management of public water distribution systems, either singularly, or as a component of a broader service responsibility or contract; and,
3. Provide a listing of all full-service contract operations, maintenance and management contracts which the Contractor has currently, citing the gross annual amount of each contract and the start date and term of each.
4. List the number of staff to be assigned to this project providing a brief resume of the training and related experiential qualifications of each; name and provide the license number of the individual to serve as system operator/manager, providing a full resume of training and work experience.
5. Provide a list with names and phone numbers of clients/customers for which operation, maintenance, and management services involving water systems similar to the District's have been provided in the last five (5) years.

**E. RANKING OF CONTRACTORS/NEGOTIATION PROCEDURE**

1. The Management Assessment Advisory Team will begin the review of proposals on May 2<sup>nd</sup>, 2005. During the review and selection process, the Board will select one or more proposals deemed to be most responsive and may elect to conduct interviews with the Contractor(s) as part of the evaluation process. If such interviews are deemed appropriate, these will be conducted during the week of May 16, 2005. Subsequently, if on site visit(s) are deemed appropriate, these will be scheduled with the respondent as appropriate.
  
2. If these negotiations are not successful they will be terminated and the firm which received the next highest score will then be invited to negotiate, and so on. Once verbal agreement has been reached with a firm, the Board of Commissioners will then announce the name of the selected firm and conduct a special meeting to introduce representatives of the firm to the general public and invite public comment. Subsequently, the Board shall place the consideration of a service contract on a regular meeting agenda.
  
3. Presentation to Board on May 25, 2005 (tentative).

**V. CRITERIA FOR REVIEW AND EVALUATION OF PROPOSALS**

<p>A) <u>Completeness of Submission</u> Submission include all information requested in the RFQ/P document.</p>	<p><b>5 points</b></p>	<p>UMC 4</p>	<p>A. Hancock 3</p>
<p>B) <u>Qualifications</u> Contractor appears to be exceptionally well qualified to perform the services sought in the RFQ/P, and has extensive experience in providing services requested.</p>	<p><b>15 points</b></p>	<p>15</p>	<p>15</p>
<p>C) <u>Credibility of Proposed Operating Plan</u> Contractor's proposed system Operating Plan is Comprehensive, appears to meet all system requirements, and is conceptually reasonable, and realistic.</p>	<p><b>30 points</b></p>	<p>28</p>	<p>25</p>
<p>D) <u>Credibility of Proposed Transition Plan</u> The Contractor appears to fully understand the District's needs, made evident by suggestions for transition, improvements, and innovations. The methodology to deal appropriately with the transition from District operations to contractor operations and the method of</p>	<p><b>20 points</b></p>	<p>20</p>	<p>16</p>

staffing the facilities is realistic and will work well.

E) Professional References

Excellent references from existing or former rural client-communities past clients.

15 points

15

15

F) Price Competitiveness

Price offered for the initial contract services period is very competitive and favors the District; and the price adjustment formula is fair and equitable.

15 points

15

## VI. CONTENT & FORMAT OF STATEMENT OF QUALIFICATION

The Contractor is required to address completely each time in this section, identifying the respective response with the corresponding letter, and number, as appropriate, such as Section VI, A1., A2., etc.

A) In narrative form provide a **Statement of Qualification**. Specifically:

1. Clearly identify the Contractor, providing the full corporate name, address, phone and fax numbers, and the name and date of organization or incorporation, indicate whether the entity is a unit of government, corporation, partnership, or other; provide the names of the board members, principal stock holders, or partners as appropriate; note the state and/or country of registration of the corporation; provide the Federal Employee identification Number.
2. Provide a brief narrative history of the Contractor's experience dealing specifically with complete operation, maintenances, and general management of public water distribution systems, either singularly, or as a component of a broader service responsibility or contract; and,
3. Provide a listing of all full-service contract operations, maintenance and management contracts which the Contractor has currently, citing the gross annual amount of each contract and the start date and term of each.
4. List the number of staff to be assigned to this project providing a brief resume of the training and related experiential qualifications of each; name and provide the license number of the individual to serve as system operator/manager, providing a full resume of training and work experience.
5. Provide a list with names and phone numbers of clients/customers for which operation, maintenance, and management services involving water systems similar to the District's have been provided in the last five (5) years.

**E. RANKING OF CONTRACTORS/NEGOTIATION PROCEDURE**

1. The Management Assessment Advisory Team will begin the review of proposals on May 2<sup>nd</sup>, 2005. During the review and selection process, the Board will select one or more proposals deemed to be most responsive and may elect to conduct interviews with the Contractor(s) as part of the evaluation process. If such interviews are deemed appropriate, these will be conducted during the week of May 16, 2005. Subsequently, if on site visit(s) are deemed appropriate, these will be scheduled with the respondent as appropriate.
  
2. If these negotiations are not successful they will be terminated and the firm which received the next highest score will then be invited to negotiate, and so on. Once verbal agreement has been reached with a firm, the Board of Commissioners will then announce the name of the selected firm and conduct a special meeting to introduce representatives of the firm to the general public and invite public comment. Subsequently, the Board shall place the consideration of a service contract on a regular meeting agenda.
  
3. Presentation to Board on May 25, 2005 (tentative).

**V. CRITERIA FOR REVIEW AND EVALUATION OF PROPOSALS**

		<u>Alliance</u>	<u>UMC</u>
A) <u>Completeness of Submission</u>			
Submission include all information requested in the RFQ/P document.	<b>5 points</b>	2	4
B) <u>Qualifications</u>			
Contractor appears to be exceptionally well qualified to perform the services sought in the RFQ/P, and has extensive experience in providing services requested.	<b>15 points</b>	10	13
C) <u>Credibility of Proposed Operating Plan</u>			
Contractor's proposed system Operating Plan is Comprehensive, appears to meet all system requirements, and is conceptually reasonable, and realistic.	<b>30 points</b>	20	27
D) <u>Credibility of Proposed Transition Plan</u>			
The Contractor appears to fully understand the District's needs, made evident by suggestions for transition, improvements, and innovations. The methodology to deal appropriately with the transition from District operations to contractor operations and the method of	<b>20 points</b>	10	18

staffing the facilities is realistic and will work well.

E) Professional References

Excellent references from existing or former rural client-communities past clients.

15 points

10

14

F) Price Competitiveness

Price offered for the initial contract services period is very competitive and favors the District; and the price adjustment formula is fair and equitable.

15 points

10

## VI. CONTENT & FORMAT OF STATEMENT OF QUALIFICATION

The Contractor is required to address completely each time in this section, identifying the respective response with the corresponding letter, and number, as appropriate, such as Section VI, A1., A2., etc.

A) In narrative form provide a **Statement of Qualification**. Specifically:

1. Clearly identify the Contractor, providing the full corporate name, address, phone and fax numbers, and the name and date of organization or incorporation, indicate whether the entity is a unit of government, corporation, partnership, or other; provide the names of the board members, principal stock holders, or partners as appropriate; note the state and/or country of registration of the corporation; provide the Federal Employee identification Number.
2. Provide a brief narrative history of the Contractor's experience dealing specifically with complete operation, maintenances, and general management of public water distribution systems, either singularly, or as a component of a broader service responsibility or contract; and,
3. Provide a listing of all full-service contract operations, maintenance and management contracts which the Contractor has currently, citing the gross annual amount of each contract and the start date and term of each.
4. List the number of staff to be assigned to this project providing a brief resume of the training and related experiential qualifications of each; name and provide the license number of the individual to serve as system operator/manager, providing a full resume of training and work experience.
5. Provide a list with names and phone numbers of clients/customers for which operation, maintenance, and management services involving water systems similar to the District's have been provided in the last five (5) years.

**E. RANKING OF CONTRACTORS/NEGOTIATION PROCEDURE**

1. The Management Assessment Advisory Team will begin the review of proposals on May 2<sup>nd</sup>, 2005. During the review and selection process, the Board will select one or more proposals deemed to be most responsive and may elect to conduct interviews with the Contractor(s) as part of the evaluation process. If such interviews are deemed appropriate, these will be conducted during the week of May 16, 2005. Subsequently, if on site visit(s) are deemed appropriate, these will be scheduled with the respondent as appropriate.
  
2. If these negotiations are not successful they will be terminated and the firm which received the next highest score will then be invited to negotiate, and so on. Once verbal agreement has been reached with a firm, the Board of Commissioners will then announce the name of the selected firm and conduct a special meeting to introduce representatives of the firm to the general public and invite public comment. Subsequently, the Board shall place the consideration of a service contract on a regular meeting agenda.
  
3. Presentation to Board on May 25, 2005 (tentative).

**V. CRITERIA FOR REVIEW AND EVALUATION OF PROPOSALS**

		6 mg	A
A) <u>Completeness of Submission</u>			
Submission include all information requested in the RFQ/P document.	<b>5 points</b>	5	2
B) <u>Qualifications</u>			
Contractor appears to be exceptionally well qualified to perform the services sought in the RFQ/P, and has extensive experience in providing services requested.	<b>15 points</b>	12	10
C) <u>Credibility of Proposed Operating Plan</u>			
Contractor's proposed system Operating Plan is Comprehensive, appears to meet all system requirements, and is conceptually reasonable, and realistic.	<b>30 points</b>	28	20
D) <u>Credibility of Proposed Transition Plan</u>			
The Contractor appears to fully understand the District's needs, made evident by suggestions for transition, improvements, and innovations. The methodology to deal appropriately with the transition from District operations to contractor operations and the method of	<b>20 points</b>	20	10

staffing the facilities is realistic and will work well.

E) Professional References

Excellent references from existing or former rural client-communities past clients.

15 points

15

15

F) Price Competitiveness

Price offered for the initial contract services period is very competitive and favors the District; and the price adjustment formula is fair and equitable.

15 points

## VI. CONTENT & FORMAT OF STATEMENT OF QUALIFICATION

The Contractor is required to address completely each time in this section, identifying the respective response with the corresponding letter, and number, as appropriate, such as Section VI, A1., A2., etc.

A) In narrative form provide a **Statement of Qualification**. Specifically:

1. Clearly identify the Contractor, providing the full corporate name, address, phone and fax numbers, and the name and date of organization or incorporation, indicate whether the entity is a unit of government, corporation, partnership, or other: provide the names of the board members, principal stock holders, or partners as appropriate; note the state and/or country of registration of the corporation; provide the Federal Employee identification Number.
2. Provide a brief narrative history of the Contractor's experience dealing specifically with complete operation, maintenances, and general management of public water distribution systems, either singularly, or as a component of a broader service responsibility or contract; and,
3. Provide a listing of all full-service contract operations, maintenance and management contracts which the Contractor has currently, citing the gross annual amount of each contract and the start date and term of each.
4. List the number of staff to be assigned to this project providing a brief resume of the training and related experiential qualifications of each; name and provide the license number of the individual to serve as system operator/manager, providing a full resume of training and work experience.
5. Provide a list with names and phone numbers of clients/customers for which operation, maintenance, and management services involving water systems similar to the District's have been provided in the last five (5) years.



**E. RANKING OF CONTRACTORS/NEGOTIATION PROCEDURE**

1. The Management Assessment Advisory Team will begin the review of proposals on May 2<sup>nd</sup>, 2005. During the review and selection process, the Board will select one or more proposals deemed to be most responsive and may elect to conduct interviews with the Contractor(s) as part of the evaluation process. If such interviews are deemed appropriate, these will be conducted during the week of May 16, 2005. Subsequently, if on site visit(s) are deemed appropriate, these will be scheduled with the respondent as appropriate.
  
2. If these negotiations are not successful they will be terminated and the firm which received the next highest score will then be invited to negotiate, and so on. Once verbal agreement has been reached with a firm, the Board of Commissioners will then announce the name of the selected firm and conduct a special meeting to introduce representatives of the firm to the general public and invite public comment. Subsequently, the Board shall place the consideration of a service contract on a regular meeting agenda.
  
3. Presentation to Board on May 25, 2005 (tentative).

**V. CRITERIA FOR REVIEW AND EVALUATION OF PROPOSALS**

<p>A) <u>Completeness of Submission</u> Submission include all information requested in the RFQ/P document.</p>	<p><b>5 points</b></p>	<p><u>UMS</u> 4</p>	<p><u>Alliance</u> 2</p>
<p>B) <u>Qualifications</u> Contractor appears to be exceptionally well qualified to perform the services sought in the RFQ/P, and has extensive experience in providing services requested.</p>	<p><b>15 points</b></p>	<p>12</p>	<p>10</p>
<p>C) <u>Credibility of Proposed Operating Plan</u> Contractor's proposed system Operating Plan is Comprehensive, appears to meet all system requirements, and is conceptually reasonable, and realistic.</p>	<p><b>30 points</b></p>	<p>25</p>	<p>15</p>
<p>D) <u>Credibility of Proposed Transition Plan</u> The Contractor appears to fully understand the District's needs, made evident by suggestions for transition, improvements, and innovations. The methodology to deal appropriately with the transition from District operations to contractor operations and the method of</p>	<p><b>20 points</b></p>	<p>20</p>	<p>10</p>

*Alliance does not  
- 1. - system operator*

*Alliance 50%  
incomplete*

*Alliance Transition  
including employees  
Transition plan / methodology*

staffing the facilities is realistic and will work well.

E) Professional References

Excellent references from existing or former rural client-communities past clients.

15 points

15

15

F) Price Competitiveness

Price offered for the initial contract services period is very competitive and favors the District; and the price adjustment formula is fair and equitable.

15 points

*TOTAL (Less P&G)*

76

52

**VI. CONTENT & FORMAT OF STATEMENT OF QUALIFICATION**

The Contractor is required to address completely each time in this section, identifying the respective response with the corresponding letter, and number, as appropriate, such as Section VI, A1., A2., etc.

**A) In narrative form provide a Statement of Qualification. Specifically:**

1. Clearly identify the Contractor, providing the full corporate name, address, phone and fax numbers, and the name and date of organization or incorporation, indicate whether the entity is a unit of government, corporation, partnership, or other; provide the names of the board members, principal stock holders, or partners as appropriate; note the state and/or country of registration of the corporation; provide the Federal Employee identification Number.
2. Provide a brief narrative history of the Contractor's experience dealing specifically with complete operation, maintenances, and general management of public water distribution systems, either singularly, or as a component of a broader service responsibility or contract; and,
3. Provide a listing of all full-service contract operations, maintenance and management contracts which the Contractor has currently, citing the gross annual amount of each contract and the start date and term of each.
4. List the number of staff to be assigned to this project providing a brief resume of the training and related experiential qualifications of each; name and provide the license number of the individual to serve as system operator/manager, providing a full resume of training and work experience.
5. Provide a list with names and phone numbers of clients/customers for which operation, maintenance, and management services involving water systems similar to the District's have been provided in the last five (5) years.

**E. RANKING OF CONTRACTORS/NEGOTIATION PROCEDURE**

1. The Management Assessment Advisory Team will begin the review of proposals on May 2<sup>nd</sup>, 2005. During the review and selection process, the Board will select one or more proposals deemed to be most responsive and may elect to conduct interviews with the Contractor(s) as part of the evaluation process. If such interviews are deemed appropriate, these will be conducted during the week of May 16, 2005. Subsequently, if on site visit(s) are deemed appropriate, these will be scheduled with the respondent as appropriate.
  
2. If these negotiations are not successful they will be terminated and the firm which received the next highest score will then be invited to negotiate, and so on. Once verbal agreement has been reached with a firm, the Board of Commissioners will then announce the name of the selected firm and conduct a special meeting to introduce representatives of the firm to the general public and invite public comment. Subsequently, the Board shall place the consideration of a service contract on a regular meeting agenda.
  
3. Presentation to Board on May 25, 2005 (tentative).

**V. CRITERIA FOR REVIEW AND EVALUATION OF PROPOSALS**

*Unit B Alliance*

<p>A) <u>Completeness of Submission</u> Submission include all information requested in the RFQ/P document.</p>	<p><b>5 points</b></p>	<p>5</p>	<p>2</p>
<p>B) <u>Qualifications</u> Contractor appears to be exceptionally well qualified to perform the services sought in the RFQ/P, and has extensive experience in providing services requested.</p>	<p><b>15 points</b></p>	<p>5</p>	<p>3</p>
<p>C) <u>Credibility of Proposed Operating Plan</u> Contractor's proposed system Operating Plan is Comprehensive, appears to meet all system requirements, and is conceptually reasonable, and realistic.</p>	<p><b>30 points</b></p>	<p>27</p>	<p>10</p>
<p>D) <u>Credibility of Proposed Transition Plan</u> The Contractor appears to fully understand the District's needs, made evident by suggestions for transition, improvements, and innovations. The methodology to deal appropriately with the transition from District operations to contractor operations and the method of</p>	<p><b>20 points</b></p>	<p>20</p>	<p>10</p>

staffing the facilities is realistic and will work well.

E) Professional References

Excellent references from existing or former rural client-communities past clients.

15 points

13

7

F) Price Competitiveness

Price offered for the initial contract services period is very competitive and favors the District; and the price adjustment formula is fair and equitable.

15 points

15

1

## VI. CONTENT & FORMAT OF STATEMENT OF QUALIFICATION

The Contractor is required to address completely each time in this section, identifying the respective response with the corresponding letter, and number, as appropriate, such as Section VI, A1., A2., etc.

A) In narrative form provide a **Statement of Qualification**. Specifically:

1. Clearly identify the Contractor, providing the full corporate name, address, phone and fax numbers, and the name and date of organization or incorporation, indicate whether the entity is a unit of government, corporation, partnership, or other: provide the names of the board members, principal stock holders, or partners as appropriate; note the state and/or country of registration of the corporation; provide the Federal Employee identification Number.
2. Provide a brief narrative history of the Contractor's experience dealing specifically with complete operation, maintenances, and general management of public water distribution systems, either singularly, or as a component of a broader service responsibility or contract; and,
3. Provide a listing of all full-service contract operations, maintenance and management contracts which the Contractor has currently, citing the gross annual amount of each contract and the start date and term of each.
4. List the number of staff to be assigned to this project providing a brief resume of the training and related experiential qualifications of each; name and provide the license number of the individual to serve as system operator/manager, providing a full resume of training and work experience.
5. Provide a list with names and phone numbers of clients/customers for which operation, maintenance, and management services involving water systems similar to the District's have been provided in the last five (5) years.

**E. RANKING OF CONTRACTORS/NEGOTIATION PROCEDURE**

1. The Management Assessment Advisory Team will begin the review of proposals on May 2<sup>nd</sup>, 2005. During the review and selection process, the Board will select one or more proposals deemed to be most responsive and may elect to conduct interviews with the Contractor(s) as part of the evaluation process. If such interviews are deemed appropriate, these will be conducted during the week of May 16, 2005. Subsequently, if on site visit(s) are deemed appropriate, these will be scheduled with the respondent as appropriate.
2. If these negotiations are not successful they will be terminated and the firm which received the next highest score will then be invited to negotiate, and so on. Once verbal agreement has been reached with a firm, the Board of Commissioners will then announce the name of the selected firm and conduct a special meeting to introduce representatives of the firm to the general public and invite public comment. Subsequently, the Board shall place the consideration of a service contract on a regular meeting agenda.
3. Presentation to Board on May 25, 2005 (tentative).

ABSTAIN<sup>W</sup>  
4M9 ALLIANCE

**V. CRITERIA FOR REVIEW AND EVALUATION OF PROPOSALS**

- A) Completeness of Submission  
Submission include all information requested in the RFQ/P document. **5 points**
- B) Qualifications  
Contractor appears to be exceptionally well qualified to perform the services sought in the RFQ/P, and has extensive experience in providing services requested. **15 points** 15
- C) Credibility of Proposed Operating Plan  
Contractor's proposed system Operating Plan is Comprehensive, appears to meet all system requirements, and is conceptually reasonable, and realistic. **30 points**
- D) Credibility of Proposed Transition Plan  
The Contractor appears to fully understand the District's needs, made evident by suggestions for transition, improvements, and innovations. The methodology to deal appropriately with the transition from District operations to contractor operations and the method of **20 points**

staffing the facilities is realistic and will work well.

UMG Alliance

- E) Professional References  
Excellent references from existing or former rural client-communities past clients. **15 points**
- F) Price Competitiveness  
Price offered for the initial contract services period is very competitive and favors the District; and the price adjustment formula is fair and equitable. **15 points**

## VI. CONTENT & FORMAT OF STATEMENT OF QUALIFICATION

The Contractor is required to address completely each time in this section, identifying the respective response with the corresponding letter, and number, as appropriate, such as Section VI, A1., A2., etc.

A) In narrative form provide a **Statement of Qualification**. Specifically:

1. Clearly identify the Contractor, providing the full corporate name, address, phone and fax numbers, and the name and date of organization or incorporation, indicate whether the entity is a unit of government, corporation, partnership, or other; provide the names of the board members, principal stock holders, or partners as appropriate; note the state and/or country of registration of the corporation; provide the Federal Employee identification Number.
2. Provide a brief narrative history of the Contractor's experience dealing specifically with complete operation, maintenances, and general management of public water distribution systems, either singularly, or as a component of a broader service responsibility or contract; and,
3. Provide a listing of all full-service contract operations, maintenance and management contracts which the Contractor has currently, citing the gross annual amount of each contract and the start date and term of each.
4. List the number of staff to be assigned to this project providing a brief resume of the training and related experiential qualifications of each; name and provide the license number of the individual to serve as system operator/manager, providing a full resume of training and work experience.
5. Provide a list with names and phone numbers of clients/customers for which operation, maintenance, and management services involving water systems similar to the District's have been provided in the last five (5) years.

**ADVERTISEMENT TO BID  
2C REGIONAL DETENTION BASIN C6  
IG ESTATES DEVELOPMENT, LLC**

be received by Delong Development, LLC at the  
ec Road, Suite 100, Lexington, KY 40511, until  
i, for furnishing labor and materials and perform-  
for Bids, General Conditions, Specifications and  
rc. Immediately following the scheduled closing  
ich have been submitted in accordance with the  
I read aloud. The opening of bids will take place  
Bull Lea Road, Suite 100, Lexington, KY 40511.  
lloving: Constructing one stormwater detention  
ation, storm sewer and other related appurte-  
Drawings and Specifications.

Issuing Office which is Strand Associates, Inc.,  
Y 40511 (859-225-8500) upon receipt of a nony  
for each complete set of Drawings and Speci-  
ned at the following places: AGC/McGraw-Hill  
100, Lexington, KY 40505, 859-425-6630 and  
Rd., Bldg. B., Suite 112, Lexington, KY 40505,

cations will not be furnished to interested parties,  
tract, CONTRACTOR will be furnished, without  
ifications needed to execute the work. Subcon-  
obtain plans and specifications from CONTRAC-  
be clearly marked on the outside of the container  
ea 2C Regional Detention Basin C6 - Contract  
ocal Time, Friday, April 22, 2005.

dar days. Bids shall be accompanied by a certifi-  
ER, in an amount not less than five percent (5%)  
; Bid is accepted Bidder will execute and file the  
nent bonds within fifteen days after the Notice of  
r a period of ninety (90) days after the date Bids  
Bid at any time prior to the time and date sched-  
postponement thereof. Any Bid received after the  
ed and will be returned unopened to the Bidder.  
ts noted on the Bid Form. The successful bidder  
rfinances of the Lexington-Fayette Urban County  
; made to the lowest, responsive responsible bid-  
specific requirements. All requests for interpreta-  
tiate, responses and addenda will be issued to  
ns concerning interpretation of the Drawings and  
el A. Woolum, P.E., Project Manager, Strand As-  
, Lexington, KY 40511, Phone 859-225-8500.

**174 LEGAL NOTICES**

**REQUEST FOR  
QUALIFICATIONS/  
PROPOSALS**

The Board of Com-  
missioners of the  
Mountain Water  
District requests  
statement of qualifi-  
cations and price  
proposals (RFQ/P)  
from capable gov-  
ernmental entities,  
non-profit corpora-  
tions, or private  
companies inter-  
ested in providing  
operations, mainte-  
nance, and manage-  
ment services to  
the Mountain Water  
District by means of  
a contractual  
agreement. The  
Mountain Water  
District will accept  
RFQ/P submittals  
until 2:00 pm, April  
25, 2005.

An RFQ/P packet  
containing informa-  
tion about the project  
and criteria, which  
may be used to se-  
lect the manage-  
ment firm may be  
obtained by con-  
tacting Kimberly  
Hunt at the Moun-  
tain Water District,  
at 606-631-9162, ex-  
tension 303.

The Mountain Water  
District is an Equal  
Opportunity Em-  
ployer and encour-  
ages responses from  
all qualified firms.  
The Mountain Water  
District reserves the  
right to select any or  
all submittals.

Willi Brown  
Mountain Water  
District

326865  
Careerbuilder  
Do not enter unless you are a member. Every Friday.  
David Anderson - 326865

**UK DIVISION OF  
COMMUNICATION  
DISORDERS**

**PUBLIC MEETING**  
Monday, April 18, 2005  
4:30 - 5:00 p.m.

University of Kentucky  
Charles T.  
Wehington, Jr.  
Building  
900 South Limestone  
Thomas C. Robinson  
Commons, Room 127  
Lexington, KY

Relating to Applica-  
tion for Re-  
accreditation sub-  
mitted to the Council,  
on Academic Ac-  
creditation of the  
American Speech-  
Language-Hearing  
Association

**Who can submit  
comments?**

Public comments re-  
lated to programs  
may include re-  
marks submitted by  
interested parties  
such as faculty, stu-  
dents, program ad-  
ministrators, related  
organizations, or in-  
dividuals receiving  
clinical services.

**Types of comments  
considered:**  
Comments should  
relate to a program's

**174 LEGAL NOTICES**

**ADVERTISEMENT  
FOR BID**

Bids will be received  
in the Office of Sup-  
port Services at  
Morehead State Uni-  
versity, Support Ser-  
vices Complex lo-  
cated at 606 West  
Main Street, More-  
head, Kentucky, for  
the department indi-  
cated no later than  
the date below:

**INVITATION TO BID#  
RFP-01-06**

**COMMODITY  
DESCRIPTION  
COLLECTION  
SERVICES -  
PERKINS LOAN  
ACCOUNTS**

**CLOSING DATE  
05/10/05 4 PM**

**REQUESTING  
DEPARTMENT  
ACCOUNTING &  
BUDGETARY  
CONTROL**

Bids will open at date,  
time and place  
shown above. Any-  
one wishing to bid  
may do so by con-  
tacting Morehead  
State University,  
LADONNA PURCELL,  
SUPPORT SERVICES  
SPECIALIST IV  
OFFICE OF  
SUPPORT SERVICES  
MOREHEAD STATE  
UNIVERSITY

**INVITATION TO BID**

NOTICE is hereby  
given to the  
Lexington-Fayette  
Urban County Gov-  
ernment that bids  
will be received in  
the Office of Central  
Purchasing, 200 East  
Main Street, Lex-  
ington, Kentucky, for:

Invitation to Bid  
#60-2005 Industrial  
Metal Shelving For  
Furrows Building

Bids will be received  
until 2:00 P.M. on  
4/18/2005 at which  
time they will be  
opened and read  
aloud. If mailed,  
bids should be ad-  
dressed to DIVISION  
OF CENTRAL PUR-  
CHASING, 200 E.  
Main Street, Lex-  
ington, KY, 40507.  
Bid Invitation Num-  
bers MUST AP-  
PEAR on the outside  
of the envelope.

Bid forms and other  
specifications may  
be obtained from the  
Director of Central  
Purchasing.

**NOTICE**

Ches Pub Restau-  
rant LLC, mailing  
address 2628 Rich-  
mond Rd, Lexing-  
ton, KY 40509 hereby  
declares intentions  
to apply for a Res-  
taurant Liquor &  
Beer License, no  
later than 4/8/05, the  
business to be li-  
censed will be lo-  
cated at 2628 Rich-  
mond Rd

**174 LEGAL NOTICES**

**REQUEST FOR  
PROPOSAL**

Notice is hereby  
given by the  
Lexington-Fayette  
Urban County Gov-  
ernment that propo-  
sals will be re-  
ceived in the Office  
of the Director of  
Central Purchasing,  
200 East Main Street,  
Lexington, Ken-  
tucky for:

Request for Proposal:  
#12-2005 ERP Soft-  
ware and Imple-  
mentation Services

Proposals will be re-  
ceived until 2:00 PM  
local time on  
4-22-2005 at which  
time they will be re-  
viewed. If mailed,  
proposals should be  
addressed to DIVI-  
SION OF CENTRAL  
PURCHASING, 200  
East Main Street,  
Lexington KY 40507.

Proposal forms and  
other specifications  
may be obtained  
from the Division of  
Central Purchasing  
by calling (859)  
258-3320.

**BUSINESS  
452 OPPORTUNITIES/  
FRANCHISES**

**DON'T PAY  
FOR A PROMISE,** es-  
pecially one relating  
to business opportu-  
nities or franchises.  
Before you do busi-  
ness with a com-  
pany, check it out  
with the Better Busi-  
ness Bureau at  
259-1008 or  
1-800-866-6668. For  
free information  
about buying a biz-  
op or franchise  
without getting  
scammed, write the  
Federal Trade  
Commission at  
Washington, DC  
20580 or call the Na-  
tional Fraud Infor-  
mation Center,  
1-800-876-7060

**CatchScam  
NETWORK**

**454 BUSINESSES  
FOR SALE**

**MY PLACE  
RESTAURANT  
& PUB 859-619-1084**

**SALON, Spacious,  
Priced right, P.O. Box  
910039 Lex, 40591**

**456 CREDIT**

**ADVANCE FEE  
LOANS OR  
CREDIT  
OFFERS**

Companies that do  
business by phone  
can't ask you to pay  
for credit before you  
get it. For more info,  
call toll-free  
1-877-FTC-HELP. A  
public service mes-  
sage from the Lex-  
ington Herald-  
Leader and the FTC.

**LOST & FOUND**

**CAT, grey**  
le Hr. collar  
324125  
Ring. 2101  
sville Rd.  
299-2442  
323332  
**AT, MALE,**  
er w/white  
ond Rd.  
325090  
Ads Ads

**SIMPLIFIEDS**

**PERSONALS**

**AN Singles**  
eplen Apr. 1st  
ry Fri. 6:30p  
ds, games,  
tc. Bring  
svp276-5581  
31449  
**IVE single/**  
s to share  
me in the  
ery private,  
ble 806-1054  
320954  
**BLE Course**  
udy. Mail  
POBox 625  
g NC 27549  
313066  
**LOCAL**

**174 LEGAL NOTICES**

**ADVERTISEMENT  
FOR BIDS**

The Fayette County  
Board of Education  
will receive sealed  
bids in the Purchas-  
ing Office, 701 East  
Main Street, Room  
110, until Monday  
April 18, 2005, 1:30  
p.m. E.S.T., for the  
Sale of Surplus Used  
Books. Bids should  
be sealed and  
marked Bid 12-05.  
Bid forms and speci-  
fications may be  
obtained at 701 East  
Main Street, Room  
110 from 8:00 a.m.  
until 4:00 p.m.,  
weekdays.

**FOR SALE**  
1995 Ford Mustang,  
VIN #  
1FALP4044SF269255  
to be sold to recover  
losses for towing &  
storage. Cost pursu-  
ant to KRS 376.275.  
Date of sale will be  
4/22/05. Time 12  
noon at location of  
Glencoe Tire-  
Towing-Truck &  
Auto Repair Inc.,  
4170 Hwy 127, Glen-  
coe, KY 40046. Seller  
has minimum re-  
serve bid on vehicle.

304368

**EGALS**

uest for  
(NON-  
ABLE).  
POSALS  
ISSUED  
O PRE-  
ED CON-  
S.  
proposals  
jects will  
le to all  
parties  
f \$10 each  
EFUND-

ltc

**NOTICE**

ance with  
B.14-070,  
Insurance  
Inc. A  
Corpor-  
ereby giv-  
vice of  
on. Be  
that any  
person(s)  
ns against  
orporation  
them in  
ce with  
ring:  
aims shall  
tted to the  
Quality  
Services,  
Box 3847,  
KY 41502  
ms shall  
he follow-  
formation:  
s name(s)  
g maiden

**650 - LEGALS**

**ADVERTISE-  
MENT  
FOR BID**

The Pike County  
Fiscal Court is  
accepting sealed  
bids for Franchises  
for Cable Television  
Systems that wish  
to operate within  
the confines of Pike  
County, Kentucky,  
pursuant to  
Ordinance Number  
06-07-04.014, and  
must meet all the  
terms and condi-  
tions of the ordi-  
nance.

Sealed bids will be  
accepted until  
10:00 a.m., local  
time, on April 14,  
2005. Franchise(s)  
awarded pursuant  
to this request will  
be non-exclusive for  
a ten (10) year peri-  
od.

Bids must be  
returned to Rose  
Farley, Fiscal Court  
Clerk of the Pike  
County Fiscal  
Court, 146 Main  
Street, Pikeville,  
KY 41501.

Sealed bids must be  
clearly marked  
"Cable Television  
Franchise Propo-  
sal".

**650 - LEGALS**

**ADVERTISE-  
MENT  
FOR BID**

The Pike County  
Fiscal Court is  
accepting sealed  
bids for the pur-  
chase of the follow-  
ing:

Six (6) new 2005  
tandem axle  
dump trucks

Bids will be accept-  
ed until 11:00 a.m.,  
local time, April 14,  
2005. The method  
of award will be the  
lowest evaluated  
bid.

Specifications and  
bid forms may be  
obtained Monday  
through Friday  
from 8:00 a.m. to  
4:30 p.m., local time  
from Karen Friend,  
Director of  
Purchasing, Pike  
County Court-  
house, 146 Main  
Street, Pikeville,  
Kentucky, or by  
calling (606) 432-  
6288. Bid forms  
must be returned to  
Rose Farley, Fiscal  
Court Clerk of the  
Pike County Fiscal  
Court, 146 Main  
Street, Pikeville,  
KY 41501.

The bid opening  
will be April 14,  
2005, at 11:00 a.m.,  
local time in the  
courtroom, located

**650 - LEGALS**

**REQUEST FOR  
QUALIFICA-  
TIONS/  
PROPOSALS**

The Board of  
Commissioners of  
the Mountain  
Water District  
requests state-  
ments of qualifica-  
tions and price pro-  
posals (RFQ/P)  
from capable gov-  
ernmental entities,  
non-profit corpora-  
tions, or private  
companies interest-  
ed in providing  
operations, mainte-  
nance, and man-  
agement services to  
the Mountain  
Water District by  
means of a contrac-  
tual agreement.  
The Mountain  
Water District will  
accept RFQ/P sub-  
mittals until 2:00  
pm, April 25, 2005.  
An RFQ/P packet  
containing informa-  
tion about the proj-  
ect and criteria,  
which may be used  
to select the man-  
agement firm may  
be obtained by con-  
tacting Kimberly  
Hunt at the  
Mountain Water  
District, at 606-  
631-9162, extension  
303.  
The Mountain  
Water District is an  
Equal Opportunity

**ANNOUN-  
CEMENT**

COMPLETE  
TORY OF  
TUCKY M  
PERS is ava  
\$25 from  
Press As  
101 Consur  
Frankfort, K  
Price inclu  
ping and ha

Reach over  
readers with  
Contact the  
department  
newspaper  
KPS at 502  
for more in  
about plac  
word classi  
newspapers  
\$225!

**BUSIN-  
ESS OPPORTU-**

A \$275,0  
Dream! Ex-  
player need  
Residual  
Protected  
w/success  
refer. \$69k  
Serious E  
Unique bu  
800-805-458

**BUSIN-  
ESS PROP-  
ERTY TO R**

**MAIL**



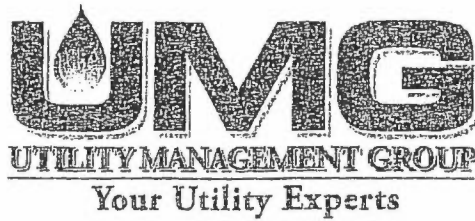
## REQUEST FOR QUALIFICATIONS/PROPOSALS

The Board of Commissioners of the Mountain Water District requests statements of qualifications and price proposals (RFQ/P) from capable governmental entities, non-profit corporations, or private companies interested in providing operations, maintenance, and management services to the Mountain Water District by means of a contractual agreement. The Mountain Water District will accept RFQ/P submittals until 2:00 pm, April 25, 2005.

An RFQ/P packet containing information about the project and criteria, which may be used to select the management firm may be obtained by contacting Kimberly Hunt at the Mountain Water District, at 606-631-9162, extension 303.

The Mountain Water District is an Equal Opportunity Employer and encourages responses from all qualified firms. The Mountain Water District reserves the right to reject any or all submittals.

Will Brown  
Mountain Water District



April 25, 2005

Board of Commissioners  
Mountain Water District  
P.O. Box 3157  
Pikeville, KY 41501

Dear Commissioner:

Enclosed please find the proposal for the Operations, Maintenance and Management of the Mountain Water District. As the primary provider of potable water and wastewater treatment services in Pike County, Kentucky, Mountain Water District consists of a integrated system of treatment plants, both water and wastewater, storage tanks, pump and pressure reducing stations and miles of distribution and collection lines. These attributes, coupled with the rugged topography of this large county, make the operations of the system difficult.

Utility Management Group offers years of experience in the operations and management of just such systems. Though a newly formed company, the key personnel possess an energy and mode of forward thinking, as well as decades of combined experience, that will allow the District to expand while reaching new levels of service.

You will find the information in our proposal follows the direction of your Request for Proposals, in a clear and concise format for ease of review. We look forward to the opportunity to work with you in this collaborative partnership.

If you have any questions or need further information, please contact me at your convenience at (606) 437-7454.

Sincerely,

Greg May  
Utilities Management Group

# Utilities Management Group

## *Statement of Qualifications*

### Table of Contents

Section I	Executive Summary
Section II	Statement of Qualifications
	A.1 General Statement of Qualifications
	A.2 Key Personnel Experience
	Greg May
	Archie Marr
	A.3 Contract Experience
	A.4 Assigned Staff
	Organizational Chart
	A.5 Operations, Maintenance and Management Experience
	Representative Project Profiles
	A.6 Subcontractors
	A.7 Non-monetary terms
Section III	Operations Plan
	A. Staffing Plan
	B. Daily Operations
	C. Initial System Enhancements
	D. Additional Services
Section IV	Transition Plan
Section V	Professional References
	▪ Reference List
	▪ Letters of Recommendation

Section VI

Price Proposal

1. Personal Services
2. Utilities
3. Chemicals
4. Equipment
5. Material & Supplies
6. Outside Services
7. Maintenance Repair
8. Capital Costs & Long Term Debt Recovery
9. Profit

Appendix A

Supplemental Information

- Certificate of Incorporation
- Certificate of Insurances
- Bond Capacity
- Resumes
- Public Service Commission statement

Appendix B

Draft Contract

### **EXECUTIVE SUMMARY**

Utility Management Group LLC, (UMG) proposes to contract with the Mountain Water District (District) to provide all services required for proper and professional operations, maintenance and management of the District's water and wastewater treatment facilities and distribution and collection systems. As proposed, the District will retain ownership of all facilities and equipment and complete control of its finances.

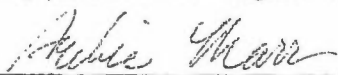
UMG is a new corporation focused solely on the provision of cost effective and efficient operation and management services of rural water and wastewater utilities. Though recently incorporated, the company boasts the varied experience and tested expertise of its chief operating officer, a public utility manager, Mr. Greg May, and owner/manager, a business and financial planner, Mr. Archie Marr, CPA.

UMG proposes to offer positions to the District's superintendent and all other current employees of the District. Using tested up-grade training methods and by increasing employee benefits, the corporation seeks to build an energized personnel team fully capable of maintaining and expanding the District's excellent service record while keeping pace with one of the highest demands for water and wastewater service development in Kentucky. As proposed UMG will be able to provide all services and accomplish all management goals within the District's current budget amount.

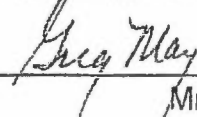
UMG is familiar with all regulatory requirements under which the District must operate and assures full and consistent compliance with both water quality and service quality standards as established by the Kentucky Division of Water and the Kentucky Public Service Commission, respectively and those of the District.

Finally, UMG is owned and directed by professionals who are Kentuckians. Corporation principals know of and place high value on the commitment and dedication of citizens who serve on water district boards of commissioners and other public bodies.

In closing, UMG pledges to provide open and constant communication to the Mountain Water District board of commissioners and to report routinely and as requested regarding the business status and operational condition of the system while shouldering all of the day to day personnel management obligations and operational liabilities of the system.

  
\_\_\_\_\_

Mr. Archie Marr

  
\_\_\_\_\_

Mr. Greg May

Date 4-26-05

---

**GENERAL STATEMENT OF QUALIFICATIONS**

The following Statement of Qualifications complies with the directive set out in the District's RFQ/P, Section VI and all entries will be marked accordingly.

**A.1 Contractor Information**

**Name and Address**

Utility Management Group, LLC  
500 Summit Drive  
P.O. Box 663  
Corbin, Kentucky 40702

Phone Number: 606-528-2454  
Fax Number: 606-528-1770

e-mail: [archiemarr@umgllc.net](mailto:archiemarr@umgllc.net)

Utility Management Group, LLC  
258 Town Mountain Road  
Suite 101  
Pikeville, Kentucky 41501

Phone Number: 606-437-4754  
Fax/ Number: 606-437-5083

e-mail: [gregmay@umgllc.net](mailto:gregmay@umgllc.net)

**Name and Date of Incorporation**

Utility Management Group, LLC

February 12, 2005

**State of Incorporation**

Commonwealth of Kentucky

**Type of Entity**

Limited liability corporation

**Name of Owner/Manager**

Archie L. Marr

**FEIN Number**

20-2621526

## A.2 Key Personnel Experience

Utility Management Group (UMG) is a newly formed company located in Eastern Kentucky. The company is committed to managing and staffing projects using local resources and other expertise to manage and maintain water and wastewater utilities throughout Eastern Kentucky. As described in detail below, the founder and operating officer have the necessary experience in the utility management and financial fields to effectively optimize existing facilities and to develop approaches to cost effectively meet changing regulatory requirements, discharge standards and operational requirements.

### **Greg May**

The Utility Management Group team will be lead by Project Developer and Chief Operating Officer Mr. Greg May. Mr. May brings to this role a unique blend of management experience, from the mining industry and utility distribution, as well as organizational skills and project development experience. He served as Executive Assistant to the Pike County Judge-Executive for three years. Prior to joining Utility Management Group he served as Area Vice President for Veolia Water, the largest contract management company in the world. He first served as project manager for the Pikeville public works project which included a 6 MGD water plant, 18 water storage tanks, 14 water pump stations, 74 miles of water distribution lines, 2 MGD wastewater plant, 14 pump stations and 54 miles of collection lines. The scope of the Pikeville Project also included full public works such as customer service, meter reading and meter replacement program, natural gas distribution, sanitation services (collection and transfer station), handling industrial leachate, parks maintenance and street maintenance. After becoming Area Vice President of Operations for Veolia Water serving Kentucky, Virginia and West Virginia Mr. May managed water and/or wastewater utilities in 13 cities and water districts as well as one state of the art private industrial wastewater plant. These projects had combined operation revenues of 14 million per year and approximately 220 employees. Mr. May took the lead role in developing and doing the 'due diligence' analysis on the one billion dollar contract for operations and maintenance for the water and sewer systems for the Norfolk Naval Yard for Veolia Water. Mr. May helped coordinate a distribution system expansion for Southern Water in Floyd County growing a customer base from 3,800 to more that 7,000.

### Archie Marr

Another key member of the team will be Archie L. Marr, president of Marr, Miller & Myers, PSC. Mr. Marr is a Certified Public Accountant and has great expertise in management advisory services, business and financial planning, acquisition and valuation strategies, and immense knowledge of auditing. Mr. Miller was also director of training for Monroe Shine & Company, CPA's. Mr. Miller resides in Corbin, Kentucky and has experience throughout eastern Kentucky managing and auditing special projects for large corporations. Mr. Miller will serve as CEO/CFO of Utility Management Group, LLC.

A full resume of Mr. May and Mr. Marr is provided in Appendix A.

### A.3 Contract Management Experience & Amounts

Utility Management Group, LLC, was incorporated in February 2005. The contract proposed with Mountain Water District will be the corporation's first full service contract for operations, maintenance and management. The demonstrated business experience and expertise of the owner, Mr. Archie Marr and the demonstrated utility management experience and expertise of Mr. Greg May and the extensive on-site project management experience and expertise of Mr. Will Brown ---serving jointly as the on-site project leadership team --assures the District that it is placing its facilities in the hands of professional utility managers.

More specifically, over the last five years Mr. May oversaw four operation and management contracts amounting to approximately \$14m annually and oversaw the implementation of capital infrastructure projects in excess of \$53m. Similarly, during the same time period, Mr. Brown managed the District's operations at an annual average of approximately \$7m while administering capital improvement projects amounting to nearly \$50m.

### A.4 Assigned Staff

The Chief Operating Officer for Utility Management Group will be Greg May. Mr. May has a vast amount of experience in the operations of water and wastewater utilities. In the past six years, Mr. May has been the senior manager over operation and maintenance of utilities for 13 different cities and water districts throughout



Kentucky, Virginia and West Virginia. The projects vary in size from three (3) employees to sixty (60) employees and in wastewater plant size from 100 thousand gallons per day to 2 million gallons per day and in water plant size from 250 thousand gallon per day to 6 millions gallon per day. These systems contain over 200 sewer lift stations, 75 water pumping stations and tanks, 800 miles of water line, varying from 1.5" to 16" in size, and approximately 300 miles of sewer line. Mr. May has proven to be an effective manager to municipal facility owners in developing and enhancing existing water and wastewater systems. The focus will be delivering the maximum value while minimizing major capital expenditures. During the operations stage, Mr. May will work with the owner to optimize existing facilities and to develop approaches to cost-effectively meet changing regulatory requirements, and operational requirements.

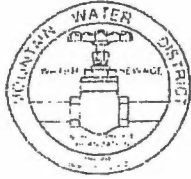
Another member of the team will be Will Brown, current Superintendent of Mountain Water District. Mr. Brown has more than nineteen (19) years of Management/Supervisory experience in water distribution operations, including booster pump station installation and maintenance, storage tank maintenance, water main construction, corrosion control, meter reading, billing, budgeting, water treatment, wastewater treatment operations and maintenance, design and construction of both water treatment and wastewater treatment system projects using recently developed technological advances in the treatment scheme. In the event of contract award Mr. Brown will continue to serve as Project Manager/Superintendent for Utility Management Group.

A full resume of Mr. Brown is provided in Appendix A.

A key component of the UMG staffing and management plan for this project involves employing all of the District's existing staff. These individuals know in-place operational methods and their participation is critically important to assure seamless continuity in service delivery as the District transitions to contract services.

UMG will offer in writing a position to each employee currently working at Mountain Water District in Pike County. Each employee will be paid their current wage and be provided a benefit package that exceeds that which is currently provided.

UMG's proposed organizational structure is fully illustrated in the following Figure 1.



Utility Management Group  
Superintendent / Project Manager



Executive Assistant

Administrative Assistant

Operations Manager

ROW Agent / Project Coordinator / Safety Coordinator

Human Resources Manager / Office Manager

Shop Mechanics

Assistant Operations Manager (2)

Administrative Assistant

Area Supervisors (2)

BPS Plant Operations

Regulation Operations / Field

Utility Workers (4)

Staff Accountant

Accounts Payable Clerk

Billing Clerks (2)

Delinquent Accounts Clerk

Cashier

File Clerk

Customer Service Representative (2)

Meter Department / Service Supervisor

Service Technicians (4)

Construction Supervisors

Wastewater Supervisor

Equipment Operator (3)

WWT Treatment Plant Operators (3)

Utility Workers (6)

Water Plant Chief Operator

Maintenance Manager

Water Treatment Plant Operator (3)

Maintenance Technicians (3)

Leak Detection

Inventory / Purchasing Agent

CDL Driver

Callout Supervisors

Equipment Supervisor

Resident Inspectors (3)

**Mountain Water District  
Proposed Organizational Structure**

Figure 1

**A.5 Operations, Maintenance and Management Experience**

The following table illustrates the clients for which operations, maintenance and management services involving water systems similar to Mountain Water District's have been provided service in the past 5 years, under the direction and/or supervision of Mr. May.

<b>Project</b>	<b>Location</b>	<b>Contact</b>
<b><u>Southern Floyd County Water &amp; Sewer</u></b>	Floyd County, KY	Paul Hunt Thompson Floyd County Fiscal Court 149 S. Central Ave Prestonsburg, KY 41635 606-886-9193
<b><u>City of Williamson</u></b>	Williamson, WV	Sam Kapourales, Former Mayor 566 Maple Street Williamson, WV 24620 304-949-3265
<b><u>Pikeville Public Works</u></b>	Pikeville, KY	Frank Justice, DVM, Mayor 118 College Street Pikeville, KY 41501 606-437-5100
<b><u>Town of Clintwood</u></b>	Clintwood, VA	Donald Baker, Mayor P.O. Box 456 Clintwood, VA 24228 276-926-8383
<b><u>CDR Pigments</u></b>	Elizabethtown, KY	Ken Horton 305 Ring Road Elizabethtown, KY 42701 270-737-1700
<b><u>Hardinsburg Public Works</u></b>	Hardinsburg, KY	Wayne Macy, Mayor 220 S Main Street Hardinsburg, KY 40143 270-756-2213

Detailed information on these clients provided in Project Profiles sheets found at the end of Section II.

## A.6 Subcontractors

### Water Quality Analysis

UMG will negotiate with all qualified laboratories located in or adjacent to the District service area to secure contract(s) for independent water quality testing and reporting services. It is reasonable to expect that contracts will be secure with one or more of the following firms:

Appalachian States Analytical Services  
181 Long View Drive  
Pikeville, Kentucky 41501

McCoy & McCoy Environmental Services  
173 Island Creek Road  
Pikeville, Kentucky 41501

### Insurance

UMG has secured a competitive array of insurance products that will guarantee a sound employee benefits package, provide for corporate liability and vehicle coverage and provide for workman's comp.

These include the following:

Health:	Blue Cross & Blue Shield
Dental:	Delta Dental
General Liability:	Acordia of Kentucky (\$2m)
Workman's Comp:	AIG
Corporate Vehicle:	AIG
Umbrella Policy:	Acordia of Kentucky

Note: documentation relating to each type of insurance provided in Appendix A.

Quality Testing

UMG will contract with Analytical Products Group, Inc., to provide water quality sampling method testing for all employees engaged in the water treatment or wastewater treatment processes.

Analytical Products Group, Inc.  
2730 Washington Boulevard  
Belpre, Ohio 45714  
Phone: 800-272-4442

A.7 Non-monetary Terms and Conditions

The following constitute the only non-monetary terms and conditions proposed by UMG and subject to negotiation with the District that are to be incorporated into the contract agreement to be executed by the District and UMG.

a. Retention / Dismissal of Employees

Pursuant to the proposed contract agreement between the District and UMG, UMG agrees to employ all current employees of the District at the time of contract signing and continue to employ these individuals for a period of least six (6) months. During this period, UMG will conduct interviews, review records, conduct drug tests, and implement other procedures to assess personnel resources and measure productivity. The information obtained from this activity will be used to develop up-grade training programs for employees.

However, at any time during the initial six (6) month period of the contract, if any employee engages in any publicly reprehensible act, such as harming or threatening to harm others, lewdness, destruction of property, or is convicted of theft, public intoxication, or other act which grossly violates the proper demeanor and deportment of an individual representing either the District or UMG, such employee may be dismissed immediately.

b. Selection/Elimination of Vehicles, Tools and Equipment

Due to the health and safety concerns associated with the condition and state of repair of vehicles, tools and equipment belonging to the District and to be used or intended for use by UMG in carrying out its obligations to operate and maintain the District's facilities, UMG reserves the right to evaluate, and accept or reject any item or items as it deems appropriate.

c. Undisclosed Regulatory Violations, Lawsuits or Other Similar Matter

UMG shall not be liable for nor in any way be responsible to resolve, correct, settle, or pursue redress on behalf of the District for any undisclosed violation(s) of regulation(s), law suits, complaints, or similar matter that is not fully disclosed by the District prior to the time of contract signing.

**PROJECT  
PROFILES**



# OPERATIONS AND MANAGEMENT

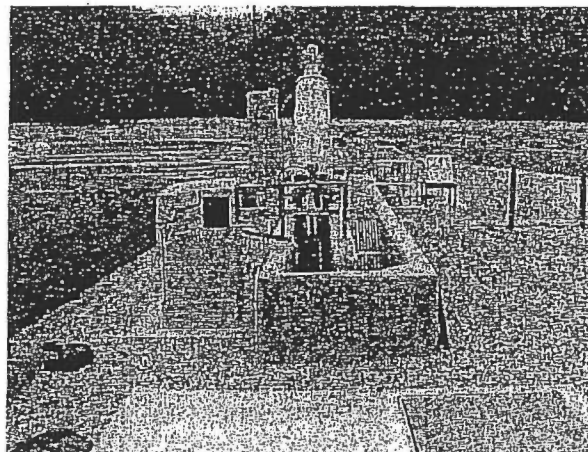
## Municipal Wastewater Project

**CLIENT:** City of Clintwood

**LOCATION:** Clintwood, KY

**BUDGET:** \$110,000 / year

### PROJECT DESCRIPTION:



Greg May led the team of professionals who negotiated, and put into application the plan for operations, maintenance and management (O&M) of a 0.5-MGD oxidation ditch type wastewater treatment plant for the Town of Clintwood, Virginia. This project also includes O&M responsibility for sludge land application operations; processing 71-dry-tons-per-year of sludge, as well as septic waste receiving and effluent reuse operations.

Under his leadership the city was able to finance more than \$50,000 in project improvements after contracting for O&M responsibility of the Town's wastewater facilities.

To achieve a stronger and more efficient system, the team also completed a vibration analysis on all major equipment. As a result, some equipment was scheduled for repair by the manufacturer while still covered under warranty.

Additionally, Mr. May instituted a *Safety First Program*, which is practiced in earnest at the Clintwood project. Staff has operated more than 12 years without a lost-time accident.

<b>Facilities</b>	0.5-MGD Oxidation Ditch WWTP
<b>Scope of Services</b>	<ul style="list-style-type: none"><li>• Operate/Maintain/Manage</li><li>• Land Application of Biosolids — 71 dry tons per year</li><li>• Septage Receiving</li><li>• Effluent Reuse</li></ul>
<b>Start Date</b>	1989
<b>Population Served</b>	1,250

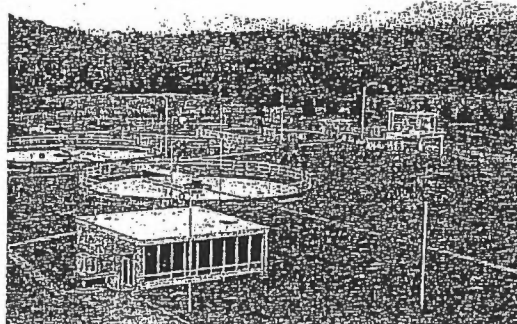
*Experience gained while with previous employer*



# OPERATIONS AND MANAGEMENT

## Pikeville Public Works

**CLIENT:** City of Pikeville  
**LOCATION:** Pikeville, KY  
**BUDGET:** \$4,000,000 / year



### PROJECT DESCRIPTION:

Greg May was instrumental in developing this Public-Private Partnership, which began in 1987 with a contract for the operations, maintenance and management (O&M) of the City's wastewater system, now involves the operation and management of the public works and utility systems (water, wastewater, natural gas, and sanitation), systems that serve a population of more than 7,000.

Under his leadership the City's contract was been renewed or extended seven times, He managed personnel who provided O&M for the City of Pikeville's utility systems, including water, wastewater, natural gas, and sanitation. Our first contract with the City was in 1987, and involved providing complete O&M services for the City's existing trickling filter wastewater treatment plant, as well as their 4.8-MGD water treatment facility.

### Awards and Recognitions:

- Governor's Environmental Award for Best Operated Water Treatment Facilities.
- KNREP Outstanding Community Water Management Award
- AWWA Top 5 small plants in state

<b>Wastewater Facilities</b>	<ul style="list-style-type: none"><li>• 2-MGD Extended Aeration Wastewater Treatment Plant</li><li>• Sludge Disposal — 388 dtpy</li><li>• 14 Pump Stations</li><li>• Collection System (54 miles)</li></ul>
<b>Water Facilities</b>	<ul style="list-style-type: none"><li>• 6-MGD Surface WTP</li><li>• Raw Water Pump Station (4 MGD)</li><li>• 18 Water Towers</li><li>• 14 Water Pump Stations</li><li>• Distribution System (74 miles)</li></ul>
<b>Scope of Services</b>	<ul style="list-style-type: none"><li>• Operate/Maintain/Manage</li><li>• Full Public Works</li><li>• Customer Service</li><li>• Meter Reading and Meter Replacement Program (Water)</li><li>• Collection and Distribution System Rehabilitation</li><li>• Septage Receiving</li><li>• Natural gas distribution</li><li>• Sanitation (collection and transfer station)</li><li>• Industrial Leachate</li><li>• Customer Service</li><li>• Parks/Cemetery Maintenance &amp; Landscaping</li><li>• Swimming Pool</li><li>• Ballfield Scheduling</li></ul>
<b>Start Date</b>	1987 - Ongoing
<b>Population Served</b>	7,000

\* Experience gained while with previous employer

# OPERATIONS AND MANAGEMENT

## Industrial Water Reclamation Facility

**CLIENT:** CDR Pigments

**LOCATION:** Elizabethtown, KY

**BUDGET:** \$ 3,400,000 / year

**Facilities** 0.55-MGD industrial water reclamation facility

**Scope of Services**

- Design/Build
- Financing
- Lease/Ownership
- Operate/Maintain/Manage

**Start Date** 2000

### PROJECT DESCRIPTION:

Greg May was instrumental in providing design/build/finance/own/operate/maintain/management services upgrades to an industrial water reclamation facility treating industrial wastewater to process water quality. Memtek® microfiltration, reverse osmosis, crystallization, salt dewatering, cooling towers and boilers are critical components in the treatment process.

Additional responsibilities exceeding management included financing, design, and construction of many system improvements and upgrades.

*Experience gained while with previous employer*

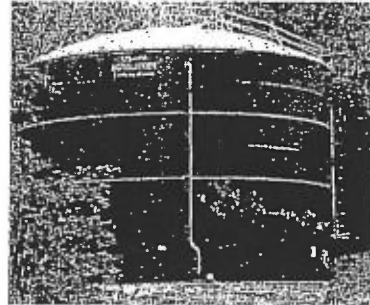
# OPERATIONS AND MANAGEMENT

## Southern Floyd County Water & Wastewater

**CLIENT:** Southern Water & Sewer District

**LOCATION:** Floyd County, KY

**BUDGET:** \$ 1,300,000 / year



### PROJECT DESCRIPTION:

Under a contract that began in 2000, Greg May assisted the Southern Water and Sewer District of Floyd County, Kentucky, as they contracted for private management and operations to expand the District's water system and find solutions to water losses.

A public-private partnership was formed in May 2000 to expand the District's water system and find solutions to water losses. Under this long-term, 20-year, contract, he lead the efforts to the design, financing and construction of 24 miles of new distribution system, adding three pumps and three tanks, to bring 500 additional connections into the water and sewer district. A second expansion project followed to bring additional customers onto the system. A third segment is underway that will bring the total of additional lines to approximately 100 miles and new connections to some 1,500.

Additionally, Mr. May has implemented a management program to help integrate the Beaver-Elkorn and Mud Creek water districts into the newly formed Southern Water and Sewer District.

Most importantly he developed an innovative plan to reduce the financial impact of the improvements and expansion on the District and the residents.

<b>Facilities</b>	<ul style="list-style-type: none"><li>• 2-MGD Surface Water Treatment Plant</li><li>• Distribution System (285 miles)</li><li>• 25 Pump Stations</li><li>• 24 Water Storage Tanks (2.8 MG)</li><li>• 0.1-MGD Extended Aeration Wastewater Treatment Plant (startup 3/05)</li></ul>
<b>Scope of Services</b>	<ul style="list-style-type: none"><li>• Operate/Maintain/Manage</li><li>• Design/Build Services</li><li>• Project Financing</li><li>• Purchase 0.3 MGD</li><li>• Meter Reading</li><li>• Meter Replacement Program</li><li>• Billing/Collection</li><li>• Customer Service</li><li>• Security Vulnerability Assessment</li><li>• Capital Expansion Program</li></ul>
<b>Start Date</b>	2000 – Ongoing through 2020
<b>Population Served</b>	18,090

*Experience gained while with previous employer*

# OPERATIONS AND MANAGEMENT

## Regional Water & Wastewater

**CLIENT:** City of Williamson

**LOCATION:** Williamson, WV

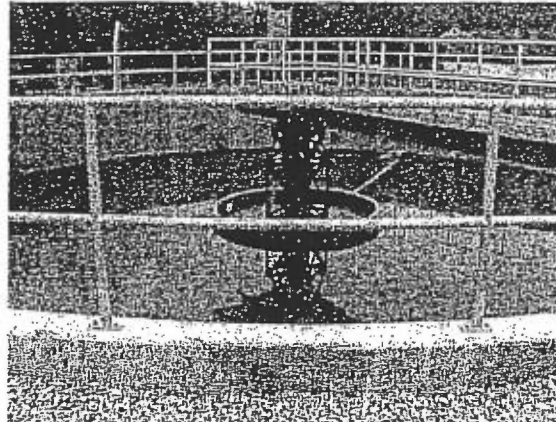
**BUDGET:** \$ 1,800,000 / year

### PROJECT DESCRIPTION:

Greg managed the effort leading to a successful negotiated contract providing contract operations, maintenance and management (O&M) services for the utility facilities serving Williamson as well as customers in Kentucky. His staff provided comprehensive management and operations services to Williamson's utility and public works departments.

He also fostered the development of customer service program 24-hours-a-day, 7-days-a-week to ensure that emergency repairs to the system are made promptly, year-round, day or night.

Working with the utility clerk and a contract computer vendor his provided oversight to the installation of a new system in just three days so that billing could go out on time. This new system added many features that the previous system lacked, including a work order tracking program to monitor customer requests.



- |                          |                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Facilities</b>        | <ul style="list-style-type: none"><li>• 1.5-MGD Envirex Activated Sludge WWTP</li><li>• 13 Lift Stations</li><li>• Collection System (23 miles)</li><li>• 4.2-MGD Surface WTP</li><li>• 5 Pump Stations</li><li>• 2 Booster Stations</li><li>• Distribution System (75 miles)</li><li>• Distribution System Rehabilitation</li><li>• 7 Water Storage Tanks</li></ul> |
| <b>Scope of Services</b> | <ul style="list-style-type: none"><li>• Operate/Maintain/Manage</li><li>• Meter Reading (water)</li><li>• Meter Replacement Program (water)</li><li>• Customer Service (water)</li><li>• Full Public Works</li><li>• Fleet Maintenance</li><li>• Solid Waste Collection</li><li>• Land Application Program - 90 dry tons per year</li></ul>                          |

**Start Date** 1999

**Population Served** 4,250

*Experience gained while with previous employer*

# OPERATIONS AND MANAGEMENT

## Hardinsburg Public Works

**CLIENT:** City of Hardinsburg

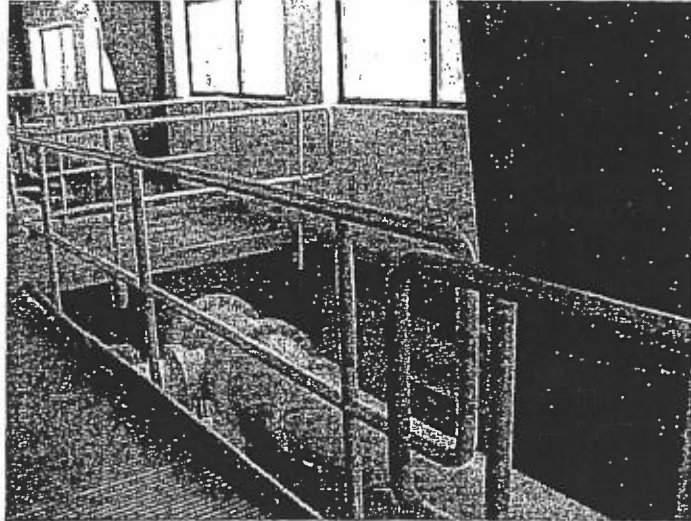
**LOCATION:** Hardinsburg, KY

**BUDGET:** \$ 1,300,000 / year

### PROJECT DESCRIPTION:

Greg May assisted in the development of a broad scope contract with the City of Hardinsburg. This contract encompasses O&M of the wastewater and water systems, including treatment, collection and distribution systems, water meter reading and beneficial use of wastewater residuals. We also manage the Public Works Department, including streets and sanitation. This includes O&M of a 0.732-MGD oxidation ditch activated sludge wastewater treatment facility with processes including clarification, disinfection, dechlorination, and reaeration. The 1.2-MGD water plant removes iron and manganese from raw lake water treated through chemical coagulation, ClariCone™ clarification, dual-media sand filtration, disinfection, post-disinfection, and lime softening.

Under this contract his staff also acted as the City's agent for FEMA coordination following disastrous weather events, and also provided expert input for water intake studies to resolve the raw water quality issues.



#### Facilities

- 0.732-MGD Extended Aeration, Oxidation Ditch WWTP
- 5 Pump Stations
- Collection System (20 miles)
- 1.2-MGD Surface WTP
- 2 Pump Stations
- Distribution System (300 miles)
- 3 Elevated Water Towers
- 2 Standpipes
- Clear Well (1.7 MG)

#### Scope of Services

- Operate/Maintain/Manage
- Public Works Department
- Sanitation
- Meter Reading
- Meter Replacement Program
- Liquid Land Application of Class B Biosolids — 7.3 dry tons per year

**Start Date** 1995

**Population Served** 10,000

*Experience gained while with previous employer*



## OPERATIONS PLAN

The following **Operations Plan** complies with the directive set out in the District's RFQ/P, Section VI, A8, and all entries will be marked accordingly.

### ***A. Staffing Plan***

The UMG on-site management team will consist of Mr. Greg May, Chief Operating Officer and Mr. Will Brown, Project Manager/Superintendent.

Generally, Mr. May will engage in methods of operation analyses, and will devise adaptations and modifications to current methods to better assure achievement of economies of scale, and conservation of resources. Additionally, Mr. May will be charged with identifying and securing funding for system component rehabilitation and up-grade, line extensions and other capital improvements on the District's system.

Mr. Brown will continue to oversee the treatment plants for water and wastewater, the distribution and collection systems, all tanks and pumping stations, and new line construction activities.

To assure continuity of service and smooth transition of staff from public management to private management, all members of the District's current staff -- administrative, treatment, distribution and collection and construction -- will be retained in their present positions and carry their current job duties and responsibilities. System maintenance employees will be configured into teams, initially conforming to the regions currently utilized by the District.

Thirty days after the start-date of system operations and management by UMG, the District's board of commissioners will be provided a comprehensive organizational chart illustrating assignments of all personnel.

### ***B. Description of Daily Operational Routine***

The typical work day will start promptly at 8:00 a.m. and continue until 5:00 p.m., with 30 minutes for a lunch break. Routine maintenance work tasks will be carried out as per assignment and by schedule established by the management team. All non-routine maintenance activities, including response to customer service calls, will be tracked electronically via a work order data base and management tool, coordinated through the District's administrative office.

All customer communication will continue to be logged and all customer accounting transactions will be handled by the administrative office and tracked through the work order software program and the District's accounting software. UMG personnel will conduct all components of the billing and bookkeeping operation and make daily deposits to that bank(s) and account(s) as determined by the District.

All emergencies, such as line breaks, pump failure and similar occurrence that interrupts routine service will result in suspension of routine maintenance work tasks to allow for appropriate and timely response by personnel. UMG will respond immediately and make all necessary expenditures and invest whatever amount of time and personnel necessary to restore service, if and when service is interrupted. As per contract, the management team will provide timely communication to members of the District's board of commissioners if and when an outage occurs and inform same when service is restored.

Generally, UMG will carry out all the day-to-day activities presently performed by the staff of Mountain Water District. This work will involve the operation and maintenance of all District facilities including its 2 mgd water treatment plant, 107 water pump stations, 97 water storage tanks, 31 pressure regulator stations, 23 master meter stations, 18 wastewater treatment plants, 25 sewer lift stations, 899 miles of water distribution line and 29 miles of sewer collection line.

UMG will provide all required personnel, equipment, parts, supplies and other specialty services needed to implement this project.

### ***C. Enhancements to Operations and Maintenance of District Facilities***

As the District's contracted operation and maintenance service provider, UMG commits to:

Improved operational and maintenance efficiency within the water treatment and distribution system and the wastewater treatment and collection systems to ensure the delivery of high quality, professional service.

Conduct all customer service activities in a civil, polite and professional manner, maintaining the District's "good neighbor" relationship with consumers throughout the service area.

Guarantee compliance with the District's water withdrawal and discharge permits, and all other State of Kentucky and Federal regulatory requirements.



Foster and maintain positive working relationships with staff of regulatory, infrastructure planning and funding agencies at all levels.

Maintain the District's facilities so as to ensure their longer-term viability and proper return on the public's investment.

Actively pursue greater efficiency in all aspects of the District's water and wastewater systems, especially in their operations and maintenance systems and methods.

Guarantee the safe operation of all facilities, protecting the employees and customers of the system.

Foster effective communication and cooperation among all State, County, Area and Municipal service entities.

Devise workable Operation and Maintenance Plans for the District's water treatment plant and distribution system and wastewater plants and collection systems.

#### ***D. Additional Services***

##### *Water & Wastewater Plant Laboratory Testing and Verification.*

The water quality is most affected by the operation of the water plant. Operating the plant involves monitoring, sampling, testing, analyzing and reporting on the makeup of the water both before and after treatment to determine what chemicals to add. The results of this testing are then passed on to the State and Federal government for review. The accuracy of the testing is checked both by the State and the company. This verification of test results is important because of public health.

UMG will implement a quality assurance/quality control program to handle this verification. This program will include performing tests in-house and contracting with a local lab. UMG will train the operators in the most current laboratory techniques to ensure proper testing procedures.

Process Control Management will be a major part of the Project Manager's responsibilities. Training will be conducted to allow each

plant operator to timely assess whether unit processes are in or out of control without being overly committed day-to-day involvement. Monitoring effluent or finished water is not an effective "Control Plan" because, at this point, serious trouble may already exist and prevention control steps are limited. This will be the primary goal.

The secondary goal is to provide a process whereby other UMG management personnel are notified when "exceptions" to normal conditions occur. Timely notification is essential in keeping management informed so that resources can be provided to assist in correction of minor issues before they become major ones.

UMG will use the "Top Down" approach to process management. This approach, and the data analysis structure that supports it, allows management to routinely review and to respond to as necessary the few leading or critical parameters rather than having to analyze all process data.

### Maintenance

UMG will carry out all the maintenance activities required by the District. The effort will include both on-site staff and or special contractors who are needed say to pull a large raw water pump. The maintenance work will involve the water plant, wastewater plants, distribution system pipes pumps and tanks, sewer collection pipes, sewer collection lines, tanks, customer meters and vehicle fleet. The maintenance work covers four different situations.

- *Preventive* -- includes oil and filter changes and similar actions.
- *Predictive* -- scheduled work that prevents outages.
- *Corrective* -- involves fixing a problem.
- *Emergency* -- repairs such as a water or wastewater line break.

UMG will follow the highest standards for maintenance as prescribed by the equipment manufactures and accepted engineering practices.

The best method of providing for compliance and monitoring the proper administration of these standards is the use of Computerized Maintenance

System. This system is used to document the procedures and completion of a Preventive Maintenance and Predictive Maintenance tasks. The Computerized System is a computer software program that will automate preventive and predictive maintenance scheduling and track distribution system work orders, maintenance histories and costs. Work orders for all areas of the water and wastewater system will be tracked on the maintenance management system. In addition, through the computerized system, information obtained from the maintenance surveys and indicators will be stored, tracked and utilized to identify trends or pending equipment failures.

Some examples of equipment monitored will include:

- Water Plant
  - Motors
  - Valves
  - Telemetry

- Distribution Systems
  - Pumps
  - Tanks
  - Valves
  - Hydrants

- Vehicles

The system can also be set up to remind operators about water testing and hydrant flushing schedules.

#### Warranty Activities

UMG will also conduct preventive maintenance such as oil changes, grease application, cleaning, changing filter elements and inspections at scheduled intervals as recommended by the manufacturer. To maintain the area equipment in the optimum condition, UMG will follow appropriate manufacturer-recommended service intervals, which are usually based on operating hours.

Computer-Aided O&M Management System

Almost every aspect of day-to-day management at the District will be assisted with computer technology. Many of these are not currently being used, but should help reduce the workload and improve customer service. Among the computer programs and systems that UMG will implement as a part of this contract are those for:

- Water Plant Operations
- Maintenance
- Distribution System Monitoring
- Inventory Control
- Meter Reading
- Billing

Annually a report will be compiled recapping the activities of the previous year, and laying out the planned activities for the upcoming year. These activities will include any major maintenance, or capital expenditures anticipated.

Safety

Safety will be our NUMBER ONE concern, and we will practice it daily. UMG will implement one of the best safety programs in the industry. UMG will develop site specific programs and procedures such a Lockout for electrical motors etc., Confined Space Entry and Traffic Control etc.. The training is provided monthly or more often depending on the work scheduled to be completed. A new or difficult task might be reviewed by the safety coordinator and training provided to the employees before performing the work. The safety coordinator is also responsible for making sure proper safety equipment is provided to the employees. This equipment involves safety shoes, hard hats and glasses, as well as making sure signs are available for traffic control, warning lights are on all vehicles, a trench box is provided for any deep or unstable trenches and confined space gas monitoring and recovery gear is available.



## TRANSITION PLAN

UMG is aware that the proposed contract for operation and maintenance of District facilities will involve a significant amount of change for current employees of the District and a lesser, though significant change for the District's customers. Acknowledging that change can prompt anxiety, UMG is committed to taking all reasonable steps to assure that the transition from public to private management of the District's facilities will go smoothly and as painlessly as possible. Proper and timely communication with District employees and District customers will resolve nearly all concern regarding the transition. UMG will coordinate closely with the District's board of commissioners regarding any and all employee notification and any public notice(s) or other method of communicating the change in operation and maintenance responsibilities.

To better assure that the transition will occur with ease, UMG proposes the following:

1. The District's board of commissioners and UMG will conduct an informational meeting for all employees, their spouses and other interested family members prior to contract signing. All aspects of the contract affecting employees will be explained in full and Commissioners and members of the management team will address any and all questions.
2. There will be no change in the hours of operation of the District office.
3. All phone numbers will remain the same, and phone salutations identifying "Mountain Water District" will continue, unchanged.
4. All vehicle and equipment logos designating ownership by the District will remain unchanged.
5. The format of all customer billings and other office-generated customer notices will carry the District's logo and the signature of the chairperson of the board of commissioners, as appropriate.

6

1

0

5

## REFERENCES

Former Governor Paul E Patton  
151 North Mayo Trail  
Pikeville, KY 41501  
606-432-2214

Frank Welch, Superintendent  
Pike County Board of Education  
PO Box 3097  
Pikeville, KY 41502  
606-433-9700

John Cecil  
Regional Manager  
KVAT Food Stores  
PO Box 1158  
Abingdon, VA 24212  
276-628-8173

Ron M Johnson, PE, LS  
3376 Rt 550E  
Hindman, KY 41822  
606-785-5926

Walter E May, CEO  
Pikeville Medical Center  
911 By Pass Road  
Pikeville, KY 41501  
606-432-2646

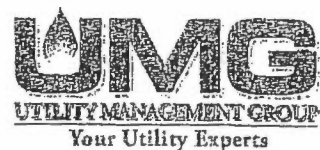
Dani Hall, Chief Engineer  
Kentucky Department of Transportation,  
District 12  
109 Lorraine Street  
Pikeville, Ky 41501  
606-433-7791

William E. Deskins  
Pike County Judge Executive  
146 Main Street  
Pikeville, KY 41501  
606-432-6247

Roger Recktenwald  
804 Honeysuckle Lane  
Lawrenceburg, KY 40342  
502-859-9666

Senator Ray S Jones, II  
31<sup>st</sup> District  
PO Box 3850  
Pikeville, KY 41502  
502-564-8100 Frankfort  
606-432-5777 Pikeville

Honorable Steven D. Combs  
35<sup>th</sup> Judicial Circuit, Division 2  
Hall of Justice  
172 Division Street  
Pikeville, KY 41501  
606-433-7554





## SOUTHERN WATER & SEWER DISTRICT

P.O. Box 610 / 245 Ky Route 680  
McDowell, KY 41647  
606.377.9296 Fax 606.377.9286

April 20, 2005

TO WHOM IT MAY CONCERN:

Re: **Recommendation for Mr. Greg May**

Please accept this correspondence as a positive reference for and endorsement of Mr. Greg May who now serves as the Chief Operating Officer of Utility Management Group, LLC. Mr. May previously served as Area Manager for Veolia Water North America (formerly U.S. Filter), a utility services contractor. During his tenure with Veolia Water, he coordinated Southern Water & Sewer's transition to private contract management. As Chairman of Southern Water & Sewer District, I worked closely with Greg and came to appreciate and respect both his work ethic and genuine interest in the success of our utility services and expansion programs.

Without any hesitation, I recommend Mr. May to you and would expect that you will find him to be as energetic and solicitous about your system as he has been with ours. Please don't hesitate to call me at home (606.285.3754) should you wish to discuss this further.

Sincerely,



Hubert Halbert, Chairman  
Southern Water & Sewer District

**SAM KAPOURALES**  
**215 LOGAN STREET, SUITE 10**  
**WILLIAMSON, WV 25661**  
**PHONE: 304-235-5395**  
**FAX: 304-235-1258**

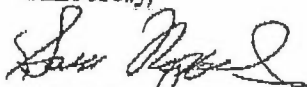
April 22, 2005

To Whom It May Concern:

Be advised that Mr. Greg May, City of Williamson, has my confidence and Support in his new venture in Utilities Management Group, LLC. Throughout his time working with our water and sewer systems, he was constantly finding ways for us to reduce costs and operate more efficiently. His employees worked hard and with little exception expressed appreciation for his firm but tempered guidance.

I regret that he is no longer working with us and assure you that you and your customers will be proud to have him on board.

Sincerely,

  
Sam Kapourales

SK/nv

HARDINBURG CITY HALL

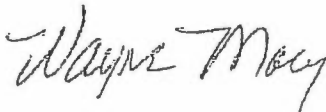
April 22, 2005

To Whom It May Concern:

This letter is provided for a positive reference for Mr. Greg May who is now Chief Operating Officer for Utility Management Group, LLC. Mr. May was previously Area Manager for Veolia Water North America utility management group. While serving at in that capacity he worked closely with the city Council, and myself to improve and maintain our cities utilities and public works. I appreciate his concern, knowledge and work ethic while working with us.

I recommend Mr. May to anyone with the desire to have expert management for their utilities. You may call me at any time. @ 270-156-2213

SINCERELY,



Wayne Macy, Mayor



**CITY OF PIKEVILLE**

118 College Street  
Pikeville, Kentucky 41501  
(606) 437-5100  
Fax Number (606) 437-5106

Frank Justice, II  
*Mayor*

Donovan Blackburn  
*City Manager*

April 22, 2005

To: Whom it May Concern

Fr: Donovan Blackburn  
City Manager – Pikeville, KY

Ref: Greg May Recommendation

I would like to give my complete endorsement and appreciation of Greg May who now serves as the Chief Operating Officer for Utility Management Group, LCC. Mr. May previously served the City of Pikeville as the Area Manger with Veolia Water. His previous position served the cities water, sewer, trash, gas, streets and parks systems. His leadership and management abilities not only offered the city exceptional services, but allowed the city to expand and grow as it was needed. Mr. May's commitment to his job and more important his client was like no other I have experienced. Any issue was handled at a moments notice with great concern to ensure total satisfaction. As City Manager I have enjoyed a great professional and what has become a personal relationship. He has earned the respect of the city, commission and community.

I would strongly state that any organization that uses Mr. May's professional services will greatly be rewarded with accomplishment. Mr. May has all the qualities, experience and desire to make whatever he manages work. If you have any questions or would like to discuss this matter further, please don't hesitate to give me a call.

Sincerely,

Donovan Blackburn  
City Manager – Pikeville, KY  
Phone (606) 437-5100





## PRICE PROPOSAL

For First Full Year of Operations

JULY, 2005 TO JUNE, 2006

1. Personnel Services	\$ <u>2,681,000</u>
2. Utilities	\$ <u>1,560,232</u>
3. Chemicals	\$ <u>106,400</u>
4. Equipment	\$ <u>469,973</u>
5. Materials/Supplies	\$ <u>386,619</u>
6. Outside Services	\$ <u>393,950</u>
7. Maintenance and Repair	\$ <u>456,140</u>
8. Capital Costs	\$ <u>415,140</u>
9. Profit	\$ <u>350,243</u>
<b>10. TOTAL</b>	<b>\$<u>6,820,000</u></b>

### Notes Regarding Bid Prices

1. Personnel Services

All wages, salaries and fringe benefits including Workers Compensation, Life, Health, Dental and LTD insurance, uniforms, safety shoes, 401K retirement.

2. Utilities

Cost of electricity, purchased water, and wastewater treatment services, solid waste service and sludge disposal costs.

3. Chemicals

Chemicals for water and waste water treatment, odor control, etc.

4. Equipment  
Vehicle and equipment costs, fuel and insurance. Does not include repair and maintenance (listed under maintenance and repair)
  5. Materials /Supplies  
Laboratory, office supplies, postage, dues and subscriptions, telephone, pager, professional and certification fees, other fees.
  6. Outside Services  
General liability insurance, Other insurance, Consultants, Drug testing, Legal, Training, CCR mailing, etc.
  7. Maintenance and Repair  
Parts and supplies for field maintenance, water treatment plant, booster pumping stations, water tanks, electrical, telemetry, wastewater plant, lift stations, vehicles and equipment. (\$356,140 for field maintenance, \$100,000 for vehicles and equipment maintenance).
  8. Capital Costs  
Startup costs, pay off all short term debt, buy out all accrued time for each employee exceeding 100 hours, each employee may carry over up to 100 hours of accrued time to UMG. Reimburse non vested employees for all accrued assets in CERS. Pay off A/P, 3 new utility vehicles, 2 new supervisor vehicles, 1 air compressor and additional safety equipment . startup of full time sewer construction crew (5 employees). Replace 3 backhoes with backhoes or excavators as determined for construction crew(s).
- Note: UMG recommends consolidation of A/P and as identified on attached Figure 2 as a convenience to district. Such action is solely at District discretion.*
9. Profit  
Calculated at 5.14% total O M & M budget.

Current construction crews will be funded fully out of construction dollars. (not included in O&M budget). Expect to add another construction crew (5 people) for construction out of coal severance sewer funds.

Resident Inspectors employment will remain with District.

---

Figure 2

**Utility Management Group  
Mountain Water District  
Schedule of Long Term Debt**

<u>Description</u>	<u>Original Issue Amount</u>	<u>Projected Beginning Balance</u>	<u>Projected Principal Payments</u>	<u>Projected Ending Balance</u>
Mountain Water A/P				
BB&T Mortgage	63,115.00	43,163.00	5,847.00	37,316.00
BB&T 36m Cap Lease Skid Steer	18,285.00	4,637.00	5,146.00	
BB&T Inst Ln-Boring Machine	19,700.00	8,518.00	5,259.00	3,259.00
Case Credit 60M 5.5% BH #12	44,842.00	20,000.00	7,674.00	12,326.00
Chrysler Financial 36M Veh #89	16,400.00	4,874.00	4,515.00	358.00
Chrysler Financial Lease-Veh #74	27,950.00	5,237.00	5,146.00	91.00
Chrysler Financial Lease-Veh #75	27,950.00	5,237.00	5,146.00	91.00
Chrysler Financial Lease-Veh #76	27,950.00	5,237.00	5,146.00	91.00
Chrysler Fin 60M Lease Veh #83	18,500.00	9,931.00	3,212.00	6,719.00
Chrysler Fin 60M Lease Veh #84	18,500.00	9,932.00	3,213.00	6,719.00
Chrysler Fin 60M Lease Veh #86	23,600.00	13,428.00	4,084.00	9,344.00
Chrysler Fin 60M Lease Veh #87	23,600.00	13,428.00	4,084.00	9,344.00
Loan#6 Comm Trust 01 S10 48m	12,013.00	2,468.00	2,468.00	
Loan#7 Comm Trust 01 Dump 60m	50,528.00	19,594.00	9,028.00	10,566.00
CTB Inst Ln 36m Vibratory Plow	29,800.00	3,658.00	3,658.00	
CTB Ln 36m Truck-Mounted Hoist	8,015.00	967.00	967.00	
CTB Loan 36m S10 Pickup Veh 82	12,391.00	2,629.00	2,629.00	
CTB Consolidation Ln 60m 4.25%	330,020.00	222,523.00	55,138.00	167,385.00
Comm Trust 36m Inst-Veh #90	15,084.00	8,227.00	4,052.00	4,174.00
Comm Trust-60m-Veh#92	16,172.00	14,025.00	2,787.00	11,238.00
Comm Trust 60m-Veh 93	19,474.00	18,054.00	3,373.00	14,680.00
Comm Trust Ln-Veh #94	24,777.00	23,690.00	4,269.00	19,421.00
Lease 01 Escape #5066511 48mon	19,234.00	1,789.00	1,789.00	
GMAC 60m Lease 2002 Chevy #85	28,300.00	16,039.00	4,854.00	11,185.00
GMAC 36m Lease 2002 S-10 #88	13,115.00	3,119.00	3,119.00	
GMAC 60M 0% Veh 91	22,300.00	15,982.00	3,345.00	12,637.00
New Holland Lease-Backhoe#11	51,450.00	1,295.00	1,295.00	
New Holland Lease-Skid Steer	17,940.00	686.00	686.00	
<b>Total Long Term Debt</b>	<b>1,001,005.00</b>	<b>498,367.00</b>	<b>161,929.00</b>	<b>336,944.00</b>



The following items of evidentiary documentation is provided in Appendix A and complies with the directive set out in the District's RFQ/P, Section II.

- A. Certificate of Incorporation
- B. Certificate of Insurance
  - General Liability
  - Commercial Automobile
  - Workman Comp Insurance
  - Umbrella Liability
  - Group Medical Coverage
  - Group Life, Disability, Dental and 401(k)
- C. Bond Capacity
- D. PSC or similar report

Draft Service contract is attached in Appendix B

CERTIFICATE  
OF  
INCORPORATION



**Commonwealth of Kentucky**  
**Trey Grayson**  
**Secretary of State**

**Certificate of Existence**

I, Trey Grayson, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

**UTILITY MANAGEMENT GROUP, LLC**

is a limited liability company duly organized and existing under KRS Chapter 275, whose date of organization is August 10, 2004.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that articles of dissolution have not been filed; and that the most recent annual report required by KRS 275.190 has been delivered to the Secretary of State.

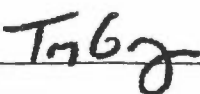
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 23rd day of April, 2005.

Certificate Number: 13554

Jurisdiction: Utility Management Group

Visit <http://www.sos.ky.gov/obdb/certvalidate.aspx> to validate the authenticity of this certificate.



  
\_\_\_\_\_  
Trey Grayson  
Secretary of State  
Commonwealth of Kentucky  
13554/0592196

**CERTIFICATES  
OF  
INSURANCE**



220 Lexington Green Circle  
Suite 410  
Lexington, KY 40503-3330  
Voice: 859.273.6600  
Fax: 859.273.5998

www.acordia.com



April 19, 2005

**Re: Utility Management Group, LLC - Commercial Insurance Programs**

To Whom It May Concern:

Acordia of Kentucky, Inc has presented a Proposal to Utility Management Group, LLC for various commercial insurance coverages. This letter will confirm that we are prepared to bind and put into effect these coverages as outlined in our Proposal:

- **Commercial General Liability:** \$1,000,000 Each Occurrence Limit / \$2,000,000 General Aggregate Limit.
- **Commercial Automobile:** \$1,000,000 Each Accident Combined Single Limit, plus other ancillary policy coverages related to ownership and use of vehicles.
- **Workers Compensation & Employers Liability:** Kentucky Statutory Limits for Workers Compensation; \$100,000 / \$500,000 / \$100,000 for Employers Liability.
- **Umbrella Liability:** \$1,000,000 Each Occurrence Limit / \$1,000,000 Aggregate Limit excess/follow-form over CGL and Automobile Liability.

Subject to receipt of final underwriting information, we are prepared to effect:

- **Group Major Medical coverage.**
- **Group Life, Dental, Long-Term Disability, Voluntary Short-Term Disability, and 401 (k) Plans.**

Our binding of coverage will take effect at the time of commencement of operations by Utility Management Group, LLC. The carriers utilized meet the financial security requirements of the Carrier Security Committee of Acordia, Inc.

Please feel free to contact our office if additional information is needed on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chip Harkins". The signature is written in a cursive, flowing style.

Chip Harkins, CPCU, CIC  
Vice President

Performance  
Bond  
Capacity





220 Lexington Green Circle  
Suite 410  
Lexington, KY 40503-3330  
Voice: 859.273.6600  
Fax: 859.273.5998

[www.acordia.com](http://www.acordia.com)

April 21, 2005

Greg May  
Utility Management Group  
4546 Raccoon Road  
Raccoon, KY 41557

Re: Bonding

Dear Greg:

Per our discussion, pending receipt and approval of all the required financial information, I can provide a Performance and Payment Bond in the amount of \$2,000,000.

Please advise if we need to discuss further.

Sincerely,

Fred Orthmeyer

FO/jl

**RESUMES**





# Archie Louis Marr



**Experience**                      1993--Present                      Marr, Miller & Myers, PSC                      Corbin, KY

Certified Public Accountants

**Shareholder/President/Managing Director**

- Management advisory services
- Business and Financial Planning
- Acquisition and valuation strategies
- Income tax matters
- Representation before taxing authorities

1981--1993

Cloyd, Marr, Miller & Myers, PSC  
Certified Public Accountants

Corbin, KY  
London, KY

**Shareholder/Vice President**

- Planning, supervising, completing and reviewing audit engagements and special projects
- Management advisory services
- Business and financial planning
- Acquisition and valuation strategies
- Income tax matters
- Representation before taxing authorities

1976--1981

Monroe Shine & Company, CPAs    Louisville, KY;  
New Albany, IN; Bedford, IN

**Supervisor**

- Planning, supervising and completing audit engagements and special projects.
- Director of training for the firm.
- Direct responsibility in consulting with clients relative to income taxation, accounting matters and other management areas.

1974--1975

Irvin S. Junghaene, Public Accountant    Jeffersonville, IN

**Part-time Bookkeeper**

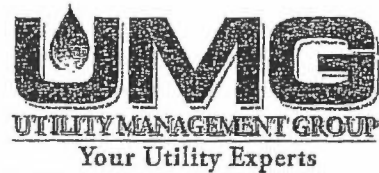
- Kept books for the firm
- Prepared tax returns

1970-1973

U.S. Marine Corps

- Computer programmer (COBOL)
- Rank of sergeant (E-5)

# Greg May



## Profile

Mr. May is the new Chief Operating Officer for Utility Management Group, LLC. He will provide oversight and management of operations, maintenance and management of (O&M) projects and client services in the region. Mr. May has more than 20 years of experience in public works and has managed O&M projects for water distribution, natural gas distribution and other utility systems.

## Experience

1999– April 2005      Veolia Water North America      Kentucky,  
West Virginia and Virginia

### Area Vice President

- Managed 3 Total Public Works Contracts
  - Water plants
  - Wastewater plants
  - Collection and distribution systems
  - One industrial wastewater plant
  - Several other wastewater plants
- Contract renewals
- New business development
- Management projects for 13 different areas
- Lead role in due diligence analysis of \$1 billion dollar contract for O&M for Norfolk, VA Naval Yard's water and wastewater utilities
- Helped coordinated distribution system expansion for Southern Water & Sewer District in Floyd County, KY

1996–1999      Veolia Water      Pikeville, KY

### Project Manager

- Managed O\*M contract for City of Pikeville
  - 6 MGD water treatment plant
  - 2 MGD wastewater treatment plant
- Managed the operation and maintenance for the City's public works, water distribution and natural gas distribution

1996–1999      PSG      Clintwood VA

### Project Manager

- Manager of operations contract
  - 0.5 MGD oxidation ditch wastewater treatment plant.

1993-1996 Pike County Fiscal Court Pikeville, KY

**Executive Assistant to Judge/Executive**

- Development and execution of orders and policies of the Fiscal Court and Judge/Executive
- Supervised administrative assistants whose duties included operation county solid waste pickup, 650 miles of road maintenance, equipment repair shop, self-contained landfill, parks crew and building and grounds crew.

1993-1996 Pike County Fiscal Court Pikeville, KY

**Floodplain Administrator for \$49 million Flood Control Project**

- Floodplain Administrator
- CRS Coordinator
- Liaison to the Army Corps of Engineers
- Assistant DES Director

1988-1993 American Electric Power Kentucky

**Lineman - electrical transmission and distribution facilities**

- Installation
- Rearrangement
- Maintenance
- Operation
- Removal
- Inspection

1987-1988 McCoy Elkhorn Coal Company Kimper, KY

**Mine Foreman**

- Supervised production crew on continuous miner section
- Supervisor over conveyor belt maintenance crew

**Education**

Liberal Arts Coursework - Prestonsburg Community College  
State Hazard Mitigation Planning, Federal Emergency Management Agency  
Mitigating Business Disaster Effects, Federal emergency Management Agency  
Liability issues, Federal Emergency Management Agency  
Managing Floodplain Development, Federal Emergency Management Agency  
Community Rating System, Federal Emergency Management Agency

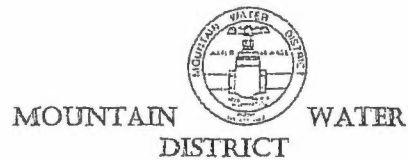
**Certifications**

Mine Foreman Certification, Kentucky  
Mine Inspector Certification, Kentucky  
Mine Electrician (surface and underground), Kentucky and U.S.

**Professional  
Affiliations**

Kentucky Gas Association  
Kentucky Rural Water Association  
Big Sandy Transportation Committee  
Kentucky Industrial Development Council  
Pike County Chamber of Commerce

# Will Brown



## Profile

Mr. Brown has more than 19 years of management and supervisory experience in water distribution operations. His experience includes booster pump station installation and maintenance, storage tank maintenance, water main construction, corrosion control, meter reading, billing, budgeting, water treatment, water treatment operations and maintenance, design and construction of both water treatment and wastewater treatment system projects using recently developed technological advances in the treatment scheme.

## Experience

1996–Present Mountain Water District Pikeville, KY

### Superintendent

- Responsible for daily operation, maintenance and management of the 2<sup>nd</sup> largest rural water system in Kentucky
- Develops and implements operating and maintenance budgets
- Directs construction of "in house" projects through the 2 full time construction crews
- Operating budget expanded from \$2.9 million to \$7.3 million
- Capital construction budget increased from \$3 million to more than \$8 million annually
- Water customers increased from 8,500 in 1995 to 14,000 in 2005
- Sewer customers increased from 110 to 1400
- Employees increased from 52 to 73
- Water loss reduced from 35-43% to 12-14%
- Developed and implemented preventive maintenance program
- Developed training program for operators
- Purchased for district 2 state of the art correlator leak detection machines, first in the state
- Improved billing which improved cash flow
- Consolidated 2 long term construction bonds saving \$1.1 million

1993–1994 Professional Services Group, Inc. Roanoke, AL

### Project Manager

- Responsible for overall operations maintenance and management of the 1.3 MGD primary wastewater treatment plant, 2 MGD water treatment plant, pump stations, collection and distribution systems, meter reading, customer service, billing and gas distribution.
- Responsible for Public Works Department (120 miles of paved streets) and sanitation department including operations of a sanitary and inert landfill, construction and operation of a transfer station for the City of Roanoke and Randolph County.
- Responsible for development of annual operations and maintenance budget for the utilities and public works.

- Manger of 35 employees.

1989–1993 Professional Services Group, Inc. Pikeville, KY

**Utilities Manager**

- Responsible for direct supervision and management of the water distribution and natural gas systems.
- Supervisor of all field maintenance for water mains, new services, meter testing and meter replacement.
- Responsible for maintenance of water storage tanks, installation and maintenance of booster pumping station and maintenance for the pumping station telemetry.
- Directly supervised the gas distribution system including metering stations, regulatory stations, gas mains and services and meter testing and replacements
- Duties also included gas and water meter reading and interfacing of reading with the utilities billing department
- Directly responsible for developing annual budgets, O & M, billing, safety, drug testing, personnel policy, etc.
- Manager of 48 employees.

1984–1989 Water Resource Corporation Prestonsburg, KY

**Superintendent of Water Distribution System O & M**

- Responsible for overseeing complete renovation of a water distribution system including replacement of mains, meters, valves, pumping station and tank repair.
- Responsible for developing the water distribution system O & M budget.
- Served as technical advisor to rural and municipal water systems interfaced through the Big Sandy Area Development District.

**Education**

Certified, Professional Utility Manager, Western Kentucky University

- Attended Pikeville College
- Graduate, Air Force School of Electronics
- Graduate, Capital Engineering Institute,
  - Major, Electronic Engineering Technology
- University of California, Sacramento
  - 6 ceu – Water Treatment
  - 6 ceu - Water Distribution
  - 6 ceu – Wastewater Treatment
  - 3 ceu – Advanced Wastewater Treatment

**Professional Affiliations**

American Water Works Association  
National Rural Water Association  
Kentucky rural Water Association  
East Kentucky Water and Wastewater Association

American Public Gas Association  
Kentucky gas Association  
Kentucky Backflow Prevention Association  
American Public Works Association  
National Association of County Engineers  
International Association of Electrical Inspectors  
Member, Water Environment Federation  
Affiliate Member American Society of Civil Engineers  
Former Class IIIA Water Plant Operator  
Former Class III Water Distribution Operator  
Former Class III Wastewater Treatment Operator

**Computer Literacy**

Lotus for Windows  
Microsoft Excel  
Word Perfect for Windows  
Microsoft Word

**Public  
Service  
Commisison**





### **Public Service Commission Report**

While principals have been involved in both regulated and non-regulated utilities in Kentucky as well in other states.

However, due to this being a newly formed company, this is the first contractual relationship between UMG and a utility in Kentucky

Agreement For Operations,  
Maintenance and Management Services

DRAFT

THIS AGREEMENT is entered into this 12th day of January, 2005, by and between:

Mountain Water District, with its principal address at P.O. Box 3157,  
Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITIES MANAGEMENT GROUP LLC. (UMG) with its principal  
address at 500 Summit Drive, P.O. Box 663, Corbin, KY (hereinafter  
"UMG").

WHEREAS, DISTRICT owns and provides for the operation of water, wastewater  
and related treatment, collection and distribution facilities; and,

WHEREAS, DISTRICT desires to employ the services of UMG in the  
management, operation, maintenance and management of these facilities and UMG  
desires to perform such services for the compensation provided for herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements  
hereinafter set forth, DISTRICT and UMG agree as follows:

1. GENERAL

- 1.1 Definitions of words and phrases used in this Agreement  
and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way,  
equipment and vehicles presently or hereinafter acquired or owned by  
DISTRICT shall remain the exclusive property of DISTRICT unless  
specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance  
with the laws of the State of Kentucky.
- 1.4 This Agreement shall be binding upon the successors and assigns of  
each of the parties, but neither party shall assign this Agreement  
without the prior written consent of the other party. Consent shall not  
be unreasonably withheld.

DRAFT

- 1.5 All notices shall be in writing and transmitted to the party's address stated above: All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated: However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees which are directly attributed to such litigation in addition to any other relief to which it may be entitled.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.11 Prior to the commencement of work under this Agreement, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary.

## 2.1 UMG's SERVICES - GENERAL

DRAFT

- 2.1 UMG will offer employment to all personnel of DISTRICT assigned full-time to the Project as of the effective date of this Agreement if they take and successfully pass a drug screen test to be administered by UMG. UMG will provide said employees with a wage and benefits package comparable to the wage and benefits package provided by DISTRICT. Specific personnel issues are addressed in Appendix G. UMG will continue to provide employment to all personnel who accept employment with UMG so long as their positions are necessary to UMG's performance under this Agreement and they continue to perform their duties in a satisfactory manner.
- 2.2 Within a reasonable time after startup, UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the State of Kentucky.
- 2.3 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.
- 2.4 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control.
- 2.5 Within forty-five (45) days after UMG begins service under this Agreement, UMG will provide a physical inventory of DISTRICT'S vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.
- 2.6 UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement.
- 2.7 UMG shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by DISTRICT and assist DISTRICT in enforcing existing equipment warranties and guarantees.
- 2.8 UMG shall provide the DISTRICT with documentation that preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.

DRAFT

- 2.9 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.10 Visits may be made at a reasonable time by DISTRICT'S employees so designated by DISTRICT'S representative. Keys for the Project shall be provided to DISTRICT by UMG for such visits. All visitors to the Project shall comply with UMG's operating and safety procedures.
- 2.11 UMG shall provide a 24 hour/day customer service phone number.
- 2.12 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMG's operations hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").
- 2.13 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be without DISTRICT'S prior written approval if the complete modification Cost shall be in excess of Twenty Thousand Dollars (\$20,000.00).
- 2.14 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMG's discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMG's Costs for the emergency.
- 2.15 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities.
- 2.16 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.17 UMG will provide for the collection and hauling of solid waste, screenings, grit, sludge and scum ("Waste") to DISTRICT'S existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICT'S Waste. All Waste and/or byproduct treated and/or generated during UMG's performance of

DRAFT

services is and shall remain the sole and exclusive property of DISTRICT.

- 2.18 UMG shall provide all the administrative and financial functions as currently provided by the DISTRICT'S staff.
- 2.19 UMG shall consult with the DISTRICT of Commissioners prior to any replacement of the Project Manager, Operations Manager and Controller.
- 2.20 UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.21 UMG shall provide for monthly meter reading and billing. Customer Services offices shall be maintained at locations approved by the DISTRICT.
- 2.22 UMG shall provide best effort in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.24 UMG shall provide such Capital Expenditure as authorized by the DISTRICT and will invoice the DISTRICT monthly or upon completion.
- 2.25 UMG will provide additional funding to DISTRICT upon negotiating mutually acceptable terms and conditions of such funding.
- 2.26 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.27 To protect the District and allow for continuity of service UMG will post a letter of credit or other surety in the amount of \$2,000,000 to ensure faithful performance of its contract obligations.

3. UMG's SCOPE OF SERVICES - WASTEWATER

- 3.1 This Article shall apply to UMG's OM&M services for the DISTRICT'S wastewater systems.
- 3.2 Within the design capacity and capabilities of the Waste Treatment, Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant's outfalls meets the requirements specified in Appendix C-I.

DRAFT

3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT, along with a detailed invoice for any DISTRICT approved repair or replacement that exceeds Twenty Thousand Dollars (\$20,000.00) defined as capital.

3.4 UMG will pay all Costs incurred in normal water and wastewater utility operations.

4. UMG's SCOPE OF SERVICES - WATER

4.1 This Article shall apply to UMG's OM&M services for the DISTRICT'S drinking water treatment system.

4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.

4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.

4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.

4.5 UMG will pay all Costs incurred in normal Water operations.

5. UMG's SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM

5.1 This Article shall apply to UMG's services for the DISTRICT'S wastewater collection system and potable water distribution system.

5.2 The scope of UMG's services for the maintenance and repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.

5.3 UMG shall provide for all daily operation and maintenance functions such as line repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. DISTRICT'S DUTIES

6.1 The DISTRICT shall fund all necessary Capital Expenditures. Priority shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from DISTRICT'S failure to provide capital when reasonably required by UMG shall be the sole responsibility of DISTRICT.

6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement.

6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMG's net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder or the services provided by any subcontractor of UMG, such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes.

6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICT'S heavy equipment that is available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.

6.5 DISTRICT shall provide all registrations and licenses for DISTRICT'S vehicles used in connection with the Project.

6.6 DISTRICT shall provide for UMG's exclusive use of all vehicles and equipment presently in full time use at the Project.

6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMG's obligation under this agreement.

6.8 DISTRICT warrants that during the interim period between the initial Project inspection by UMG and the commencement date specified in Section 11.1, the plant, facilities and equipment have been operated only in the normal course of business, all scheduled and proper maintenance has been performed and there are no issues known to DISTRICT regarding the condition of the Project, and Facility composing the Project and/or any equipment used by the Project.

## 7. COMPENSATION

7.1 UMG's compensation under this Agreement shall consist of an Annual Fee. The Annual Fee for the period July 1, 2005 through June 30, 2010 shall be \$6,870,000. The Maintenance and Repair Limit included in the Annual Fee is \$456,140. to be used as specified and set out herein during the period.

7.2 If actual Maintenance and Repair expenditures are less than the



DRAFT

Maintenance and Repair Limit for any Agreement year, UMG will rebate the entire difference to the District in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the District shall pay the excess to UMG in accordance with Section 8.2. UMG will notify the District when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each year throughout the contract period.

- 7.3 The services being provided under this Agreement are based on reasonably expected overtime for repair of line breaks, other emergencies or routine services required after hours. Any additional expenses, incurred by UMG including regular or overtime wages as a result of severe weather, a disaster or other unplanned events (in which funds may be recovered through billing a third party including the State or Federal Government such as through the FEMA program or other source) will be invoiced by UMG to the District for reimbursement in accordance with Section 8.2.
- 7.4 The Annual Fee (and Maintenance and Repair Limit included therein) shall be negotiated each year at least three (3) months prior to the anniversary of this Agreement's effective date. Should the District and UMG fail to agree, the Annual Fee (and Maintenance and Repair Limit included therein) will be adjusted by multiplying the existing Annual Fee by the percentage increase in the Consumer Price Index for the preceding twelve months each year.

## 8. PAYMENT OF COMPENSATION

- 8.1 One twenty-fourth (1/24) of the Annual Fee for the current year shall be due and payable on the 15<sup>th</sup> and the last day of each month for service provided in accordance to Articles 7.1 and 7.2 of this agreement.
- 8.2 All other compensation to UMG is due upon receipt of UMG's invoice and payable within fifteen (15) days.
- 8.3 DISTRICT shall pay interest at an annual rate equal to the District's designated financial institution's prime rate plus two percent (2.0%), said rate of interest not to exceed any limitation provided by law on payments not paid and received within fifteen (15) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law; such charges shall be reduced to the highest rate or amount within such limitation.

DRAFT

9. SCOPE CHANGES

9.1 A Change in Scope of services shall occur when and as UMG's costs of providing services under this Agreement change as a result of:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change;

9.1.2 Increases or decreases in rates or other related charges (including taxes) imposed upon UMG by a utility provider (see Section 9.4 below) or taxing authority - excluding taxes based on UMG's net income; and/or

9.1.3 DISTRICT'S request of UMG and UMG's consent to provide additional services.

9.2 For Changes in Scope described in Sections 9.1.1 through and including 9.1.3, the Annual Fee shall be increased (or decreased) by an amount equal to UMG's additional (reduced) Cost associated with the Change in Scope plus ten percent (10%). Modifications of the Annual Fee as a result of conditions described in Section 9.1.3 shall be retroactive to the beginning of the twelve month comparison period.

10. INDEMNITY AND LIABILITY INSURANCE

10.1 UMG hereby agrees to indemnify and hold DISTRICT harmless from any liability or damages for bodily injury, including death, which may arise from UMG's negligence or willful misconduct under this Agreement; provided, UMG shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault.

10.2 DISTRICT agrees to indemnify and hold UMG harmless from any liability or damage or bodily injury, including death, which may arise from all causes of any kind other than UMG's negligence or willful misconduct including, but not limited to, breach of a DISTRICT warranty.

10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after (contract date) , of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMG's negligence. DISTRICT will assist UMG in contesting any such fines in

administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest

DRAFT

- 10.4 DISTRICT shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of UMG's negligence or are otherwise directly related to the ownership of the Project and shall indemnify and hold UMG harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

## 11. TERM, TERMINATION AND DEFAULT

- 11.1 The initial term of this Agreement shall be five (5) years commencing July 1, 2005. The DISTRICT shall have the right, without cause, to terminate at the end of the third agreement year upon repayment of the unamortized capital investment made by UMG, if any. Notice of termination shall be given in writing ninety (90) days in advance of the effective date of termination.
- 11.2 A party may terminate this Agreement only for a material breach of the agreement by the other party except as provided in Section 11.1 only after giving written notice of breach; and, except in case of a breach by DISTRICT for non-payment of UMG's invoices, in which case termination may be immediate by UMG, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event that this Agreement is terminated for any reason prior to the termination date of the initial term, DISTRICT shall pay to UMG a termination fee based on the remaining unamortized balance of start-up costs and capital expenditures made by UMG - all as set forth in Appendix F.
- 11.4 Upon notice of termination by DISTRICT, UMG shall assist DISTRICT in assuming operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within 15 days of invoice receipt.
- 11.5 Upon termination of this agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear

excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary.

DRAFT

- 11.6 The DISTRICT shall have the exclusive right during the contract term to repay any unamortized capital investment made by UMG as shown in Appendix F.

## 12. DISPUTES AND FORCE MAJEURE

- 12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMG's ability to perform at the Project, DISTRICT, with UMG's assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.
- 12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances beyond its reasonable control or force majeure. However, this section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

DRAFT

This agreement is subject to approval by Mountain Water DISTRICT.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

MOUNTAIN WATER DISTRICT

UTILITIES MANAGEMENT GROUP, INC.

By:

By:

Name:

Name:

Title: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The undersigned, as counsel for the Mountain Water Utility District in this transaction, hereby certifies that (s)he has examined the circumstances surrounding the selection of UTILITIES MANAGEMENT GROUP, INC (UMG) and the award and letting of the foregoing contract to UMG by DISTRICT and has found that said selection and award process comply with the procurement laws of the State of Kentucky and DISTRICT.

DRAFT

## APPENDIX A

### DEFINITIONS

A. 1 "Adequate Nutrients" means plant influent nitrogen, phosphorus and iron contents proportional to BODs in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BODs.

A.2 "Annual Fee" means a predetermined, fixed sum for UMG's services. The Annual Fee includes Cost and profit.

A.3 Definitions:

"Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of DISTRICT'S NPDES Permit. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.

A. 7 "Capital Expenditures " means any expenditures for (1) the purchase of new equipment or facility items that cost more than TEN Thousand Hundred Dollars (\$10,000); or (2) major repairs which significantly extend equipment or facility service life and cost more than TEN Thousand Dollars (\$10,000) or (3) expenditures that are planned, non-routine and budgeted by DISTRICT.

A.8 "Cost" means all Direct Cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.

A.9 "Direct Cost" means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.

APPENDIX B DESCRIPTION  
OF PROJECT

DRAFT

UMG agrees to provide the services necessary for the management, operation and maintenance of the following.

- a. All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate DISTRICT'S Water Treatment Plant located at:

P.O. Box 3157, Pikeville, Kentucky 41502

- b. All equipment, grounds and facilities now existing within the present property boundaries of pumping stations described as follows:

AS ATTACHED - Eighty-eight (88) Pumping Stations of gravity sewers, four (299) miles of force mains, and forty-two (42) manholes in service on the effective date of this Agreement.

Six hundred (899) miles of water lines, three hundred (300) hydrants and valves in services on the effective date of this Agreement.

APPENDIX C-1  
NPDES PERMIT AND  
PROJECT CHARACTERISTICS

DRAFT

C.1 UMG will operate so that effluent will meet the requirement of NPDES permit No. (AS ATTACHED) issued on (AS ATTACHED) a full and complete copy of which is adopted by reference herein as of the date hereof. UMG shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) the project influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) dischargers into DISTRICT'S sewer system violate any or all regulations as stated in DISTRICT'S Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent BODs and/or suspended solids exceeds the Project design parameters which are (AS ATTACHED) million gallons of flow per day, (AS ATTACHED) pounds of BODs per day, (AS ATTACHED) pounds of suspended solids and a daily peaking factor of (AS ATTACHED) times flow; (4) if the Project is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond UMG's control.

C.2 In the event any one of the Project influent characteristics, suspended solids, BODj or flow, exceeds the design parameters stated above, UMG shall return the plant effluent to the characteristics required by NPDES in accordance with the following schedule after Project influent characteristics return to within design parameters.

10% or Less	5
Above 10% Less than 20%	days
20% and Above	10

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then UMG will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.



- C.3 UMG shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances or is inoperable, and the subsequent recovery period.
- C.4 UMG's compensation shall be based on a minimum of 14,542 water customers and 299 sewer customers

APPENDIX C-2

DRAFT

PROJECT CHARACTERISTICS

C.1 The Project has the following design characteristics:

[Describe parameters of influent which will be treated to specifications without additional charges to customer.]

A capacity of 2.0 MGD of finished water production with an ability for chemical additions, flocculation, sedimentation and filtration based on 2 gallons per minute per square foot of filter area. The Project has the capability for post treatment by chlorination and fluoridation.

C.2 UMG will operate the Project so that water treated will meet the current Provincial Drinking Water Standards. UMG's Annual Fee includes all costs for treating an average daily flow of 2.0 MGD of raw water per day to the standards specified below.

Turbidity	0.5NTU
Iron	<0.3 mg/L
Manganese	<0.05
Fluoride	mg/L
pH	0.8 average
Corrosivity	mg/L >7.0
Odor	<15 color units
E. Coli	Non-corrosive
	<3.0TON

C.3 If any of the following contaminants in the raw water causes the finished water to exceed the maximum Contaminant Levels (MCL) established for finished water quality, UMG will treat the raw water to reduce said contaminant to an acceptable MCL. The cost of any specific treatment will be in addition to the Annual Fee for the treatment required by this Article C.3.

CONFIDENTIAL

Radionuclides

---

Radium 5.0 Pci/L

Gross Alpha 15.0 Pci/L

---

Organic Chemicals

Contaminant	MCL Cmg/U
Alachlor	
Aldicarb	0.002
Aldicarb Sulfone	0.003
Aldicarb Sulfoxide	0.002
Atrazine	0.004
Benzene	0.003
Carbofuran	0.005
Carbon Tetrachloride	0.04
Chlordane	0.005
2,4-D	0.002
Dibromochloropropane (DBCP)	0.07 0.0002
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1 -Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Endrin	0.002
Ethylbenzene	0.7
Thylene Dibromide (EDB)	0.00005
Heptachlor	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Polychlorinated Biphenyls (PCB)	0.0005 0.1
Styrene	0.005
Tetrachloroethylene	1
Toluene	0.003
Toxaphene	0.05
2,4,5-TP (Silvex)	0.02
1,1,1 -Trichloroethane	0.005
Trichloroethylene	0.1
Total Trihalomethanes	0.002
Vinyl Chloride	10
Xylenes (Total)	

0.0002

## Inorganic Chemicals

Contamina	MCL
Arsenic	0.05
Asbestos	7 (million fibers/L)
Barium	2
Cadmium	0.005
Chromium	0.1
Fluoride	4
Mercury	0.002 10 (as
Nitrate	nitrogen)
Nitrite	1 (as
Total Nitrate Nitrite	nitrogen) 10
Selenium	0.05
Chloride	300
Copper	1.0
Fluoride	2.0
Silver	0.10
Sulfate	300
Total Dissolved Solids (TDS)	1,000
Zinc	5

20

C.4 UMG will provide laboratory services for monitoring only the following contaminants on an as-requested basis. These contaminants do not have an established MCL.

Aldrin	Hexachlorobenzene
Benzo(a)pyrene	Hexachlorocyclopentadiene
Butachlor	3-Hydroxycarbofiiran
Carbayl	Methomyl
Dalapon	Metolachlor
Di(2-ethylhexy) adipatc	Metribuzin
Di(2-ethylhexyl)pthalarc	Oxyamyl (vydate)
Didamba	Pictoram
Dichloromethane Dieldrin	Propachlor
Dinoseb	Simazine
Diquat	2,3,7,8-TCDD (Dioxin)
Entodhal	1,2,4-Trichlorobenzene
Glyphosate	1,1,2-Trichloroethane

APPENDIX C-3

WASTEWATER COLLECTION SYSTEM  
SCOPE OF SERVICES

(Intentionally left blank)

02/13/17

APPENDIX C-4  
DRINKING WATER DISTRIBUTION SYSTEM  
SCOPE OF SERVICES

(Intentionally left blank)

APPENDIX D

ARBITRATION PROCEDURES

In the event that DISTRICT and UMG are unable to reach an agreement as to the increase and /or decrease in compensation specified in Section 7, then those issues remaining unresolved shall be submitted to binding arbitration under the following terms, conditions and procedures.

- D. 1 Unless specifically provided for herein to the contrary, the rules and procedures of the American Arbitration Association (AAA), as shall from time to time be amended, apply. The arbitration process shall begin 15 days after the parties are unable to reach an agreement. Such date shall be specified in writing and shall be the date from which the following procedures begin.
- D.2 There shall be a three (3) member Arbitration DISTRICT composed of one (1) member selected by the DISTRICT and one (1) member selected by UMG. Each party shall notify the other of its selection on or before 30 days from the date specified in D1. The final member of the three member Arbitration DISTRICT shall be selected by the initial members selected within a reasonable time after their appointment.
- D.3 On or before 60 (insert date approximately twenty-five (25) days after date in opening paragraph), each party shall submit to the Arbitration DISTRICT its written position on each unresolved issue. Such submission shall include not only the party's proposed resolution, but also introduction at the hearing and a list of witnesses each party intends to call shall be submitted as exhibits to the submission.
- D.4 The Arbitration DISTRICT may schedule such pre-hearing conferences as its shall deem advisable.
- D.5 The arbitration hearing shall commence no earlier that 75 (dates from D.3 plus ten (10) days) and no later that 85 (date from D.3 plus twenty (20) days) and shall be concluded no later that ten (10) working days after its commencement.
- D.6 The parties hereby agree and stipulate for purposes of arbitration that the pricing and cost estimates contained in this Agreement or any subsequent modification hereto are fair and reasonable and are not to be a factual issue for determination by the Arbitration DISTRICT. The sole question of fact (s) for the Arbitration shall be confined to changes (or anticipate future changes) in circumstances between the effective date of this Agreement or any



modification(s) hereto (including, but not limited to, negotiated or arbitrated changes to fees and cost estimates pursuant to this Agreement) and the effect such changed circumstance(s) should have on the then effective fees and/or cost estimates.

- D.7 Within ten (10) days of the conclusion of the evidentiary phase of the arbitration hearing the Arbitration DISTRICT shall announce its decision and award. The possible "decision and award" shall be limited on each individual issue presented to either the position of the DISTRICT or the position of UMG as set forth in the position submissions described in Subsection "D.3" above.
- D.8 Findings of fact and conclusions of law shall not be required of the Arbitration DISTRICT unless specifically requested by either party within five (5) working days of the announcement of the Decision and Order.
- D.9 Unless specifically requested by either party, the proceedings shall not be recorded by other than a tape recording device. In the event that either party requests the services of a court reporter or other means of transcription of the proceedings, the requesting party shall bear the cost of recordation and transcription.
- D.10 The costs of arbitration services shall be borne equally by the parties; provided, however, that in the event that the Arbitration DISTRICT makes a specific written finding of fact that one party has prosecuted its case frivolously or in bad faith, then the Arbitration DISTRICT shall assess the costs of arbitration services to the offending party.
- D.11 The Decision and Order shall be binding on both parties and shall not be subject to appeal.

## APPENDIX E INSURANCE

### COVERAGE

#### UMG SHALL MAINTAIN:

1. Statutory Workers' Compensation for all of UMG's employees at the Project as required by the State of Kentucky.
2. Comprehensive general liability insurance, insuring UMG's negligence, in an amount not less than \$1,000,000 combined single limits for bodily injury and/or property damage.

#### DISTRICT SHALL MAINTAIN:

1. Statutory Workers' Compensation for all of DISTRICT'S employees associated with the Project as required by the State of Kentucky.
2. Property damage insurance for all property including vehicles owned by DISTRICT and operated by UMG under this Agreement. Any property, including vehicles not properly or fully insured shall be the financial responsibility of the DISTRICT.
3. Automobile liability insurance for collision, comprehensive, and bodily injury.

UMG will provide at least thirty (30) days notice of the cancellation of any policy it is required to maintain under this Agreement. UMG may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law but only if such action does not invalidate the property insurance of DISTRICT. UMG and the DISTRICT, on behalf of themselves and their insurers, waive their rights of subrogation with respect to losses occurring to property of the parties.

APPENDIX F

SCHEDULE OF AMORTIZED EXPENDITURES

The parties mutually agree that for all purposes, the beginning principal shall be \$\_\_\_\_\_. The interest rate applied shall be calculated at \_\_\_\_\_%. If DISTRICT terminates contract at end of year five per Section 11.1, the unamortized balance to be paid to UMG is \$\_\_\_\_\_.

APPENDIX G

PERSONNEL

ISSUES

1. All current fulltime employees will receive a 3% salary increase at start of contract.
2. Employees will receive the same holidays as currently provided by DISTRICT.
3. Employees will receive vacation at UMG accrual with time employed with utility credited or paid out the accrued in excess of four weeks.
4. Employees will receive bonuses for obtaining higher certification levels in their respective fields.
5. Employees will be provided with uniforms, safety shoes, and required personal safety equipment.

May 9, 2005

Board of Commissioners  
Mountain Water District  
P.O. Box 3157  
Pikeville, Kentucky 41501

Dear Commissioners:

I would like to thank the commissioners for the additional time for refining the proposal for operations, maintenance and management for the District. However, I thought my proposal addressed all points of the solicitation and I have some concern about extending the time for revisions of the price, adding plans and certain provisions.

Enclosed please find the addendum to the proposal for the Operations, Maintenance and Management of the Mountain Water District as notified in your fax dated: May 4, 2005. The information in the addendum will answer or identify the section's in the proposal in your fax, along with an adjusted price for O M&M for Mountain Water District.

If you have any questions or need further information, please contact me at your convenience at (606) 437-4754.

Sincerely,

Greg May  
Utility Management Group

## **Addendum to Proposal to Mountain Water District**

### **District Employees**

1. All employees will be hired by Utility Management Group after successfully passing a drug test. (Referenced in Section I, Page 1 in Executive Summary, Section II, A.4, Page 5, Section III, A, Page 10 of the proposal) and again in the draft contract in Section 2.1.
2. UMG's plan for number of operational staffing after six months will be within a range of fifty-one (51) and fifty-six (56). There are currently eleven (11) persons on the construction crews at Mountain Water. UMG will propose a plan to retain the eleven currently employed for water line construction and add another five (5) for sewer line construction. The construction crews will be totally funded by coal severance tax dollars earmarked for construction for each specific project. UMG will construct specific projects for the amount earmarked with coal severance tax dollars. (Referenced in Section VI, Price Proposal) **Resident Inspectors will remain with the District.** (Referenced in Section VI, Price Proposal).
3. Employees will be paid for all over 100 hours of time accrued. Employee will transfer up to 100 hours of accrued time to UMG. (Referenced in Section VI, Price Proposal and Appendix G in Draft Contract).

- 4. Mountain Water employee's retirement is currently with County Retirement System. All employees that are vested will freeze their investment in the county system and join UMG's 401k retirement fund. UMG will match the employee's contribution at 50% up to 7% of the employee's contribution. At 7% by employee, total contribution would be 10.5%. Those employee's that are not vested, UMG will invest the District's contribution for each employee into UMG's 401k fund or pay out the District's accumulated total to each employee as a lump sum payment. **NOTE: Employees vested in the CRS will retain benefits @ the level accrued at the time of transition.**

**Price Proposal**

- 1. UMG's submittal included a plan to pay off short term debt and capitalize the term of the contract
- 2. UMG's submittal included all utility bills, i.e. electricity, telephone, pagers, purchased water. (Referenced in Section VI, Price Proposal).
- 3. UMG's budgetary process relies on standard accounting methods of projecting costs over time, taking into consideration any out of normal overtime expenses or other similar extraordinary cost. UMG's methods will conform to that outlined in the price proposal as submitted. More specifically, UMG would offer for discussion with the District's Board of Commissioners a method to determine future service contract costs, based on a per customer basis.
- 4. UMG will continue to work on refining the price on O M & M for Mountain Water District



May 9, 2005

Board of Commissioners  
Mountain Water District  
P.O. Box 3157  
Pikeville, Kentucky 41501

Dear Commissioners:

I would like to thank the commissioners for the additional time for refining the proposal for operations, maintenance and management for the District. However, I thought my proposal addressed all points of the solicitation and I have some concern about extending the time for revisions of the price, adding plans and certain provisions.

Enclosed please find the addendum to the proposal for the Operations, Maintenance and Management of the Mountain Water District as notified in your fax dated: May 4, 2005. The information in the addendum will answer or identify the section's in the proposal in your fax, along with an adjusted price for O M&M for Mountain Water District.

If you have any questions or need further information, please contact me at your convenience at (606) 437-4754.

Sincerely,

A handwritten signature in cursive script that reads "Greg May".

Greg May  
Utility Management Group

P.O. Box 663, Corbin, Kentucky 40702  
Phone: 606-528-2454 - Fax: 606-528-1770



## **Addendum to Proposal to Mountain Water District**

### **District Employees**

1. All employees will be hired by Utility Management Group after successfully passing a drug test. (Referenced in Section I, Page 1 in Executive Summary, Section II, A.4, Page 5, Section III, A, Page 10 of the proposal) and again in the draft contract in Section 2.1.
2. UMG's plan for number of operational staffing after six months will be within a range of fifty-one (51) and fifty-six (56). There are currently eleven (11) persons on the construction crews at Mountain Water. UMG will propose a plan to retain the eleven currently employed for water line construction and add another five (5) for sewer line construction. The construction crews will be totally funded by coal severance tax dollars earmarked for construction for each specific project. UMG will construct specific projects for the amount earmarked with coal severance tax dollars. (Referenced in Section VI, Price Proposal) **Resident Inspectors will remain with the District.** (Referenced in Section VI, Price Proposal).
3. Employees will be paid for all over 100 hours of time accrued. Employee will transfer up to 100 hours of accrued time to UMG. (Referenced in Section VI, Price Proposal and Appendix G in Draft Contract).

4. Mountain Water employee's retirement is currently with County Retirement System. All employees that are vested will freeze their investment in the county system and join UMG's 401k retirement fund. UMG will match the employee's contribution at 50% up to 7% of the employee's contribution. At 7% by employee, total contribution would be 10.5%. Those employee's that are not vested, UMG will invest the District's contribution for each employee into UMG's 401k fund or pay out the District's accumulated total to each employee as a lump sum payment. **NOTE: Employees vested in the CRS will retain benefits @ the level accrued at the time of transition.**

#### **Price Proposal**

1. UMG's submittal included a plan to pay off short term debt and capitalize the term of the contract
2. UMG's submittal included all utility bills, i.e. electricity, telephone, pagers, purchased water. (Referenced in Section VI, Price Proposal).
3. UMG's budgetary process relies on standard accounting methods of projecting costs over time, taking into consideration any out of normal overtime expenses or other similar extraordinary cost. UMG's methods will conform to that outlined in the price proposal as submitted. More specifically, UMG would offer for discussion with the District's Board of Commissioners a method to determine future service contract costs, based on a per customer basis.
4. UMG will continue to work on refining the price on O M & M for Mountain Water District.

**STATE OF KENTUCKY  
COUNTY OF FAYETTE**

Before me, a Notary Public, and for said County and State, this 8 day  
of April, 2005 came Christine Templin

Personally known to me, who, being duly sworn, states as follows:

That she is Account Executive of  
Lexington Herald-Leader, and that said publication date of  
April 8, 2005 carried the advertising  
of Mountain Water District  
occupying the following space 4.53 in.

By Chris Perry

(SEAL)

Lue H. Nagin  
Notary Public

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
111 PIKE STREET  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
E-MAIL: [shmlaw@setel.com](mailto:shmlaw@setel.com)

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX

October 23, 2008

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653  
via email: [mikespears@setel.com](mailto:mikespears@setel.com)

Mike Litafik  
7617 Upper Johns Creek Road  
Phelps, Kentucky 41553  
via email: [mikecreekconsulting@setel.com](mailto:mikecreekconsulting@setel.com)

Toni Akers, Chairman  
Mountain Water District  
P.O. Box 3157  
Pikeville, KY 41502  
Hand Delivered

Re: ***Mountain Water District / UMG Contract***

Dear Lady and Gentlemen:

Following our conversations this morning concerning the canceled meeting, I called Bob Myers to inform him that we would be willing to meet with him Monday or Tuesday, but a decision had to be made on Wednesday. He called me back with the following offer.

- 1) \$500,000 up front.
- 2) \$25,000 per month concession on their contract.
- 3) Extension of the current contract three years beyond the end of the original contract.
- 4) If we cancel at any time prior to the end of the extended term, we would owe them \$500,000 (the amount being fronted) plus interest (rate not disclosed).

**STRATTON, HOGG & MADDOX, P.S.C.**

October 23, 2008

Page 2

- 5) They are prepared to amend the contract in regard to annual price changes from an increase of new customers to some form of CPI index adjustment.

He states that they are still amortizing 1.5million dollars that was injected into the company to start it, implying that there was a balance due on that bill if we canceled now. I did not get into details with him over that number.

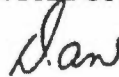
I would recommend that we set up a conference call or meet on Friday or Monday, to review this in detail.

Lastly, after Bob hung up, he called me back to state that it would be in everybody's best interest if we did in fact hire an administrator as we had discussed, and they strongly encouraged us to do that.

Please advise.

Sincerely,

STRATTON, HOGG & MADDOX, PSC



Daniel P. Stratton

email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

October 27, 2008

Greg May  
Utilities Management Group,  
158 Town Mountain Road  
Suite 101  
Pikeville, Kentucky 41501

Via Fax: (606) 437-5083

RE: Mountain Water District Contract

Dear Greg:

Please be advised that on October 23<sup>rd</sup>, Bob Myers informed me that UMG made the following offer to amend the MWD/UMG contract. The Offer was as follows:

- 1) Payment of \$500,000 up front (funds for bond payments).
- 2) \$25,000 per month concession on your contract (effective upon date of amendment).
- 3) Extension of the current contract by three (3) years beyond the end of the original contract period.
- 4) If Mountain Water District cancels the contract at any time prior to the extended term, it would owe UMG \$500,000 (the amount being fronted for bond payments) plus interest (rate for which was not determined).
- 5) Amend the contract in regard to the annual price changes from an increase of new customers to some form of CPI index adjustment.

**STRATTON, HOGG & MADDOX, P.S.C.**

October 27, 2008

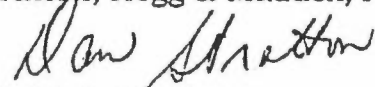
Page 2

On behalf of Mountain Water, we appreciate the substantial move that you have made with this offer. Unfortunately, we must respectfully decline the same. However, we would counter that we amend the contract with an advance of \$450,000 up front, and a reduction in the monthly contract fee of \$70,000 retroactive to July 1, 2008. This is a reduction of \$6,250 per month from our original offer.

Please understand that we originally made our offer based on our need to have funds to pay current outstanding bond payments, to replenish the reserve, and to hire an administrator. These are the numbers we need to make this work for us. We recognize you have cost increases and need to make a profit, but the facts are what they are and the debts and reserve must be paid as I know you understand.

This counter offer is open until Tuesday, October 28<sup>th</sup>, at 4 pm. If you have any questions concerning the same, please advise.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Toni Akers  
Mike Litafik  
Mike Spears

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

October 29, 2008

Greg May  
Utilities Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501

Via Fax: (606) 437-5083  
Hard copy to follow

RE: Mountain Water District Contract

Dear Greg:

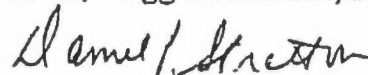
Please be advised that this letter is to notify you that Mountain Water District is terminating it's contract with UMG dated July 3, 2005. The termination shall be effective no later than 180 days from today, being Monday, April 27<sup>th</sup>, 2009, based on the transition process.

This notice is being given pursuant to paragraph 11.1 of the contract, and is deemed to have been given at the end of the third year of the agreement. This notice shall also trigger all notice provisions in the contract concerning termination.

As you know, since the close of the third year of our agreement, we have attempted to renegotiate certain contract terms, and through no fault of either party, we have been unsuccessful in doing so. Accordingly, the District has authorized me to issue this notice of termination pursuant to it's Board action taken on Wednesday, October 29, 2008.

Obviously, there will be a great deal to do in regard to a transition from the current structure to the return of Mountain Water District's prior structure as an independent operating entity. We look forward to working with you to ensure a smooth transition.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Mountain Water District Board  
Mike Spears



**MOUNTAIN WATER DISTRICT / UTILITIES MANAGEMENT GROUP  
TRANSITION MEETING  
NOVEMBER 5, 2008**

**Agenda**

**I. REVIEW RESPECTIVE CONTRACTUAL OBLIGATIONS**

**A. UMG's Obligations**

- 1) Section 2.4 - UMG will supply District all computerized programs, codes, records, instruction manuals and other items necessary for the District to execute a complete transfer of their records and operating systems necessary to access and maintain the same within 30 days.
- 2) Section 2.5 - Within 90 days UMG will provide the District a physical inventory of the District's vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment.
- 3) Section 2.6 - UMG will provide the District a physical inventory of chemicals and other consumables at the time UMG begin services under this agreement.
- 4) Section 2.8 - UMG will provide the District documentation of the maintenance performed on the District owned equipment.
- 5) Section 2.15 - UMG will produce plant performance reports.
- 6) Section 2.16 - UMG will provide copies of all lab reports on water tests, and all tests required by state and federal regulation will be current as of the time of transfer.
- 7) Section 2.20-2.22 - UMG will provide all monthly reports to the District's project activities and water loss, meter readings and billings.
- 8) Section 6.2 - UMG shall keep in force all project warranties, guarantees, easements and licenses transferred to them under this agreement. These need to be identified.
- 9) Section 11.4 - Upon notice of termination, UMG will assist the District in assuming or transferring operations of the project for a period up to six months from the date of notice of termination. UMG's compensation for such services shall be it's cost not

otherwise incurred in operation of the project. If additional cost is incurred by UMG, at request of District, District shall pay UMG such cost within 30 days of receipt of invoice.

- 10) Section 11.5 - Upon termination, UMG will return the project to District in the same condition as it was upon the effective date, ordinary wear and tear accepted.
- 11) Need a list of UMG property that was paid for by the District, or for which the District specifically reimbursed UMG for the cost incurred. These items are to be returned to the District.

#### B. Mountain Water District's Obligations

- 1) Section 2.26 - Mountain Water District shall release UMG of it's obligation to maintain a \$2,000,000 letter of credit upon termination of this agreement and compliance by UMG with it's obligations hereunder.
- 2) Section 6.3 - District shall reimburse UMG for any sales tax or use taxes on the value of services provided by UMG hereunder, unless the District furnishes a valid exemption certificate for such taxes.
- 3) Section 11.3 - District shall pay UMG a termination fee based on the remaining unamortized ~~balanced~~ of start up cost and capital expenditures made by UMG.

Appendix F - After 3 years, this amount is ZERO.

#### II. EMPLOYEE ISSUES

- A) Management communication
- B) Staff communication
- C) Transition time table

#### III. TIME TABLE - see attached schedule

## PROPOSED TIME LINE SCHEDULE

<u>DATE</u>	<u>EVENT</u>
<b>October 29, 2008</b>	Notice of Termination
<b>November 26, 2008</b>	<ol style="list-style-type: none"><li>1. UMG to supply all computerized programs, codes, records and instruction manuals.</li><li>2. Provide list of employees with copies of any contracts, if any, respective compensation benefits, accrued vacations, etc.</li><li>3. Copies of all existing insurance coverages.</li><li>4. Operating procedure manuals.</li></ol>
<b>December 30, 2008</b>	<ol style="list-style-type: none"><li>1. List of all real estate deeds, leases, easements, transferred into the name of UMG.</li><li>2. List of all equipment to be transferred back to the District.</li><li>3. List of all equipment to be retained by UMG.</li><li>4. List of all deferred and prepaid expenses.</li><li>5. Copies of all contracts and agreements effecting the District.</li><li>6. List of all claims and litigation made against UMG or MWD by any party. (To be updated the day of closing).</li><li>7. List all outstanding regulatory issues.</li></ol>
<b>January 30, 2009</b>	<ol style="list-style-type: none"><li>1. Report on all plant performance, plant maintenance, and all related documentation. (To be updated the day of closing).</li><li>2. Provide all project warranties, easements and licenses that have been transferred to UMG.</li><li>3. Transfer to the District, all appropriate and needed warranties, easements and licenses.</li></ol>
<b>February 28, 2009</b>	<ol style="list-style-type: none"><li>1. Inventory of chemicals and other consumables be provided by UMG.</li><li>2. All lab reports and water tests at time of transfer.</li><li>3. Effective transfer.</li></ol>
<b>April 27, 2009</b>	Completion of payment obligations to UMG.

RECEIVED  
11-10-08

Ray S. Jones, II

**THE LAW OFFICES OF**  
**RAY S. JONES & BILL HICKMAN, P.C.**

William Hickman, III

43 Tolle Lane • P.O. Box 3850 • Pikeville, KY 41502 • (606) 432-5777 • Fax (606) 432-5154

November 7, 2008

Via Facsimile and Mail Delivery: (606) 437-7800

Hon. Daniel Stratton  
Stratton, Hogg & Maddox  
P.O. Box 1530  
Pikeville, KY 41502

Re: Utility Management Group, LLC

Dear Dan:

We do not agree that notice of termination has been properly given to Utility Management Group and we do not agree with your reading of Appendix F and Appendix H. Therefore, this letter is to notify you and your client, Mountain Water District, that we are asserting our right to maintain our attorney client privilege regarding communications between Will Brown, a management employee and partial owner of Utility Management Group, LLC. and yourself, your client, and any board members, etc. of your client as well as other managers of Utility Management Group.

We agree that either Greg May, Bob Meyer, or one of their attorneys will meet with yourself or your client's board members whenever any discussions need to take place with Will Brown or any other UMG managers. We will make every effort to be available on short notice and at your client's convenience as to both place and time.

Greg and Bob are working on the other items we discussed in our meeting and we hope to have all of the other information quickly gathered and delivered to you. They are also reviewing the proposed time line and thinking about who all should be involved in the transition team.

Thank you for your cooperation.

Sincerely,

*William Hickman, III (ji)*

William Hickman, III

WH/tli

cc: Greg May  
Bob Meyer  
Will Brown

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

November 11, 2008

Hon. William Hickman, III  
Jones & Hickman Law Office  
P.O. Drawer 3850  
Pikeville, Kentucky 41502

Via Facsimile: 432-5154  
Hard Copy to follow

Re: Utility Management Group, LLC/Mountain Water District

Dear Bill:

Thank you for your letter of November 7, 2008. I would respectfully direct your attention to Section 1.5 of the contract concerning notice. While the contract provides an address of 500 Summit Drive, P.O. Box 663, Corbin, Kentucky 40702, as the location of notice, Section 1.5 provides in the last sentence "*where received by the party for which notice is intended if given in any other manner*". I sent notice via facsimile to Greg May, your Chief Operating Officer, and Co-Manager of the LLC. A hard copy of the faxed notice was sent by U.S. Mail to UMG's address in Pikeville. **Greg May acknowledged notice by sending a letter to his employees concerning the same, and he entered into a joint letter with the Toni Akers, the Chairperson of Mountain Water District, acknowledging that notice of termination had been sent, and was effective April 27, 2009.** If you still believe we have not appropriately given notice pursuant to the terms of the contract, please advise immediately.

Second, I would direct your attention to Section 11.4 of the contract, wherein it provides, "*Upon notice of termination by District, UMG shall assist District in assuming or transferring operations of the project, for a period of up to six months from the date of notice of termination*". In our meeting with you on November 5, 2008, we discussed an orderly procedure to transition employees from UMG back to Mountain Water District. At that time, you expressed no objections to us doing so. In fact, you provided us a list that we had requested of all employees. Further, it was noted by our Chairperson that Mountain Water District employees were allowed to be used in the transition of the operation from Mountain Water District to UMG. We believe "good faith" requires like kind support.

**STRATTON, HOGG & MADDOX, P.S.C.**

November 11, 2008

Page 2

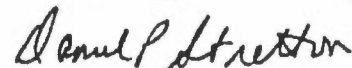
At that time, we sought to clarify as to whether or not Will Brown, your Superintendent of our project, was under any form of contract with you other than being an employee at will. You stated he did not have a contract. We advised you that we planned on a meeting with Mr. Brown to discuss his re-employment by the District. At that time, you said Mr. Brown had "fiduciary duties" to UMG. We noted that we had no interest in any issues concerning UMG, and that all we wanted to do was to determine if he would be willing to be re-employed by the District, and if so, the terms and conditions. You did not note any objections to our re-employment of him.

You have now asserted in your letter of November 7<sup>th</sup> that no one from Mountain Water District, including it's Board members or counsel, can communicate with Will Brown or any other managers of Utility Management Group without counsel, Greg May or Bob Meyer being present to do so. You have asserted attorney-client privilege regarding any such communications. I have reviewed KRE 503 and I believe your assertion of privilege is wholly misplaced. I won't debate that issue here, but if in fact you are barring us from communicating with the person that you have designated as Superintendent for our project, how are we to operate over the next six months? If you are saying Mr. Brown has no authority to act in the day to day operations without someone else from UMG present, please advise. If you want to restrict our communication with him concerning transition issues, that is your prerogative. However, if you are trying to prevent us from talking to him or anyone else about future employment with the District, then that is not acceptable. Such a position would constitute a breach of contract (§ 11.4), and breach of good faith.

Bill, we need to sit down and discuss this immediately. It is important for both companies and our community to make this a smooth and orderly transition. I would think that the last thing that UMG would want is a negative reference concerning their disposition of this matter, much less litigation if we can't get this matter resolved.

Please advise.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Toni Akers  
Mike Litafik  
Mike [unclear]

# Memo

**To : Greg May and Bob Myers**  
**From : Daniel P. Stratton**  
**Date : November 11, 2010**  
**Regarding : UMG / MWD Contract Negotiations**

\*\*\*\* \* \* \* \* \*

On behalf of Rhonda James, Mike Spears and myself, we wish to express to you our appreciation for how well the preliminary negotiations have gone to date. In order to insure that everyone is on the same page, I was asked to outline the District's proposed conceptual changes to the contract. We recognize that there are a number of specifics that need to be completed, but we believe that it is important to make sure that we are on the same page in regard to the big picture, then we can proceed to work out the details.

The original contract set up a fixed fee arrangement wherein UMG assumes the risk for all variable expenses, except for repair and maintenance. If R&M was over budget, the District will make up that difference, and if it is under budget, UMG will refund that amount to the District as the R&M budget covered your fee. To date, with a few minor exceptions, which have been off set against each other, there has been no additional payment or refund.

Up until the amendment of April 29, 2009, UMG received an additional fee for each new water and/or sewer tap; the theory being, that fee would cover the additional cost of servicing these additional customers. The contract also calls for an annual adjustment in the base rate, based on the CPI index, if we could not otherwise agree.

As you know, under this arrangement, the District's financial position deteriorated due to the rapid growth of LMI taps, and the contract was amended on April 29, 2009, removing the compensation for each additional tap, thereby reducing it to a fixed fee agreement, subject to renegotiation or adjustment.

MWD's proposal for this new contract creates a revenue sharing concept. This is

to insure that the District can meet it's legal obligations and provide additional income to UMG. Based on the latest audited information (2009), total sales were \$9,251,799. MWD would be paid \$1,791,904 per year (based on projected cost), and UMG would be paid \$621,658 per month, our current proposal to UMG, being the balance of the District's revenues. From these expenses, UMG would assume all variable expenses (in that you have at least some control over those expenditures), and there would also be an allocation of \$572,892 per year for R&M.

This would leave the District with two contingent budgetary issues. The first being any unbudgeted R&M expense, and the second, any other unbudgeted expenses. We are proposing that any additional revenue generated over the year, be divided on a percentage basis with 70% to UMG and 30% to MWD. UMG's share would cover any increased cost, and if none, would be additional profit. MWD's share would be for any contingent expenses. At the end of the contract term, the base line for both parties would be re-negotiated.

We believe that this format provides sufficient income to the District to meet it's legal obligations, and provides a necessary contingency to maintain financial health, while at the same time assuring that UMG will have revenue growth to cover their expenses and profit.



**Ray S. Jones, II****William Hickman, III**

43 Tolle Lane • P.O. Box 3850 • Pikeville, KY 41502 • (606) 432-5777 • Fax (606) 432-5154

November 13, 2008

Via Facsimile: (606) 437-7800

Hon. Daniel Stratton  
Stratton, Hogg & Maddox  
P.O. Box 1530  
Pikeville, KY 41502

RE: Utility Management Group

Dear Dan:

You and your client are authorized to discuss the day to day operations of Mountain Water District with the employees of Utility Management Group, including Will Brown, so long as no operational, legal, or other issues related to Utility Management Group are discussed.

We are also authorizing you and your client to discuss employment possibilities with Will Brown provided the discussions occur after hours when Mr. Brown is not on the job for Utility Management Group and provided that you notify Utility Management Group immediately if Mr. Brown agrees to go to work for Mountain Water District.

We are reserving comment on all other issues at this time.

Thank you and your client for your cooperation.

Sincerely,

William Hickman, III

WH/tli

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

November 17, 2008

Hon. William Hickman, III  
Jones & Hickman Law Office  
P.O. Drawer 3850  
Pikeville, Kentucky 41502

Via Facsimile: 432-5154  
Hard Copy to follow

Re: Utility Management Group, LLC/Mountain Water District

Dear Bill:

Thank you for your letter of November 13, 2008, we will proceed accordingly.

I understand that there are other issues that need to be reserved for future conversations, however, I would appreciate an answer on the issue you've raised concerning our notice of termination. I think it is mute at this point in time, but I would like confirmation from you on this issue. If you do not agree, then I will need to resend the notice. We will then need to resolve that issue when we talk about the other outstanding matters.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Toni Akers  
Mike Litafik  
Mike Spears

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

March 31, 2009

Hon. William Hickman, III  
Jones & Hickman Law Office  
P.O. Drawer 3850  
Pikeville, Kentucky 41502  
Via email: [williamhickma1@bellsouth.net](mailto:williamhickma1@bellsouth.net)

Re: Utility Management Group, LLC/Mountain Water District Contract

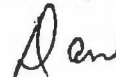
Dear Bill:

As I am sure you know, our clients reached an agreement yesterday concerning cancellation of UMG's contract. Greg presented to the Board a settlement proposal which was accepted. Pursuant to instructions from the Board, I have prepared an amendment to the contract to reflect those changes. Please find attached the proposal made by Greg, and the proposed amendment to the contract. I have tried to copy the proposal's language as closely as I could. In those other areas, I referenced the original contract. If you have any additions or corrections, please advise.

In order to expedite the matter, I am sending Greg and Bob a copy of this information along with a copy of the notification letter of the settlement to Judge Rutherford, and proposed joint press release to be issued. If there is any changes you have to the press release, please advise.

If everything is satisfactory in regard to the contract, please have your client sign the same and return it to me for Toni's signature.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Enclosures

cc: Greg May via email: [gregmay@umgllc.net](mailto:gregmay@umgllc.net)  
Bob Meyer via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

**AMENDMENT TO AGREEMENT FOR OPERATIONS,  
MAINTENANCE AND MANAGEMENT SERVICES**

THIS AGREEMENT entered into this \_\_\_\_ day of April, 2009, by and between Mountain Water District, Post Office Box 3157, Pikeville, Kentucky 41502, hereinafter ("DISTRICT"), and Utilities Management Group, LLC, Post Office Box 663, Corbin, Kentucky 40702, hereinafter ("UMG").

WHEREAS, the parties hereto entered into an agreement for UMG to provide operations, maintenance and management services to the DISTRICT on or about the 3<sup>rd</sup> day of July, 2005 ("CONTRACT"); and

WHEREAS, pursuant to section 11 the of the CONTRACT, the DISTRICT issued a notice of termination of the CONTRACT on or about the 29<sup>th</sup> day of October, 2008; and

WHEREAS, the parties hereto have agreed to amend the CONTRACT so as to continue the same.

**NOW THEREFORE WITNESSETH:**

That for and in consideration of the mutual covenants and promises contained herein, the DISTRICT and UMG agree as follows:

- 1) DISTRICT agrees to rescind its termination of UMG's CONTRACT dated July 3<sup>rd</sup>, 2005.
- 2) The CONTRACT will run its full term, terminating at the end of its term on June 30, 2010.
- 3) UMG will provide the DISTRICT, upon closing of this agreement, a "forgivable" Five Hundred Thousand Dollar (\$500,000) loan. UMG will

amortize this "loan" over a period of five (5) years at an assumed rate of five percent (5%). Should the DISTRICT decide at any time to terminate its CONTRACT with UMG, the DISTRICT agrees that it will repay UMG for the total amount of the unamortized balance of the loan at the time of CONTRACT termination. The schedule for amortization is attached as Exhibit A.

4) UMG agrees to reduce the DISTRICT's obligation to pay repair and maintenance expense Thirty Thousand Nine Hundred and Forty Dollars (\$30,940) for the current fiscal year.

5) Effective with the April 2009 invoice, UMG will reduce its operating and monthly management fee by the sum of Forty Six Thousand Dollars (\$46,000) per month.

6) The third paragraph in section 7.1 of the CONTRACT shall be deleted, and the parties agree that in lieu of that formula, UMG's management fee will be increased on an annual basis as provided in section 7.4 of the CONTRACT.

7) Sections 3.4 and 4.5 of the CONTRACT provided that UMG shall pay all cost incurred in normal waste water, utility operations, and normal water operations which include power bills. These provisions will be amended as follows:

- a) Each year UMG will provide the DISTRICT with a comprehensive analysis of the total kilowatt hours, as well as the average cost per kilowatt hour paid by UMG for all DISTRICT owned facilities.
- b) Should the total cost to UMG for DISTRICT electrical bills increase over the previous year (either because of an increase in the amount of kilowatt hours or due to an

increase in the average cost per kilowatt hour), the DISTRICT will pay UMG for the net increase in cost. Should the total cost decrease, UMG will reimburse the DISTRICT for the net decrease in cost.

8) The parties acknowledge that the DISTRICT may, at its discretion, hire an individual to provide administrative and financial oversight for the DISTRICT, and report directly to the Board of Commissioners. This expense shall be borne solely by the DISTRICT.

9) All other provisions of the CONTRACT will remain the same.

10) The provisions of this amendment will prevail over any provision in the CONTRACT inconsistent with this amendment.

IN WITNESS WHEREOF, the parties hereto have agreed the date and year first above written.

**MOUNTAIN WATER DISTRICT**

**UTILITIES MANAGEMENT GROUP, LLC**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**IT'S:** \_\_\_\_\_

**IT'S:** \_\_\_\_\_

**Utility Management Group, LLC**  
**CONTRACT AMENDMENT PROPOSAL**

Submitted to  
**MOUNTAIN WATER DISTRICT**

**March 30, 2009**

Despite Mountain Water District's stated intent to terminate its management contract with Utility Management Group at the end of April, UMG feels that a continuation of the contract through the end of its original five year term can – with certain concessions from UMG – be beneficial to both the District and UMG. The concessions that UMG is willing to make to the District are as follows:

1. With regard to the District's request for an immediate infusion of cash to the District from UMG to assist with its short term cash flow problems, UMG will:
  - A. Provide the District with a \$500,000.00 "forgiveable" loan immediately upon the execution of a revised management contract between the District and UMG. UMG will amortize this "loan" over a period of five years at an assumed rate of 5%. Should the District decide, at any time, to terminate its contract with UMG, the District agrees that it will repay UMG for the total amount of the unamortized balance of the loan at the time of contract termination.
  - B. As of the end of February, 2009, the District's Repair & Maintenance expenditures have exceeded the contract ceiling by the amount of \$61,880.00. Should the District agree to continue its present contract with UMG through June 2010, it will reduce the District's obligation to repay this overage by 50% (\$30,940.00).
2. With regard to a reduction in monthly management fee reductions, UMG proposes the following:
  - A. UMG, effective with the April 2009 invoice to Mountain Water District, will reduce the Operation & Management portion of its monthly fee by ~~1/6~~ \$36,000.00 per month. This will reduce the District's annual contract fee expense to UMG by \$432,000.00.
3. UMG is also recommending and agreeing to a change in the manner in which its contract fee is adjusted. At the present time, the contract allows for an automatic

increase in UMG's monthly fee based on the number of new water and sewer customers added to the District's customer base. In lieu of that formula, UMG proposes that its management fee be increased on an annual basis based on either a negotiated amount or an automatic increase annually based on the CPI.

4. As we indicated previously, UMG is cognizant of the District's financial obligations regarding annual bond / debt payments and funding various reserve accounts. With an immediate infusion of \$500,000 into the District's cash flow, it can either elect to partially fund its required reserve accounts or eliminate all or part of its recent loan with Community Trust Bank. UMG also commits its resources to coordinating with state legislators and funding agencies to secure grant funds for the purpose of replenishing its reserve funds and assisting with various bond payments.
5. In addition to the annual contract fee adjustment in item 2C above, the District agrees that an annual adjustment will be made for the cost of providing electrical service to all of the District's facilities (paid by UMG). Each year, UMG will provide the District with a comprehensive analysis of the total kilowatt hours as well as the average cost per kilowatt hour paid by UMG for all District owned facilities. Should the total cost to UMG for District electric bills increase over the previous year (either because of an increase in the total amount of kilowatt hours or due to an increase in the average cost per kilowatt hour), the District will pay UMG for the net increase in cost. Should the total cost decrease, UMG will reimburse the District for the net decrease in costs.
6. UMG concurs with the District that it is in the District's best interest to hire an individual (on the District's payroll) to provide administrative and financial oversight for the District – and to report directly to the District's Commissioners. This was part of the District's rationale in its initial request for a contract concession from UMG. Consequently, UMG strongly encourages the District to hire a qualified individual in that capacity, and will assist the District with identifying and orienting that individual.
7. UMG is prepared to work with District in finalizing and executing a contract amendment which incorporates the terms and conditions in this proposal.

*Negotiate  
@ Annually*

***Submitted to Mountain Water District by:***

---

UTILITY MANAGEMENT GROUP, LLC  
Greg May, Chief Operating Officer

---

Date



UMG

**AMORTIZATION SCHEDULE**

Description **Loan: UMG to MWD**  
 Loan Amount:: **\$500,000.00**  
 Interest Rate: **5.00%**  
 Term (Months): **60**  
 Loan Date: **4/1/2009**  
 Monthly Payment: **\$9,435.62**  
 Lender:

Month	Pmt Date	Pmt Amt	Inter Exp	Principal	Balance
Beginning Balance					<b>\$500,000.00</b>
1	5/1/2009	\$9,435.62	\$2,083.33	\$7,352.28	\$492,647.72
2	6/1/2009	\$9,435.62	\$2,052.70	\$7,382.92	\$485,264.80
3	7/1/2009	\$9,435.62	\$2,021.94	\$7,413.68	\$477,851.12
4	8/1/2009	\$9,435.62	\$1,991.05	\$7,444.57	\$470,406.55
5	9/1/2009	\$9,435.62	\$1,960.03	\$7,475.59	\$462,930.96
6	10/1/2009	\$9,435.62	\$1,928.88	\$7,506.74	\$455,424.22
7	11/1/2009	\$9,435.62	\$1,897.60	\$7,538.02	\$447,886.20
8	12/1/2009	\$9,435.62	\$1,866.19	\$7,569.42	\$440,316.78
9	1/1/2010	\$9,435.62	\$1,834.65	\$7,600.96	\$432,715.82
10	2/1/2010	\$9,435.62	\$1,802.98	\$7,632.63	\$425,083.18
11	3/1/2010	\$9,435.62	\$1,771.18	\$7,664.44	\$417,418.75
12	4/1/2010	\$9,435.62	\$1,739.24	\$7,696.37	\$409,722.37
13	5/1/2010	\$9,435.62	\$1,707.18	\$7,728.44	\$401,993.93
14	6/1/2010	\$9,435.62	\$1,674.97	\$7,760.64	\$394,233.29
15	7/1/2010	\$9,435.62	\$1,642.64	\$7,792.98	\$386,440.31
16	8/1/2010	\$9,435.62	\$1,610.17	\$7,825.45	\$378,614.86
17	9/1/2010	\$9,435.62	\$1,577.56	\$7,858.05	\$370,756.81
18	10/1/2010	\$9,435.62	\$1,544.82	\$7,890.80	\$362,866.01
19	11/1/2010	\$9,435.62	\$1,511.94	\$7,923.68	\$354,942.34
20	12/1/2010	\$9,435.62	\$1,478.93	\$7,956.69	\$346,985.65
21	1/1/2011	\$9,435.62	\$1,445.77	\$7,989.84	\$338,995.80
22	2/1/2011	\$9,435.62	\$1,412.48	\$8,023.13	\$330,972.67
23	3/1/2011	\$9,435.62	\$1,379.05	\$8,056.56	\$322,916.11
24	4/1/2011	\$9,435.62	\$1,345.48	\$8,090.13	\$314,825.97
25	5/1/2011	\$9,435.62	\$1,311.77	\$8,123.84	\$306,702.13
26	6/1/2011	\$9,435.62	\$1,277.93	\$8,157.69	\$298,544.44
27	7/1/2011	\$9,435.62	\$1,243.94	\$8,191.68	\$290,352.76
28	8/1/2011	\$9,435.62	\$1,209.80	\$8,225.81	\$282,126.94
29	9/1/2011	\$9,435.62	\$1,175.53	\$8,260.09	\$273,866.86
30	10/1/2011	\$9,435.62	\$1,141.11	\$8,294.50	\$265,572.35
31	11/1/2011	\$9,435.62	\$1,106.55	\$8,329.07	\$257,243.29
32	12/1/2011	\$9,435.62	\$1,071.85	\$8,363.77	\$248,879.52
33	1/1/2012	\$9,435.62	\$1,037.00	\$8,398.62	\$240,480.90
34	2/1/2012	\$9,435.62	\$1,002.00	\$8,433.61	\$232,047.28
35	3/1/2012	\$9,435.62	\$966.86	\$8,468.75	\$223,578.53
36	4/1/2012	\$9,435.62	\$931.58	\$8,504.04	\$215,074.49
37	5/1/2012	\$9,435.62	\$896.14	\$8,539.47	\$206,535.02
38	6/1/2012	\$9,435.62	\$860.56	\$8,575.05	\$197,959.96
39	7/1/2012	\$9,435.62	\$824.83	\$8,610.78	\$189,349.18
40	8/1/2012	\$9,435.62	\$788.95	\$8,646.66	\$180,702.52
41	9/1/2012	\$9,435.62	\$752.93	\$8,682.69	\$172,019.83
42	10/1/2012	\$9,435.62	\$716.75	\$8,718.87	\$163,300.96
43	11/1/2012	\$9,435.62	\$680.42	\$8,755.20	\$154,545.76
44	12/1/2012	\$9,435.62	\$643.94	\$8,791.68	\$145,754.09
45	1/1/2013	\$9,435.62	\$607.31	\$8,828.31	\$136,925.78
46	2/1/2013	\$9,435.62	\$570.52	\$8,865.09	\$128,060.69
47	3/1/2013	\$9,435.62	\$533.59	\$8,902.03	\$119,158.66
48	4/1/2013	\$9,435.62	\$496.49	\$8,939.12	\$110,219.53
49	5/1/2013	\$9,435.62	\$459.25	\$8,976.37	\$101,243.17
50	6/1/2013	\$9,435.62	\$421.85	\$9,013.77	\$92,229.40
51	7/1/2013	\$9,435.62	\$384.29	\$9,051.33	\$83,178.07
52	8/1/2013	\$9,435.62	\$346.58	\$9,089.04	\$74,089.03
53	9/1/2013	\$9,435.62	\$308.70	\$9,126.91	\$64,962.11
54	10/1/2013	\$9,435.62	\$270.68	\$9,164.94	\$55,797.17
55	11/1/2013	\$9,435.62	\$232.49	\$9,203.13	\$46,594.04
56	12/1/2013	\$9,435.62	\$194.14	\$9,241.47	\$37,352.57
57	1/1/2014	\$9,435.62	\$155.64	\$9,279.98	\$28,072.59
58	2/1/2014	\$9,435.62	\$116.97	\$9,318.65	\$18,753.94
59	3/1/2014	\$9,435.62	\$78.14	\$9,357.48	\$9,396.46
60	4/1/2014	\$9,435.62	\$39.15	\$9,396.46	\$0.00

**MOUNTAIN WATER DISTRICT  
SUMMARY OF REVENUES  
& DISBURSEMENTS**

2007-2009

	2007 TOTAL (Per Audit)	Average Per Month	2008 TOTAL (Unaudited)	Average Per Month	2009 YTD (Unaudited)	Projected 2009-2010
<b>REVENUE</b>						
Customer Payments						
Water	7,280,232	606,686	7,997,278	666,440	1,298,263	
Sewer	839,581	69,965	781,430	65,119	141,258	
<b>TOTAL REVENUE</b>	<b>8,119,813</b>	<b>676,651</b>	<b>8,778,708</b>	<b>731,559</b>	<b>1,439,521</b>	<b>9,018,972</b>
% Increase from prev year.	4.0%		8.1%			2.7%
<b>DISBURSEMENTS (Excluding Non-Cas</b>						
Commissioners' Payroll	30,000	2,500	33,635	2,803	2,148	33,635
Legal Fees	18,723	1,560	42,333	3,528	9,736	30,000
Accounting Fees	53,312	4,443	63,599	5,300	1,590	50,000
Other Contract Services	0	0	0	0	0	10,000
Insurance	0	0	0	0	0	0
Settlement Expenses		0		0	25,500	25,500
Contr Mgmt Expense Assumed		0		0	(8,180)	
Miscellaneous Expenses	15,190	1,266	15,581	1,298	2,839	25,000
Contract Management Fees						
Operations	6,268,101	522,342	7,068,415	589,035		6,715,608
Repair & Maintenance	450,121	37,510	507,593	42,299		510,180
<b>Total Contract Mgmt Fees</b>	<b>6,718,222</b>	<b>559,852</b>	<b>7,576,008</b>	<b>631,334</b>	<b>639,337</b>	<b>7,225,788</b>
<b>DEBT PAYMENTS / RESERVES</b>						
Principal & Interest Payments						
RD Loans			740,990			795,393
KIA Loans			545,201			380,543
CTB Loan - Bond Pmts			0			114,576
CTB Loan - Old Projects			0			100,728
<b>Total Principal &amp; Inter. Pmts</b>	<b>1,283,352</b>		<b>1,286,191</b>		<b>0</b>	<b>1,391,240</b>
Payments to Reserve Accounts						
<b>TOTAL CASH DISBURSED</b>	<b>8,118,799</b>		<b>9,017,347</b>			<b>8,791,163</b>
<b>REV. OVER/(UNDER) EXPENDITURES</b>	<b>1,014</b>		<b>(238,639)</b>			<b>227,809</b>

NOTE: The above projections for 2009 include any budgeted expenses for a "Financial/Administrative Overrun". If the total cost for that position including salary and benefits is \$175,000, the cash flow for the District would be reduced accordingly.

**Adjusted positive cash flow:**

(75,000)
<b>152,809</b>

NOTE 2: The above projections do not include imputed annual payments into reserve accounts.

**SPEARS MANAGEMENT AND CONSULTING, INC.**  
**P.O. BOX 2932**  
**PIKEVILLE, KY 41502**

April 2, 2009

Mountain Water District  
Board of Commisioners  
Pikeville, KY 41653

RE: UMG, LLC Contract Amendment Proposal

Dear Commissioners,

After Monday's board meeting, I reviewed the proposal made by UMG. I took the proposal and broke it down line item by line item. I have attached the spreadsheet for such. I have projected that it would save the District approximately \$652,547 over the next 15 months through June 30, 2010. I have also done a spreadsheet for your review to compare that to the lowest offer that was made to UMG by the District during our negotiations. In that offer we asked for a \$2,130,000 concession from UMG through June 30, 2010. I have taken \$75,000 out of that amount for an Administrative salary that we anticipated hiring if UMG accepted, in order to make the two proposals comparative. I concluded that the offer by UMG is \$1,402,453 less than what was offered to them as our lowest offer.

Also if the District goes ahead with the termination of UMG's contract versus extending it, the District would owe an unamortized amount due to UMG of \$144,052.00. If in fact the Board decides to accept the proposal and does not extend the contract of UMG beyond June 30, 2010 then the board will owe an unamortized amount of \$394,233.29 at that time, an increase of \$250,181.29 for staying in the contract through the end date of the original contract.

Also in the offer from UMG Item 3 takes away the floor CPI of 2.5 %, therefore I used that potential loss in my calculations. Items 3 and 5 have some unknowns in them and I can only estimate the effect of them and have done so in my calculations.

Keep in mind that we already had to borrow \$500,000.00 from Community Trust Bank in December of 2008 to make bond payments because of cash flow problems. The Contract amendment does not reference this other than to say in Item 4 that we could use the new loan from UMG to pay that off. This does nothing but replaces us owing Community Trust Bank by us owing UMG instead. I don't see any advantage in this scenario.

In light of the analysis as presented, I **cannot recommend** the Board accept this Amendment as proposed. It does not solve the long-term cash flow requirements of the District. I cannot see any way of reestablishing our Bond reserves and have very grave concerns that we would not be able to meet Bond payments as well.

I appreciate the opportunity to serve you and if you have any questions please feel free to contact me at 886-8040.

Sincerely,

Michael R. Spears, CPA

# Mountain Water District

## March 30 Contract Amendment Proposal Calculation of the Concession by UMG

In the event that we don't extend the original contract past June 30, 2010.

	Actual Concession
<b>Item 1.</b> Infusion of cash of \$500,000 into the district, in the form of a forgivable loan. Amortized at five years at 5 % interest.	\$ 500,000.00
If we don't extend the contract beyond the June 30, 2010 date then we repay UMG the following amount as per their schedule	<u>(394,233.29)</u>
Actual Cash infusion if we don't extend the contract	\$ 105,766.71
<b>Item 2.</b> UMG agrees to reduce monthly fees by \$46,000 per month per statement before the vote was cast, instead of the \$36,000 on the contract I worked from. This was to be effective April 2009.	690,000.00
<b>Item 3.</b> I cant calculate the savings because we don't know what the CPI will do. But if I project 1000 new customers at \$23.50 per month assuming they come on ratably over the year and there is no CPI increase then the savings would be	188,940.00
Note: This is offset by CPI increases if any.	
Loss of floor CPI of 2.5% at \$7,571,376 based on Aug 08 bill	(189,284.40)
<b>Item 4.</b> No contractual obligation in this item because \$500K is item 1.	-
<b>Item 5.</b> According to numbers provided during negotiations Electric was \$724,000 per year per my notes. This seems low to me but for analysis this is fine. Assume projected increase in Rate of 7.5%, only UMG can control Kilowatt hours so this should be eliminated. Addition cost to the District would be	(67,875.00)
<b>Item 6.</b> Additional cost to hire Administrator is a cost to the Board even though it is not a concession by UMG. Therefore it is included.	<u>(75,000.00)</u>
Projected Savings to the Board if the contract expires in June 2010.	<u><u>652,547.31</u></u>

	No. Mos	on Contract	Former Fee	
april	67	15	\$ 23.50	\$ 23,617.50
may	67	14	\$ 23.50	\$ 22,043.00
june	67	13	\$ 23.50	\$ 20,468.50
july	67	12	\$ 23.50	\$ 18,894.00
aug	67	11	\$ 23.50	\$ 17,319.50
sep	67	10	\$ 23.50	\$ 15,745.00
oct	67	9	\$ 23.50	\$ 14,170.50
nov	67	8	\$ 23.50	\$ 12,596.00
dec	67	7	\$ 23.50	\$ 11,021.50
jan	67	6	\$ 23.50	\$ 9,447.00
feb	67	5	\$ 23.50	\$ 7,872.50
mar	67	4	\$ 23.50	\$ 6,298.00
april	67	3	\$ 23.50	\$ 4,723.50
may	67	2	\$ 23.50	\$ 3,149.00
june	67	1	\$ 23.50	\$ 1,574.50
				<u>\$188,940.00</u>

UMG

**AMORTIZATION SCHEDULE**

Description **UMG Capital Costs - MWD Contract**  
 Loan Amount:: **\$547,494.17**  
 Interest Rate: **6.50%**  
 Term (Months): **60**  
 Purchase Date: **7/1/2005**  
 Monthly Payment: **\$10,712.35**  
 Lender:

Month	Pmt Date	Pmt Amt	Inter Exp	Principal	Balance
Beginning Balance					<b>\$547,494.17</b>
1	8/1/2005	\$10,712.35	\$2,965.59	\$7,746.76	\$539,747.41
2	9/1/2005	\$10,712.35	\$2,923.63	\$7,788.72	\$531,958.69
3	10/1/2005	\$10,712.35	\$2,881.44	\$7,830.91	\$524,127.78
4	11/1/2005	\$10,712.35	\$2,839.03	\$7,873.33	\$516,254.46
5	12/1/2005	\$10,712.35	\$2,796.38	\$7,915.97	\$508,338.48
6	1/1/2006	\$10,712.35	\$2,753.50	\$7,958.85	\$500,379.63
7	2/1/2006	\$10,712.35	\$2,710.39	\$8,001.96	\$492,377.67
8	3/1/2006	\$10,712.35	\$2,667.05	\$8,045.31	\$484,332.36
9	4/1/2006	\$10,712.35	\$2,623.47	\$8,088.89	\$476,243.48
10	5/1/2006	\$10,712.35	\$2,579.65	\$8,132.70	\$468,110.78
11	6/1/2006	\$10,712.35	\$2,535.60	\$8,176.75	\$459,934.02
12	7/1/2006	\$10,712.35	\$2,491.31	\$8,221.04	\$451,712.98
13	8/1/2006	\$10,712.35	\$2,446.78	\$8,265.57	\$443,447.41
14	9/1/2006	\$10,712.35	\$2,402.01	\$8,310.35	\$435,137.06
15	10/1/2006	\$10,712.35	\$2,356.99	\$8,355.36	\$426,781.70
16	11/1/2006	\$10,712.35	\$2,311.73	\$8,400.62	\$418,381.08
17	12/1/2006	\$10,712.35	\$2,266.23	\$8,446.12	\$409,934.96
18	1/1/2007	\$10,712.35	\$2,220.48	\$8,491.87	\$401,443.09
19	2/1/2007	\$10,712.35	\$2,174.48	\$8,537.87	\$392,905.22
20	3/1/2007	\$10,712.35	\$2,128.24	\$8,584.12	\$384,321.11
21	4/1/2007	\$10,712.35	\$2,081.74	\$8,630.61	\$375,690.50
22	5/1/2007	\$10,712.35	\$2,034.99	\$8,677.36	\$367,013.13
23	6/1/2007	\$10,712.35	\$1,987.99	\$8,724.36	\$358,288.77
24	7/1/2007	\$10,712.35	\$1,940.73	\$8,771.62	\$349,517.15
25	8/1/2007	\$10,712.35	\$1,893.22	\$8,819.13	\$340,698.01
26	9/1/2007	\$10,712.35	\$1,845.45	\$8,866.90	\$331,831.11
27	10/1/2007	\$10,712.35	\$1,797.42	\$8,914.93	\$322,916.18
28	11/1/2007	\$10,712.35	\$1,749.13	\$8,963.22	\$313,952.95
29	12/1/2007	\$10,712.35	\$1,700.58	\$9,011.77	\$304,941.18
30	1/1/2008	\$10,712.35	\$1,651.76	\$9,060.59	\$295,880.59
31	2/1/2008	\$10,712.35	\$1,602.69	\$9,109.67	\$286,770.93
32	3/1/2008	\$10,712.35	\$1,553.34	\$9,159.01	\$277,611.92
33	4/1/2008	\$10,712.35	\$1,503.73	\$9,208.62	\$268,403.30
34	5/1/2008	\$10,712.35	\$1,453.85	\$9,258.50	\$259,144.80
35	6/1/2008	\$10,712.35	\$1,403.70	\$9,308.65	\$249,836.14
36	7/1/2008	\$10,712.35	\$1,353.28	\$9,359.07	\$240,477.07

UMG

**AMORTIZATION SCHEDULE**

Description **UMG Capital Costs - MWD Contract**  
Loan Amount:: **\$547,494.17**  
Interest Rate: **6.50%**  
Term (Months): **60**  
Purchase Date: **7/1/2005**  
Monthly Payment: **\$10,712.35**  
Lender:

Month	Pmt Date	Pmt Amt	Inter Exp	Principal	Balance
37	8/1/2008	\$10,712.35	\$1,302.58	\$9,409.77	\$231,067.30
38	9/1/2008	\$10,712.35	\$1,251.61	\$9,460.74	\$221,606.57
39	10/1/2008	\$10,712.35	\$1,200.37	\$9,511.98	\$212,094.58
40	11/1/2008	\$10,712.35	\$1,148.85	\$9,563.51	\$202,531.08
41	12/1/2008	\$10,712.35	\$1,097.04	\$9,615.31	\$192,915.77
42	1/1/2009	\$10,712.35	\$1,044.96	\$9,667.39	\$183,248.38
43	2/1/2009	\$10,712.35	\$992.60	\$9,719.76	\$173,528.62
44	3/1/2009	\$10,712.35	\$939.95	\$9,772.41	\$163,756.21
45	4/1/2009	\$10,712.35	\$887.01	\$9,825.34	\$153,930.87
46	5/1/2009	\$10,712.35	\$833.79	\$9,878.56	\$144,052.31
47	6/1/2009	\$10,712.35	\$780.28	\$9,932.07	\$134,120.25
48	7/1/2009	\$10,712.35	\$726.48	\$9,985.87	\$124,134.38
49	8/1/2009	\$10,712.35	\$672.39	\$10,039.96	\$114,094.42
50	9/1/2009	\$10,712.35	\$618.01	\$10,094.34	\$104,000.08
51	10/1/2009	\$10,712.35	\$563.33	\$10,149.02	\$93,851.06
52	11/1/2009	\$10,712.35	\$508.36	\$10,203.99	\$83,647.07
53	12/1/2009	\$10,712.35	\$453.09	\$10,259.26	\$73,387.81
54	1/1/2010	\$10,712.35	\$397.52	\$10,314.83	\$63,072.97
55	2/1/2010	\$10,712.35	\$341.65	\$10,370.71	\$52,702.26
56	3/1/2010	\$10,712.35	\$285.47	\$10,426.88	\$42,275.38
57	4/1/2010	\$10,712.35	\$228.99	\$10,483.36	\$31,792.02
58	5/1/2010	\$10,712.35	\$172.21	\$10,540.15	\$21,251.88
59	6/1/2010	\$10,712.35	\$115.11	\$10,597.24	\$10,654.64
60	7/1/2010	\$10,712.35	\$57.71	\$10,654.64	(\$0.00)



EXHIBIT 1

CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)

12/31/2010

		ACQUISITION COST	TYPE OF CAPITAL ASSET		
			VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
<b>PURCHASED BY UMG:</b>					
Hammerhead Mole	11/30/2005	\$ 3,700.00		\$ 3,700.00	
2005 Expedition	6/30/2006	\$ 34,448.02	\$ 34,448.02		
2006 GMC Sierra	7/10/2006	\$ 31,951.40	\$ 31,951.40		
Hammerhead Mole	8/31/2006	\$ 3,808.83		\$ 3,808.83	
Hammerhead Mole	11/6/2006	\$ 3,826.68		\$ 3,826.68	
Air Compressor	1/31/2007	\$ 2,771.99		\$ 2,771.99	
Air Compressor	1/31/2007	\$ 1,358.78		\$ 1,358.78	
2 Way Radio	1/31/2007	\$ 3,147.00		\$ 3,147.00	
Camera	1/31/2007	\$ 5,126.77		\$ 5,126.77	
Tilt Bed Trailer	1/31/2007	\$ 7,368.20	\$ 7,368.20		
Aqua Scope	1/31/2007	\$ 2,092.44		\$ 2,092.44	
Engine Scanner	1/31/2007	\$ 2,546.01		\$ 2,546.01	
Trencher	4/27/2007	\$ 4,001.00	\$ 4,001.00		
Laptop Computer	1/23/2008	\$ 1,680.06			\$ 1,680.06
Trailer	1/31/2008	\$ 2,495.00	\$ 2,495.00		
Laptop Computer	2/25/2008	\$ 1,619.68			\$ 1,619.68
Data Recorder	2/20/2008	\$ 2,717.50		\$ 2,717.50	
Computer	4/30/2008	\$ 3,385.00			\$ 3,385.00
Pressure Logger	5/20/2008	\$ 420.00		\$ 420.00	
Laptop Computer	8/5/2008	\$ 1,185.00			\$ 1,185.00
Phone System	8/21/2008	\$ 17,592.44			\$ 17,592.44
Parking Lot Paved	8/29/2008	\$ 14,000.00			\$ 14,000.00
Laptop Computer	12/18/2008	\$ 1,163.90			\$ 1,163.90
2009 Yukon	4/28/2009	\$ 53,227.62	\$ 53,227.62		
Laptop Computer	5/31/2009	\$ 660.01			\$ 660.01
Cameras/DVR	6/19/2009	\$ 1,355.00			\$ 1,355.00
2009 F150	6/9/2009	\$ 48,000.00	\$ 48,000.00		
Trailer	6/25/2009	\$ 7,282.20	\$ 7,282.20		
Auto Dialer	9/28/2009	\$ 3,044.00			\$ 3,044.00
Desktop PC	11/13/2009	\$ 599.98			\$ 599.98
2005 F350	7/23/2010	\$ 13,500.00	\$ 13,500.00		
2006 F250	7/23/2010	\$ 11,500.00	\$ 11,500.00		
<b>TOTALS</b>		<b>\$ 291,574.51</b>	<b>\$ 213,773.44</b>	<b>\$ 31,516.00</b>	<b>\$ 46,285.07</b>

**PURCHASED BY MOUNTAIN WATER DISTRICT:**

Weedeater	8/31/2005	\$ 275.00		\$ 275.00	
Trash Pump	8/31/2005	\$ 892.62		\$ 892.62	
Cut Off Saw	10/31/2005	\$ 821.08		\$ 821.08	
Radios/Chargers	11/30/2005	\$ 1,361.00		\$ 1,361.00	
Colorimeter	11/30/2005	\$ 1,018.54		\$ 1,018.54	
2005 Ranger	12/31/2005	\$ 17,840.65	\$ 17,840.65		
Ford F250	2/25/2006	\$ 32,929.95	\$ 32,929.95		
Trailer	8/4/2006	\$ 7,656.00	\$ 7,656.00		
Mini Excavator	8/30/2006	\$ 29,503.00	\$ 29,503.00		
Ford F250	8/31/2006	\$ 31,400.00	\$ 31,400.00		



EXHIBIT 1

CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)

12/31/2010

		ACQUISITION COST	TYPE OF CAPITAL ASSET		
			VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
Ford F250	8/31/2006	\$ 31,400.00	\$ 31,400.00		
Ford F350	8/31/2006	\$ 36,089.00	\$ 36,089.00		
Dump Truck	5/19/2007	\$ 70,772.00	\$ 70,772.00		
2008 Colorado	8/6/2007	\$ 12,639.65	\$ 12,639.65		
2008 Colorado	8/9/2007	\$ 12,639.65	\$ 12,639.65		
2008 Nissan	10/24/2007	\$ 24,769.00	\$ 24,769.00		
2008 Ranger	12/2/2007	\$ 19,090.00	\$ 19,090.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
Phone System	2/25/2009	\$ 10,000.00			\$ 10,000.00
Postage Machine	3/18/2009	\$ 1,477.00			\$ 1,477.00
Computer Domain	3/30/2009	\$ 300.00			\$ 300.00
Payroll Software	4/21/2009	\$ 1,590.00			\$ 1,590.00
Komatsu Mini Exc	4/30/2009	\$ 37,580.00	\$ 37,580.00		
Pressure Washer	6/22/2009	\$ 2,200.00		\$ 2,200.00	
2009 Chevy PU	9/29/2009	\$ 34,406.24	\$ 34,406.24		
2009 Chevy PU	9/29/2009	\$ 34,406.24	\$ 34,406.24		
<b>TOTALS</b>		<b>\$ 502,268.62</b>	<b>\$ 482,333.38</b>	<b>\$ 6,568.24</b>	<b>\$ 13,367.00</b>

PAID THROUGH R&M ACCOUNT:

Radios	1/31/2008	\$ 3,663.00		\$ 3,663.00	
Trailer	6/30/2008	\$ 552.48	\$ 552.48		
Band Saw	1/23/2008	\$ 397.90		\$ 397.90	
Hose Combo Kit	1/31/2008	\$ 1,194.69		\$ 1,194.69	
Scanner Update	8/29/2008	\$ 979.00		\$ 979.00	
Hydrant Gauge	10/27/2008	\$ 405.96		\$ 405.96	
Refrigerator	5/27/2009	\$ 660.58			\$ 660.58
Settleometer Kit	3/6/2009	\$ 1,142.38		\$ 1,142.38	
Flow Meter	9/9/2009	\$ 5,856.46		\$ 5,856.46	
Shut off Tool	5/8/2009	\$ 325.00		\$ 325.00	
Weedeater	6/30/2009	\$ 264.67		\$ 264.67	
Hole Saw	7/31/2009	\$ 588.07		\$ 588.07	
Wastewater Probe	11/19/2009	\$ 731.61		\$ 731.61	
Impact Wrench	1/28/2010	\$ 205.00		\$ 205.00	
Vega Drill. Etc	8/31/2010	\$ 1,465.50		\$ 1,465.50	
Refrigerator	1/22/2010	\$ 1,220.53			\$ 1,220.53
Trash Pump	3/21/2010	\$ 597.12		\$ 597.12	
Radios	8/10/2010	\$ 1,892.10		\$ 1,892.10	
Laptop, etc. Mtr Rdng	8/30/2010	\$ 13,650.00		\$ 13,650.00	
Correlator Upgrade	9/21/2010	\$ 10,077.43		\$ 10,077.43	
<b>TOTALS</b>		<b>\$ 45,869.48</b>	<b>\$ 552.48</b>	<b>\$ 43,435.89</b>	<b>\$ 1,881.11</b>

**UTILITY MANAGEMENT GROUP, LLC  
SCHEDULE OF CAPITAL EXPENDITURES FOR OFFICE EQUIPMENT  
FOR MOUNTAIN WATER DISTRICT PAID BY UMG, LLC**

ITEM	DATE	VENDOR	AMOUNT
New Telephone System:	6/13/2008	S.E. Telephone	\$13,796.22
	8/22/2008	S.E. Telephone	\$13,796.22
Subtotal new phone system:			\$27,592.44
<b>Personal Computers/Laptops</b>			
Refurbished Desktops	2/28/2006	Kimberlain IT	\$1,677.00
Spartan Laptop	5/20/2006	Kimberlain IT	\$1,558.20
Intel Pentium Workstation	8/30/2006	Kimberlain IT	\$1,433.48
Intel Pentium Workstation	9/17/2006	Kimberlain IT	\$1,409.10
Intel Pentium Workstation	11/9/2006	Kimberlain IT	\$1,375.00
Intel Pentium Workstation	1/13/2007	Kimberlain IT	\$1,480.00
Intel Pentium Workstation	2/16/2007	Kimberlain IT	\$1,369.30
Lenovo Laptop	3/5/2007	Kimberlain IT	\$864.00
17" Flat Panel Monitor	6/17/2007	Kimberlain IT	\$352.50
Desktop Computer (Tammy)	8/17/2007	Kimberlain IT	\$1,279.00
New Server	12/12/2007	Kimberlain IT	\$6,081.00
Dell Notebook	6/4/2008	Staples	\$929.97
New Laptop	8/5/2008	W Brown	\$1,185.00
Dell Computer	11/20/2008	W Brown AmEx	\$1,163.90
Subtotal computers/laptops			\$22,157.45
Refrigerator	8/22/2008	Sears	\$455.79
<b>TOTAL CAPITAL EQUIPMENT</b>			
<b>(OFFICE) PAID BY UMG</b>			<b>\$50,205.68</b>

**Contract Development Costs / Amortization**  
**Utility Management Group, LLC**  
**12/31/06**

<u>ITEM</u>	<u>Amount</u>	
07/08/05 Loan Fee Huntington Natl. Bank (60 Mo.)	19,786.67	-?
07/27/05 Sick / Vacation / Pers. Time Buyout (60 Mo.) (A)	320,000.00	→
08/12/05 Reimbursement for Retirement (59 Mo.) (B)	121,812.50	
09/01/05 Retirement Buyout (58 Mo.)	43,719.00	
	505,318.17	
2005 Capital Items Purchased 2005	42,176.00	- Need list
<b>TOTAL TO BE AMORTIZED</b>	<b>547,494.17</b>	
<u>ADDITIONAL CAPITAL EXPENSE ASSUMED BY UMG:</u>		
MWD Consolidation Loan: Monthly Pmts made by UMG for 32 months @ \$6,126.40/month	196,044.80	
<b>TOTAL INITIAL CAPITAL EXPENSE</b>	<b>743,538.97</b>	
<i>Current UMG Liability for Accrued Vacation/Pers Days</i>	<i>132,676.68</i>	

M.d Dec

- (A) UMG paid \$320,000 to MWD to buyout Sick / Vacation / Personal time. MWD paid the employees.  
 (B) UMG paid \$121,812.50 to employees via payroll. This was for the nonvested portion the MWD employees lost when they became employees of UMG and the new 401k plan was established. The were paid a bonus by UMG and they were given the option to contribute 100% of the bonus to the 401k plan.



**Ray S. Jones, II**

**William Hickman, III**  
**Roy J. Downey**

43 Tolle Lane • P.O. Box 3850 • Pikeville, KY 41502 • (606) 432-5777 • Fax (606) 432-5154

April 16, 2009

Danny Stratton  
Stratton, Hogg & Maddox, PSC  
PO Box 1530  
Pikeville, KY 41502

Re: Amendment to Agreement for Operations,  
Maintenance and Management Services

Dear Dan:

We suggest the following changes to your rough draft:

- Paragraph 3** UMG will provide the District, upon closing of this agreement, a Five Hundred Thousand Dollar (\$500,000.00) loan. This loan will be amortized over a period of five years at a simple interest rate of five percent per annum according to the Schedule for Amortization that is attached hereto as Exhibit A and which is incorporated herein as if set forth at length. For each full month that this contract remains in effect or is extended or renewed, UMG agrees to "forgive" or otherwise not require that a payment actually be made from the District to UMG. Should the contract or any renewal or extension not be in place between the District and UMG the District agrees that it will repay UMG for the total amount of the unamortized balance of the loan at the time that the Contract has ended or is no longer in effect.
- Paragraph 4** As of the end of February, 2009 the District's Repair and Maintenance expenditures have exceeded the contract ceiling by the amount of Sixty Thousand Eight Hundred and Eighty Dollars (\$61,880.00). UMG hereby reduces this amount to Thirty Thousand Nine Hundred and Forty Dollars (\$30,940.00).
- Paragraph 5** Beginning with the first April, 2009 invoice to the District, UMG will reduce its operating and monthly management fee by the sum of Twenty Three Thousand Dollars (\$23,000.00) off of each bi-monthly billing so as to reduce the total monthly billing by a total of Forty Six Thousand Dollars (\$46,000.00).
- Paragraph 7** change (towed cost) to (totaled cost)

Paragraph 8 add the following sentence – Said individual will have access to all of the District's records that are in the possession of UMG during regular business hours.

Respectfully,

*William Hickman, III*  
CA

William Hickman, III

WH/ca  
#08-1083

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

April 20, 2009

Hon. William Hickman, III  
Jones & Hickman Law Office  
P.O. Drawer 3850  
Pikeville, Kentucky 41502  
Via email: [williamhickma1@bellsouth.net](mailto:williamhickma1@bellsouth.net)

Re: Amendment to Agreement for Operations  
Mountain Water District / UMG Contract

Dear Bill:

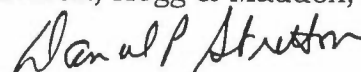
Please be advised that I have reviewed your April 16, 2009, letter with Toni and Mike as the Board will not meet in full session until April 29<sup>th</sup>. Your proposed amended language to paragraphs 3, 5, 7 and 8 are acceptable.

As to paragraph 4, we need to inquire as to whether or not this provision is hard money or soft money. By that, what I mean is, the R&M budget is an annual budget. If UMG is over budget for the year, then Mountain Water has to pay them the difference. We will not know until the end of the year as to whether or not the budget is over or under. Projects could easily be postponed until the following year in order to bring the budget under \$60,000. We originally interpreted this as a \$30,000 savings based on the year end, and wish to clarify that point.

Secondly, a new topic has come up which involves amendment of notice of termination. The key reason why the Board approved this agreement was because of UMG's promise to try to solicit additional money from the legislature to fund our debts. The legislature will meet in January 2010. It is the Board's understanding that Greg agreed to terminate the agreement if he was unable to get the money. However, no one will know if he is able to get the money until after the termination notice date has passed, which is December 31<sup>st</sup>. Accordingly, we need to amend the six month termination notice to ninety (90) days.

Please respond to David prior to the 29<sup>th</sup> as I will be out of town.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Mountain Water District Board Members

# Mountain Water District

## March 30 Contract Amendment Proposal Calculation of the Concession by UMG

In the event that we don't extend the original contract past June 30, 2010.

	Actual Concession
<b>Item 1.</b> Infusion of cash of \$500,000 into the district, in the form of a forgivable loan. Amortized at five years at 5 % interest.	\$ 500,000.00
If we don't extend the contract beyond the June 30, 2010 date then we repay UMG the following amount as per their schedule	<u>(394,233.29)</u>
Actual Cash infusion if we don't extend the contract	\$ 105,766.71
<b>Item 2.</b> UMG agrees to reduce monthly fees by \$46,000 per month per statement before the vote was cast, instead of the \$36,000 on the contract I worked from. This was to be effective April 2009.	690,000.00
<b>Item 3.</b> I cant calculate the savings because we don't know what the CPI will do. But if I project 1000 new customers at \$23.50 per month assuming they come on ratably over the year and there is no CPI increase then the savings would be	188,940.00
Note: This is offset by CPI increases if any.	
Loss of floor CPI of 2.5% at \$7,571,376 based on Aug 08 bill	(189,284.40)
<b>Item 4.</b> No contractual obligation in this item because \$500K is item 1.	-
<b>Item 5.</b> According to numbers provided during negotiations Electric was \$724,000 per year per my notes. This seems low to me but for analysis this is fine. Assume projected increase in Rate of 7.5%, only UMG can control Kilowatt hours so this should be eliminated. Addition cost to the District would be	(67,875.00)
<b>Item 6.</b> Additional cost to hire Administrator is a cost to the Board even though it is not a concession by UMG. Therefore it is included.	<u>(75,000.00)</u>
Projected Savings to the Board if the contract expires in June 2010.	<u><u>652,547.31</u></u>

	No. Mos		on Contract Former Fee		
april	67	15	\$	23.50	\$ 23,617.50
may	67	14	\$	23.50	\$ 22,043.00
june	67	13	\$	23.50	\$ 20,468.50
july	67	12	\$	23.50	\$ 18,894.00
aug	67	11	\$	23.50	\$ 17,319.50
sep	67	10	\$	23.50	\$ 15,745.00
oct	67	9	\$	23.50	\$ 14,170.50
nov	67	8	\$	23.50	\$ 12,596.00
dec	67	7	\$	23.50	\$ 11,021.50
jan	67	6	\$	23.50	\$ 9,447.00
feb	67	5	\$	23.50	\$ 7,872.50
mar	67	4	\$	23.50	\$ 6,298.00
april	67	3	\$	23.50	\$ 4,723.50
may	67	2	\$	23.50	\$ 3,149.00
june	67	1	\$	23.50	\$ 1,574.50
					<u>\$ 188,940.00</u>



**MOUNTAIN WATER DISTRICT**

**PROJECTED  
2009**

	<b>AUDITED FINANCIAL STATEMENTS</b>					<b>PROJECTED</b>	
	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Operating Revenues</b>							
Metered Water Revenue - Residential	\$ 4,649,788	\$ 4,969,522	\$ 5,043,002	\$ 5,221,060	\$ 5,767,199	\$ 6,286,247	\$ 6,600,559
Metered Water Revenue - Commercial	485,527	532,813	556,627	615,563	607,573	662,255	695,367
Metered Water Revenue - Industrial	49,942	53,795	48,863	43,405	48,293	52,639	55,271
Metered Water Revenue - Public Authorities	335,010	308,652	314,106	318,044	275,488	300,282	315,296
Metered Water Revenue - Multiple Family Dwellings	209,062	216,733	222,850	201,976	197,756	215,554	226,332
Metered Water Revenue - Bulk Loading Stations		-					
Fire Protection Revenue	1,200	1,200	1,150	1,200	1,150	1,200	1,200
Sewer Revenue	417,308	526,361	647,607	855,994	839,581	881,560	925,638
Water and Sewer Revenue	6,147,837	6,609,076	6,834,205	7,257,242	7,737,040	8,399,737	8,819,664
<b>Other Water Revenues (sub-category)</b>							
Customer late pmts	127,182	169,431	166,878	158,013	200,649	206,668	212,869
Miscellaneous Service Revenues	496,448	514,004	663,206	307,302	110,650	110,650	110,650
Service Connection Fees	63,103	79,445	83,540	84,617	71,474	73,618	75,827
Subtotal Other Water Revenues	686,733	762,880	913,624	549,932	382,773	390,937	399,345
<b>Total Operating Revenues</b>	<b>6,834,570</b>	<b>7,371,956</b>	<b>7,747,829</b>	<b>7,807,174</b>	<b>8,119,813</b>	<b>8,790,674</b>	<b>9,219,009</b>
<b>Operation and Maintenance Expenses</b>							
Contract Service Management	-	-	2,521,578	6,332,862	6,718,222	7,223,058	
Depreciation	1,739,690	1,994,862	2,242,984	2,342,537	2,465,454	2,514,763	2,590,206
Salaries and Wages - Employees	1,804,780	2,033,661	891,374				1,885,700
Materials and Supplies	680,877	814,282	442,186	1,219			1,139,995
Employee Group Benefits	423,597	482,993	395,052				671,779
Electric Power	283,973	442,494	234,223				530,993
Water Purchased - Pikeville	665,527	437,639	233,586				525,167
Water Purchased - Williamson	443,553	367,816	205,690				441,379
Auto and Transportation	342,690	328,980	176,257	271	3,287	3,186	394,776
Insurance	148,801	248,460	105,311	19,259			298,152
Payroll Taxes	154,811	158,854	105,277	2,874	570		147,296
Insurance - Workers Comp	105,746	113,818	101,637				211,074
Salaries and Wages - Management	140,971	148,645	88,194				95,000
Contract Service - Accounting & Auditing	78,530	75,167	65,978	54,765	53,312	55,000	55,000
Bad Debt	18,335	87,366	61,976	64,802	75,066	75,000	75,000
Contract Service Legal	18,206	45,231	56,335	22,801	18,723	35,000	35,000
Chemicals	72,987	54,737	30,666				82,106
Water Purchased - Sandy Valley	88,406	89,978	29,998				-
Compensation Commissioners	18,000	18,000	29,000	29,000	30,000	30,000	30,000
Contract Service General	32,547	63,706	15,085	44,706			76,447
Telephone	25,225	29,157	14,020				34,988
Regulatory	11,216	11,917	12,311	13,076			14,300
contract Service - Engineering	1,153	7,324	10,699	1,523			8,789
Settlement Fees		-	7,200	17,097	2,503	70,000	-
Education, Dues, and Meetings	9,020	8,953	6,795	349	2,579	1,604	10,744
Miscellaneous	14,226	8,064	2,218		4,988	4,900	9,677
Rent - Building	1,949	3,196	1,136	25	25	25	3,835
Advertising	2,097	1,434	581	1,044	1,808	2,535	1,721
Rent - Equipment	2,029	41,493	-				49,792
Maintenance	17,246	17,491	-				20,989
<b>Total Operation and Maintenance Expenses</b>	<b>7,346,188</b>	<b>8,135,718</b>	<b>8,087,347</b>	<b>8,948,210</b>	<b>9,376,537</b>	<b>10,015,071</b>	<b>9,439,905</b>
<b>Operating Income (Loss)</b>	<b>(511,618)</b>	<b>(763,762)</b>	<b>(339,518)</b>	<b>(1,141,036)</b>	<b>(1,256,724)</b>	<b>(1,224,398)</b>	<b>(220,896)</b>
<b>Non Operating Revenue (Expenses)</b>							
Gain on Sale of Assets	2,270	7,562	32,151	49,949	163,902	-	-
Interest Income	13,625	12,377	25,867	46,975	42,170	42,170	42,170
Discount Amortization	3,828						
Interest Expense	(579,847)	(644,006)	(679,795)	(653,086)	(586,010)	(572,465)	(596,777)
<b>Total Non Operating Revenue(Expenses) Net</b>	<b>(560,124)</b>	<b>(624,067)</b>	<b>(621,777)</b>	<b>(556,162)</b>	<b>(379,938)</b>	<b>(530,295)</b>	<b>(554,607)</b>
<b>Net Income (Loss)</b>	<b>(1,071,742)</b>	<b>(1,387,829)</b>	<b>(961,295)</b>	<b>(1,697,198)</b>	<b>(1,636,662)</b>	<b>(1,754,693)</b>	<b>(775,503)</b>

**MOUNTAIN WATER DISTRICT**

PROJECTED  
2009

**ASSUMPTIONS**

Operating Revenues

Metered Water Revenue - Residential                   WATER REVENUES IN 08 RISE 9 % AND 09 RISE 5%  
 Metered Water Revenue - Commercial  
 Metered Water Revenue - Industrial  
 Metered Water Revenue - Public Authorities  
 Metered Water Revenue - Multiple Family Dwellings  
 Metered Water Revenue - Bulk Loading Stations  
 Fire Protection Revenue  
 Sewer Revenue                                                 SEWER REVENUES IN 08 RISE 5 % AND 09 RISE 5%

    Water and Sewer Revenue

Other Water Revenues (sub-category)

Customer late pmts  
 Miscellaneous Service Revenues  
 Service Connection Fees

    Subtotal Other Water Revenues

OTHER WATER REVENUES REMAIN SAME WITH 3 % INCREASE

**Total Operating Revenues**

Operation and Maintenance Expenses

Contract Service Management                         NO CONTRACT MANAGEMENT IN PLACE  
 Depreciation                                                 ESTIMATE DEPRECIATION  
 Salaries and Wages - Employees                     ASSUME 14 LESS EMPLOYEES THAN 04 AT \$25K PER TIMES 3 % INCREASE FOR THE 4 YEARS  
 Materials and Supplies                                 40 % INCREASE IN MATERIALS  
 Employee Group Benefits                             USE PAYROLL FACTOR INCREASE BY 50%  
 Electric Power                                             20% INCREASE SINCE 04  
 Water Purchased - Pikeville                         20% INCREASE SINCE 04  
 Water Purchased - Williamson                     20% INCREASE SINCE 04  
 Auto and Transportation                             20% INCREASE SINCE 04  
 Insurance                                                 20% INCREASE SINCE 04  
 Payroll Taxes                                             FACTOR OF SALARY  
     Insurance - Workers Comp                         ASSUME INCREASE BASE ON PAYROLL AND RATES  
     Salaries and Wages - Management             NUMBER FOR MANAGEMENT PERSONNEL  
 Contract Service - Accounting & Auditing         AVERAGE OF YEARS  
 Bad Debt                                                 AVERAGE OF YEARS  
 Contract Service Legal                               AVERAGE OF YEARS  
 Chemicals                                                 50% INCREASE SINCE 04  
 Water Purchased - Sandy Valley                     NO WATER PURCHASES FROM SV  
 Compensation Commissioners                     ACTUAL  
 Contract Service General                             20% INCREASE SINCE 04  
 Telephone                                                 20% INCREASE SINCE 04  
 Regulatory                                               20% INCREASE SINCE 04  
 contract Service - Engineering                     20% INCREASE SINCE 04  
 Settlement Fees  
 Education, Dues, and Meetings                     20% INCREASE SINCE 04  
 Miscellaneous                                           20% INCREASE SINCE 04  
 Rent - Building                                         20% INCREASE SINCE 04  
 Advertising                                              20% INCREASE SINCE 04  
 Rent - Equipment                                       20% INCREASE SINCE 04  
 Maintenance                                             20% INCREASE SINCE 04

**Total Operation and Maintenance Expenses**

**Operating Income (Loss)**

**Non Operating Revenue (Expenses)**

Gain on Sale of Assets  
 Interest Income                                         SAME AS ALWAYS  
 Discount Amortization  
 Interest Expense                                       PER AUDIT

**Total Non Operating Revenue(Expenses) Net**

**Net Income (Loss)**

**MOUNTAIN WATER DISTRICT**  
**ANALYSIS OF BOND, KIA AND INTEREST EXPENSE**  
 12/1/2009

	BONDS		KIA		TOTAL
	PRINCIPAL	INTEREST	PRINCIPAL	INTEREST	
2008	257,982	483,008	370,699	174,502	1,286,191
2009	268,500	471,315	255,298	113,906	1,109,019
2010	321,081	492,313	262,041	107,251	1,182,686
2011	* 293,500	446,290	268,970	100,411	1,109,171
2012	* 310,500	429,313	263,158	93,485	1,096,456
2013	* 322,000	417,799	270,046	86,687	1,096,532
2014	* 332,000	407,695	277,121	79,703	1,096,519
2015	* 342,500	397,042	284,391	72,525	1,096,458

RESERVE ACCOUNT	KIA R & M	RD DEPR	TOTAL
UNDERFUNDED PER AUDIT OF 2007	505,000	478,500	983,500
2008	56,294	58,560	114,854
2009	56,294	58,560	114,854
2010	56,294	39,360	95,654
2011	56,294	39,360	95,654
2012	56,294	39,360	95,654
2013	56,294	39,360	95,654
2014	5,000	35,640	40,640
2015		33,240	33,240
	<u>847,764</u>	<u>821,940</u>	<u>1,669,704</u>

YEARS REMAINING ON NEW CONTRACT 5  
 YEARLY CONCESSION 333,940.80

RESERVE ACCOUNT BALANCES	PER AUDITS						
	2003	2004	2005	2006	2007	2008	2009
REQUIRED RESERVES							
KIA - R & M	366,228	385,578	395,578	588,160	504,564	537,060	617,588
RD - DEPRECIATION RESERVE	312,960	348,300	354,420	432,300	478,500	560,948	595,620
	<u>679,188</u>	<u>733,878</u>	<u>749,998</u>	<u>1,020,460</u>	<u>983,064</u>	<u>1,098,008</u>	<u>1,213,208</u>
ACTUAL RESERVES	715,445	807,120	907,095	562,256	7,981	1,981	139,000
OVERFUNDED/(UNDERFUNDED)	<u>36,257</u>	<u>73,242</u>	<u>157,097</u>	<u>(458,204)</u>	<u>(975,083)</u>	<u>(1,096,027)</u>	<u>(1,074,208)</u>

\* ESTIMATED

*21,000/mo into reserves = \$252,000/yr*

USoA

Acct #

Actual  
2008

Budget  
2009

Estimate  
2010

		Actual 2008	Budget 2009	Estimate 2010
<b><u>Operating Revenues</u></b>				
<b><u>Sales of Water (sub-category)</u></b>				
460	Unmetered Water Revenue			
461.1	Metered Water Revenue - Residential	6,415,079	\$ 6,515,993	\$ 6,711,473
461.2	Metered Water Revenue - Commercial	776,465	634,440	\$ 691,540
461.3	Metered Water Revenue - Industrial	52,051	51,100	\$ 55,699
461.4	Metered Water Revenue - Public Authorities	280,330	293,962	\$ 299,841
461.5	Metered Water Revenue - Multiple Family Dwellings	224,745	256,000	\$ 256,000
461.6	Metered Water Revenue - Bulk Loading Stations	0	0	0
462	Fire Protection Revenue	1,150	1,200	1,200
465	Sales to Irrigation Customers		0	0
466	Sales for Resale		0	0
	Subtotal Sales of Water	7,749,820	7,752,695	8,015,753
<b><u>Other Water Revenues (sub-category)</u></b>				
470	Forfeited Discounts		0	0
471	Miscellaneous Service Revenues	344,498	468,000	280,000
472	Rents from Water Property		0	0
473	Interdepartmental Rents		0	0
474	Other Water Revenues	708,051	854,721	933,875
	Subtotal Other Water Revenues	1,052,549	1,322,721	1,213,875
	<b>Total Operating Revenues</b>	<b>8,802,369</b>	<b>9,075,416</b>	<b>9,229,628</b>
<b><u>Operation and Maintenance Expenses</u></b>				
601	Salaries and Wages - Employees	0	0	0
603	Salaries and Wages - Commissioners	28,924	24,000	30,000
604	Employee Pensions and Benefits		0	
	Medical/Life Insurance	0	0	0
	Retirement Benefits	0	0	0
	Other	0	0	0
	Subtotal Employee Pensions and Benefits	0	0	0

USoA		Actual	Budget	Estimate
Acct #		2008	2009	2010
610	Purchased Water	0	0	0
615	Purchased Power	0	0	0
616	Fuel for Power Production	0	0	0
618	Chemicals	0	0	0
620	Materials and Supplies	0	0	0
631	Contractual Services - Engineering	0	0	0
632	Contractual Services - Accounting	69,189	60,000	55,000
633	Contractual Services - Legal	44,709	92,000	60,000
634	Contractual Services - Management Fees	7,366,703	7,246,963	7,103,064
635	Contractual Services - Testing	0	0	0
636	Contractual Services - Other	0	15,000	
641	Rental of Building/Real Property	0	0	0
642	Rental of Equipment	0	0	0
650	Transportation Expenses	0	0	0
656	Insurance - Vehicle	0	0	0
657	Insurance - General Liability	0	0	0
658	Insurance - Workers' Compensation	0	0	0
659	Insurance - Other	0	0	0
660	Advertising Expense	3,716	1,200	3,500
665/667	Regulatory Commission Expense	12,000	12,000	12,000
668	Water Resource Conservation Expense	0	0	0
670	Bad Debt Expense	59,534	66,150	69,458
675	Miscellaneous Expenses	10,427	12,000	12,000
	<b>Total Operation and Maintenance Expenses</b>	<b>7,595,202</b>	<b>7,529,313</b>	<b>7,345,022</b>
	<b><u>Depreciation Expense</u></b>			
403	<b>Depreciation Expense on Utility Plant</b>	<b>2,886,035</b>	<b>3,261,348</b>	<b>3,300,000</b>
	<b><u>Amortization Expense</u></b>			
406	Amortization of Utility Plant Acquisition Adjustments			
407	Amortization Expense			
	<b>Total Amortization Expense</b>	<b>0</b>	<b>0</b>	<b>0</b>

USoA Acct #	Actual 2008	Budget 2009	Estimate 2010
<b><u>Taxes Other Than Income</u></b>			
408.10			
408.11			
408.12	1,695	1,600	1,600
408.13			
	<b>1,695</b>	<b>1,600</b>	<b>1,600</b>
<b><u>Income from Utility Plant Leased to Others</u></b>			
413			
<b><u>Gains (Losses) from Disposition of Utility Property</u></b>			
414	29,364	0	0
	<b>10,453,568</b>	<b>10,792,261</b>	<b>10,646,622</b>
	<b>(1,651,199)</b>	<b>(1,716,845)</b>	<b>(1,416,994)</b>
<b><u>Other Income and (Deductions)</u></b>			
<b><u>Net Results of Merchandising, Jobbing and Contract Work</u></b>			
415			
416			
	0	0	0
<b><u>Interest and Dividend Income</u></b>			
419	14,652	14,063	15,000
<b><u>Allowance for Funds Used During Construction</u></b>			
420			
<b><u>Nonutility Income</u></b>			
421	0	0	0
<b><u>Miscellaneous Nonutility Expenses</u></b>			

**USoA**

**Acct #**

**Actual  
2008**

**Budget  
2009**

**Estimate  
2010**

426	Miscellaneous Nonutility Expenses			
	<b><u>Taxes Other Than Income</u></b>			
408.20	Taxes Other Than Income (Other Income and Deductions)			
	<b><u>Interest Expense</u></b>			
427.1	Interest on Debt to Associated Companies			
427.2	Interest on Short-Term Debt			
427.3	Interest on Long-Term Debt	555,232	615,000	600,000
427.4	Interest on Customer Deposits			
427.5	Interest - Other			
428	Amortization of Debt Discount and Expense			
429	Amortization of Premium on Debt			
	<b>Total Interest Expense</b>	<b>555,232</b>	<b>615,000</b>	<b>600,000</b>
	 <b>Income Before Contributions &amp; Extraordinary Items</b>	 <b>(2,191,779)</b>	 <b>\$ (2,317,782)</b>	 <b>\$ (2,001,994)</b>
	 <b><u>Proceeds from Capital Contributions</u></b>			
432	Proceeds from Capital Contributions			
	Federal Grants	14,437,500	2,000,000	2,000,000
	State Grants	5,689,442	3,000,000	3,000,000
	Other Grants	0	50,000	50,000
	Customer Contributions	181,277	185,000	175,000
	Subtotal Proceeds from Capital Contributions	20,308,219	5,235,000	5,225,000
	<b><u>Net Extraordinary Items</u></b>			
433	Extraordinary Income			
434	(Extraordinary Deductions)	0		
	<b>Net Extraordinary Items</b>	<b>0</b>	<b>0</b>	<b>0</b>
	 <b>Change in Net Assets</b>	 <b>18,116,440</b>	 <b>\$ 2,917,218</b>	 <b>\$ 3,223,006</b>

**MOUNTAIN WATER DISTRICT/UMG  
CONTRACT NEGOTIATIONS**

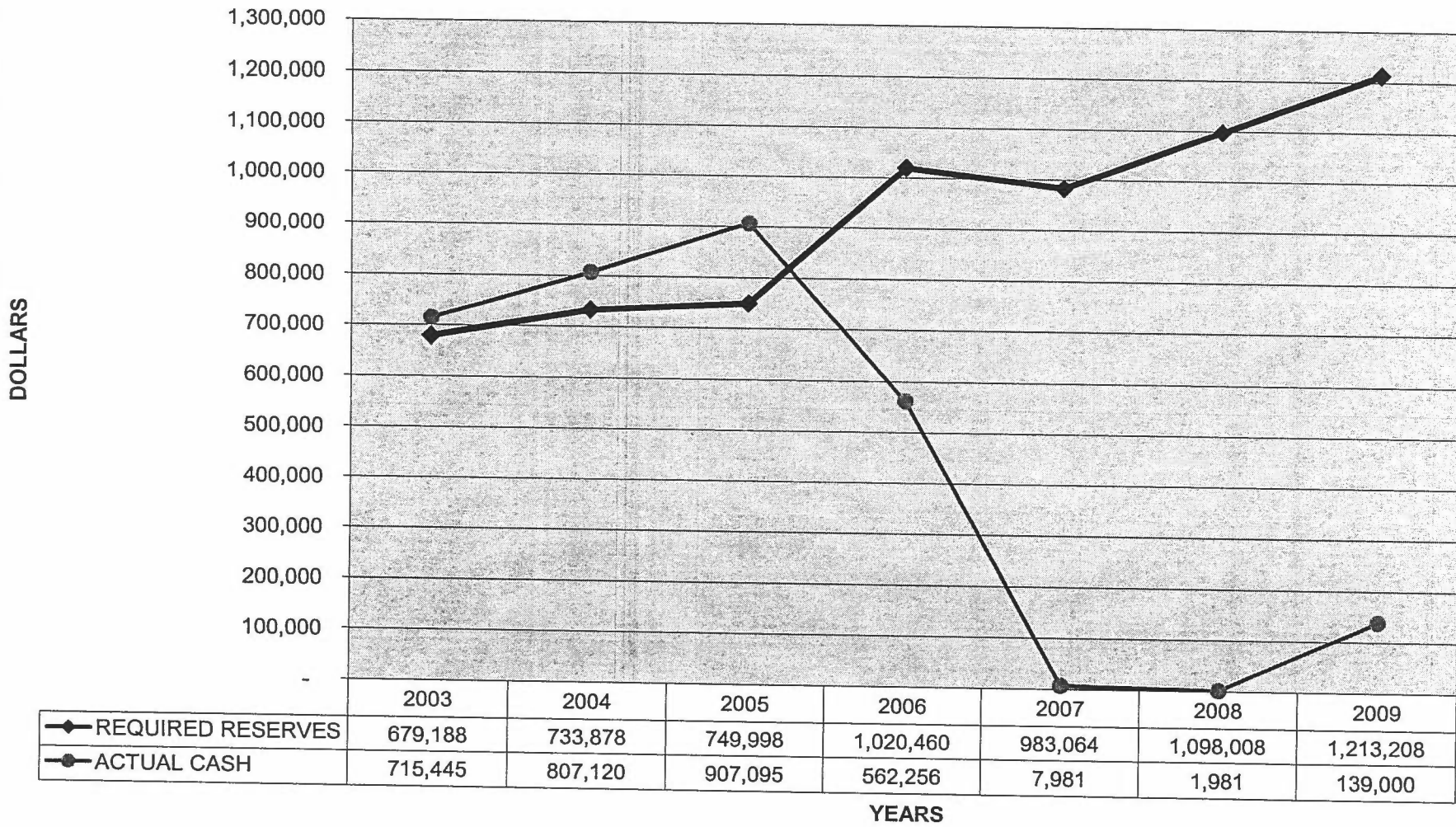
<b>Date</b>	<b>Transaction</b>	<b>Annualized Savings</b>	<b>Cost/Value Life of Contract</b>
7/3/05	UMG/MWD Contract Fee		\$ 6,819,000
8/2008	UMG/MWD Annualized Fee		\$ 7,571,376
9/30/08	<b>MWD FIRST OFFER TO AMEND</b> 1.) One time \$450,000 refund 2.) Reduce monthly fee effective 7/1/08 by \$76,250 per month	\$ 915,000	\$ 2,280,000
10/23/08	<b>UMG COUNTER OFFER</b> 1.) \$500,000 loan plus interest (5 years) 2.) Reduce monthly fee \$25,000 (\$300,000 annual savings - \$450,000 life of contract) 3.) Three (3) year contract extension 4.) Drop fee for new customers (\$188,000 savings) 5.) Adjust fee schedule to CPI (0 vs. 2.5%) (-\$189,000)	\$ 299,000	\$ 949,000
10/27/08	<b>MWD COUNTER OFFER</b> 1.) \$450,000 Refund 2.) Reduce monthly fee \$70,000	\$ 840,000	\$ 2,133,450
10/29/08	MWD Termination Notice to UMG		



Date	Transaction	Annualized Savings	Cost/Value Life of Contract
3/30/09	<b>UMG COUNTER OFFER</b> 1.) \$500,000 forgivable loan 2.) Reduce R&M (\$30,940 savings) 3.) Reduce monthly fee \$36,000 (\$432,000 savings) 4.) Fee adjustment to CPI (0 vs 2.5%) (-\$189,000) 5.) Drop new customer fee (\$188,000 savings) 6.) Mountain Water pays power bill increase (-\$70,000) 7.) \$1,750,000 grants	\$ 391,940	
	with loan if contract is extended		\$ 893,940
	with loan if contract ends 2010		\$ 499,707
	with loan if contract is extended, plus grants		\$ 2,643,940
4/3/09	<b>MWD COUNTER OFFER</b> 1.) All of the above except a) \$46,000 monthly adjustment (\$552,000 savings) b) UMG pays all power	\$ 581,940	
	with loan if contract is extended		\$ 1,081,940
	with loan if contract ends 2010		\$ 687,707
	with loan if contract is extended, plus grants		\$ 2,831,940

Date	Transaction	Annualized Savings	Cost/Value Life of Contract
4/29/09	<b>AMENDED AGREEMENT</b> 1.) \$500,000 forgivable loan 2.) Reduce R&M \$30,940 (2008) 3.) Reduce monthly fee \$46,000 (\$552,000) 4.) Delete additional monthly fee of \$23.50 for new water customers and \$19.00 for new sewer customers. * Estimate	  \$ 581,940 \$ 188,000* <hr/> <b>\$ 769,940</b>	

### REQUIRED RESERVES VS. ACTUAL CASH



◆ REQUIRED RESERVES    ● ACTUAL CASH

# Mountain Water District

## Projections for Contract Negotiations

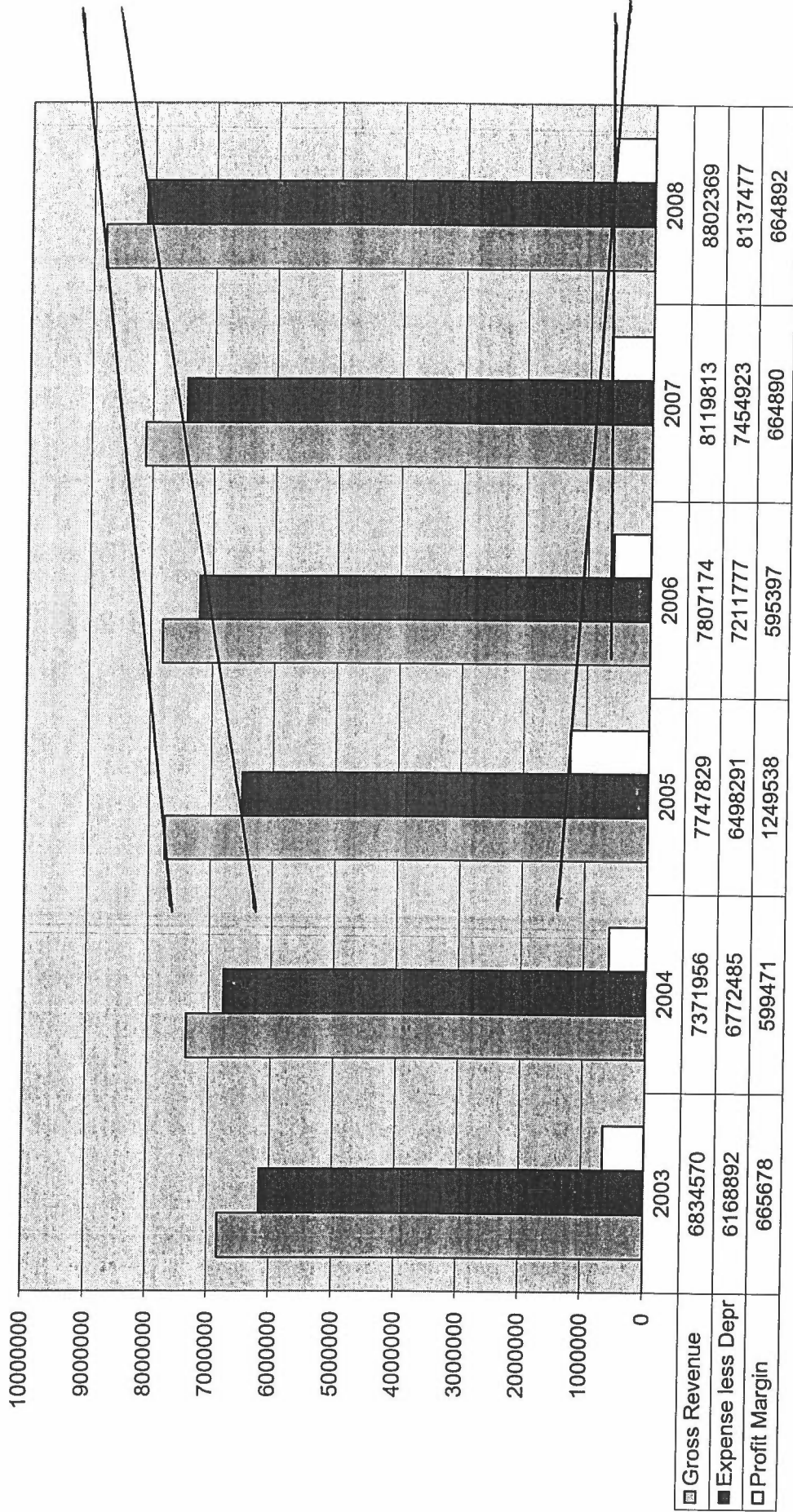
	2010	2011	2013	2014	2015
Projected Revenue	\$ 9,229,628	\$ 9,414,221	\$ 9,602,505	\$ 9,794,555	\$ 9,990,446
<b>Cash Flow Projections</b>					
Commisioners Expense	30,000	30,000	30,000	30,000	30,000
Accounting	55,000	55,000	55,000	55,000	55,000
Legal	75,000	75,000	75,000	75,000	75,000
Bad Debt Expense	70,000	70,000	70,000	70,000	70,000
Miscellaneous	40,000	40,000	40,000	40,000	40,000
Consolidated Note	100,716	100,716	100,716	48,410	-
MWD Superintendent	78,000	78,000	78,000	78,000	78,000
RD and KIA Loans	1,182,686	1,182,686	1,182,686	1,182,686	1,182,686
Reserve Requirements	333,940	333,940	333,940	333,940	333,940
<b>Total Outflows</b>	<b>1,965,342</b>	<b>1,965,342</b>	<b>1,965,342</b>	<b>1,913,036</b>	<b>1,864,626</b>
<b>Net Available to UMG/R&amp;M Budget</b>	<b>7,264,286</b>	<b>7,448,879</b>	<b>7,637,163</b>	<b>7,881,519</b>	<b>8,125,820</b>
<b>Monthly Rate to UMG</b>	605,357	620,740	636,430	656,793	677,152
<b>Current Monthly Rate</b>	591,922	605,357	620,740	636,430	656,793
<b>Monthly Increase</b>	13,435	15,383	15,690	20,363	20,358
<b>%-age</b>	2.22%	2.48%	2.47%	3.10%	3.01%

### Assumptions

2 % Growth Annually

Fully funding reserves over the 5 year Contract

**REVENUE VS EXPENSE LESS DEPR VS NET PROFIT**

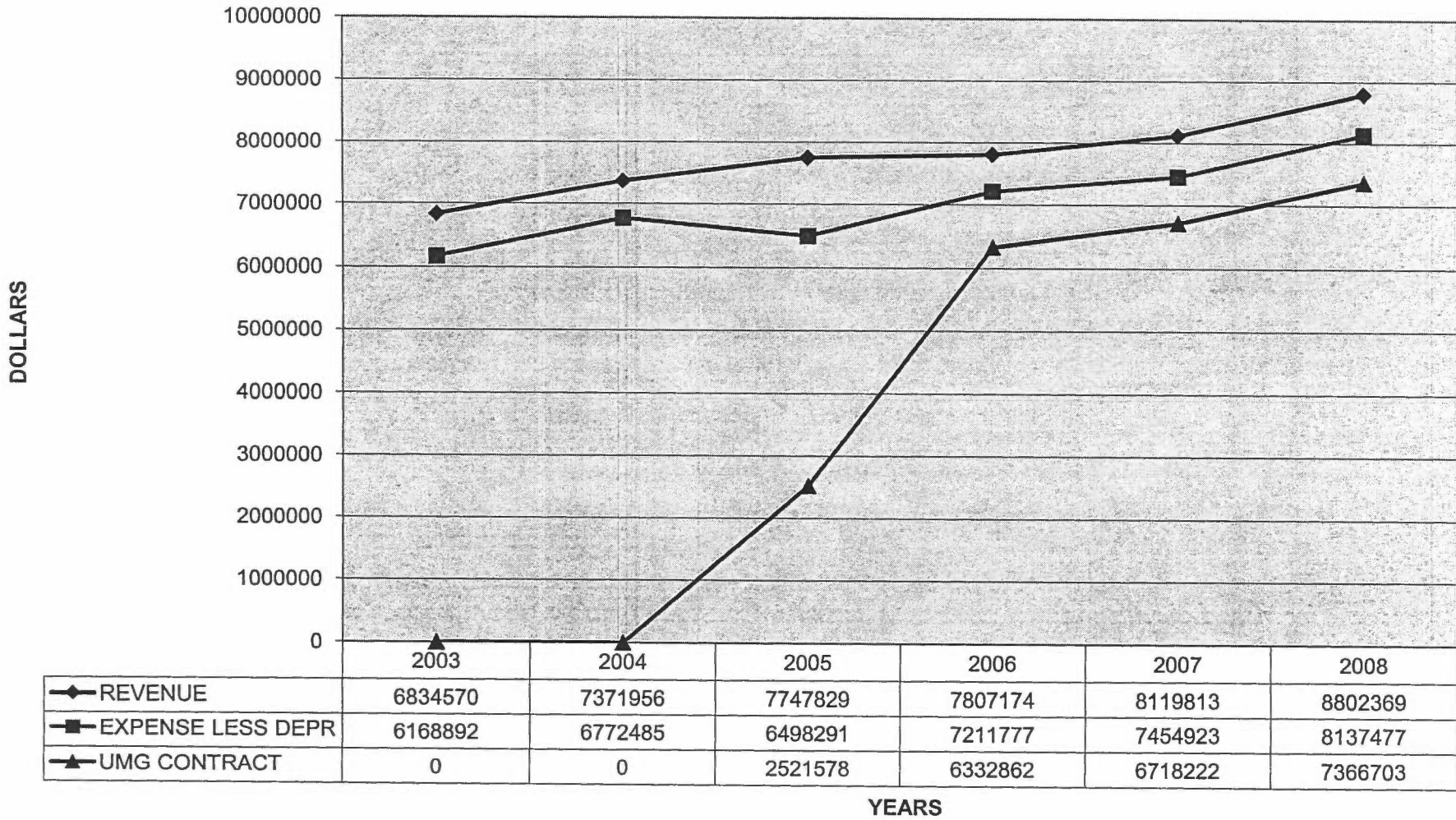


DOLLARS

YEARS

Gross Revenue   
  Expense less Depr   
  Profit Margin

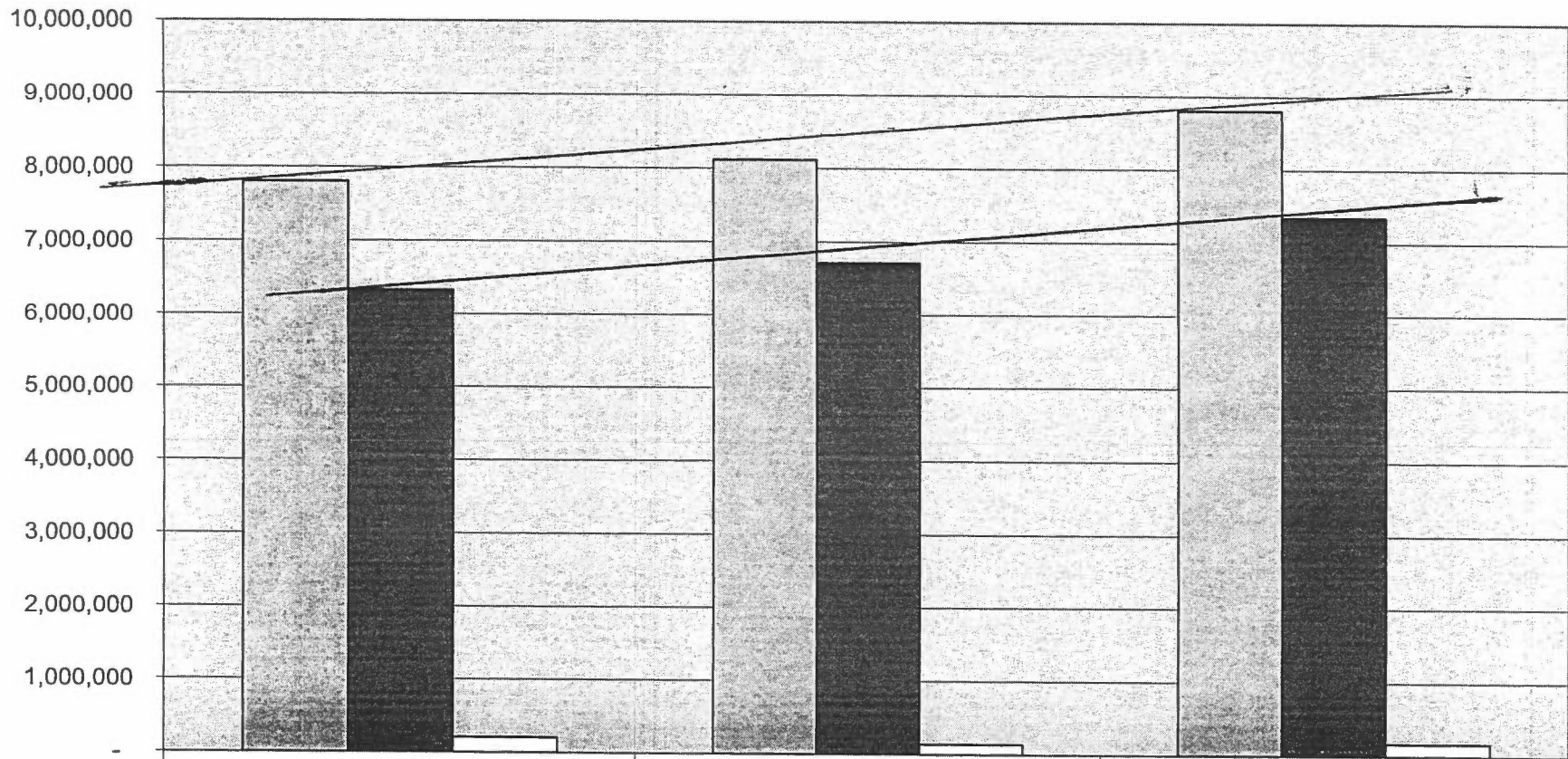
### REVENUE VS EXPENSE LESS DEPR VS UMG CONTRACT



◆ REVENUE    ■ EXPENSE LESS DEPR    ▲ UMG CONTRACT

*1/2 yr  
UMC*

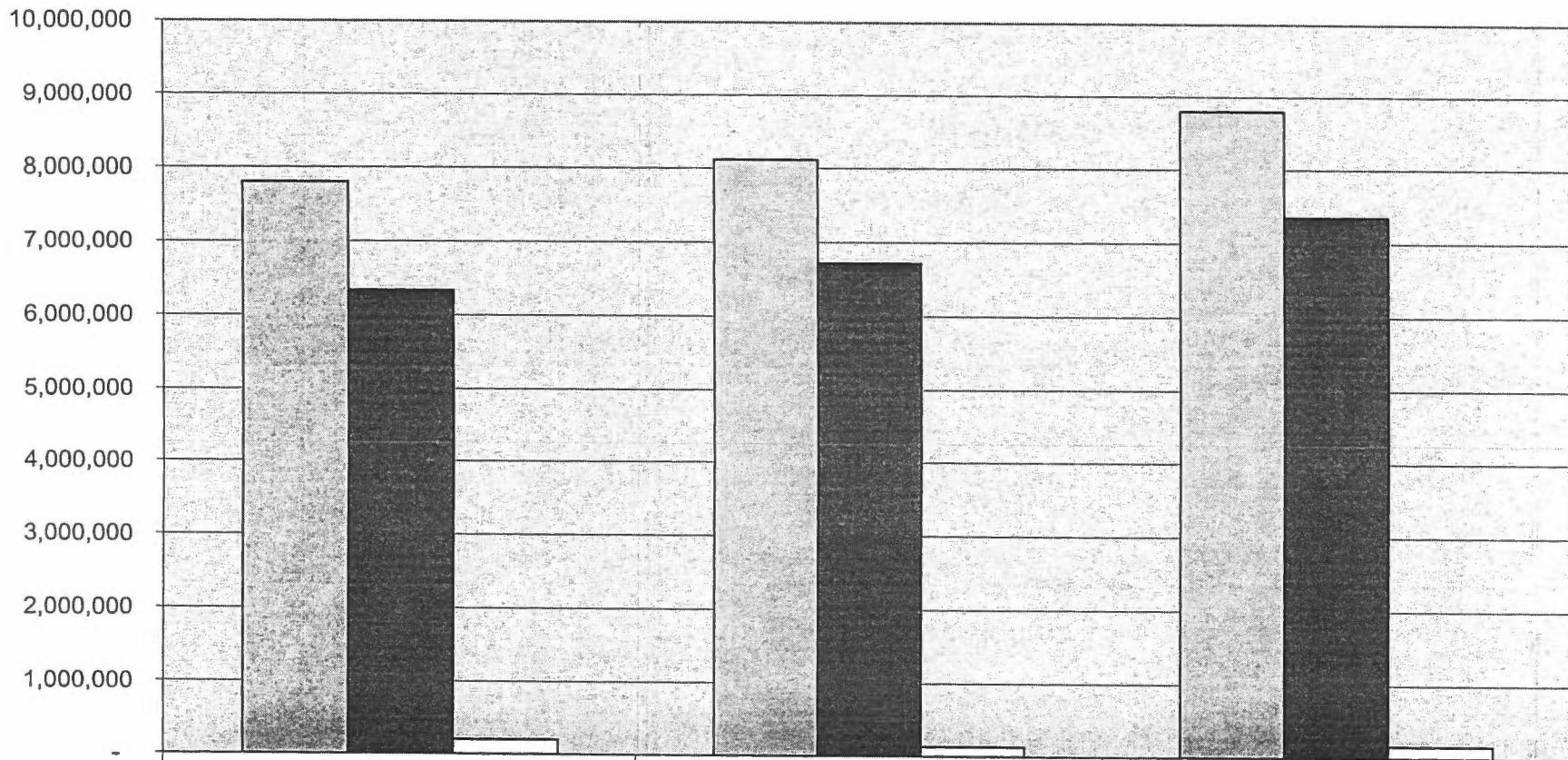
### REVENUE vs UMG vs OTHER EXPENSE



	2006	2007	2008
Revenue	7,807,174	8,119,813	8,802,369
UMG Contract	6,332,862	6,718,222	7,366,703
Other Expenses	208,002	139,549	170,660

Revenue
  UMG Contract
  Other Expenses

### REVENUE vs UMG vs OTHER EXPENSE

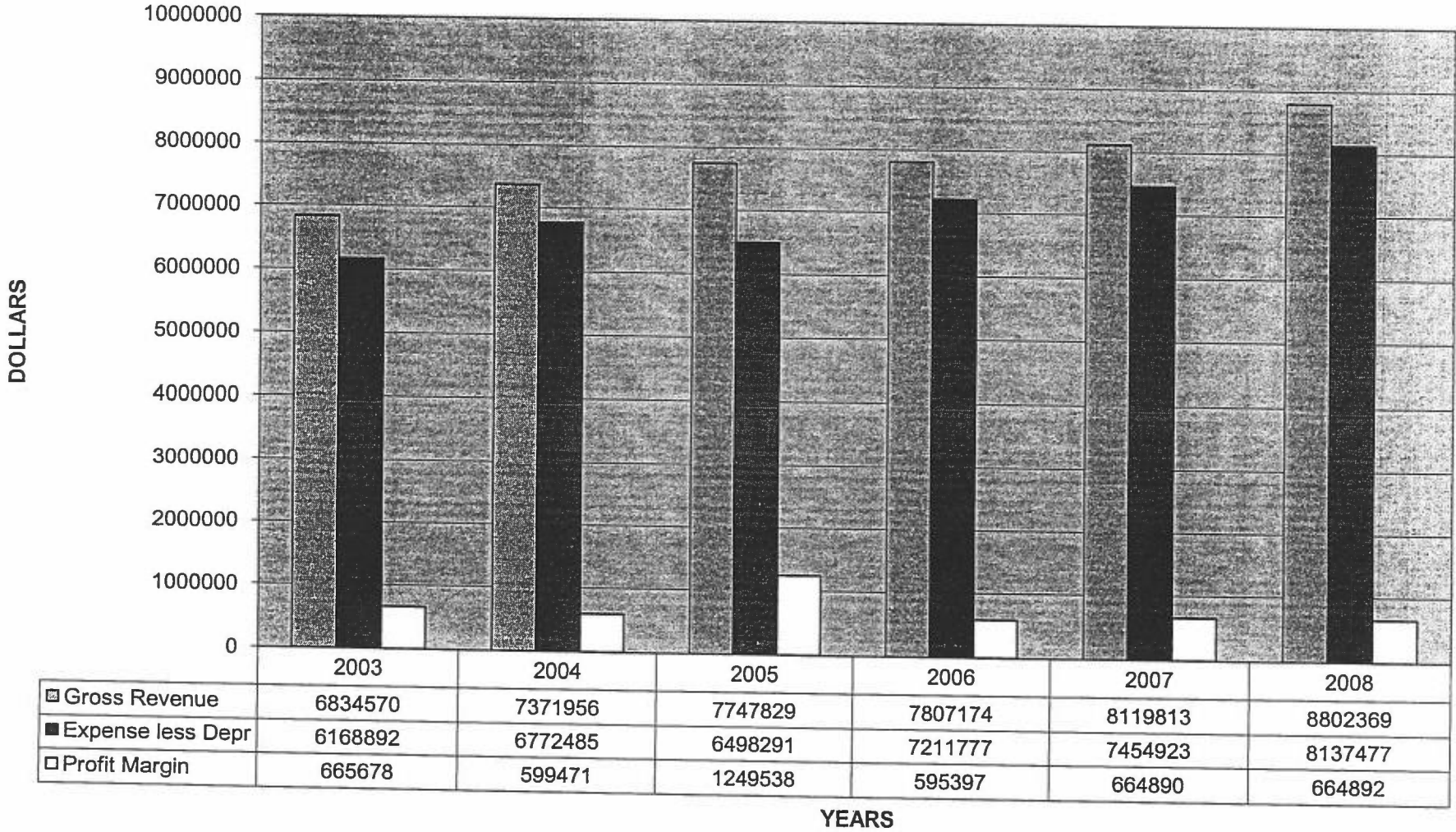


	2006	2007	2008
□ Revenue	7,807,174	8,119,813	8,802,369
■ UMG Contract	6,332,862	6,718,222	7,366,703
□ Other Expenses	208,002	139,549	170,660

□ Revenue   ■ UMG Contract   □ Other Expenses

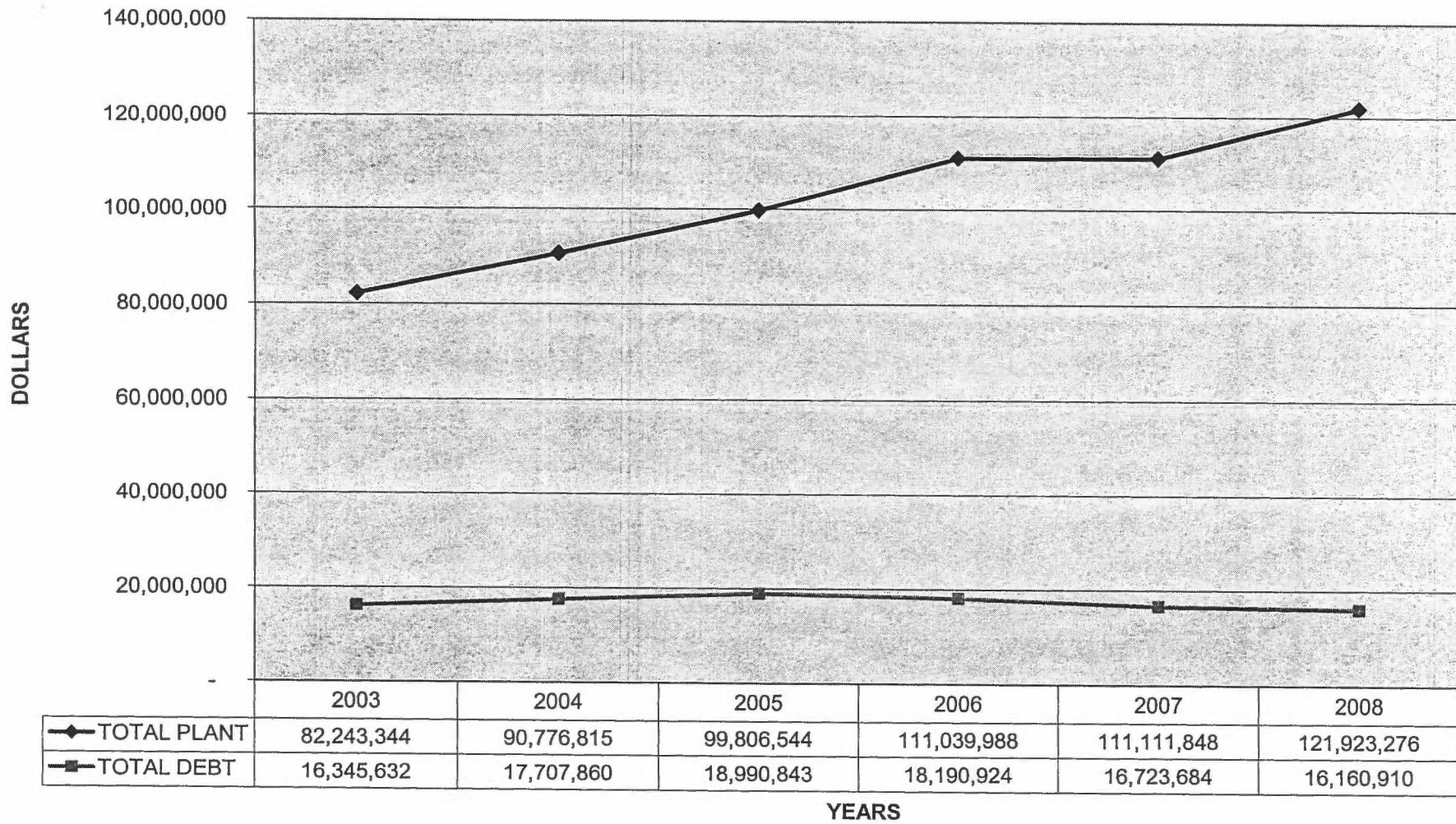


### REVENUE VS EXPENSE LESS DEPR VS NET PROFIT



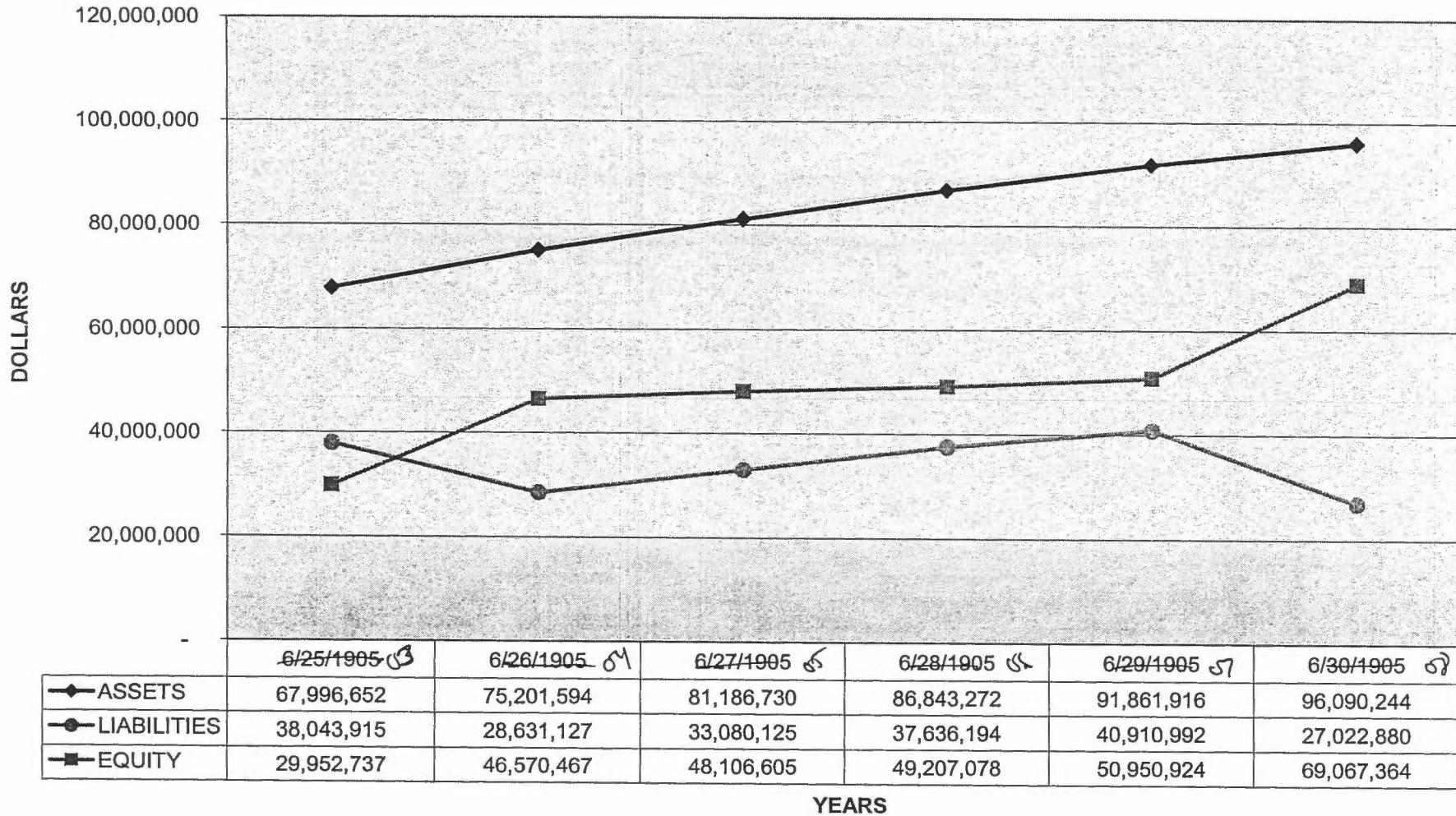
Gross Revenue  
  Expense less Depr  
  Profit Margin

### TOTAL PLANT VS TOTAL DEBT



◆ TOTAL PLANT    ■ TOTAL DEBT

### ASSETS, LIABILITIES AND EQUITY



\*  
LW  
money  
for the  
cup

◆ ASSETS    ● LIABILITIES    ■ EQUITY

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

January 8, 2010

Mr. Greg May  
Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501

RE: Mountain Water District / UMG Contract

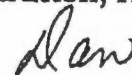
Dear Greg:

As you know, the current contract between UMG and Mountain Water District expires on June 30, 2010, and the negotiations for extension of the contract need to be completed no later than April 1, 2010. In light of the upcoming examination of Mountain Water District's operations by Crit Luallen, Auditor for the Commonwealth of Kentucky, I plan to advise the Board that they should request a six month extension of the current contract, and all deadlines therein, so that it would not appear that we are trying to complete a second contract prior to completion of the auditor's examination. Given the publicity that has been received over various issues facing the District, I think it would be prudent to extend the contract for six months, pending completion of the audit.

I have enclosed for your review and consideration, a draft agreement establishing this extension. If you have any additions or corrections, please advise. I would like to be able to present a document to the Board at the January meeting. I would also like to be able to represent to the Commissioners at that time, that you have no objections to the extension, or if you do, what those might be. Barring any objections, and if the Board approves it, I will forward a copy of the signed document to your office for signature, and then you can return a copy of the completed document to me.

If you have any questions concerning the same, please feel free to call.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Enclosure

cc: Rhonda James  
Grondall Potter  
Mike Spears

**AMENDMENT TO AGREEMENT FOR OPERATIONS,  
MAINTENANCE AND MANAGEMENT SERVICES**

THIS AGREEMENT entered into this \_\_\_\_ day of January, 2010, by and between Mountain Water District, Post Office Box 3157, Pikeville, Kentucky 41502, hereinafter ("DISTRICT"), and Utility Management Group, LLC, Post Office Box 663, Corbin, Kentucky 40702, hereinafter ("UMG").

WHEREAS, the parties hereto entered into an agreement for UMG to provide operations, maintenance and management services to the DISTRICT on the 3<sup>rd</sup> day of July, 2005, hereinafter ("CONTRACT"); and

WHEREAS, the parties amended the above referenced CONTRACT on the 29<sup>th</sup> day of April, 2009; and

WHEREAS, the term of the CONTRACT is through June 30, 2010; and

WHEREAS, the District is being subjected to an examination by the Auditor's office of the Commonwealth of Kentucky in the first quarter of 2010; and

WHEREAS, the parties agree that it would be in the interest of both parties to extend the CONTRACT, and all deadlines therein, for six (6) months pending completion of the above referenced examination, prior to renegotiating the same.

**NOW THEREFORE WITNESSETH:**

That for and in consideration of the mutual covenants and promises contained herein, the DISTRICT and UMG agree as follows:

- 1) The parties CONTRACT dated July 3, 2005, as amended on April 29, 2009, shall be extended from June 30, 2010, to December 31, 2010.

2) All other provisions of the CONTRACT as amended shall remain the same.

3) The provisions of this amendment shall prevail over any other provision in the CONTRACT as amended, which are inconsistent with this amendment.

IN WITNESS WHEREOF, the parties hereto have agreed the date and year first above written.

**MOUNTAIN WATER DISTRICT**

**UTILITIES MANAGEMENT GROUP, LLC**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**IT'S:** \_\_\_\_\_

**IT'S:** \_\_\_\_\_

# Memorandum

**To** : MWD Board  
**From** : Dan *DL*  
**Date** : January 17, 2010  
**Regarding** : UMG Contract

\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*  
\*\*\*\* \*

Please find attached the final revision to the MWD/UMG Contract for your review and consideration for the Special Board Meeting scheduled for Thursday, January 20, 2011, at 2:00 pm at the District's office. Also enclosed is a clean copy of the final documents.

The additional sections that have been added to this agreement are the new 2.26 and 6.10, concerning capital purchases and who is responsible for what. Please read this in detail as this is basically putting into words what has been practiced over the prior five years.

Also attached is a close out agreement to the first contract. UMG made a claim for utility rate expenses, which we questioned, and we have agreed to settle the same, along with a claim for reimbursement of expenses from the 2007 flood through offsetting some funds the respective parties owed each other through the R&M Budget, and the payment of \$57,062.65 cash to UMG.

The second element of the settlement agreement acknowledges the funds that are owed UMG from the 2010 flooding, and that we will make payments on those starting June 15<sup>th</sup>, in the event FEMA has not paid the same prior to that time.

Lastly, there are certain assets that have been purchased as capital items under the agreement that need to be re-titled. Exhibit "A" is the current title for these assets and Exhibit "B" is how they will be re-titled. Everything comes back to the District, except for Grondall and David's trucks.

Approval of this agreement will basically wipe out any other claims that either party may have against the other as a result of the first contract. The final contract will need to be approved subject to UMG's signature on this document.

At the special meeting, subject to your instructions, I will go over this new contract in detail, outlining all of the changes and additions from the original contract. If everyone is satisfied at that time, it would then be appropriate for the Board to approve the agreement, if it so wishes.

If you have any questions prior to the meeting, please advise.

cc: Mike Spears

**AMENDMENT TO AGREEMENT FOR OPERATIONS,  
MAINTENANCE AND MANAGEMENT SERVICES**

THIS AGREEMENT entered into this \_\_\_\_ day of January, 2010, by and between Mountain Water District, Post Office Box 3157, Pikeville, Kentucky 41502, hereinafter ("DISTRICT"), and Utility Management Group, LLC, Post Office Box 663, Corbin, Kentucky 40702, hereinafter ("UMG").

WHEREAS, the parties hereto entered into an agreement for UMG to provide operations, maintenance and management services to the DISTRICT on the 3<sup>rd</sup> day of July, 2005, hereinafter ("CONTRACT"); and

WHEREAS, the parties amended the above referenced CONTRACT on the 29<sup>th</sup> day of April, 2009; and

WHEREAS, the term of the CONTRACT is through June 30, 2010; and

WHEREAS, the District is being subjected to an examination by the Auditor's office of the Commonwealth of Kentucky in the first quarter of 2010; and

WHEREAS, the parties agree that it would be in the interest of both parties to extend the CONTRACT, and all deadlines therein, for six (6) months pending completion of the above referenced examination, prior to renegotiating the same.

**NOW THEREFORE WITNESSETH:**

That for and in consideration of the mutual covenants and promises contained herein, the DISTRICT and UMG agree as follows:

- 1) The parties CONTRACT dated July 3, 2005, as amended on April 29, 2009, shall be extended from June 30, 2010, to December 31, 2010.



2) All other provisions of the CONTRACT as amended shall remain the same.

3) The provisions of this amendment shall prevail over any other provision in the CONTRACT as amended, which are inconsistent with this amendment.

IN WITNESS WHEREOF, the parties hereto have agreed the date and year first above written.

**MOUNTAIN WATER DISTRICT**

**UTILITIES MANAGEMENT GROUP, LLC**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**IT'S:** \_\_\_\_\_

**IT'S:** \_\_\_\_\_



RECEIVED  
JAN 27 2010  
BY: dem

January 26, 2010

Mr. Daniel P. Stratton  
Stratton, Hogg & Maddox, PSC  
P.O. Box 1530  
Pikeville, Kentucky 41502

RE: Mountain Water District / KRS Chapter 74.050

Dan:

Grondall indicated to me earlier today that you are requesting some form of certification that Mountain Water District is in compliance with KRS 74.050 regarding the obligation of the District's Treasurer to "maintain a proper record of the receipts and disbursements of the water district in accordance with the Uniform System of Accounts for utilities". My understanding is that this requirement addresses the internal accounting policies and procedures of the water district, not those of UMG, as the District's contract management operator.

As you are aware, Mountain Water District makes a semi-monthly payment to UMG for services rendered, pursuant to our contract. At the last commission meeting, in December 2009, Mike Spears addressed the commissioners and spoke with me afterwards in the context of UMG specifying on its semi-monthly invoices the amount of charges(s) associated with water system operations and likewise how much relates to sewer operations. We agreed that, beginning in January 2010, UMG would detail on its invoices to the District the amounts associated specifically with water and sewer operations.

As to how Mountain Water District accounts for its payments to UMG, in accordance with the Uniform System of Accounts and subsequently reports that information to state agencies, I would assume that Mike Spears, the District's accounting consultant, would make that determination. Likewise, any certification regarding the District's accounting practices being in compliance with KRS 74.050 would need to be made by Mr. Spears.

158 Town Mountain Road, Suite 101 - Pikeville, Kentucky 41501  
Phone: 606-437-4754 - Fax: 606-437-5083

Please don't hesitate to give me a call if you want to discuss this concern in more detail. UMG remains committed to assisting Mountain Water District with contract operations and administration in every way possible. At the same time, we recognize and respect the fact that the District is a separate public entity and that UMG is not authorized to speak on its behalf in that context.

Sincerely,



Bob Meyer, Controller  
Utility Management Group, LLC

Cc: Grondall Potter, Project Manager  
Rhonda James, Chairperson, MWD  
Greg May  
Mike Spears

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

January 27, 2010

Mr. Bob Meyers  
c/o Utility Management Group  
via email: [bmeyer@umglc.net](mailto:bmeyer@umglc.net)

RE: Mountain Water District/Utility Management Group  
Contract Extension

Dear Bob:

This letter is to acknowledge your verbal proposal made to me today following the MWD Board meeting, wherein you agreed to extend the contract provided that if there is a rate increase from Kentucky Power, the provisions of section 9.2 of the contract would apply, which would provide UMG a fee adjustment based on the increased cost.

At that time, I explained that I could not agree that section 9.2 was applicable to this rate increase, but that I would discuss it with Rhonda, and see how she wanted to proceed. After discussing the matter with her, please be advised that we cannot agree to a contract extension subject to that understanding. If we are going to extend the contract for six months, it needs to be an unconditional extension based on the same terms and conditions that we currently have.

By way of explanation, if you will note in this month's financial report, on page 4, in the bottom right hand corner of the cash flow statement, you will see that in 2009, the District spent \$45,000 more than it received resulting in a negative cash flow. The Board, in good conscience, cannot agree to pay something it does not have the income to cover. We understand and respect your need to protect UMG's bottom line, and if we had resources to accommodate that request, we would be happy to consider the same. Unfortunately, at this time, and until the end of the year, there is no income available to cover a power rate increase, should it occur. To allocate the little income we have to an increase in fees to UMG would make it impossible for the Board to fund its loan reserves over a five year period, which we have pledged to do to cure the current default.

**STRATTON, HOGG & MADDOX, P.S.C.**

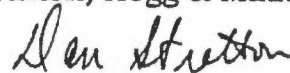
January 27, 2010

Page 2

We are prepared to apply for a rate increase later this year. I am prepared to recommend to the Board that a percentage of that rate increase be allocated to an increase in the contract fee. However, not knowing how much of a rate increase, if any, will be approved by the PSC, the Board cannot commit to an amount at this time.

Rhonda, Mike and I are prepared to meet and discuss this matter at any reasonable time you request. We believe you understand the importance of extending the contract until the end of the year and hopefully, you now understand why we cannot commit to any increase in our costs. We simply do not have the money.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

August 27, 2010

Hon. William Hickman, III  
Jones & Hickman Law Office  
Post Office Drawer 3850  
Pikeville, Kentucky 41502  
Via email: [williamhickma1@bellsouth.net](mailto:williamhickma1@bellsouth.net)

Re: Amendment to Agreement for Operations  
Mountain Water District / UMG Contract


Dear Bill:

As you are aware, our clients agreed to extend the contract that ended on June 30, 2010, to December 31, 2010, so that both parties could consider the state auditor's management audit of the District. In that the audit process is clearing running behind the initial time table provided to the District, and the fact that we are now one hundred twenty (120) days from the above mentioned deadline, the Mountain Water Board has authorized Mike Spears and me to begin preliminary negotiations with you and appropriate representatives from UMG.

To that end, we would request some potential meeting times during the week of September 13<sup>th</sup> and 20<sup>th</sup>, so that we may begin the negotiation process.

Please advise.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Rhonda James  
Mike Spears

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

August 31, 2010

Hon. William Hickman, III  
Jones & Hickman Law Office  
Post Office Drawer 3850  
Pikeville, Kentucky 41502

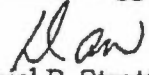
Re: Amendment to Agreement for Operations  
Mountain Water District / UMG Contract

Dear Bill:

Please find enclosed an Amendment to the underlying contract that was approved at the last Mountain Water District Board meeting. Greg and Bob are familiar with the issue as Bob presented the issue to the Board for consideration at the July meeting. Bob has signed off on this format.

Please have UMG sign, and return a signed copy to me. If you have any questions concerning the same, please advise.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Rhonda James  
Mike Spears

**AMENDMENT TO AGREEMENT FOR OPERATIONS,  
MAINTENANCE AND MANAGEMENT SERVICES**

THIS AGREEMENT entered into this 26<sup>th</sup> day of August, 2010, by and between **UTILITIES MANAGEMENT GROUP, LLC**, of Post Office Box 663, Corbin, Kentucky 40702, hereinafter referred to as ("UMG"), and **MOUNTAIN WATER DISTRICT** of Post Office Box 3157, Pikeville, Kentucky 41502, hereinafter referred to as ("MWD").

**WHEREAS**, the parties hereto entered into a management contract dated of July 3, 2005; and

**WHEREAS**, the above referenced contract terminated according to its terms on June 30, 2010; and

**WHEREAS**, the parties agreed to extend the contract under its amended terms and conditions until December 31, 2010; and

**WHEREAS**, an issue has arisen concerning UMG'S ability to exempt sales taxes on purchases made on behalf of the MWD; and

**WHEREAS**, the parties hereto wish to resolve the same until a permanent solution can be had when the full contract is renegotiated.

**NOW THEREFORE WITNESSETH:**

That for and in consideration of the mutual covenants and promises contained herein, the parties hereto agree to amend their contract dated July 3, 2005, as follows:

1) UMG will submit all requests for vendor payments that they would have otherwise made under the management contract, but for the sales tax issue, to the MWD Board for payment each month.



2) UMG's statement for the 30<sup>th</sup> of the month following the Board meeting will identify all disbursements made by MWD in the prior month for vendor payments which would otherwise have been made directly by UMG, and will be reduced by the amount of such payments.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement the date and year first above written.

**UTILITIES MANAGEMENT GROUP, LLC**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**MOUNTAIN WATER DISTRICT**

BY: Rhonda James

ITS: Chairperson

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

September 16, 2010

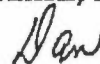
Hon. William Hickman, III  
Jones & Hickman Law Office  
Post Office Drawer 3850  
Pikeville, Kentucky 41502

Re: **Mountain Water District / UMG Contract**

Dear Bill:

Please find attached a copy of the letter I sent you on August 27<sup>th</sup> on starting the UMG contract negotiations for the Mountain Water District contract. We have a Board meeting on September 28<sup>th</sup>, and I would like to report back to them that arrangements have been made to start that process. If you could please advise of the same, it would be greatly appreciated.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Rhonda James  
Mike Spears

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

December 2, 2010

Mr. Bob Meyers  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmever@umgllc.net](mailto:bmever@umgllc.net)

**RE: MWD/UMG 2011 Contract**

Dear Bob:

Please find attached our proposed changes to the 2011 MWD/UMG Contract. Most of the deletions center around those items which are no longer applicable in that you have already had the contract for five years, and of course, the changes in the structure of the consideration.

After you have had an opportunity to review everything, if you have any additions or corrections you wish to make, please give me a call.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)

## **Agreement For Operations, Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_ day of December, 2010, by and between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box 3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water, wastewater and related treatment, collection and distribution facilities described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the management operation, maintenance and management of these facilities and UMG desires to perform such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, DISTRICT and UMG agree as follows:

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by DISTRICT shall remain the exclusive property of DISTRICT unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by either party hereto UMG without the prior written consent of the other party: District.

- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost.

1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

~~1.11 Prior to the commencement of work under this Agreement, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Services and compensation therefore, execute written change orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary. The parties however agree and acknowledge that the ultimate authority for approval of changes in the scope of services and compensation rest in the Board of Commissioners for Mountain Water District and that they may limit their representative's authority as they deem appropriate.~~

## 2.1 UMGs SERVICES - GENERAL

~~2.1 UMG will offer employment to all personnel of DISTRICT assigned full time to the Project as of the Commencement Date if they take and successfully pass a drug screen test to be administered by UMG and a criminal background test. UMG will provide said employees with a wage and benefits package comparable to the wage and benefits package provided by DISTRICT. The Current wage and benefits package provided by the DISTRICT to such employees is set forth on Appendix G. Specific personnel issues are addressed in Appendix G. UMG will continue to provide employment to all personnel who accept employment with UMG so long as their positions are necessary to UMGs performance under this Agreement and they continue to perform their duties in a satisfactory manner.~~

~~2.21 Within one hundred eighty (180) days after the commencement date, UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary license and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.~~

~~2.32 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.~~

- 2.43 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same.
- 2.54 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to DISTRICT, a physical inventory of DISTRICT'S vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract.
- 2.65 Within forty five (45) days after the Commencement Date, UMG will ~~promptly~~ provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement.
- 2.76 UMG shall be responsible for maintaining all manufacturers warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees.
- 2.87 UMG shall provide the DISTRICT with documentation that preventive maintenance is being performed on DISTRICTS owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.98 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.109 Visits may be made at a reasonable time by DISTRICT'S employees, board members or so designated by DISTRICTS representative. Keys for the Project shall be provided to DISTRICT by UMG for

such visits. All visitors to the Project shall comply with UMGs operating and safety procedures.

2. ~~140~~UMG shall provide a 24 hour/day 7 days per week customer service phone number.

2.1~~21~~ UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMGs operations hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

~~2.13 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval if the complete modification cost shall be in excess of Twenty Thousand Dollars (\$20,000.00). Any and all modifications of the process facilities or equipment regardless of cost shall be reported to the Board in writing no less than thirty (30) days after the same has been undertaken detailing the changes made and related costs.~~

2.1~~42~~ In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.

2.1~~53~~ As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.

2.1~~64~~ UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.



- 2.175 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. ~~To the extent any change in any designated disposal site necessitates additional costs to UMG. UMG shall be compensated for such additional costs.~~ All Waste and/or byproduct treated and/or generated during UMGs performance of services is and shall remain the sole and exclusive property of DISTRICT will not be considered property of UMG.
- 2.186 UMG shall provide all the administrative and financial functions as ~~currently provided by the DISTRICTS staff, and any and all other administrative and financial functions,~~ necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. UMG will provide a monthly report showing the percentage of revenue and cost associated between water and waste water services for the prior month and year to date.
- 2.197 UMG shall consult with the DISTRICTS Commissioners prior to any replacement of the Project Manager, Operations Manager and Controller.
- 2.2018 UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.219 UMG shall provide for monthly meter reading and billing. All amounts billed on behalf of DISTRICT shall be the property of DISTRICT and shall be promptly remitted to DISTRICT after receipt by UMG. Customer Services offices shall be maintained at locations approved by the DISTRICT.
- 2.220 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.231 UMG shall provide such Capital Expenditure as authorized by the DISTRICT and will invoice the DISTRICT for such Capital Expenditures monthly or upon completion.
- 2.242 UMG will provide additional funding to DISTRICT upon negotiating mutually acceptable terms and conditions of such funding.

2.253 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.

2.264 To protect the District and allow for continuity of service UMG will post a letter of credit or other surety in the amount of \$21,000,000 to ensure faithful performance of its contract obligations. Such letter of credit or surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.

3. **UMG'S SCOPE OF SERVICES - WASTEWATER**

3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.

3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.

3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT. ~~along with a detailed invoice for any DISTRICT approved repair or replacement that exceeds Twenty Thousand Dollars (\$20,000.00).~~

3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation for the basis upon which its been determined to be abnormal.

4. **UMG'S SCOPE OF SERVICES - WATER**

4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.

4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.

4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.

- 4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation for the basis upon which it's been determined to be abnormal.

5. **UMGs SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.
- 5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.
- 5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICTS DUTIES**

- 6.1 The DISTRICT shall fund all necessary Capital Expenditures. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.
- 6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement.

UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.

- 6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG.

- 6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.
- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- ~~6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.~~
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- ~~6.8 DISTRICT warrants that during the interim period between the initial Project inspection by UMG and the commencement date specified in Section 11.1, the plant, facilities and equipment have been operated only in the normal course of business, all scheduled and proper maintenance has been performed and there are no issues known to DISTRICT regarding the condition of the Project and Facility composing the Project and/or any equipment used by the Project.~~

6.98 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.

7. **COMPENSATION**

7.1 ~~UMGs compensation under this Agreement shall consist of an Annual Fee and certain Connection Fees.~~

~~The Annual Fee for the first Agreement Year (as defined in Section 11.1 hereof), which first Agreement Year shall be for the period July 1, 2005 through June 30, 2006, shall be \$6,819,000, as adjusted below for new water and sewer customers. The Maintenance and Repair Limit included in the Annual Fee is \$456,140, to be used as specified and set out herein during the period. The Annual Fee for the remaining Agreement Years of the initial term as described in Section 11.1 shall be increased by the amounts added in clauses (i) and (ii) of the next paragraph and further increased if and to the extent that the percentage increase in the Consumer Price Index as published by the Bureau of Labor Standards (the "CPI") during the immediately preceding Agreement year exceeds 2.5%. In such event, an amount equal to such excess over 2.5%, multiplied by an amount equal to the prior Agreement Year's Annual Fee, including the amounts added in clauses (i) and (ii) of the next paragraph.~~

~~In addition to the Annual Fee, commencing with the one thousand one (1001) new water or four hundred one (401) new sewer customer is connected, UMG will be entitled to an additional continuing monthly fee (which shall be added to and thereafter considered a part of the Annual Fee for all purposes of this~~

~~Agreement and paid on a monthly basis with the payment of the Annual Fee at the end of each month as provided in Section 8.1 hereof) equal to (i) \$23.50 multiplied by the number of new water customers connected during such month, plus (ii) \$19.00 multiplied by the number of new sewer customers connected during such month.~~

~~In addition to the Annual Fee, UMG shall be entitled to the following Connection Fees: (a) for each new water customer connected during any Agreement Year in excess of four hundred fifty (450) new water customers, the DISTRICT shall pay UMG a \$675.00 fee; (b) for each new sewer customer connected during any Agreement Year in excess of ten (10) new sewer customers, the~~

~~DISTRICT shall pay UMG a \$750.00 fee if such additional customer is a gravity sewer customer and a \$2,600.00 fee if such additional customer is a force main sewer customer.~~

7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein.

The Annual Fee for the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2012, shall be \$7,632,000 (\$636,000 monthly), adjusted as hereinafter set out.

7.2 The Annual Fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increased revenues based on the District's two most recent prior year's audits. If the annual revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Examples of both increased revenue and decreased revenue are attached on Exhibit " ". Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 monthly). The maintenance and repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.

7.3 In the event, the annual adjustment provided in Section 7.2 is not sufficient to match the Consumer Price Index ("CPI") for the prior year, upon the request by UMG, the District agrees to apply to the Public Service Commission ("PSC") for a rate increase sufficient to provide for a cost of living adjustment in UMG's fees. Prior to the District's application to the PSC, UMG will provide the District an audited financial statement for UMG which denotes its cost and profit under this contract. The parties agree that a request to the PSC for a rate adjustment shall only be made one time during the term of the contract.

7.4 The Annual Fee (and Maintenance and Repair Limit included therein) shall be negotiated each Agreement Year at least six (6) months prior to the anniversary of this Agreement's effective date. calculated within thirty (30) days of approval of the DISTRICT'S annual audit, but in no event, later than thirty (30) days prior to the next anniversary date, at which time the new fee would be effective. Should the DISTRICT and UMG fail to agree, the Annual Fee (and Maintenance and Repair Limit included therein) will be adjusted by multiplying the existing Annual Fee (and Maintenance and Repair Limit) by the percentage increase in the Consumer Price Index for the preceding twelve months each year.

~~7.27.5~~ If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.

~~7.37.6~~ The services being provided under this Agreement are based on reasonably expected overtime for repair of line breaks, other emergencies or routine services required after hours. Reasonableness shall be defined as an average of overtime expended on these items for the prior three years. Any additional expenses, incurred by UMG including overtime wages as a result of severe weather, a disaster or other unplanned events (in which funds may be recovered through billing a third party including the State or Federal Government such as through the FEMA program or other source) will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2. Any expense that may be recovered from FEMA or other similar source may also be invoiced by UMG to the DISTRICT subject to the condition that payment for the same is subject to reimbursement by FEMA, or other similar source to the DISTRICT.

## 8. PAYMENT OF COMPENSATION

8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 15<sup>th</sup> and the last day of each month during such Agreement Year for service provided in accordance to Articles 7.1 and 7.2 of this Agreement, ~~except for the first Agreement Year (commencing July 1, 2005, and ending June 30, 2006), in which one twenty third (1/23) of the Annual Fee shall be due and payable on the 15<sup>th</sup> and the last day of each month commencing July 31, 2005. The additional continuing water and sewer fees earned by UMG as provided in the third paragraph of Section 7.1 shall be added to the payments described above and paid on a monthly basis with the payment of the Annual Fee at the end of each month during the balance of the Agreement Year and all remaining Agreement Years.~~

8.2 All other compensation to UMG (~~including any Connection Fees~~) is due upon receipt of UMGs invoice and payable within ~~fifteen (15)~~ thirty (30) days, except as provided in Article 7.6.

8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate ~~plus two percent (2.0%)~~ on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement change as a result of DISTRICTS request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and growth of current services.

~~9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change;~~

~~9.1.2 Increases or decreases in rates or other related charges (including taxes) imposed upon UMG by a utility provider (see Section 9.4 below) or taxing authority excluding taxes based on UMGs net income; and/or~~

~~9.1.3 DISTRICTS request of UMG and UMGs consent to provide additional services.~~

~~9.2 For Changes in Scope described in Sections 9.1.1 through and including 9.1.3, the Annual Fee shall be increased (or decreased) by an amount equal to UMGs additional (reduced) Cost associated with the Change in Scope plus ten percent (10%). Modifications of the Annual Fee as a result of conditions described in Section 9.1.3 shall be retroactive to the effective date of the request to provide additional services.~~



10. **INDEMNITY AND LIABILITY INSURANCE**

- 10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.
- 10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.
- 10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.
- 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the ownership of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

11. **TERM, TERMINATION AND DEFAULT**

- 11.1 The initial term of this Agreement shall be five (5) years commencing ~~July 1, 2005~~ January 1, 2011. Each period during the term commencing ~~July 1~~ January 1 and ending the following

~~June 30~~ December 31 shall be referred to as an "Agreement Year." The DISTRICT shall have the right, without cause, to terminate this Agreement at the end of the third Agreement Year upon repayment of the unamortized capital investment made by UMG, if any. Notice of termination shall be given in writing one hundred ~~eighty~~ twenty (~~181~~20) days in advance of the effective date of termination.

- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party except as provided in Section 11.1 only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 ~~In the event that this Agreement is terminated for any reason prior to the expiration date of the initial term, DISTRICT shall pay to UMG a termination fee based on the remaining unamortized balance of start-up costs and capital expenditures made by UMG shall as set forth in Appendix F. In the event this agreement is terminated prior to the District's payoff of UMG'S loan dated \_\_\_\_\_, which is being forgiven over time, the District agrees to pay UMG the unamortized balance of the note as of the date of termination as set out in Exhibit \_\_\_\_\_.~~
- 11.4 Upon notice of termination by DISTRICT, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to six (6) months from the date of notice of termination. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.
- 11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary.

12. **DISPUTES AND FORCE MAJEURE**

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMGs ability to perform at the Project, DISTRICT, with UMGs assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A

### DEFINITIONS

- A. 1 "Adequate Nutrients" means plant influent nitrogen, phosphorus and iron contents proportional to BODs in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BODs.
- A.2 "Annual Fee" means a predetermined, fixed sum for UMGs services. The Annual Fee includes Cost and profit.
- A.3 "Biologically or Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of DISTRICTS NPDES Permit. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.
- A.4 "Capital Expenditures" means any expenditures for (1) the purchase of new equipment or facility items that cost more than ~~Two Thousand Dollars (\$2,000)~~ Three Thousand Five Hundred Dollars (\$3,500); or (2) major repairs which [significantly extend equipment or facility service life and] cost more than ~~Two Thousand Dollars (\$2,000)~~ Three Thousand Five Hundred Dollars (\$3,500) or (3) expenditures that are planned, non-routine and budgeted by DISTRICT.
- A.5 "Cost" means all Direct Cost and ~~indirect cost~~ determined on an accrual basis in accordance with generally accepted accounting principles.
- A.6 "Direct Cost" means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental; legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.
- A.7 "Commencement Date" shall mean ~~July 1, 2005~~ January 1, 2011.
- A.8 "Maintenance" means those routine and/or repetitive activities required or recommended by the equipment or facility manufactured or by UMG to maximize the service life of the equipment, sewer, vehicles and facilities.

- A.9 "Maintenance or Repair Limit" means the total Maintenance and Repair expenditures that UMG has included in the Annual Fee. Such expenditures exclude any labor costs for UMGs staff assigned to the Project. UMGs specialized maintenance personnel, not assigned at the Project, who provide such specialized services such as, but not limited to, vibration, thermographic and electrical ~~analyses~~ analysis, instrumentation maintenance and repair will be charged to the Maintenance and Repair Limit.
- A.10 "Project" means all equipment, vehicles, grounds, rights of way, sewers and facilities described in Appendix B and, where appropriate, the management, operations and maintenance of such.
- A.11 "Repairs" mean those ~~not routine~~ non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.
- A.12 "Unforeseen Circumstances" shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance; (ii) preliminary of final order of any local, province, administrative agency or governmental body of competent jurisdiction (but excluding in the case of performance by the DISTRICT, any order of the DISTRICT); (iii) ~~any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body;~~ (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of UMG; and (iv) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

**APPENDIX B**

**DESCRIPTION OF PROJECT**

UMG agrees to provide the services necessary for the management, operation and maintenance of the following.

- a. All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the DISTRICT's Water Treatment Plant located at:

Harless Creek, Pikeville, Kentucky 41501

- b. All equipment, grounds and facilities now existing within the present property boundaries of pumping stations described as follows:

AS ATTACHED - one hundred and seven (107) Pumping Stations, twenty-three (23) master meters, thirty-one (31) pressure regulators, ninety-six (96) water storage tanks, three hundred fifty (350) fire hydrants and seven hundred eighty-one (781) miles of water distribution line.

- c. All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the DISTRICT'S eighteen (18) wastewater treatment plants located at:

Belfry Courthouse	Branham Heights
Colley Hills	Douglas Industrial
Forest Hills	Hellier Courthouse
Hardy Park	Johns Creek Day Care
Johns Creek Fire Dept	Johnson Bottom
Keene Village	Maple Village Subdivision
Mossy Bottom	Phelps WWTP
Phelps Courthouse	Shelbiana MHP
Stone Heights	Willow Place

- d. Twenty-five sewer lift stations, one hundred (100) (+ or -) miles of force mains or gravity sewer lines in service on the effective date of this Agreement.
- e. All additions to the above that occur is the ordinary course of business.

## APPENDIX C-1

### NPDES PERMIT AND PROJECT CHARACTERISTICS

C.1.1 UMG will operate so that effluent will meet the requirement of each NPDES permit number listed in Figure 1 and any additions thereto that occur in the ordinary course of business:

Figure 1

Location	KY PDES#	Permit Issued	Permit Expires	Capacity	BOD	TSS
Belfry Courthouse	KY0072591	07/01/01	06/30/05	5,000	30/60mg/l	30/60mg/l
Branham Heights	KY0096580	03/01/03	08/31/05	10,000	30/60mg/l	30/60mg/l
Colley Hills	KY0089303	10/01/02	09/30/05	10,000	30/60mg/l	30/60mg/l
Dorton Park	KY0104841	06/01/03	08/31/05		30/60mg/l	30/60mg/l
Douglas Industrial	KY0042811	09/01/01	08/31/05	150,000	15/30mg/l	30/60mg/l
Forest Hills	KY0095885	08/01/02	06/30/05	10,000	20/40mg/l	30/60mg/l
Hellier Courthouse	KY0072664	09/01/01	08/31/05	5,000	30/60mg/l	30/60mg/l
Hardy Park	KY0072672	07/01/01	06/30/05	10,000	30/60mg/l	30/60mg/l
Johns Creek DC	KY0098621	01/31/04	01/31/09	2,000	30/60mg/l	30/60mg/l
Johns Creek Fire	KY0103365	08/01/02	01/31/06	1,000	30/60mg/l	30/60mg/l
Johnson Bottom	KY0073156	07/01/01	06/30/06	15,000	30/60mg/l	30/60mg/l
Keene Village	KY0072834	02/01/02	01/31/06	15,000	20/40mg/l	20/40mg/l
Maple Village	KY0098353	09/01/04	01/31/06	10,000	30/60mg/l	30/60mg/l
Mossy Bottom	KY0100480	09/01/01	09/30/05	200,000	30/45mg/l	30/45mg/l

Location	KY PDES#	Permit Issued	Permit Expires	Capacity	BOD	TSS
Phelps WWTP	KY0104442	07/01/03	06/30/05	250,000	30/45mg/l	30/45mg/l
Phelps Courthouse	KY0072648	07/01/01	06/30/05	2,000	30/60mg/l	30/60mg/l
Shelbiana MHP	KY0099805	09/01/01	08/31/05	37,134	30/60mg/l	30/60mg/l
Stone Heights	KY0029343	06/30/05	02/28/07	10,000	30/60mg/l	30/60mg/l
Willow Place	KY0082708	02/01/02	01/31/06	5,000	10/20mg/l	30/60mg/l
Russell FK	KYG640159	09/01/04	08/31/09	2 mgd	N/A	30/50mg/l

These are adopted by reference herein as of the date hereof UMG shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) ~~the project influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains~~ Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) dischargers into DISTRICT'S sewer system violate any or all regulations as stated in DISTRICT'S Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent BODs and/or suspended solids exceeds the Project design parameters which are identified (FIGURE 1) thousand gallons of flow per day, (FIGURE 1) pounds of BODs per day, (FIGURE 1) pounds of suspended solids and a daily peaking factor of (FIGURE 1) times flow; (4) if the Project is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond UMGs control.

C.1.2 In the event any one of the Project influent characteristics, suspended solids, BOD or flow, exceeds the design parameters stated above, UMG shall return the plant effluent to the characteristics required by NPDES in accordance with the following schedule after Project influent characteristics return to within design parameters.

10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days



Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then UMG will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

- C.1.3 ~~UMG shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances or is inoperable, and the subsequent recovery period.~~
- C.1.4 ~~UMGs compensation shall be based on a minimum of 14,542 water customers and 1,242 sewer customers.~~

APPENDIX C-2

PROJECT CHARACTERISTICS

C.2.1 The Project has the following design characteristics:

A capacity of 2.0 MGD of finished water production with an ability for chemical additions, flocculation, sedimentation and filtration based on 2 gallons per minute per square foot of filter area. The Project has the capability for post treatment by chlorination and fluoridation.

C.2.2 UMG will operate the Project so that water treated will meet the current Municipal Drinking Water Standards. UMGs Annual Fee includes all costs for treating an average daily flow of 2.0 MGD of raw water per day to the standards specified below.

Turbidity	0.3 NTU
Iron	<0.3 mg/L
Manganese	<0.05 mg/L
Fluoride	0.8 average mg/L
pH Color	>7.0
Corrosivity	<15 color units
Odor E.	Non-corrosive
Coli	<3.0 TON
	Negative

C.2.3 If any of the following contaminants in the raw water causes the finished water to exceed the maximum Contaminant Levels (MCL) established for finished water quality, UMG will treat the raw water to reduce said contaminant to an acceptable MCL. The cost of any specific treatment will be in addition to the Annual Fee for the treatment required by this Article C.2.3.

Radionuclides

---

Radium	5.0 Pci/L
--------	-----------

---

Gross Alpha	15.0 Pci/L
-------------	------------

---

## Organic Chemicals

<u>Contaminant</u>	<u>MCL Cmg/U</u>
Alachlor	0.002
Aldicarb	0.003
Aldicarb Sulfone	0.002
Aldicarb Sulfoxide	0.004
Atrazine	0.003
Benzene	0.005
Carbofuran	0.04
Carbon Tetrachloride	0.005
Chlordane	0.002
2,4-D	0.07
Dibromochloropropane (DBCP)	0.0002
Dibromochloropropane (DBCP)	0.6
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1 -Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Endrin	0.002
Ethylbenzene	0.7
Thylene Dibromide (EDB)	0.00005
Thylene Dibromide (EDB)	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Polychlorinated Biphenyls (PCB)	0.0005
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Toxaphene	0.003
2,4,5-TP (Silvex)	0.05
1,1,1 -Trichloroethane	0.02
Trichloroethylene	0.005
Total Trihalomethanes	0.1
Vinyl Chloride	0.002
Xylenes (Total)	10

## Inorganic Chemicals

<u>Contaminant</u>	<u>MCL</u>
Arsenic	0.05
Asbestos	7 (million fibers/L)
Barium	2
Cadmium	0.005
Chromium	0.1
Fluoride	4
Mercury	0.002 10 (as
Nitrate	nitrogen)
Nitrite	1 (as nitrogen)
Total Nitrate Nitrite	10
Selenium	0.05
Chloride	300
Copper	1.0
Fluoride	2.0
Silver	0.10
Sulfate	300 1,000
Total Dissolved Solids (TDS)	5
Zinc	

C.2.4 UMG will provide laboratory services for monitoring only the following contaminants on an as-requested basis. These contaminants do not have an established MCL.

Aldrin	Hexachlorobenzene
Benzo(a)pyrene	Hexachlorocyclopentadiene
Butachlor	3-Hydroxycarbofuran
Carbayl	Methomyl
Dalapon	Metolachlor
Di(2-ethylhexy) adipate	Metribuzin
Di(2-ethylhexyl)phthalate	Oxyamyl (vydate)
Didamba	Pictoram
Dichloromethane Dieldrin	Propachlor
Dinoseb	Simazine
Diquat	2,3,7,8-TCDD (Dioxin)
Entodhal	1,2,4-Trichlorobenzene
Glyphosate	1,1,2-Trichloroethane

## APPENDIX C-3

### WASTEWATER COLLECTION SYSTEM

#### SCOPE OF SERVICES

The wastewater collection system consists of all lift stations, manholes and pipe in service as of effective day of this Agreement and those added to the system in the ordinary course of business. UMG's responsibility with the wastewater collection system shall be to respond to notification of clogged or blocked DISTRICT owned wastewater/sewer lines in place as of the effective date of this Agreement, and to make all reasonable and diligent efforts to remove debris or other material causing blockages. UMG shall respond to notices of blockage by the next working day of receiving notice. The DISTRICT shall remain responsible for replacing sewer and wastewater lines and for any damage or loss to property or injury, including death or disease of any person arising from failure or from the operation or repair of the wastewater collection system, and the DISTRICT, or its underwriters, shall retain responsibility to administer, adjust and respond to any claims arising as a result thereof.

~~UMG will notify the DISTRICT promptly when UMG becomes aware of the potential requirement of repair or replacement of any wastewater collection system components and assist the DISTRICT in locating such areas. UMG repair and maintenance of the wastewater collection system components shall be treated as Maintenance and Repair incurred pursuant to this Agreement.~~

**APPENDIX C-4**  
**DRINKING WATER DISTRIBUTION SYSTEM**  
**SCOPE OF SERVICES**

The water distribution system consists of all waterlines, meters, hydrants, master meters and valves in service as of the effective date of this Agreement and pump stations and water storage tanks identified in Figure 2, Figure 3, Figure 4, and those added to the system in the ordinary course of business.

Figure 2

<b>MMS</b>	<b>Location</b>	<b>Meter Size</b>
M-01JC	Town Mountain	6 inch
M-02JC	Meta	6 inch
M-03BC	Big Creek	6 inch
M-04CC	Chloe Creek	6 inch
M-05SV	Indian Hills	4 inch
M-06IC	Island Creek	4 inch
M-07IC	Raccoon Branch	4 inch
M-08IC	Hoopwood Hollow	2 inch
M-09SX	Sookey Creek #1	4 inch
M-10SV	Sookey Creek #2	6 inch
M-11EC	Elkhorn Creek	4 inch
M-12CP	Cowpen	4 inch
M-13HC	Hurricane Creek	4 inch
M-14MC	Marrowbone WTP	10 inch
M-15MC	Millard	6 inch
M-16PC	Williamson #1	10 inch
M-17PC	Williamson #2	6 inch
M-18IC	Modern Mobile Home Park	2 inch

<b>MMS</b>	<b>Location</b>	<b>Meter Size</b>
M-19MC	Ferrells Creek	4 inch
M-20JC	Brushy Creek	4 inch
M-21HC	Cedar Gap	4 inch
M-22MC	Elkhorn Connector	6 inch

Figure 3

01FC	Ferguson Creek	02RC	Taylor Fork
03RC	Grassy Fork #1	05JC	Cabin Knoll
07JC	Johns Creek RR	08JC	Deskens
09JC	Elkhorn MT	10GV	Grapevine School
11GV	Upper Camp Branch	13JC	Stratton Fork
14JC	Meathouse	15JC	Coburn Mt #1
17BC	Long Fork, Big Creek	18PC	Rogers Park
20PC	Williamson Mall	21PC	Southside Mall
22PC	Forest Hills	23PC	US 119, Toler
24PC	Sharondale	25PC	Runyon School
26PC	Hardy	27PC	Turkey Toe
28BB	Dials Branch	29BB	Blue Springs
30BB	Left Fork of Blackberry	31BB	Smith Fork
32BB	Peter Fork	33BC	Pinson Fork
35CC	Kendrick Fork	36CC	Ivy Fork
37MC	Marrowbone Pl.	38MC	Poor Bottom
39MC	Twin Bridges	40MC	Graveyard Hollow

41SV	Fords Branch	42SV	Sookeys Creek
43RC	Grassy Fork #2	44IC	Island Creek
45SV	Caney Creek	46DC	Dorton Creek
47GC	Greasy Creek	48BC	Buckley Creek
49GC	Greasy Creek	50GC	Gillespi Branch
51LP	Lower Pompey	52JC	Johns Creek #1
53JC	Johns Creek #2	54JC	Long Fork Johns Creek
55SV	US 23 Solenoid	56CP	Cowpen Creek
57CP	Adkins Branch	58PC	Narrows Branch
59PC	Mudlick Branch	60PC	Pinson Fork Pond Creek
61PC	Coburn Mountain	62PC	Scant Branch
63PC	Runyon Branch	64JC	Scott Fork
65MC	Alleghany	66PC	Belfry Hill
67SV	Indian Creek	68MC	Peyton Creek
69SV	Long Fork Shelby Creek	70LP	Slones Branch
71PT	Smith Fork	72HC	Hurricane Creek
73SV	Elkhorn Creek	74PC	Sharon Heights
75PC	Allison Heights	76JC	Layne Branch
77PC	Caney Fork	78SV	Pigeon Branch
79HC	Spring Branch	80MC	Powell Creek
81PF	Widows Branch	82PF	Barrenshee
83IC	Edgewood Lane	84SV	Lizzie Fork
85SV	Little Robinson Creek	86EC	Mills Branch
87PF	Beech Creek	88MC	Biggs Branch
96GV	Trace Fork	19PC	KY 292
89GV	Pritchard Fork	90PC	Ball Fork



91 PF	Bones Branch	93MC	Contrary Hollow
94MC	Sarah Branham	95PC	Straight Hollow
92MC	Brushy Fork, Hellier	96PF	Upper Peter Creek
97MC	Rockhouse	98BC	Brushy Creek
99PF	Hurricane Fork	100MC	Wolfpit Hollow
101SV	Kelly Mountain Road	102SV	Sugar Branch
103MC	Bowling Fork	104PF	Camp Creek
105	Hunt Branch	106	Anderson Branch
107	Sutton Bottom	108	Hatfield
109	Upper Pompey	110	Abner Fork
111	Feds Creek		

Figure 4

01FC	Town Mountain
03RC	Grassy Fork #1
05JC	Cabin Knoll
06JC	Bent Mountain
07JC	Lawson Branch
08JC	Elkhorn Fork
09JC	Ridgeline Road
10GV	Grapevine School
11GV	Hunt Knob
12BC	Canada
14JC	Meathouse Fork

15JC	Coburn Mountain
16BC	Sandlick
17BB	Long Fork, Big Creek
18PC	Rogers Park
19PC	KY 292 Tank
20PC	Southside Mall #1
21PC	Southside Mall #2
22PC	Forest Hills
23PC	Sharon dale
24PC	Stone
25PC	McVeigh
26PC	Hardy Park
29BB	Blackberry Mountain
30BB	Left Fork Blackberry
31BB	Smith Fork Blackberry
32BB	Peter Fork Blackberry
33BC	Pinson Fork of Rockhouse
35CC	Kendrick Fork
36CC	Ivy Fork
38MC	Poor Bottom
40MC	Graveyard Hollow
41SV	Shelbiana
42SV	Douglas Park
43RC	Grassy Fork #2
44IC	Island Creek
45SV	Dorton #1

46DC	Dorton #2
47GC	Greasy Creek
48BC	Buckley Creek
49GC	Upper Greasy Creek
50GC	Gillespi Branch
51LP	Lower Pompey
52JC	Upper Johns Creek #1
53JC	Upper Johns Creek #2
54JC	Long Fork of Johns Creek
55SV	Robinson Creek
56CP	Cowpen Creek
57CP	Pike County Airport
58PC	Narrows Branch
59PC	Mudlick Branch
60PC	Pinson Fork of Pond Creek
62PC	Scant Branch
63PC	Runyons Branch
65MC	Alleghany
66PC	Belfry Hill
67SV	Indian Hill
68MC	Peyton Creek
69SV	Long Fork of Shelby Creek
70LP	Slones Branch
71GC	Smith Fork
72HC	Hurricane Creek
73SV	Elkhorn Creek

74PC	Sharon Heights
76JC	Lane Branch
77PC	Caney Fork
79HC	Spring Branch
80MC	Powell Creek
81PF	Widows Branch
82PF	Barrenshee Hollow
37MC	Wolfpit
84SV	Lizzie Fork
85SV	Little Robinson Creek
86EC	Mills Branch
87PF	Beech Creek
88MC	Biggs Branch
89GV	Pritchard Fork
90PC	Ball Fork
91PF	Bones Branch
92MC	Brushy Fork of Allengeny
93SV	Contrary Hollow
94SV	Sarah Branham Hollow
95PC	Straight Hollow
96PF	Upper Peter Creek
97MC	Rockhouse, Marrowbone
98BC	Brushy Creek
99DF	Hurricane Fork of Knox Creek
100MC	Wolfpit Hollow
101SV	Kelly Mountain Road

102SV	Sugar Camp Road
103MC	Bowling Fork Road
104PF	Camp Creek
105	Road Creek
106	Ferrells Creek
107MC	Feds Creek
108MC	Motley Fork

## APPENDIX D

### ARBITRATION PROCEDURES

~~In the event that DISTRICT and UMG are unable to reach an agreement as to the increase and/or decrease in compensation specified in Section 7, then those issues remaining unresolved shall be submitted to binding arbitration under the following terms, conditions and procedures:~~

- D.1 ~~Unless specifically provided for herein to the contrary, the rules and procedures of the American Arbitration Association (AAA), as shall from time to time be amended, apply. However, the parties shall not be required to use the AAA or its arbitrators. The arbitration process shall begin 15 days after the parties are unable to reach an agreement (the "Arbitration Start Date"). Such date shall be specified in writing and shall be the date from which the following procedures begin.~~
- D.2 ~~There shall be a three (3) member arbitration panel composed of one (1) member selected by the DISTRICT and one (1) member selected by UMG. Each party shall notify the other of its selection on or before 30 days after the Arbitration Start Date. The final member of the three member arbitration panel shall be selected by the initial members selected within 20 days after their appointment. If no Agreement is reached the third arbitration member shall be appointed by the Pike County Judge Executive.~~
- D.3 ~~On or before 60 days after the Arbitration Start Date, each party shall submit to the arbitration panel its written position on each unresolved issue. Such submission shall include not only the party's proposed resolution, but also introduction at the hearing and a list of witnesses each party intends to call shall be submitted as exhibits to the submission.~~
- D.4 ~~The arbitration panel may schedule such pre-hearing conferences as it shall deem advisable.~~
- D.5 ~~The arbitration hearing shall commence no earlier than 75 and no later than 85 days after the Arbitration Start Date and shall be concluded no later than ten (10) working days after its commencement.~~
- D.6 ~~The parties hereby agree and stipulate for purposes of arbitration that the pricing and cost estimates contained in this Agreement or any subsequent modification hereto as agreed between the parties are fair~~

~~and reasonable and are not to be a factual issue for determination by the arbitration panel.~~

- D.7 ~~Within ten (10) days of the conclusion of the evidentiary phase of the arbitration hearing the arbitration panel shall announce its decision and award. The possible "decision and award" shall be limited on each individual issue presented to either the position of the DISTRICT or the position of UMG as set forth, in the position submissions described in Subsection "D.3" above.~~
- D.8 ~~Findings of fact and conclusions of law shall not be required of the arbitration panel unless specifically requested by either party within five (5) working days of the announcement of the Decision and Order.~~
- D.9 ~~Unless specifically requested by either party, the proceedings shall not be recorded by other than a tape recording device. In the event that either party requests the services of a court reporter or other means of transcription of the proceedings, the requesting party shall bear the cost of recordation and transcription.~~
- D.10 ~~The costs of arbitration services shall be borne equally by the parties; provided, however, that in the event that the arbitration panel makes a specific written finding of fact that one party has prosecuted its case frivolously or in bad faith, then the arbitration panel shall assess the costs of arbitration services to the offending party.~~

## APPENDIX E D

### INSURANCE COVERAGE

#### UMG SHALL MAINTAIN:

1. Statutory Workers' Compensation for all of UMG's employees at the Project as required by the Commonwealth of Kentucky.
2. Comprehensive general liability insurance, insuring UMGs negligence, in an amount not less than \$12,000,000 combined single limits for bodily injury and/or property damage.

#### DISTRICT SHALL MAINTAIN:

1. Statutory Workers' Compensation for all of DISTRICT'S employees associated with the Project as required by the Commonwealth of Kentucky.
2. Property damage insurance for all property including vehicles owned by DISTRICT and operated by UMG under this Agreement. Any property, including vehicles not properly or fully insured shall be the financial responsibility of the DISTRICT. Although the DISTRICT is required to maintain these insurance coverages, the parties acknowledge that the current premium costs are included in the budget provided to UMG and provided and to the extent the premium costs do not increase, UMG will promptly pay, on behalf of the DISTRICT, the premiums for said insurance coverages. The DISTRICT shall pay any additional premium cost for such insurance coverages.
3. Automobile liability insurance for collision, comprehensive, and bodily injury.

Each party will provide at least thirty (30) days notice of the cancellation of any policy it is required to maintain under this Agreement. UMG may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law but only if such action does not invalidate the property insurance of DISTRICT.



## ~~APPENDIX F~~

### ~~SCHEDULE OF AMORTIZED EXPENDITURES~~

~~The parties mutually agree that for all purposes, the beginning balance shall be one million five hundred thousand (\$1,500,000). The interest rate applied shall be calculated at 6.5%. If DISTRICT terminates the Agreement at the end of year five per Section 11.1, the unamortized balance to be paid to UMG is six hundred fifty-eight thousand eight hundred forty-eight and thirty-one (\$658,848.31).~~

~~If DISTRICT terminates the Agreement at the end of year three per Section 11.1, the unamortized balance to be paid to UMG is zero dollars (0).~~

## APPENDIX G

### PERSONNEL ISSUES

1. ~~All current fulltime hourly employees will receive a 4% salary increase at start of contract.~~
2. ~~All current fulltime salaried employees will receive a 3% salary increase at start of contract.~~
3. ~~Employees will receive the same holidays as currently provided by DISTRICT.~~
4. ~~Employees will receive vacation credit at UMG for their accrued vacation at the Commencement Date with the DISTRICT up to a maximum of four weeks' vacation. Not later than July 31, 2005, UMG will pay out to each employee with accrued and unused vacation as of the Commencement Date in excess of four weeks the amount of the excess for each such employee.~~
5. ~~Employees will receive bonuses for obtaining higher certification levels in their respective fields.~~
6. ~~Employees will be provided with uniforms, safety shoes, and required personal safety equipment.~~

APPENDIX H

UMG

MWD Capital Cost

Amortization Schedule

Exhibit “ \_\_\_\_\_ ”

Rate Adjustment Examples

MWD Audited Revenues

2008	\$100
2009	<u>\$110</u>
Increase	\$ 10

UMG Fees

2009	\$ 80
2011 (prior year increase 70%)	\$ 87

---

MWD Audited Revenues

2008	\$100
2009	<u>\$ 95</u>
Increase	\$ 5

UMG Fees

2009	\$ 80.00
2011 (prior year -5 x 70%)	\$ 76.50

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

December 7, 2010

Mr. Bob Meyers  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

**RE: MWD/UMG 2011 Contract**

Dear Bob:

Please find attached our proposed changes to the 2011 MWD/UMG Contract. Most of the deletions center around those items which are no longer applicable in that you have already had the contract for five years, and of course, the changes in the structure of the consideration.

After you have had an opportunity to review everything, if you have any additions or corrections you wish to make, please give me a call.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)



## Memo

To: Dan Stratton  
From: Bob Meyer  
CC: Greg May, Archie Marr, Rhonda James, Mike Spears  
Date: December 9, 2010  
Re: MWD-UMG Renewal Contract

Following are recommended changes to the draft amendment you sent me on Tuesday:

- OK* Section 1.1 – Typo – should read "Agreement and the attachments..."
- HS* Section 1.4: Leave the original language intact.
- OK* Section 2.1 – Typo – should read "UMG warrants that it will maintain the necessary licensed and certified personnel..."
- JK* Section 2.4 – Is it necessary for UMG to "provide a physical inventory of DISTRICT's vehicles and equipment....", as this is a renewal as opposed to the original contract?
- JK* Section 2.5 – Same question as above in Section 2.4 – Why is it necessary to provide a new inventory of chemicals, etc?  
(Previous) Section 2.13: Why is this being deleted? Any particular reason for deleting it? If not, keep this Section in the renewal contract. *We want full costing - (see Amst)*
- OK* Section 2.15 – Typo – should read "... All Waste and/or byproduct.... is not and will not be considered property of UMG."
- OK* Section 2.16 – Suggested rewording: "UMG will submit a monthly report to the District that illustrates in summary how much of the current month and year to date operations invoices submitted by UMG to the DISTRICT is related to water services and how much is related to sewer services."
- OK* Section 2.17 – No problem with consulting the District regarding replacement of "Project Manager". Who are the "Operations Manager" and the "Controller"? If these are UMG corporate positions, the District's approval is not necessary for replacing them.
- OK* Section 2.19 – Suggested wording: "All amounts billed and received by UMG on behalf of DISTRICT are the property of the DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT."

*check (law) ? & add more ?*

Section 2.20 – Suggested wording: “UMG shall take all necessary and reasonable actions to control unaccounted for water loss.”

Section 2.21 – Suggested wording: “UMG shall facilitate the acquisition and installation of any “Capital Improvements” authorized by the DISTRICT, and will coordinate with the DISTRICT the funding of and payment for any approved Capital Expenditures that are outside the scope of normal Repair and Maintenance obligations of UMG.”

*OK*  
*OK to delete*

Section 2.22 – It is unclear as to what this means. See Section 2.23. Section 2.22 should be deleted.

Section 2.24 – This section should be deleted. It would generate an additional expense for UMG which would be passed on to the District.

*NO*

Section 3.4 – Suggested rewording- “... along with an explanation for the basis upon which it was determined by UMG to be abnormal.”

*OK*

Section 4.2 – Typo – should read: “... operate and maintain...”

*OK*

Section 4.5 – Suggested rewording: “... along with an explanation for the basis upon which it was determined by UMG to be abnormal...”

*OK*

Section 7.1 – Typo – should read: “... for the period January 1, 2011 through December 31, 2011...”

*OK*

Section 7.2 – Suggested rewording: “Beginning with the second year of the renewal term (January 1 through December 31, 2012) and for each of the subsequent years for the term of this Agreement, the Annual Fee shall be adjusted to provide UMG with an annual fee increase equal to seventy-five (75%) of the increase in District revenues based on the District’s two most recent prior years’ audits. Should the District’s audited revenue increase be less than 3.2% in any given year of the contract renewal period, the District shall increase UMG’s annual fee by an amount equivalent to the increase in the Consumer Price Index (CPI) for the most recent year. Should the District have insufficient revenues or cash flow to accommodate the fee increase(s) identified herein, the District agrees to initiate and expedite any actions necessary to increase its revenues by an amount that will accommodate such increase(s). Such action(s) may include a formal request for water and/or sewer rate increases to the District’s customers. Included in the annual fee is an allowance for Maintenance and Repairs which shall initially be \$564,000.00 (\$47,000.00 monthly). The Maintenance and Repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.”

*270*  
*add 4/1/2012  
- New Rev*

NOTE: The suggested wording in 7.2 would eliminate the need for Section 7.3.

NOTE: My recent proposal was that UMG receive “75%” of any increase in the District’s audited revenue increases. If you review the District’s analysis of 2009 audited financial information, it illustrates that the District’s internal costs (debt service, reserve payments, commissioners’ payments, legal & accounting fees, etc) are \$1,791,904. This is equal to 19.4% of the total District revenues (\$9,251,799 for 2009). The balance of the District revenues is available for “operational” costs (ie: UMG fees). That amounts to 80.6% of total revenues. Realistically, it seems apparent that UMG’s operational costs are likely to increase and the District’s will remain static. In that context, UMG’s request for 75% if the District’s revenue increase(s) is very reasonable.

*Show in Law 4/5*

Section 7.6: The language at the end of Section 7.6 needs to be revised. What if there had not been a federal declaration for the recent July 2010 flooding. UMG would have expended a great deal of its funds for overtime, parts, materials, etc. (which we have done consistently in the past and

waited for District's receipt of FEMA funds). If a federal or state disaster declaration is not made, is UMG expected to absorb all of its extraordinary expenses and not be reimbursed by the District?

Section 9.1 Scope Changes: Why is this being deleted? If AEP decides to do another 15% rate increase (over which UMG has no control), is UMG required to absorb these additional costs?

No more money



# Response Memorandum

To : Bob Meyers  
From : Daniel P. Stratton  
Date : December 10, 2010  
Regarding : UMG / MWD Renewal Contract  
Copy : Rhonda James and Mike Spears

\*\*\*\* \*\*

Rhonda, Mike and I have met to review your memo of December 9, 2010, and would make the following responses for your review and consideration. Those sections underlined would be proposed language.

Section 1.1 Agreed

Section 1.4 Do not agree. If the District were ever to merge with another entity, then in theory, UMG could block the merger based on this language.

Section 2.1 Agreed

Section 2.4 Yes, it is necessary for UMG to provide a physical inventory as this is the beginning of a new contract, and if the contract was ever terminated, this inventory would be necessary to make a full accounting of UMG's disposition of the assets from the time the contract began.

Section 2.15 Agreed

- Section 2.16 UMG shall provide all administrative and financial functions necessary to effectively operate the business affairs of the District, except as designated by the District. UMG shall submit a monthly report to the District that illustrates in summary, how much of the current month and year to date operation invoices submitted by UMG to the District is year to date revenues and operation invoices submitted by UMG to the District is related to water services, and how much is related to waste water services.
- Section 2.17 UMG will consult with the District's commissioners prior to any replacement of the project manager.
- Section 2.19 UMG shall provide for monthly meter readings and billing. All amounts billed and received by UMG on behalf of the District are the property of the District and shall be promptly deposited into a bank account designated by the District. Customer service offices shall be maintained at locations approved by the District.
- Section 2.20 UMG shall take all necessary actions and make all reasonable business efforts to control unaccounted for water loss. A monthly report of system accounted for and unaccounted for water loss, shall be submitted to the District.
- Section 2.22 We agree to delete.
- Section 2.24 We disagree. We were criticized by the state auditor's office for dropping this provision in the original contract. We have agreed to reduce the original amount in half. This is not a large expense, and would protect the District should there be a problem.
- Section 3.4 Agreed
- Section 4.2 Agreed
- Section 4.5 Agreed
- Section 7.2 We disagree in that your proposed language was not what we agreed to do. The structure of any additional compensation must be based on revenue sharing and not your cost structure as that would create the same problems that we had under the original contract.

In addition, we would add a new paragraph under 7.2 which would read as follows:

In the event the District obtains a rate increase which was secured in part or in whole to pay for new or additional debt, then in such an event, that portion of the additional revenue allocated for division 70/30 between UMG and the District, shall only be the net revenue after payment of the debt and any reserve requirements associated therewith.

The purpose of this section is to clarify that any revenue generated as a result of a new debt of the District, will only apply to the net proceeds of the additional revenue.

Section 7.3 We disagree.

Section 7.6 Any additional expenses, reasonably incurred by UMG, including overtime wages, as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the District for reimbursements in accordance with Section 8.2.

Any expense that may be recovered from billing a third party, including the state or federal government, such as a FEMA program or other source, may also be invoiced by UMG to the District, subject to the condition that payment for the same is subject to reimbursement by FEMA or other similar source to the District.

Section 9.1 This section was modified as it is inconsistent with the theory of adjusting future fees based on revenue growth as opposed to changes in operational expenses. If UMG incurs an operating expense that is not covered by any increase in revenue provided for under this agreement, then at such time, they would be in position to petition the District to apply for a rate increase pursuant to section 7.

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

December 14, 2010

Mr. Bob Meyers  
c/o Utility Management Group  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

RE: Mountain Water District/Utility Management Group  
2011 Contract

Dear Bob:

Please find enclosed the proposed language changes to those sections that were amended as a result of our meeting on Monday, December 13<sup>th</sup>. Section are amended as follows:

Section 2.16 UMG shall provide all administrative and financial functions necessary to effectively operate the business affairs of the District, except as designated by the District. UMG shall submit a monthly report to the District that illustrates in summary, how much of the current month and year to date ~~revenue from operations~~ ~~and~~ invoices submitted by UMG to the District, are related to water services and how much are related to waste water services.

Section 2.24 We have agreed to retain that provision subject to your review of the pricing for the policy of the bonds.

Section 7.2 The annual fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenue based on the District's two (2) most recent prior year's audits. If the annual operating revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Examples of both the increased operating revenue and decreased operating revenue are attached on Exhibit "      ".

STRATTON, HOGG & MADDOX, P.S.C.

December 14, 2010  
Page 2

Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 per month). The maintenance and repair budget shall adjust annually in direct proportion of any adjustments in the annual fee.

Section 7.3

In the event the District should make application to PSC for a rate increase in any of it's services, UMG agrees to provide the District a copy of any and all necessary information required by the PSC for such application.

In the event that the District obtains a rate increase, which was secured in part or in whole, to pay for new or additional debt, the parties agree that the portion of the additional revenue to be allocated for division under the 70/30 formula set forth in Section 7.2, shall be the increased net operating revenue after payment of the new or additional debt incurred and any reserve requirements associated therewith.

Section 7.6

Any additional expenses, reasonably incurred by UMG, including overtime wages, as a result of severe weather, a natural disaster or other unplanned event outside of the normal course of operations, will be invoiced by UMG to the District for reimbursement in accordance with Section 8.2.

Any additional expenses, reasonably incurred by UMG as set forth in the above paragraph, for which the District ~~makes application for reimbursement by~~ <sup>←</sup> a third party, ~~(including the state or federal government, such as a FEMA program or other source, may also be invoiced by UMG to the District, subject to the condition that the payment for the same is subject to reimbursement by FEMA or other similar sources to the District.~~ <sup>(i.e. FEMA)</sup>

*13 eligible  
UMG agrees to defer payment from the District for such expenses until the District receive reimbursement from the third party.  
Cdd mark 12/17*

Section 9.1

A change in scope of services shall occur when and as UMG's cost for providing service under this agreement significantly change as a result of one of the following:

**STRATTON, HOGG & MADDOX, P.S.C.**

December 14, 2010

Page 3

- 9.1.1 Any change in project operations, personnel qualifications or staffing, or other cost which is mandated or otherwise required, by a change in law, rule or regulation, or an action or forbearance of any governmental body having jurisdiction order dictated or requires such change.
- 9.1.2 The District's request of UMG, and UMG's consent to provide additional services beyond what is provided in this agreement and growth of such current services.

Section 9.2 For changes in scope described in Section 9.1.1, the annual fee shall be increased (or decreased) in an amount equal to UMG's additional (or reduced) cost associated with the change in scope.

Bob, please review these proposed changes, and if satisfactory, I will incorporate them into the entire agreement. If you have any questions, please feel free to call.

Sincerely,  
Stratton, Hogg & Maddox, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)

# Response Memorandum

**To : Bob Meyers**  
**From : Daniel P. Stratton**  
**Date : December 17, 2010**  
**Regarding : UMG / MWD Renewal Contract**  
**Copy : Rhonda James and Mike Spears**

\*\*\*\* \* \* \* \* \*

Rhonda, Mike and I have met to review your memo of December 17, 2010, and would make the following responses for your review and consideration. Those sections underlined would be proposed language.

Section 2.16 Agreed

Section 2.24 Agreed  
(Price will not be put in contract, only the required bond)

Section 7.2 “.. shall be based on the increase in the District’s total operating revenue according...”

Section 7.6 Second paragraph  
Any additional expenses, reasonably incurred by UMG as set forth in the above paragraph, for which the District is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the District for such expenses until the District receives reimbursement from the third party.

The District agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the District's application for reimbursement and run on the outstanding balance until paid in full.

Section 9.1.2 Comment:

Bob, we did not discuss this one, but we would want to retain my amended language as it would allow for growth of current services. Your provision does not provide for growth. Therefore, any growth could be deemed a change in the scope of services.



MOUNTAIN WATER DISTRICT / UTILITY MANAGEMENT GROUP 2011 CONTRACT  
Recommended Changes in Wording  
December 17, 2010

Section 2.16

OK

"... UMG shall submit a monthly report to the District that illustrates in summary how much of the current month and year to date invoices submitted by UMG to the District is related to water services and how much is related to waste water services."

*(Mike's monthly financial report identifies revenues by water/sewer. All UMG needs to do is identify how much of our invoices are related to water and sewer.)*

Section 2.24

OK

Based on information we have presently, the cost for a surety bond in the amount of \$600,000.00 will cost UMG 1.5% or \$9,000.00 per year.

Section 7.2

OK

The annual fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenues of the District based on the District's two (2) most recent prior years' audits. Thus, the annual fee increase for UMG in the second year of the renewal term (January through December of 2012) shall be based on the increase in total District revenues according to the 2010 audit as compared to the 2009 audit. If the annual operating revenue..."

Section 7.6

Any additional expenses, reasonably incurred by UMG, including overtime wages, as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations will be invoiced by UMG to the District for reimbursements in accordance with Section 8.2.

Comments by Mike w/ Amy - OK

Any expenses identified in this Section for which the District has received formal notification that it will be reimbursed by a third party (including FEMA or other federal or state government agencies) may also be invoiced by UMG to the District at the time the expenses are incurred. UMG agrees that it will allow the District to defer payment to UMG for such expenses until the District receives reimbursement from the third party or for six months from the date the expenses were incurred, whichever comes first. If the District has not received reimbursement from a third party within six months, it agrees that it will issue a payment to UMG at the end of the six month period.

Section 9.1.2

The District's request of UMG, and UMG's consent to provide additional services beyond what is provided in this agreement.

Mountain Water District / Utility Management Group  
Contract Renewal Beginning January 1, 2011  
Recommended Amendment language:

ARTICLE 7. COMPENSATION

7.1 The Annual Fee for the first year of this contract renewal (beginning January 1, 2011 and ending December 31, 2011) shall be a fixed amount of \$7,632,000.00, and shall be paid in 24 (twenty-four) semi-monthly installments of \$318,000.00 each. This fee includes \$572,892.00 annually (\$47,741.00 monthly) for Repair and Maintenance expenses which are addressed in more detail in Section 7.2 below. This annual fee also includes compensation to UMG for additional costs associated with the production of water for Elkhorn City that were previously invoiced by UMG and paid by the District to UMG in addition to its normal monthly operations fee. For each subsequent calendar year during the five year term of this contract renewal, increments in the operations and management fee paid to UMG shall be determined as follows:

- a. Beginning in the second year of this contract renewal (January through December of 2012), and for each subsequent year in the contract renewal period, the District will review audited financials for the two most recent fiscal years and compare the total revenues per the respective audit reports. <sup>70%</sup> <sup>as a whole</sup> UMG's annual operations and management fee will be increased for the next Agreement year subsequent to the most recent audit by an amount equal to 75% of the audited increase in District revenues, subject to the following condition.
- b. Should the District's audited revenue increase be less than 3.2% in any given year of the contract renewal period, the District shall increase UMG's annual fee by an amount equivalent to the increase in the Consumer Price Index (CPI) for the current year. Should the District be unable to increase UMG's annual fee based on the CPI increase, the District agrees to initiate and expedite any actions necessary to increase its revenues by an amount that will accommodate UMG's annual fee increase. Such action(s) may include a formal request for water and/or sewer rate increases to the District's customers. In that same context, the District agrees that it will, upon receipt of its December 31, 2010 annual audit report, perform an internal analysis and assessment of its water and sewer revenues and costs associated with those water and sewer services to determine if its current rate structure(s) are sufficient to meet its current and future financial obligations.

Don't address UMG

Sound like just taking care of UMG

7.2 As indicated in Section 7.1 above, the total operations and management fee to be paid to UMG beginning in January, 2011 includes an annual allowance for "Repair and Maintenance Expenses". Repair and maintenance expenses include costs associated with routine maintenance, repairs, and replacement of the District's water and sewer facilities (including support facilities - ie: office buildings, garage and storage structures, etc.) as well as all vehicles, equipment, and tools utilized by UMG in the operation of the District's water and sewer systems. Both the District and UMG agree that the District will issue payments directly to vendors and suppliers for all repair and maintenance expenses incurred by UMG on the District's behalf. UMG personnel will be responsible for receiving and processing all invoices and statements associated with repair and maintenance expenditures and will provide the District with a detailed listing and summary of all such expenses at each monthly meeting of the District's commissioners. On a monthly basis, the District will issue an invoice to UMG for the total amount of repair and maintenance expenditures it paid for in the previous month. UMG will, in turn, issue a reimbursement check to the District for the same amount. On an annual basis, a determination will be made as to whether the cumulative repair and maintenance expenditures made by the District

were over or under the annual repair and maintenance limit for that year. If the cumulative amount of repair and maintenance expenditures for the year is under the annual limit, UMG will issue a check to the District in the amount of the cumulative under-expenditure. If the cumulative amount of repair and maintenance expenditures for the year is over the annual limit, the District will issue a check to UMG in the amount of the cumulative over-expenditure. UMG will provide the District on both a monthly and annual basis a justification for any amounts over the monthly or annual repair and maintenance limit. UMG will notify the District when actual repair and maintenance expenditures equal eighty percent (80%) of the repair and maintenance limit in each agreement year throughout the extended term of this Agreement. The amount of repair and maintenance expenses included in UMG's annual fee shall be increased in the same proportion as the increase in UMG's fee for other direct operating expenses as outlined in Section 7.1 above. ✓

7.5 (new) The District and UMG acknowledge that UMG's annual fee includes the cost of electricity associated with all of the District's facilities. Beginning January 1, 2011, the District will issue payments directly to each electric utility provider for all District facilities. On a monthly basis, the District will issue an invoice to UMG for the total amount of electric expenditures it paid for in the previous month. UMG will, in turn, issue a reimbursement check to the District in the same amount. ✓

NEW Section: UMG agrees to provide the District, on a monthly basis, an analysis of how much of that month's fee is associated with the cost of water service and how much is associated with sewer service. (Include in Section 7.1 above?) ✓

11.1 The term of this Agreement Renewal shall be five (5) years commencing on January 1, 2011. Each year of the renewal period will commence on January 1 and end on the following December 31. Both the District and UMG shall have the right, without cause, to terminate this Agreement at the end of the third year of the renewal period. Termination of the Agreement, pursuant to this section, will require written notice of such termination from the terminating party to the other party no less than 120 days in advance of the effective date of termination. Should the District elect to terminate the Agreement under this clause, it will be required to repay to UMG any outstanding balance due to UMG pursuant to Paragraph (3) of the Amendment to Agreement for Operations, Maintenance, and Management Services executed on April 29, 2009. (Note: Paragraph 8 of the Amendment dated 4/29/09 needs to be voided.) ✓

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL F. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

December 21, 2010

Rhonda James, Chair Person  
Mountain Water District  
146 Main Street  
Pikeville, Kentucky 41501

Lester "John" Collins, Secretary  
Mountain Water District  
3979 Raccoon Creek Road  
Raccoon, Kentucky 41557

Kelsey Friend, III, Commissioner  
Mountain Water District  
1381 Lizzie Fork Road  
Pikeville, Kentucky 41501

Ancie Cascy, Commissioner  
Mountain Water District  
43860 State Highway 194 East  
Phelps, Kentucky 41553

Prentis Adkins, Commissioner  
Mountain Water District  
375 Schoolhouse Road  
Shelbiana, Kentucky 41562

RE: **MWD/UMG 2011 Contract / State Audit**

Dear Board Members:

Please find attached a revised proposal for the UMG / MWD Contract Extension. The changes in this agreement will show as a strike through or underline as in the previous agreement. However, since we have given you the prior agreement for your review, Rhonda, Mike and I have met with UMG and made a few changes. There were several minor technical changes, but the key changes I would direct your attention to are Section 7 and Section 9. Under Section 7, UMG requested that we strike the language involving their requesting a rate increase as they believe that would not create the best public image for our request to have one. We agreed and that language has been removed.

We have further provided that in the event that they front money to us to fix repairs from a disaster that is reimbursable from a third party (i.e., FEMA), we will pay them interest on that amount starting six months after the third party application has been approved. This structure gives them incentive to get the applications through quickly. It does not penalize them for advancing money to us with no return if a third party doesn't act promptly. If they have not agreed to provide this money up front, we would have been forced to have borrowed the same and paid interest on it to fund the repairs from the disaster.

**STRATTON, HOGG & MADDOX, P.S.C.**

December 21, 2010  
Page 2

The next biggest change is in Section 9 under Scope of Change. We have essentially provided that if there is a government regulation that changes so that it would substantially increase their cost, we would agree to cover that cost as that would be an unanticipated change in circumstances.

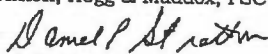
I have also enclosed a copy of a "draft" report from the state auditors. This is their final document, subject to any changes made based on our comments or questions. As of now, please identify any questions or comments you would have as the report may relate to the UMG contract. After our next board meeting, we can address any questions or comments you want to make to the Auditor's Office.

Rhonda, Mike and I will be reviewing this in detail over the weekend. If you have any comments, please call Rhonda, Mike or me. I can be reached at 606-424-4248 over the holiday weekend.

**This document is "confidential" and cannot be shared with anyone except the Board, Mike and me. The Auditor's Office is very serious about the confidentiality of this report in that it is not yet final. We also do not want anything reported until your questions and responses have been addressed.**

I am sorry to give everyone such a big homework assignment over the Christmas holiday, but please do not hesitate to call me if you have any questions or concerns.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachments



# Memo

**To:** Dan Stratton  
**From:** Bob Meyer  
**CC:** Greg May, Archie Marr, Rhonda James, Mike Spears  
**Date:** December 22, 2010  
**Re:** MWD-UMG Renewal Contract

---

I reviewed your latest draft of the MWD-UMG agreement and have the following comments:

Section 2.17: Delete Operations Manager and Controller from this section.

Section 7.3: "... provide the District a copy of any...."

Section 7.6: "... Interest would start to accrue six months after the submission of an invoice from UMG to the District for such expenses and run on the outstanding balance until paid in full."

Section 8.1: "One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> day of each month during such Agreement Year..."

Section 9.1.2: "... what is provided in this agreement and routine growth of current services."

Section 9.2: "... amount equal to UMG's additional (or reduced) Cost associated with the Change in Scope plus eight percent (8%)."

Section 10.4: What is the intent of this section?

Section 11.1: "... Either party shall have the right, without cause, to terminate this Agreement at the end of the third Agreement Year. Notice of termination shall be given in writing..."

*NOTE: Repayment of the UMG loan is addressed in Section 11.3.*

Signature line: Page 16

UTILITY MANAGEMENT GROUP, LLC (Not Inc.)

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

December 23, 2010

Mr. Bob Meyers  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

RE: MWD/UMG Contract

Dear Bob:

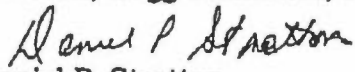
To follow up on our telephone conversation yesterday, please be advised that the District has received a confidential draft of the state auditor's final report. Rhonda, Mike and I reviewed the same yesterday, and have forwarded a copy to our board members, along with a proposed final draft of the contract that was sent to you earlier.

Based on our review of the audit report, we believe that it is necessary to take sufficient time to fully consider the same, and to determine whether or not any of their recommendations should be incorporated into our new contract. Accordingly, we must ask for a thirty day extension of our prior contract so that the Board may fully consider the same, and to have sufficient time to negotiate with you any changes the Board might request based on the audit's recommendations. To that end, I have drafted a proposed extension for your review and consideration so that you may adequately consider the same prior to the Board meeting.

On behalf of the District, we regret that we must get another extension, given everyone's patience to date. However, having waited this long for the audit, and having finally received it, it would appear to us to be imprudent not to take adequate time to fully consider their recommendations and to see what should be adopted, if anything. To ignore the report after we have received it would not only be a bad public relations move, but would also be a breach of the commissioner's fiduciary duty.

If you have any additions or corrections to the proposed contract, or this extension of the original contract, please advise.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
cc: Rhonda James  
Mike Spears

CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)

12/31/2010

		ACQUISITION COST	TYPE OF CAPITAL ASSET		
			VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
Ford F250	8/31/2006	\$ 31,400.00	\$ 31,400.00		
Ford F350	8/31/2006	\$ 36,089.00	\$ 36,089.00		
Dump Truck	5/19/2007	\$ 70,772.00	\$ 70,772.00		
2008 Colorado	8/6/2007	\$ 12,639.65	\$ 12,639.65		
2008 Colorado	8/9/2007	\$ 12,639.65	\$ 12,639.65		
2008 Nissan	10/24/2007	\$ 24,769.00	\$ 24,769.00		
2008 Ranger	12/2/2007	\$ 19,090.00	\$ 19,090.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
Phone System	2/25/2009	\$ 10,000.00			\$ 10,000.00
Postage Machine	3/18/2009	\$ 1,477.00			\$ 1,477.00
Computer Domain	3/30/2009	\$ 300.00			\$ 300.00
Payroll Software	4/21/2009	\$ 1,590.00			\$ 1,590.00
Komatsu Mini Exc	4/30/2009	\$ 37,580.00	\$ 37,580.00		
Pressure Washer	6/22/2009	\$ 2,200.00		\$ 2,200.00	
2009 Chevy PU	9/29/2009	\$ 34,406.24	\$ 34,406.24		
2009 Chevy PU	9/29/2009	\$ 34,406.24	\$ 34,406.24		
<b>TOTALS</b>		<b>\$ 502,268.62</b>	<b>\$ 482,333.38</b>	<b>\$ 6,568.24</b>	<b>\$ 13,367.00</b>

## PAID THROUGH R&amp;M ACCOUNT:

Radios	1/31/2008	\$ 3,663.00		\$ 3,663.00	
Trailer	6/30/2008	\$ 552.48	\$ 552.48		
Band Saw	1/23/2008	\$ 397.90		\$ 397.90	
Hose Combo Kit	1/31/2008	\$ 1,194.69		\$ 1,194.69	
Scanner Update	8/29/2008	\$ 979.00		\$ 979.00	
Hydrant Gauge	10/27/2008	\$ 405.96		\$ 405.96	
Refrigerator	5/27/2009	\$ 660.58			\$ 660.58
Settleometer Kit	3/6/2009	\$ 1,142.38		\$ 1,142.38	
Flow Meter	9/9/2009	\$ 5,856.46		\$ 5,856.46	
Shut off Tool	5/8/2009	\$ 325.00		\$ 325.00	
Weedeater	6/30/2009	\$ 264.67		\$ 264.67	
Hole Saw	7/31/2009	\$ 588.07		\$ 588.07	
Wastewater Probe	11/19/2009	\$ 731.61		\$ 731.61	
Impact Wrench	1/28/2010	\$ 205.00		\$ 205.00	
Vega Drill. Etc	8/31/2010	\$ 1,465.50		\$ 1,465.50	
Refrigerator	1/22/2010	\$ 1,220.53			\$ 1,220.53
Trash Pump	3/21/2010	\$ 597.12		\$ 597.12	
Radios	8/10/2010	\$ 1,892.10		\$ 1,892.10	
Laptop, etc. Mtr Rdng	8/30/2010	\$ 13,650.00		\$ 13,650.00	
Correlator Upgrade	9/21/2010	\$ 10,077.43		\$ 10,077.43	
<b>TOTALS</b>		<b>\$ 45,869.48</b>	<b>\$ 552.48</b>	<b>\$ 43,435.89</b>	<b>\$ 1,881.11</b>



## EXHIBIT 1

CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)

12/31/2010

		ACQUISITION COST	TYPE OF CAPITAL ASSET		
			VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
<b>PURCHASED BY UMG:</b>					
Hammerhead Mole	11/30/2005	\$ 3,700.00		\$ 3,700.00	
2005 Expedition	6/30/2006	\$ 34,448.02	\$ 34,448.02		
2006 GMC Sierra	7/10/2006	\$ 31,951.40	\$ 31,951.40		
Hammerhead Mole	8/31/2006	\$ 3,808.83		\$ 3,808.83	
Hammerhead Mole	11/6/2006	\$ 3,826.68		\$ 3,826.68	
Air Compressor	1/31/2007	\$ 2,771.99		\$ 2,771.99	
Air Compressor	1/31/2007	\$ 1,358.78		\$ 1,358.78	
2 Way Radio	1/31/2007	\$ 3,147.00		\$ 3,147.00	
Camera	1/31/2007	\$ 5,126.77		\$ 5,126.77	
Tilt Bed Trailer	1/31/2007	\$ 7,368.20	\$ 7,368.20		
Aqua Scope	1/31/2007	\$ 2,092.44		\$ 2,092.44	
Engine Scanner	1/31/2007	\$ 2,546.01		\$ 2,546.01	
Trencher	4/27/2007	\$ 4,001.00	\$ 4,001.00		
Laptop Computer	1/23/2008	\$ 1,680.06			\$ 1,680.06
Trailer	1/31/2008	\$ 2,495.00	\$ 2,495.00		
Laptop Computer	2/25/2008	\$ 1,619.68			\$ 1,619.68
Data Recorder	2/20/2008	\$ 2,717.50		\$ 2,717.50	
Computer	4/30/2008	\$ 3,385.00			\$ 3,385.00
Pressure Logger	5/20/2008	\$ 420.00		\$ 420.00	
Laptop Computer	8/5/2008	\$ 1,185.00			\$ 1,185.00
Phone System	8/21/2008	\$ 17,592.44			\$ 17,592.44
Parking Lot Paved	8/29/2008	\$ 14,000.00			\$ 14,000.00
Laptop Computer	12/18/2008	\$ 1,163.90			\$ 1,163.90
2009 Yukon	4/28/2009	\$ 53,227.62	\$ 53,227.62		
Laptop Computer	5/31/2009	\$ 660.01			\$ 660.01
Cameras/DVR	6/19/2009	\$ 1,355.00			\$ 1,355.00
2009 F150	6/9/2009	\$ 48,000.00	\$ 48,000.00		
Trailer	6/25/2009	\$ 7,282.20	\$ 7,282.20		
Auto Dialer	9/28/2009	\$ 3,044.00			\$ 3,044.00
Desktop PC	11/13/2009	\$ 599.98			\$ 599.98
2005 F350	7/23/2010	\$ 13,500.00	\$ 13,500.00		
2006 F250	7/23/2010	\$ 11,500.00	\$ 11,500.00		
<b>TOTALS</b>		<b>\$ 291,574.51</b>	<b>\$ 213,773.44</b>	<b>\$ 31,516.00</b>	<b>\$ 46,285.07</b>

**PURCHASED BY MOUNTAIN WATER DISTRICT:**

Weedeater	8/31/2005	\$ 275.00		\$ 275.00	
Trash Pump	8/31/2005	\$ 892.62		\$ 892.62	
Cut Off Saw	10/31/2005	\$ 821.08		\$ 821.08	
Radios/Chargers	11/30/2005	\$ 1,361.00		\$ 1,361.00	
Colorimeter	11/30/2005	\$ 1,018.54		\$ 1,018.54	
2005 Ranger	12/31/2005	\$ 17,840.65	\$ 17,840.65		
Ford F250	2/25/2006	\$ 32,929.95	\$ 32,929.95		
Trailer	8/4/2006	\$ 7,656.00	\$ 7,656.00		
Mini Excavator	8/30/2006	\$ 29,503.00	\$ 29,503.00		
Ford F250	8/31/2006	\$ 31,400.00	\$ 31,400.00		

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
[www.shmlaw.com](http://www.shmlaw.com)

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

January 6, 2011

Bob Meyers  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

**RE: MWD/UMG 2011 Contract**

Dear Bob:

Please find enclosed the revised contract in its entirety showing the final deletions and additions per our various discussions.

Please review the same and if you have any questions or corrections please advise; otherwise, I will prepare this as the final document for the Board meeting.

Sincerely,

STRATTON, HOGG & MADDOX, P.S.C.



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)  
Phone Extension: 304

DPS/sef

Enc.

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

January 11, 2011

Mr. Bob Meyers  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmever@umgllc.net](mailto:bmever@umgllc.net)

RE: **MWD/UMG 2011 Contract**

Dear Bob:

Please find attached a revised contract in its entirety, for your review and consideration. I have not changed the new paragraph 2.27 in that we have not received your language for the same. We understand that this provision is subject to change.


After thinking about this paragraph some more, I would propose the following language for your consideration.

It is agreed and understood that UMG has to date, funded certain capital expenditures for the District's tangible personal property, including equipment, tools, vehicles, office equipment and furnishings, as a part of their obligations herein to maintain the same. Notwithstanding any provisions herein to the contrary, UMG agrees to fund all capital expenditures for the District's tangible personal property under the obligations to maintain the same for the District. Tangible personal property shall be defined as that property used to operate the District's systems, but shall exclude those items that are a part of the system, such as pipes, pumps, motors, tanks and other such items that are installed as a part of the water and waste water systems. These items fall under the maintenance and repair budget, and would be the financial responsibility of the District.

Bob, I think this creates a fairly clean line between what UMG would be responsible for and what the District would be responsible for, and is consistent with what I understand to be past practice. I will also work on additional language concerning debt payments for the assets.

This is to also confirm we will meet on Friday the 14<sup>th</sup> at my office, subject to Greg's schedule.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachments

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

January 19, 2011

Mr. Bob Meyers  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmever@umgllc.net](mailto:bmever@umgllc.net)

Mr. Greg May  
Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [gregmay@umgllc.net](mailto:gregmay@umgllc.net)


RE: **MWD/UMG 2011 Contract**

Dear Bob & Greg:

Please find attached the final draft of the 2011 Contract Agreement between MWD and UMG, with all additions and corrections, along with a clean copy of the final document.

Also enclosed is the final draft of the close out agreement. The attached drafts were sent to the Board members for their review and consideration for Thursday, January 20<sup>th</sup> special meeting.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachments

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

January 14, 2011

Mr. Bob Meyers  
c/o Utility Management Group  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

RE: Mountain Water District/Utility Management Group  
Contract Extension

Dear Bob:

Please find enclosed revised section 2.27 and new section 6.10 concerning capital expenditures.  
UMG's obligation are in Article 2 and the District's are in Article 6.

Also enclosed is the closeout document for the current contract. If you have any questions please  
give me a call.

Sincerely,

STRATTON, HOGG & MADDOX, P.S.C.



Daniel P. Stratton  
Email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/la

enclosures

cc: Rhonda James  
Mike Spears

F:\Mountain Water District\Utility Management Group\UMG\Letters\Meyer, Bob 1.14.2011  
(1a).wpd

**MOUNTAIN WATER DISTRICT - UMG CONTRACT**

2.27

Notwithstanding anything herein to the contrary UMG agrees to replace the District's capital assets that are not an integral part of the District's water/sewer production, treatment, distribution and or collection systems. For those items that cost less than \$1,500 UMG will purchase and pay for the same. For items that cost more than \$1,500 they may also be purchased and paid for by UMG or at UMG's option may be financed in the District's name, subject to prior approval by the Board, and all such payments shall be made by UMG. At the end of the contract term, if there are outstanding payments due and owing on any purchase of a capital asset referenced above, Mountain Water agrees to pay the balance of the same. All assets acquired under this paragraph, except as hereinafter provided, will be titled in the District's name. Any capital assets that UMG acquires that are not replacements of prior MWD assets, and are not solely dedicated solely for use by the District shall be titled in the name of UMG.

UMG shall submit to the Board at the November board meeting a capital budget request for the next calendar year for approval by the Board. Any capital purchases made that are not in UMG's capital budget as approved by the Board, or are not subsequently requested or purchased by UMG, on their own, shall be paid by the District.

Routine repair and maintenance of any real property utilized by UMG will be done and paid for by UMG.

6.10

The District will be responsible for the purchase of all capital assets regarding the replacement or addition of capital assets that are an integral part of the District's Water/Sewer production treatment distribution and/or collection systems.

THIS AGREEMENT made and entered into this \_\_\_\_ day of January, 2011, by and between **Mountain Water District** of P.O. Box 3157, Pikeville, Kentucky 41502, hereinafter referred to as "District" and **Utilities Management Group, LLC** of P.O. Box 663, Corbin, Kentucky 40702, hereinafter referred to as "UMG."

WHEREAS, the parties hereto entered into a Management Contract, hereinafter referred to as "Agreement" on or about July 3, 2005, in which the District contracted with UMG to manage its operations and facilities pursuant to the terms of the agreement; and

WHEREAS, the agreement has been subsequently amended on three prior occasions, being the 29<sup>th</sup> day of April, 2009, the 24<sup>th</sup> day of February, 2010, and the 29<sup>th</sup> day of December, 2010; and

WHEREAS, the parties hereto contemplate entering into a new contract for operational services and wish to resolve certain outstanding issues concerning the above referenced agreement, as amended.

**NOW THEREFORE, WITNESSETH:**

That for and in consideration of the mutual promises and considerations provided, the parties agree as follows:

1. Pursuant to Section 9 "Scope Changes" of the Agreement UMG made a claim against the District for additional utility expenses incurred as the result of a rate increase beginning on July 1, 2010, through December 31, 2010. This claim has been disputed by the District.
2. To settle this disputed claim, while not admitting liability, the District agrees to pay UMG and UMG has agreed to accept in full settlement of all

claims for change in scope of services under Section 9 of the agreement the sum of \$53,112.00, payable in four monthly installments of \$13,278.00 each, beginning on February 15, 2011, until paid.

3. The parties further acknowledge that UMG advanced the sum of \$153,047.47 for expenses to repair and replace water and sewer lines damaged by the flooding events of July 2010. The District has applied and been approved for reimbursement from FEMA for the above referenced amount; but FEMA has not yet paid the same. If FEMA money has not been received by May 30, 2011, then the District agrees to pay UMG the sum of \$153,047.47 in twelve monthly installments of \$12,753.95 beginning June 15, 2011, until paid.

4. During the term of the agreement, certain capital assets have been purchased by UMG and the District as set forth in Exhibit A. The parties agree that the title to the respective assets shall be as set out in Exhibit 2. UMG agrees to retitle those items listed in Exhibit 2 that belong to the District if and when their contract to operate the District expires or terminates, or when the items are replaced by new capital assets. As the vehicles/rolling stocks set out in Exhibit 2 need to be replaced, they will be acquired and funded pursuant to the parties' new agreement effective January 1, 2011.

5. Should the contract be terminated by either party prior to its term, then the assets set out in Exhibit 2 shall be transferred to the District, along with the balance of any debt thereon.



6. Notwithstanding anything to the contrary, it is further agreed that those vehicles assigned to Grondall Potter and David Taylor shall remain the property of UMG.

7. The parties mutually represent that the above claims are all of the outstanding claims for payment between the parties based on their Agreement; and neither shall make any further claims for payment except as may arise under Section 10 of the Agreement, as amended.

In witness whereof, the parties hereto have agreed the date and year first above written.

**Utilities Management Group, LLC**

**Mountain Water District**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

## MOUNTAIN WATER DISTRICT – UMG CONTRACT

### Section 2.27

Notwithstanding anything herein to the contrary, UMG agrees to replace the District's capital assets that are not an integral part of the District's water/sewer production, treatment, distribution, and collection systems. For those capital items that cost less than \$1,500.00 and are essential to UMG's continuing performance under this agreement, UMG will purchase and pay for the same. For those capital items that are projected to cost more than \$1,500.00 per item and are essential to UMG's continuing performance under this agreement, UMG will submit to the Board at its November meeting each year a capital budget request for the next calendar year for approval by the Board. Any items on the capital budget request submitted to the Board by UMG and subsequently approved by the Board will be purchased by UMG in the District's name utilizing the District's established procurement policies. Such items may be financed in the District's name, subject to the District's approval. Monthly or other periodic payments associated with the financing of these capital items will be paid by UMG so long as this contract remains in effect. At the end of the contract term or upon earlier termination of the contract, if there are outstanding payments due and owing on any purchase of a capital asset referenced above, Mountain Water agrees to pay the balance of the same.

Any capital assets that UMG acquires, at its discretion, that are not replacements of assets owned by the District at 12/31/2010 or are not solely dedicated for use at the Mountain Water District Project shall be titled in the name of UMG. Any capital purchases made that are not included in the capital budget presented to the Board by UMG and approved by the Board, or are not subsequently requested or purchased by UMG on their own, shall be paid by the District.

Routine repair and maintenance of any real property utilized by UMG in the performance of its responsibilities under this contract will be performed and paid for or financed in the District's name by UMG pursuant to the capital acquisition procedures outlined above. This excludes any major renovation or expansion directed by the District which shall be paid directly by the District.

### Section 6.10

The District will be responsible for the purchase or replacement of all capital assets that are an integral part of its water and sewer production, treatment, distribution, and collections systems.

*MOUNTAIN WATER DISTRICT – UMG OPERATIONS AGREEMENT: PROPOSED ADDITION*

Section 2.27

Both parties to this Agreement recognize that there is a continuing need for the District to make capital improvements and/or acquire capital assets that are not an integral part of the District's water and sewer production, treatment, distribution, and collection systems. The capital acquisitions/capital improvements addressed in this Section include vehicles and other rolling stock, major tools and equipment, office equipment, and administrative office facility improvements. While the repair and/or replacement of water and sewer system components (plants, lines, tanks, pump stations, lift stations, meters, PRV's, etc.) are addressed elsewhere in this Agreement and are funded through the Repair and Maintenance portion of the District / UMG budget, this Section of the Agreement addresses the acquisition, replacement, and funding of those capital assets not specifically associated with the District's water and sewer systems.

1. During the initial term of this agreement (July, \_\_ 2005 through December 31, 2010), there were multiple capital asset acquisitions and capital improvements associated with vehicles and other rolling stock, major equipment and tools, office equipment, and administrative office improvements. These acquisitions/improvements were funded in part by UMG, in part by the District, and in part through the Repair and Maintenance portion of the District's budget with UMG. A schedule of capital assets and improvements acquired during the initial term of this Agreement and the source of funding for those assets is attached (Schedule \_\_).
2. With regard to the capital assets / improvements acquired during the initial term of this Agreement (July \_\_, 2005 through December 31, 2010), and identified on Schedule \_\_, the District and UMG agree to the following stipulations:
  - a. All capital assets/improvements identified as either "Equipment / Large Tools" and "Office Equipment" on the attached Schedule \_\_ will be, as of the effective date of this Amendment, the property of the District, regardless of the source of funding for those capital assets/improvements.
  - b. Capital assets identified as "Vehicles / Rolling Stock" on the attached schedule that were acquired by UMG shall remain the property of UMG. As those vehicles and rolling stock need to be replaced, they will be acquired and funded pursuant to Section 3(b) below. (Exception: Grondall and David's vehicles.... PAV's through UMG)
  - c. Should the District elect to terminate this agreement prior to December 31, 2015, all vehicles and rolling stock identified on the attached schedule shall remain the property of UMG.
  - d. Should UMG elect to terminate this Agreement prior to December 31, 2015, UMG shall transfer title to those vehicles and rolling stock on the attached schedule purchased by UMG to the District, with the exception of those vehicles acquired by UMG for senior Mountain Water District Project Managers (listed as "2009 Yukon" and "2009 F150" on the attached schedule).
  - e.

3. With regard to the acquisition of capital assets / improvements needed to continue consistent and efficient operation of the District's water and sewer systems and associated administrative functions by UMG subsequent to January 1, 2011, the District and UMG agree as follows:
  - a. Any acquisition, replacement, and/or repair of existing District assets that are essential to the continued routine and efficient operation of the District's programs at their present level and which cost less than \$1,500.00 will be acquired and paid for by UMG. Title to these assets will be in the name of the District.
  - b. In November of each contract year, UMG will provide the District with a comprehensive schedule of any capital asset replacements or acquisitions that it determines are necessary for its continued efficient and consistent delivery of services required under this Agreement and that are projected to exceed \$1,500.00 per item. This schedule will identify each specific capital asset, whether it replaces an existing capital asset or is a new or additional capital asset not previously owned by the District, rationale for its replacement or acquisition, projected cost, and projected time frame for acquisition. For all such capital items, UMG will procure, acquire, and obtain financing pursuant to the District's policies and procurement guidelines. All such capital assets will be acquired in the District's name. Financing rates and terms will be jointly evaluated, reviewed, and authorized by UMG personnel and the District's financial consultant. As part of its obligation to pay for the continuing operation of the District's facilities and services, UMG agrees to pay for monthly or other periodic loan payments associated with the acquisition / financing of those capital assets addressed in this Section which are replacements of existing District owned assets. The monthly or other periodic loan costs associated with the acquisition of capital assets that are not "replacement" assets shall be borne by the District. Both parties also understand and agree that any capital assets that UMG acquires and are not dedicated solely for use in the Mountain Water District Project will remain the property of UMG.
  - c. Those costs associated with the acquisition of new assets or renovation/repair of existing assets requested and authorized by the Commissioners of the District that are not essential to UMG's performance under this Agreement or are being acquired as a result of a major expansion of the District's water and sewer systems or renovation or expansion of its administrative facilities shall be funded by the District.
  - d. It is understood and agreed by both parties that, should this Agreement be terminated by either party at any time during the term of this contract amendment, all capital assets acquired pursuant to Section 3(b) and 3(c) above will remain the property of the District, and all remaining debt at the time of the termination associated with the acquisition of those assets will be the obligation of the District.
  - e.
- 4.

**CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)**

12/31/2010

	ACQUISITION COST	TYPE OF CAPITAL ASSET		
		VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
<b>PURCHASED BY UMG:</b>				
Hammerhead Mole	11/30/2005	\$ 3,700.00		\$ 3,700.00
2005 Expedition	6/30/2006	\$ 34,448.02	\$ 34,448.02	
2006 GMC Sierra	7/10/2006	\$ 31,951.40	\$ 31,951.40	
Hammerhead Mole	8/31/2006	\$ 3,808.83		\$ 3,808.83
Hammerhead Mole	11/6/2006	\$ 3,826.68		\$ 3,826.68
Air Compressor	1/31/2007	\$ 2,771.99		\$ 2,771.99
Air Compressor	1/31/2007	\$ 1,358.78		\$ 1,358.78
2 Way Radio	1/31/2007	\$ 3,147.00		\$ 3,147.00
Camera	1/31/2007	\$ 5,126.77		\$ 5,126.77
Tilt Bed Trailer	1/31/2007	\$ 7,368.20	\$ 7,368.20	
Aqua Scope	1/31/2007	\$ 2,092.44		\$ 2,092.44
Engine Scanner	1/31/2007	\$ 2,546.01		\$ 2,546.01
Trencher	4/27/2007	\$ 4,001.00	\$ 4,001.00	
Laptop Computer	1/23/2008	\$ 1,680.06		\$ 1,680.06
Trailer	1/31/2008	\$ 2,495.00	\$ 2,495.00	
Laptop Computer	2/25/2008	\$ 1,619.68		\$ 1,619.68
Data Recorder	2/20/2008	\$ 2,717.50		\$ 2,717.50
Computer	4/30/2008	\$ 3,385.00		\$ 3,385.00
Pressure Logger	5/20/2008	\$ 420.00		\$ 420.00
Laptop Computer	8/5/2008	\$ 1,185.00		\$ 1,185.00
Phone System	8/21/2008	\$ 17,592.44		\$ 17,592.44
Parking Lot Paved	8/29/2008	\$ 14,000.00		\$ 14,000.00
Laptop Computer	12/18/2008	\$ 1,163.90		\$ 1,163.90
2009 Yukon	4/28/2009	\$ 53,227.62	\$ 53,227.62	
Laptop Computer	5/31/2009	\$ 660.01		\$ 660.01
Cameras/DVR	6/19/2009	\$ 1,355.00		\$ 1,355.00
2009 F150	6/9/2009	\$ 48,000.00	\$ 48,000.00	
Trailer	6/25/2009	\$ 7,282.20	\$ 7,282.20	
Auto Dialer	9/28/2009	\$ 3,044.00		\$ 3,044.00
Desktop PC	11/13/2009	\$ 599.98		\$ 599.98
2005 F350	7/23/2010	\$ 13,500.00	\$ 13,500.00	
2006 F250	7/23/2010	\$ 11,500.00	\$ 11,500.00	
<b>TOTALS</b>		<b>\$ 291,574.51</b>	<b>\$ 213,773.44</b>	<b>\$ 31,516.00</b>

**PURCHASED BY MOUNTAIN WATER DISTRICT:**

Weedeater	8/31/2005	\$ 275.00		\$ 275.00
Trash Pump	8/31/2005	\$ 892.62		\$ 892.62
Cut Off Saw	10/31/2005	\$ 821.08		\$ 821.08
Radios/Chargers	11/30/2005	\$ 1,361.00		\$ 1,361.00
Colorimeter	11/30/2005	\$ 1,018.54		\$ 1,018.54
2005 Ranger	12/31/2005	\$ 17,840.65	\$ 17,840.65	
Ford F250	2/25/2006	\$ 32,929.95	\$ 32,929.95	
Trailer	8/4/2006	\$ 7,656.00	\$ 7,656.00	
Mini Excavator	8/30/2006	\$ 29,503.00	\$ 29,503.00	
Ford F250	8/31/2006	\$ 31,400.00	\$ 31,400.00	

**CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)**

12/31/2010

	ACQUISITION COST	TYPE OF CAPITAL ASSET		
		VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
Ford F250	8/31/2006 \$ 31,400.00	\$ 31,400.00		
Ford F350	8/31/2006 \$ 36,089.00	\$ 36,089.00		
Dump Truck	5/19/2007 \$ 70,772.00	\$ 70,772.00		
2008 Colorado	8/6/2007 \$ 12,639.65	\$ 12,639.65		
2008 Colorado	8/9/2007 \$ 12,639.65	\$ 12,639.65		
2008 Nissan	10/24/2007 \$ 24,769.00	\$ 24,769.00		
2008 Ranger	12/2/2007 \$ 19,090.00	\$ 19,090.00		
2008 Ranger	7/29/2008 \$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008 \$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008 \$ 16,404.00	\$ 16,404.00		
Phone System	2/25/2009 \$ 10,000.00			\$ 10,000.00
Postage Machine	3/18/2009 \$ 1,477.00			\$ 1,477.00
Computer Domain	3/30/2009 \$ 300.00			\$ 300.00
Payroll Software	4/21/2009 \$ 1,590.00			\$ 1,590.00
Komatsu Mini Exc	4/30/2009 \$ 37,580.00	\$ 37,580.00		
Pressure Washer	6/22/2009 \$ 2,200.00		\$ 2,200.00	
2009 Chevy PU	9/29/2009 \$ 34,406.24	\$ 34,406.24		
2009 Chevy PU	9/29/2009 \$ 34,406.24	\$ 34,406.24		
<b>TOTALS</b>	<b>\$ 502,268.62</b>	<b>\$ 482,333.38</b>	<b>\$ 6,568.24</b>	<b>\$ 13,367.00</b>

**PAID THROUGH R&M ACCOUNT:**

Radios	1/31/2008 \$ 3,663.00		\$ 3,663.00	
Trailer	6/30/2008 \$ 552.48	\$ 552.48		
Band Saw	1/23/2008 \$ 397.90		\$ 397.90	
Hose Combo Kit	1/31/2008 \$ 1,194.69		\$ 1,194.69	
Scanner Update	8/29/2008 \$ 979.00		\$ 979.00	
Hydrant Gauge	10/27/2008 \$ 405.96		\$ 405.96	
Refrigerator	5/27/2009 \$ 660.58			\$ 660.58
Settleometer Kit	3/6/2009 \$ 1,142.38		\$ 1,142.38	
Flow Meter	9/9/2009 \$ 5,856.46		\$ 5,856.46	
Shut off Tool	5/8/2009 \$ 325.00		\$ 325.00	
Weedeater	6/30/2009 \$ 264.67		\$ 264.67	
Hole Saw	7/31/2009 \$ 588.07		\$ 588.07	
Wastewater Probe	11/19/2009 \$ 731.61		\$ 731.61	
Impact Wrench	1/28/2010 \$ 205.00		\$ 205.00	
Vega Drill. Etc	8/31/2010 \$ 1,465.50		\$ 1,465.50	
Refrigerator	1/22/2010 \$ 1,220.53			\$ 1,220.53
Trash Pump	3/21/2010 \$ 597.12		\$ 597.12	
Radios	8/10/2010 \$ 1,892.10		\$ 1,892.10	
Laptop, etc. Mtr Rdng	8/30/2010 \$ 13,650.00		\$ 13,650.00	
Correlator Upgrade	9/21/2010 \$ 10,077.43		\$ 10,077.43	
<b>TOTALS</b>	<b>\$ 45,869.48</b>	<b>\$ 552.48</b>	<b>\$ 43,435.89</b>	<b>\$ 1,881.11</b>

**CAPITAL ITEMS LIST  
2009**

**VEHICLES**

VEH #	VEHICLE	YEAR	MILEGE	MAKE	MODEL	USE	REPLACEMENT	EST. COST
77	1 Ton Flatbed with Crane 6X2	1990	200,000 +	Ford	F-350	Water - DPS WW - LR Station Pump Removal	2 1/2 Ton Flatbed with Crane 4X6	\$54,000
100	Full Size SUV	2005	UMG	Ford	Expedition	Maint. Mgr.	Full Size SUV	~\$45,000
103	Full Size Pickup 4X4	2008	UMG	GMC	1500 Sierra Crew	Ops. Mgr.	1/2 Ton 4X4 Crew Cab	~\$45,000
003	3/4 Ton Pickup 4X4	2003	UMG	Chevy	2500 Silverado Xcab	WW Mgr	Mid Size 1 - 4X4 Extended Cab	\$30,000
71	3/4 Utility Truck	2000	149,048	Ford	F250	Callout	3/4 Ton Diesel Utility	\$35,000
74	3/4 Ton Utility Service Truck	2001	183,034	Dodge	2500 Utility	Utility Service	3/4 Ton Diesel Utility 4 X 2	\$38,000
85	3/4 Ton Utility Service Truck	2002	165,439	Chvrolet	2500 Utility 4X4	Electrical Crew	3/4 Ton Diesel Utility 4 X 4	\$37,000
86	3/4 Ton Utility Service Truck	2002	126,425	Dodge	2500 Utility 2WD	Electrical Crew	3/4 Ton Diesel Utility 4 X 2	\$35,000
87	3/4 Ton Utility Service Truck	2002	156,072	Dodge	2500 Utility 2WD	Electrical Crew	3/4 Ton Diesel Utility 4 X 2	\$35,000

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

January 12, 2011

Mr. Bob Meyers  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmever@umgllc.net](mailto:bmever@umgllc.net)

RE: **MWD/UMG 2011 Contract**


Dear Bob:

Please find attached proposed language to be set forth in Paragraph 2.28 to address the issue of UMG's payment of MWD's debts for capital purchases made on behalf of the District by UMG, but paid for by MWD.

I am certainly open to suggestions as to how this may be better clarified, but I'll tender it as our first proposal for your review and consideration.

If you do have any alternative language proposals for either 2.27 or 2.28, if you could please forward them to me prior to our meeting on Friday at 2:00 pm, it would be most helpful.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachments

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)



Paragraph 2.28 For those capital items referenced in Paragraph 2.27 above, which are the obligation of UMG, it is agreed that the title for all such items will be placed in the name of Mountain Water District. It is further agreed that if the District requires financing for the purchase of said item, UMG will arrange for the financing of the same, subject to the District's approval, and UMG shall pay that debt. It is agreed and understood that in the event this Contract is ever terminated for any reason, or should lapse on its own terms, then in either event, any outstanding debt in the name of Mountain Water District, which has been incurred pursuant to this section, will be the debt of Mountain Water District and not UMG, and UMG will be released from any further obligations to pay the same as established herein.

3. With regard to the acquisition of capital assets / improvements needed to continue consistent and efficient operation of the District's water and sewer systems and associated administrative functions by UMG subsequent to January 1, 2011, the District and UMG agree as follows:
- a. Any acquisition, replacement, and/or repair of existing District assets that are essential to the continued routine and efficient operation of the District's programs at their present level and which cost less than \$1,500.00 will be acquired and paid for by UMG. Title to these assets will be in the name of the District.
  - b. In November of each contract year, UMG will provide the District with a comprehensive schedule of any capital asset replacements or acquisitions that it determines are necessary for its continued efficient and consistent delivery of services required under this Agreement and that are projected to exceed \$1,500.00 per item. This schedule will identify each specific capital asset, whether it replaces an existing capital asset or is a new or additional capital asset not previously owned by the District, rationale for its replacement or acquisition, projected cost, and projected time frame for acquisition. For all such capital items, UMG will procure, acquire, and obtain financing pursuant to the District's policies and procurement guidelines. All such capital assets will be acquired in the District's name. Financing rates and terms will be jointly evaluated, reviewed, and authorized by UMG personnel and the District's financial consultant. As part of its obligation to pay for the continuing operation of the District's facilities and services, UMG agrees to pay for monthly or other periodic loan payments associated with the acquisition / financing of those capital assets addressed in this Section which are replacements of existing District owned assets. The monthly or other periodic loan costs associated with the acquisition of capital assets that are not "replacement" assets shall be borne by the District. Both parties also understand and agree that any capital assets that UMG acquires and are not dedicated solely for use in the Mountain Water District Project will remain the property of UMG.
  - c. Those costs associated with the acquisition of new assets or renovation/repair of existing assets requested and authorized by the Commissioners of the District that are not essential to UMG's performance under this Agreement or are being acquired as a result of a major expansion of the District's water and sewer systems or renovation or expansion of its administrative facilities shall be funded by the District.
  - d. It is understood and agreed by both parties that, should this Agreement be terminated by either party at any time during the term of this contract amendment, all capital assets acquired pursuant to Section 3(b) and 3(c) above will remain the property of the District, and all remaining debt at the time of the termination associated with the acquisition of those assets will be the obligation of the District.
  - e.

Handwritten note: "not dedicated for"

4.

*MOUNTAIN WATER DISTRICT – UMG OPERATIONS AGREEMENT: PROPOSED ADDITION*

Section 2.27

Both parties to this Agreement recognize that there is a continuing need for the District to make capital improvements and/or acquire capital assets that are not an integral part of the District's water and sewer production, treatment, distribution, and collection systems. The capital acquisitions/capital improvements addressed in this Section include vehicles and other rolling stock, major tools and equipment, office equipment, and administrative office facility improvements. While the repair and/or replacement of water and sewer system components (plants, lines, tanks, pump stations, lift stations, meters, PRV's, etc.) are addressed elsewhere in this Agreement and are funded through the Repair and Maintenance portion of the District / UMG budget, this Section of the Agreement addresses the acquisition, replacement, and funding of those capital assets not specifically associated with the District's water and sewer systems.

1. During the initial term of this agreement (July, \_\_ 2005 through December 31, 2010), there were multiple capital asset acquisitions and capital improvements associated with vehicles and other rolling stock, major equipment and tools, office equipment, and administrative office improvements. These acquisitions/improvements were funded in part by UMG, in part by the District, and in part through the Repair and Maintenance portion of the District's budget with UMG. A schedule of capital assets and improvements acquired during the initial term of this Agreement and the source of funding for those assets is attached (Schedule \_\_).
2. With regard to the capital assets / improvements acquired during the initial term of this Agreement (July \_\_, 2005 through December 31, 2010), and identified on Schedule \_\_, the District and UMG agree to the following stipulations:
  - a. All capital assets/improvements identified as either "Equipment / Large Tools" and "Office Equipment" on the attached Schedule \_\_ will be, as of the effective date of this Amendment, the property of the District, regardless of the source of funding for those capital assets/improvements.
  - b. Capital assets identified as "Vehicles / Rolling Stock" on the attached schedule that were acquired by UMG shall remain the property of UMG. As those vehicles and rolling stock need to be replaced, they will be acquired and funded pursuant to Section 3(b) below. (Exception: Grondall and David's vehicles.... PAV's through UMG)
  - c. Should the District elect to terminate this agreement prior to December 31, 2015, all vehicles and rolling stock identified on the attached schedule shall remain the property of UMG.
  - d. Should UMG elect to terminate this Agreement prior to December 31, 2015, UMG shall transfer title to those vehicles and rolling stock on the attached schedule purchased by UMG to the District, with the exception of those vehicles acquired by UMG for senior Mountain Water District Project Managers (listed as "2009 Yukon" and "2009 F150" on the attached schedule).
  - e.

**CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)**

12/31/2010

	ACQUISITION COST	TYPE OF CAPITAL ASSET		
		VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
<b>PURCHASED BY UMG:</b>				
Hammerhead Mole	11/30/2005	\$ 3,700.00	\$ 3,700.00	
2005 Expedition	6/30/2006	\$ 34,448.02	\$ 34,448.02	
2006 GMC Sierra	7/10/2006	\$ 31,951.40	\$ 31,951.40	
Hammerhead Mole	8/31/2006	\$ 3,808.83	\$ 3,808.83	
Hammerhead Mole	11/6/2006	\$ 3,826.68	\$ 3,826.68	
Air Compressor	1/31/2007	\$ 2,771.99	\$ 2,771.99	
Air Compressor	1/31/2007	\$ 1,358.78	\$ 1,358.78	
2 Way Radio	1/31/2007	\$ 3,147.00	\$ 3,147.00	
Camera	1/31/2007	\$ 5,126.77	\$ 5,126.77	
Tilt Bed Trailer	1/31/2007	\$ 7,368.20	\$ 7,368.20	
Aqua Scope	1/31/2007	\$ 2,092.44	\$ 2,092.44	
Engine Scanner	1/31/2007	\$ 2,546.01	\$ 2,546.01	
Trencher	4/27/2007	\$ 4,001.00	\$ 4,001.00	
Laptop Computer	1/23/2008	\$ 1,680.06		\$ 1,680.06
Trailer	1/31/2008	\$ 2,495.00	\$ 2,495.00	
Laptop Computer	2/25/2008	\$ 1,619.68		\$ 1,619.68
Data Recorder	2/20/2008	\$ 2,717.50	\$ 2,717.50	
Computer	4/30/2008	\$ 3,385.00		\$ 3,385.00
Pressure Logger	5/20/2008	\$ 420.00	\$ 420.00	
Laptop Computer	8/5/2008	\$ 1,185.00		\$ 1,185.00
Phone System	8/21/2008	\$ 17,592.44		\$ 17,592.44
Parking Lot Paved	8/29/2008	\$ 14,000.00		\$ 14,000.00
Laptop Computer	12/18/2008	\$ 1,163.90		\$ 1,163.90
2009 Yukon	4/28/2009	\$ 53,227.62	\$ 53,227.62	
Laptop Computer	5/31/2009	\$ 660.01		\$ 660.01
Cameras/DVR	6/19/2009	\$ 1,355.00		\$ 1,355.00
2009 F150	6/9/2009	\$ 48,000.00	\$ 48,000.00	
Trailer	6/25/2009	\$ 7,282.20	\$ 7,282.20	
Auto Dialer	9/28/2009	\$ 3,044.00		\$ 3,044.00
Desktop PC	11/13/2009	\$ 599.98		\$ 599.98
2005 F350	7/23/2010	\$ 13,500.00	\$ 13,500.00	
2006 F250	7/23/2010	\$ 11,500.00	\$ 11,500.00	
<b>TOTALS</b>		<b>\$ 291,574.51</b>	<b>\$ 213,773.44</b>	<b>\$ 46,285.07</b>

**PURCHASED BY MOUNTAIN WATER DISTRICT:**

Weedeater	8/31/2005	\$ 275.00	\$ 275.00	
Trash Pump	8/31/2005	\$ 892.62	\$ 892.62	
Cut Off Saw	10/31/2005	\$ 821.08	\$ 821.08	
Radios/Chargers	11/30/2005	\$ 1,361.00	\$ 1,361.00	
Colorimeter	11/30/2005	\$ 1,018.54	\$ 1,018.54	
2005 Ranger	12/31/2005	\$ 17,840.65	\$ 17,840.65	
Ford F250	2/25/2006	\$ 32,929.95	\$ 32,929.95	
Trailer	8/4/2006	\$ 7,656.00	\$ 7,656.00	
Mini Excavator	8/30/2006	\$ 29,503.00	\$ 29,503.00	
Ford F250	8/31/2006	\$ 31,400.00	\$ 31,400.00	

**CAPITAL ASSETS ACQUIRED FOR MOUNTAIN WATER DISTRICT  
BY SOURCE OF FUNDING (AND OWNERSHIP)**

12/31/2010

		ACQUISITION COST	TYPE OF CAPITAL ASSET		
			VEHICLES / ROLLING STOCK	EQUIPMENT / LARGE TOOLS	OFFICE EQUIPMENT
Ford F250	8/31/2006	\$ 31,400.00	\$ 31,400.00		
Ford F350	8/31/2006	\$ 36,089.00	\$ 36,089.00		
Dump Truck	5/19/2007	\$ 70,772.00	\$ 70,772.00		
2008 Colorado	8/6/2007	\$ 12,639.65	\$ 12,639.65		
2008 Colorado	8/9/2007	\$ 12,639.65	\$ 12,639.65		
2008 Nissan	10/24/2007	\$ 24,769.00	\$ 24,769.00		
2008 Ranger	12/2/2007	\$ 19,090.00	\$ 19,090.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
2008 Ranger	7/29/2008	\$ 16,404.00	\$ 16,404.00		
Phone System	2/25/2009	\$ 10,000.00			\$ 10,000.00
Postage Machine	3/18/2009	\$ 1,477.00			\$ 1,477.00
Computer Domain	3/30/2009	\$ 300.00			\$ 300.00
Payroll Software	4/21/2009	\$ 1,590.00			\$ 1,590.00
Komatsu Mini Exc	4/30/2009	\$ 37,580.00	\$ 37,580.00		
Pressure Washer	6/22/2009	\$ 2,200.00		\$ 2,200.00	
2009 Chevy PU	9/29/2009	\$ 34,406.24	\$ 34,406.24		
2009 Chevy PU	9/29/2009	\$ 34,406.24	\$ 34,406.24		
<b>TOTALS</b>		<b>\$ 502,268.62</b>	<b>\$ 482,333.38</b>	<b>\$ 6,568.24</b>	<b>\$ 13,367.00</b>

**PAID THROUGH R&M ACCOUNT:**

Radios	1/31/2008	\$ 3,663.00		\$ 3,663.00	
Trailer	6/30/2008	\$ 552.48	\$ 552.48		
Band Saw	1/23/2008	\$ 397.90		\$ 397.90	
Hose Combo Kit	1/31/2008	\$ 1,194.69		\$ 1,194.69	
Scanner Update	8/29/2008	\$ 979.00		\$ 979.00	
Hydrant Gauge	10/27/2008	\$ 405.96		\$ 405.96	
Refrigerator	5/27/2009	\$ 660.58			\$ 660.58
Settleometer Kit	3/6/2009	\$ 1,142.38		\$ 1,142.38	
Flow Meter	9/9/2009	\$ 5,856.46		\$ 5,856.46	
Shut off Tool	5/8/2009	\$ 325.00		\$ 325.00	
Weedeater	6/30/2009	\$ 264.67		\$ 264.67	
Hole Saw	7/31/2009	\$ 588.07		\$ 588.07	
Wastewater Probe	11/19/2009	\$ 731.61		\$ 731.61	
Impact Wrench	1/28/2010	\$ 205.00		\$ 205.00	
Vega Drill, Etc	8/31/2010	\$ 1,465.50		\$ 1,465.50	
Refrigerator	1/22/2010	\$ 1,220.53			\$ 1,220.53
Trash Pump	3/21/2010	\$ 597.12		\$ 597.12	
Radios	8/10/2010	\$ 1,892.10		\$ 1,892.10	
Laptop, etc. Mtr Rdng	8/30/2010	\$ 13,650.00		\$ 13,650.00	
Correlator Upgrade	9/21/2010	\$ 10,077.43		\$ 10,077.43	
<b>TOTALS</b>		<b>\$ 45,869.48</b>	<b>\$ 552.48</b>	<b>\$ 43,435.89</b>	<b>\$ 1,881.11</b>

ADDITION TO CONTRACT

It is agreed and understood that UMG has to date funded all capital expenditures for the District's equipment, tools, vehicles, office equipment and furnishings, and all other items that would not be ~~subject to the repair and maintenance budget for the District's~~ operations as a part of their obligations herein to maintain the same. Notwithstanding any provisions herein to the contrary, UMG agrees to fund all capital expenditures for the above referenced items under their obligation to maintain the same for the District.

Phone books  
for UMG  
move

Plants  
pay on each 1.5  
of maintenance  
of  
New through 12.1  
at first year

Change  
to phone book  
for UMG  
move

1-8-11

# MEMO

**TO** : Rhonda, John, Roy & Mike  
**FROM** : Dan *W.S.*  
**DATE** : August 15, 2012  
**REGARDING** : Mountain Water District

---

## REVISIONS TO UMG CONTRACT

---

Attached are the proposed revisions to the UMG contract per our meeting on August 9<sup>th</sup>. Following our meeting on the 9<sup>th</sup>, I met with Roy, who had some other suggestions to add to the contract, and I have also incorporated those for your review and consideration.

To point out a few things of note, in the opening paragraph, the amended agreement would be effective January 1, 2013, so that we stay on our current cycle for terms. After talking with Roy, it is our recommendation that all repairs and maintenance work be approved by the Administrator and an amount over "X" would require Board approval. We have not attempted to set what those amounts should be.

The big change of course, is in Section 7, under Compensation. I have set a fixed fee for the three year term. I would note however, that in subsequent sections, they are allowed additional fees for work beyond the scope of the original contract, and for emergencies that would not fall under the normal operations of the District.

I have also put in under 7.1 that the annual fee may be adjusted from time to time as agreed upon by the parties. We may want to consider whether we keep this sentence, but I thought I would add it to show that we are flexible should there be a substantial need or issue for which the contract should be amended.

I have also added a new 7.2 that would require them, on or before April 1<sup>st</sup> of each year, to provide the District with a detailed financial report of their cost to operate the District, and that this would have an allocation of expenses between water and sewer operations. This of course is our basis for receiving the cost analysis that they provided for 2010 and 2011, and would not tie our hands to having to get a rate request to get the same. This would subject those records to an open records request, if one was made. I know that will be a sensitive subject to them, but I think we need to insure a way that we receive this information on at least an annual basis. I am open to suggestions if there is another way to approach this issue.

You will also note that I have eliminated the provision for repair and maintenance expenditures coming out of their fee, and this contract is structured so that we will pay our own repair and maintenance bills.

Lastly, in Section 11, I have provided that in the event of non-renewal, we will give them 180 notice, and then this will be the six (6) month period that they would have to work with us to bridge from point A to point B, if there is a change.

I have not attached the appendix to this document, and Roy will be working with Grondall to make sure that those are updated as necessary.

If you have any questions or comments, please feel free to call.



## **Agreement For Operations, Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_ day of ~~January~~ \_\_\_\_\_, ~~2011~~  
2012, effective the 1<sup>st</sup> day of January ~~2011~~ 2013, by and between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box  
3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit  
Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water,  
wastewater and related treatment, collection and distribution facilities  
described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation,  
maintenance and management of these facilities and UMG desires to perform  
such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the  
attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way,  
equipment and vehicles presently or hereinafter acquired or owned  
by DISTRICT shall remain the exclusive property of DISTRICT  
unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance  
with the laws of the Commonwealth of Kentucky. Venue for any  
action concerning this contract will be in the Circuit Court of Pike  
County, Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations  
hereunder, may be assigned by UMG without the prior written  
consent of the DISTRICT.

- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or understanding between the parties which pertain to the subject matter hereof.

1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

## 2.1 **UMG's SERVICES - GENERAL**

2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.

2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.

2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same.

2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles, ~~and~~ equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT'S vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory and offset the cost against any funds due UMG.

- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory and offset the cost against any funds due UMG.
- 2.6 UMG shall be responsible for maintaining all manufacturers warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties and provide the DISTRICT an updated copy of the same on a monthly basis.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment with documentation. They shall report to the DISTRICT on a monthly basis what that preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT'S employees, board members or designated DISTRICT's representative. UMG shall provide Kkeys for the Project shall be provided to the DISTRICT'S Administrator. by UMG for such visits. All visitors to the Project shall comply with UMGs operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.
- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply

with governmental safety regulations applicable to UMGs operations hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. All Waste and/or byproduct treated and/or generated during UMGs performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. UMG shall submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water

services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.
- UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary UMG agrees to replace the DISTRICT's capital assets that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that

replacement of capital assets is not essential for their continuing performance under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

- 2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.

- 2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.
- 2.28 All repairs and maintenance expenditures shall be approved in advance by the DISTRICT's Administrator, unless an emergency situation exist. Any emergency situation will be reported to the Administrator or Chairperson within twenty-four (24) hours of notice of the situation. All requests will be supported by a work order. All repair and maintenance expenditures over \$ \_\_\_\_\_ shall be approved by the Board in advance of the expenditure, unless an emergency. UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary.
- 2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the expressed prior written consent of the DISTRICT.

3. **UMG'S SCOPE OF SERVICES - WASTEWATER**

- 3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.
- 3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.
- 3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary
- 3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which



additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

4. **UMG'S SCOPE OF SERVICES - WATER**

- 4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.
- 4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.
- 4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.
- 4.4 ~~UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.~~
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.
- 4.6 ~~UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.~~

5. **UMGs SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.
- 5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.
- 5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and

tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICT'S DUTIES**

6.1 The DISTRICT shall fund all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.

6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.

6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that

UMG may discharge its obligations under this Agreement in the most cost-effective manner.

- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.
- 6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.

## 7. COMPENSATION

- 7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for ~~the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2011, January 1, 2013 through December 31, 2013, shall be \$7,632,000 (\$636,000 monthly),~~ each year of this agreement shall be \$\_\_\_\_\_ (\$\_\_\_\_\_ monthly). adjusted as hereinafter set out. The annual fee may be adjusted from time to time as agreed upon by the parties.
- 7.2 ~~The Annual Fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenues based on the DISTRICT's two most recent prior year's~~

audits. If the annual revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Thus the annual fee increase (decrease) for UMG in the second year of the renewal term (January - December 2012) shall be based on the increase (decrease) in the DISTRICT's total operating revenue based on the 2010 audit as compared to the 2009 audit. Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 monthly). The maintenance and repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.

7.2 On or before April 1<sup>st</sup> of each year, UMG shall provide the DISTRICT a detailed financial report of its costs to operate the DISTRICT. Such report shall also allocate expenses between water and sewer operations.

7.3 In the event the DISTRICT should make application to PSC for a rate increase in any of its services, UMG agrees to provide the DISTRICT a copy of any and all necessary information required by the PSC for such application.

If the DISTRICT elects to verify any information which is required by the PSC, or to conduct rate study, UMG agrees to allow the DISTRICT's duly authorized agents access to its records to verify the information provided by UMG.

~~In the event that the DISTRICT obtains a rate increase, which was secured in part or in whole, to pay for new or additional debt, the parties agree that the portion of the additional revenue to be allocated for division under the 70/30 formula set forth in Section 7.2, shall be the increased net operating revenue after payment of the new or additional debt incurred and any reserve requirements associated therewith.~~

~~7.4 The Annual Fee (and Maintenance and Repair Limit included therein) shall be calculated within thirty (30) days of approval of the DISTRICT'S annual audit, but in no event, later than thirty (30) days prior to the next anniversary date, at which time the new fee would be effective.~~

~~7.5 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the~~

~~excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.~~

- 7.64 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT's application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT's application for reimbursement. If they DISTRICT's application does not receive final approval, or final approval is delayed due to UMG's failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

## 8. PAYMENT OF COMPENSATION

- 8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month during such Agreement Year for service provided in accordance to Articles 7.1 ~~and 7.2~~ of this Agreement.
- 8.2 All other compensation to UMG is due upon receipt of UMGs invoice and payable within ~~fifteen (15)~~ thirty (30) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.

8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement significantly change as a result of one of the following:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.

9.1.2 The DISTRICTS request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and routine growth of current services.

9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMGs additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.

10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.

- 10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.
- 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

## 11. TERM, TERMINATION AND DEFAULT

- 11.1 The initial term of this Agreement shall be ~~five (5)~~ three (3) years commencing January 1, ~~2011~~, 2013. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." ~~Either party shall have the right, without cause, to terminate this Agreement at the end of the third Agreement Year. Notice of termination shall be given in writing no less than one hundred twenty (120) days in advance of the effective date of termination.~~
- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party. ~~except as provided in Section 11.1~~ only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the

unamortized balance of the note as of the date of termination as set out in Appendix E.

If either party elects not to renew or extend the current term of the contract, they shall give the other party one hundred eighty (180) days written notice of their decision.

11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to ~~six (6) months~~ one hundred eighty (180) days from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

## 12. DISPUTES AND FORCE MAJEURE

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMGs ability to perform at the Project, DISTRICT, with UMGs assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action



necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX(1946-2003)

October 23, 2012

Mr. Bob Meyers  
Utility Management Group  
287 Island Creek Road  
Pikeville, Kentucky 41501  
via email: [bmevers@umgllc.net](mailto:bmevers@umgllc.net)

RE: **MWD/UMG Contract Amendment**


Dear Bob:

Please find attached the District's proposed revisions to the UMG Contract. As you can see, we have tried to address those issues that have been of concern to the Board. You will note that we have left blank the amount of compensation to be paid to UMG. We would like to see if we can agree to the basic terms set forth herein, and if we can, then sit down and work out a price.

If you have any questions concerning the changes made to this agreement, please advise and I will walk you through them, and our rationale concerning the same.

I look forward to hearing from you soon. I hope your health issue is resolving itself.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachments

cc: Rhonda James via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)  
John Collins via email: [johnbrendacollin@bellsouth.net](mailto:johnbrendacollin@bellsouth.net)  
Roy Sawyers via email: [rsawyers@mtwater.org](mailto:rsawyers@mtwater.org)  
Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)

**Agreement For Operations,  
Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_ day of January \_\_\_\_\_, ~~2011~~  
2012, effective the 1<sup>st</sup> day of January ~~2011~~ 2013, by and between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box  
3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit  
Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water,  
wastewater and related treatment, collection and distribution facilities  
described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation,  
maintenance and management of these facilities and UMG desires to perform  
such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by DISTRICT shall remain the exclusive property of DISTRICT unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Venue for any action concerning this contract will be in the Circuit Court of Pike County, Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by UMG without the prior written consent of the DISTRICT.

- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or understanding between the parties which pertain to the subject matter hereof.

1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

2.1 **UMG's SERVICES - GENERAL**

2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.

2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.

2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same.

2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles, and equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT'S vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory and offset the cost against any funds due UMG.

- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory and offset the cost against any funds due UMG.
- 2.6 UMG shall be responsible for maintaining all manufacturer's warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties and provide the DISTRICT an updated copy of the same on a monthly basis.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment with documentation. They shall report to the DISTRICT on a monthly basis ~~what that~~ preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT'S employees, board members or designated DISTRICT's representative. UMG shall provide keys for the Project shall be provided to the DISTRICT'S Administrator, by UMG for such visits. All visitors to the Project shall comply with UMG's operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.
- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply

with governmental safety regulations applicable to UMGs operations hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. All Waste and/or byproduct treated and/or generated during UMGs performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. UMG shall submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water

services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.  
  
UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary UMG agrees to replace the DISTRICT's capital assets that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that



replacement of capital assets is not essential for their continuing performance under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

- 2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.

2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.

2.28 All repairs and maintenance expenditures shall be approved in advance by the DISTRICT's Administrator, unless an emergency situation exist. Any emergency situation will be reported to the Administrator or Chairperson within twenty-four (24) hours of notice of the situation. All requests will be supported by a work order. All repair and maintenance expenditures over \$ shall be approved by the Board in advance of the expenditure, unless an emergency. UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary.

2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the expressed prior written consent of the DISTRICT.

3. **UMG'S SCOPE OF SERVICES - WASTEWATER**

- 3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.
- 3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.
- 3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary
- 3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which

additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

4. **UMG'S SCOPE OF SERVICES - WATER**

4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.

4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.

4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.

~~4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.~~

4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

~~4.6 UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.~~

5. **UMG'S SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.

5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.

5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and

tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICTS DUTIES**

- 6.1 The DISTRICT shall fund all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.
- 6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.
- 6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

- 6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that

UMG may discharge its obligations under this Agreement in the most cost-effective manner.

- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.
- 6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.

## 7. COMPENSATION

7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2011, January 1, 2013 through December 31, 2013, shall be \$7,632,000 (\$636,000 monthly), each year of this agreement shall be \$\_\_\_\_\_ (\$\_\_\_\_\_ monthly), adjusted as hereinafter set out. The annual fee may be adjusted from time to time as agreed upon by the parties.

7.2 ~~The Annual Fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenues based on the DISTRICT's two most recent prior year's~~

~~audits. If the annual revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Thus the annual fee increase (decrease) for UMG in the second year of the renewal term (January - December 2012) shall be based on the increase (decrease) in the DISTRICT's total operating revenue based on the 2010 audit as compared to the 2009 audit. Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 monthly). The maintenance and repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.~~

- 7.2 On or before April 1<sup>st</sup> of each year, UMG shall provide the DISTRICT a detailed financial report of its costs to operate the DISTRICT. Such report shall also allocate expenses between water and sewer operations.
- 7.3 In the event the DISTRICT should make application to PSC for a rate increase in any of its services, UMG agrees to provide the DISTRICT a copy of any and all necessary information required by the PSC for such application.

If the DISTRICT elects to verify any information which is required by the PSC, or to conduct rate study, UMG agrees to allow the DISTRICT's duly authorized agents access to its records to verify the information provided by UMG.

~~In the event that the DISTRICT obtains a rate increase, which was secured in part or in whole, to pay for new or additional debt, the parties agree that the portion of the additional revenue to be allocated for division under the 70/30 formula set forth in Section 7.2, shall be the increased net operating revenue after payment of the new or additional debt incurred and any reserve requirements associated therewith.~~

- 7.4 ~~The Annual Fee (and Maintenance and Repair Limit included therein) shall be calculated within thirty (30) days of approval of the DISTRICT'S annual audit, but in no event, later than thirty (30) days prior to the next anniversary date, at which time the new fee would be effective.~~
- 7.5 ~~If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the~~

~~excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.~~

- 7.64 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT's application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT's application for reimbursement. If the DISTRICT's application does not receive final approval, or final approval is delayed due to UMG's failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

8. **PAYMENT OF COMPENSATION**

- 8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month during such Agreement Year for service provided in accordance to Articles 7.1 and 7.2 of this Agreement.
- 8.2 All other compensation to UMG is due upon receipt of UMG's invoice and payable within fifteen (15) thirty (30) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.

8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement significantly change as a result of one of the following:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.

9.1.2 The DISTRICTS request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and routine growth of current services.

9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMGs additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.

10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.



- 10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.
- 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

11. **TERM, TERMINATION AND DEFAULT**

- 11.1 The initial term of this Agreement shall be ~~five (5)~~ three (3) years commencing January 1, ~~2011~~, 2013. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." ~~Either party shall have the right, without cause, to terminate this Agreement at the end of the third Agreement Year. Notice of termination shall be given in writing no less than one hundred twenty (120) days in advance of the effective date of termination.~~
- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party, ~~except as provided in Section 11.1~~ only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the

unamortized balance of the note as of the date of termination as set out in Appendix E.

If either party elects not to renew or extend the current term of the contract, they shall give the other party one hundred eighty (180) days written notice of their decision.

11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to ~~six (6) months~~ one hundred eighty (180) days from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

## 12. DISPUTES AND FORCE MAJEURE

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMG's ability to perform at the Project, DISTRICT, with UMG's assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action

necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

January 8, 2013

Rhonda James, Chairperson  
Mountain Water District  
146 Main Street  
Pikeville, Kentucky 41501  
via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)

Roy Sawyers, Administrator  
Mountain Water District  
Post Office Box 3156  
Pikeville, Kentucky 41502  
via email: [rsawyers@mtwater.org](mailto:rsawyers@mtwater.org)

Lester "John" Collins, Secretary  
Mountain Water District  
3979 Raccoon Creek Road  
Raccoon, Kentucky 41557  
via email: [johnbrendacollin@bellsouth.net](mailto:johnbrendacollin@bellsouth.net)


**Re: MWD/UMG Contract Amendment**

Dear Folks:

Please find attached a copy of the proposed changes to the MWD/UMG Contract Amendment that was forwarded to UMG in October of last year. Pursuant to requests from Greg May, Mike and I met with Greg, Bob and Grondall on Monday, January 7<sup>th</sup> to get their responses to the proposed changes. I have attached a memorandum of my notes from the meeting, noting item per item their agreement or issues with the proposed changes. After you have had an opportunity to review the same, Mike and I are requesting that we set up a meeting to discuss and review our next steps.

If you have any questions prior to then, please feel free to call.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

cc: Mike Spears via email: [mikespears@setel.com](mailto:mikespears@setel.com)

# Memo

**TO** : UMG Contract File  
**FROM** : Dan  
**DATE** : January 7, 2013  
**REGARDING** : MWD/UMG Contract Amendment

---

---

At the request of Greg May, Mike Spears and I met with Greg, Bob and Grondall, to review UMG's response to our proposal sent to them on October 23, 2012. Roy Sawyers was unable to join us for this meeting.

We did an item by item review, and the following are the comments and positions of UMG concerning the proposed changes:

- 1.3 UMG opposes designating Pike Circuit Court as the venue, even though they think that is where it would occur.
- 1.11 Greg did not understand this provision, and would not agree to it, unless we address the addendum dated January 20, 2011, which addressed past due money due to them for extra work. We can make that exception.
- 1.12 Greg did not understand this, but agreed to it.
- 2.3 UMG agreed to put in maps, but noted that we would need to provide that MWD would have to apply for, and pay for, any software licenses required.
- 2.4 & 2.5 Greg stated that the inventories have been done. He would like that deleted, but we asked to see copies of the inventories.

- 2.6 Greg states that MWD has copies of inventories in their files. Need to delete "monthly basis".
- 2.7 Greg has agreed, but states that it is already done, though he will try to do a more detailed report. He said that close to ninety percent (90%) of our repair & maintenance is reactionary to problems that arise, and as a result, they do not have the resources to do planned maintenance. It is his plan to set up a schedule each year, and designate, priority 1, 2 and 3 level maintenance, and cover priority 1 until the funding runs out, and then start on priority 2 as funding is available, and so forth and so on. He states that we do not understand the magnitude of our situation. We acknowledged that we do not understand the amount of unscheduled maintenance that takes place, and that is what is causing the budget deficit in the R&M.
- 2.9 Agreed, provided that we sign for the key. Roy now has a key.
- 2.17 He wants to change the original language, which provides:

"UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT."

They want to change that language to:

"UMG will provide administrative and support necessary for the DISTRICT to effectively operate its business affairs."

This leaves any gap for this work in the District's hands as opposed to UMG's hands. Now that MWD has Roy and Carrie on board, this may not be an issue, but it is something that we need to review carefully. They have an issue with our proposed additional language concerning their report on direct operating cost for water and waste water services on a monthly basis, and year to date basis. They want to apply a percentage cost allocation for the operation of the District to water and to sewer by major cost items. This is a section that will need to be redrafted and adjusted.

2.27, 2.28  
and 2.29

They had a serious objection to these sections as they do not want any prior approval for their work, saying that it would make it impossible for them to do what is necessary, and they stated it was a lack of belief and trust that they are handling the matters properly. As to 2.27, that is okay, and they think they can do that. As to 2.29, they understood why we were requesting it, and they say that is what they do now. As to 2.28, this section needs to be reviewed in light of how we want to address the R & M Budget. We explained to them that we need to get control over the expenses, and this was a way to do so. They did not have another suggestion, per say, other than coordinating the repair and maintenance through an annual plan as referenced above. We told them that we would re-examine this issue. The other issue that we had here was the need to get quotes because we are required to get quotes for certain sized projects, and we needed to be insured that they are doing that in that they were buying in our name, and using our tax ID number.

4.6

This section will remain. I think it is their concern that we would contract out repair and maintenance to third parties, though it was not stated specifically at the meeting.

Section 7

Greg stated categorically that he would not agree to a fixed cost contract, unless there was some provision for adjustment in the event that we could not agree to the same. His recommendation is the CPI Index. We discussed this at length and explained to him that our PSC counsel has told us that it is not a viable option for the PSC as they will not agree to CPI adjustments. Greg fails to understand why because he has a number of agreements of that nature with cities and other entities.

We discussed a number of options, including a margin over his costs, and the pros and cons with that. He made a big to-do over Kentucky Water in Lexington getting a twelve percent (12%) rate of return, which included all of their costs. I told him that it also included all the risk of capital maintenance, and he is under the belief that they get twelve percent (12%) over whatever their costs are, which would include maintenance. I am to check with Jack Hughes on that specific issue.

In the end, we shared with them that it is our belief that they are paid to much, and we understand that they believe that they are not paid enough, and that is the issue that exists between any buyer and seller.

- 7.2 Agreed.
- 7.3 Greg said he would only give limited access to the PSC to his files to verify costs. We do not know what limited means.
- 8.2 He wants to keep it fifteen (15) days instead of thirty (30), noting that there had not been a problem before.
- 11.1 He believes it should be a five (5) year contract. I explained to him that the three (3) years was to his benefit based on the proposed pricing structure, but that we would work with him to set the term to appropriately reflect our agreement in regard to the pricing structure for the contract.
- 11.3 & 11.4 He wanted the hundred and eighty (180) days changed back to the six (6) months. I told him that we were just trying to be more precise. He did not want to do that.

We concluded the meeting, and told him that we would get back with the Board and get their feedback in regard to their responses.



LAW OFFICES OF  
**STRATTON, HOGG & MADDOX, P.S.C.**

P.O. BOX 1530  
PIKEVILLE, KY 41502  
PHONE: (606) 437-7800  
FAX: (606) 437-7569  
www.shmlaw.com

DAVID C. STRATTON  
STEPHEN L. HOGG  
DANIEL P. STRATTON

HENRY D. STRATTON (1925-1989)  
F. BYRD HOGG (1922-1999)  
H. EDWARD MADDOX (1946-2003)

February 26, 2013

Rhonda James, Chairperson  
Mountain Water District  
146 Main Street  
Pikeville, Kentucky 41501  
via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)

Roy Sawyers, Administrator  
Mountain Water District  
Post Office Box 3156  
Pikeville, Kentucky 41502  
via email: [rsawyers@mtwater.org](mailto:rsawyers@mtwater.org)

Lester "John" Collins, Secretary  
Mountain Water District  
3979 Raccoon Creek Road  
Raccoon, Kentucky 41557  
via email: [johnbrendacollin@bellsouth.net](mailto:johnbrendacollin@bellsouth.net)

Michael R. Spears, CPA, PSC  
Post Office Box 1270  
Prestonsburg, Kentucky 41653  
Via email: [mikespears@setel.com](mailto:mikespears@setel.com)

**Re: MWD/UMG Contract Amendment**

Dear Folks:

Please find attached a revised draft of the MWD/UMG Contract Amendment, incorporating those changes that we agreed upon in our meeting of February 21<sup>st</sup>.

I have also attached a proposed draft letter for Mike to review with Greg, denoting the changes that we have agreed to, and our compromised language that we proposed in certain sections. If you have any additions or corrections, please advise.


I would note that Section 11 in our current agreement provides:

"Either party shall have the right, without cause, to terminate this agreement at the end of the third agreement year. Notice of termination shall be given in writing no less than one hundred twenty days in advance of the effective date of termination."

The current contract was effective January 1, 2011. Accordingly, if we were to terminate this agreement under this provision, we would be required to give them notice of the same no later than September 1, 2013.

If you have any questions, please feel free to call.

Sincerely,  
Stratton, Hogg & Maddox, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

# MEMO

**TO** : Utility Management Group, LLC  
**FROM** : Daniel P. Stratton, Esq.  
**DATE** : February 26, 2013  
**REGARDING** : MWD / UMG

---

## CONTRACT AMENDMENT

---

Mountain Water District's Committee for the UMG Contract has met and reviewed your response to our proposed amendments. The following is an item by item review of the District's responses to UMG's comments.

- 1.3 The District will agree to a venue in Johnson County if Pike County is not acceptable.
- 1.11 This provision will remain, but we will add that the District will remain liable for any debt due UMG.
- 1.12 Both sides have agreed to this language.
- 2.3 UMG has agreed to the amendment of maps, and the District has agreed to apply and pay for any software licence required at the time.

- 2.4 &  
2.5 The inventories have been completed, but this section would remain as it will impact future inventories as the contract is renewed.
- 2.6 MWD has agreed to delete "on a monthly basis".
- 2.7 The parties have agreed to the amended language.
- 2.9 The District has agreed that the Administrator will sign a receipt for all keys received.
- 2.17 The District cannot agree to the proposed changes by UMG and wishes to retain the original language as amended.
- 2.27 &  
2.28 The District agrees that UMG will not have to seek prior approval of any repair and maintenance expenditures by the Administrator or by the Board, unless and until such expenditures exceed the monthly R&M Budget, after which UMG will seek approval of the Administrator, unless an emergency exist. The remaining provisions of 2.27 and 2.28 will otherwise remain.
- 2.29 The District cannot agree to the removal of this provision.

4.4 &

4.6 These sections will remain in the agreement as is.

Section 7 The provisions for compensation as set forth in Section 7 of the agreement have yet to be determined, however, MWD must have a fixed price for a set term to be agreed upon between the parties. If the parties cannot agree upon a price and a fixed term, then the District's proposal is to request that the PSC set the rate increase.

7.2 The District wants to keep this change.

8.2 The District agrees to maintain the original fifteen (15) day provision.

11.1 The term of the agreement will be based upon the pricing structure which has yet to be determined.

11.3 &

11.4 The District agrees to use the term six (6) month instead of one hundred eighty (180) days as proposed.

## Agreement For Operations, Maintenance and Management Services

THIS AGREEMENT is entered into this \_\_\_\_ day of ~~January~~, ~~2011~~  
2013, effective the 1<sup>st</sup> day of ~~January~~ 2011 2013, by and  
between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box  
3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit  
Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water,  
wastewater and related treatment, collection and distribution facilities  
described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation,  
maintenance and management of these facilities and UMG desires to perform  
such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the  
attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way,  
equipment and vehicles presently or hereinafter acquired or owned  
by DISTRICT shall remain the exclusive property of DISTRICT  
unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance  
with the laws of the Commonwealth of Kentucky. Venue for any  
action concerning this contract will be in the Circuit Court of  
Johnson County, Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations  
hereunder, may be assigned by UMG without the prior written  
consent of the DISTRICT.

- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.

1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or understanding between the parties which pertain to the subject matter hereof. However, the DISTRICT shall remain liable for any outstanding debt due UMG.

1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

2.1 **UMG's SERVICES - GENERAL**

2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.

2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.

2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same. The DISTRICT agrees to apply and pay for any and all software licenses necessary to transfer the same to the DISTRICT.

2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles, and equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT'S

vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory and offset the cost against any funds due UMG.

- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory and offset the cost against any funds due UMG.
- 2.6 UMG shall be responsible for maintaining all manufacturers warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties for the DISTRICT.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment with documentation. They shall report to the DISTRICT on a monthly basis what that preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT'S employees, board members or designated DISTRICT's representative. UMG shall provide keys for the Project shall be provided to the DISTRICT'S Administrator. The Administrator shall sign a receipt for any keys received. by UMG for such visits. All visitors to the Project shall comply with UMGs operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.



- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMGs operations hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").
- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. All Waste and/or byproduct treated and/or generated during UMGs performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. UMG shall

submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water services and waste water services on a monthly and year to date basis.

2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.

2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.

UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.

2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.

2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.

2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.

2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.

2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.

2.25 Notwithstanding anything herein to the contrary UMG agrees to replace the DISTRICT's capital assets that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that replacement of capital assets is not essential for their continuing performance under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require

financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.

2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.

2.28 All repairs and maintenance expenditures shall be approved in advance by the DISTRICT's Administrator, unless an emergency situation exist. Any emergency situation will be reported to the Administrator or Chairperson within twenty-four (24) hours of notice of the situation. All requests will be supported by a work order. All repair and maintenance expenditures over \$ shall be approved by the Board in advance of the expenditure, unless an emergency. UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary. If an expenditure for repair and maintenance is going to exceed the monthly budget set forth above, then such expenditures shall be approved in advance by the DISTRICT Administrator, unless an emergency situation exist.

2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the expressed prior written consent of the DISTRICT.

3. **UMG'S SCOPE OF SERVICES - WASTEWATER**

3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.

3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.

- 3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary
- 3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

4. **UMG'S SCOPE OF SERVICES - WATER**

- 4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.
- 4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.
- 4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.
- 4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.
- 4.6 UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.

5. **UMG's SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.

5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.

5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICTS DUTIES**

6.1 The DISTRICT shall fund all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.

6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements, and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.

6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the

DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

- 6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.
- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.
  - 6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.
7. **COMPENSATION**
- 7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2011, January 1, 2013 through December 31, 2013, shall be \$7,632,000 (\$636,000 monthly), each year of

fox WorkCentre 7  
2-26-13 Letter - Stratton to Ja., Thu Oct 30 18:11:14 2014 Media Type: Default  
Automatic Office: sRGB-Display Press: Commercial Print Quality: Stand

this agreement shall be \$\_\_\_\_\_ (\$\_\_\_\_\_ monthly),  
~~adjusted as hereinafter set out. The annual fee may be adjusted  
from time to time as agreed upon by the parties.~~

7.2 ~~The Annual Fee shall be adjusted annually to provide that UMG  
will be paid seventy percent (70%) of the increase in total operating  
revenues based on the DISTRICT's two most recent prior year's  
audits. If the annual revenue decreases, there will likewise be a  
downward adjustment in the fee based on the same ratio. Thus  
the annual fee increase (decrease) for UMG in the second year of  
the renewal term (January - December 2012) shall be based on the  
increase (decrease) in the DISTRICT's total operating revenue  
based on the 2010 audit as compared to the 2009 audit. Included  
in the annual fee is the allowance for maintenance and repair,  
which shall initially be \$564,000 (\$47,000 monthly). The  
maintenance and repair budget shall adjust annually in direct  
proportion with any adjustments in the annual fee.~~

7.2 On or before April 1<sup>st</sup> of each year, UMG shall provide the  
DISTRICT a detailed financial report of its costs to operate the  
DISTRICT. Such report shall also allocate expenses between water  
and sewer operations.

7.3 In the event the DISTRICT should make application to PSC for a  
rate increase in any of its services, UMG agrees to provide the  
DISTRICT a copy of any and all necessary information required by  
the PSC for such application.

If the DISTRICT elects to verify any information which is required  
by the PSC, or to conduct rate study, UMG agrees to allow the  
DISTRICT's duly authorized agents access to its records to verify  
the information provided by UMG.

~~In the event that the DISTRICT obtains a rate increase, which was  
secured in part or in whole, to pay for new or additional debt, the  
parties agree that the portion of the additional revenue to be  
allocated for division under the 70/30 formula set forth in Section  
7.2, shall be the increased net operating revenue after payment of  
the new or additional debt incurred and any reserve requirements  
associated therewith.~~

7.4 ~~The Annual Fee (and Maintenance and Repair Limit included  
therein) shall be calculated within thirty (30) days of approval of  
the DISTRICT'S annual audit, but in no event, later than thirty (30)~~



days prior to the next anniversary date, at which time the new fee would be effective.

7.5 ~~If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.~~

7.64 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT's application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT's application for reimbursement. If they DISTRICT's application does not receive final approval, or final approval is delayed due to UMG's failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

## 8. PAYMENT OF COMPENSATION

8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month during such Agreement Year for service provided in accordance to Articles 7.1 and 7.2 of this Agreement.

8.2 All other compensation to UMG is due upon receipt of UMGs invoice and payable within fifteen (15) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.

8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement significantly change as a result of one of the following:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.

9.1.2 The DISTRICT'S request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and routine growth of current services.

9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMGs additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.

- 10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.
  - 10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.
  - 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
  - 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
  - 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.
11. **TERM, TERMINATION AND DEFAULT**
- 11.1 The initial term of this Agreement shall be ~~five (5)~~ three (3) years commencing January 1, ~~2011~~, 2013. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." ~~Either party shall have the right, without cause, to terminate this Agreement at the end of the third Agreement Year. Notice of termination shall be given in writing no less than one hundred twenty (120) days in advance of the effective date of termination.~~
  - 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party, ~~except as provided in Section 11.1~~ only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.

11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the unamortized balance of the note as of the date of termination as set out in Appendix E.

If either party elects not to renew or extend the current term of the contract, they shall give the other party six (6) months one hundred eighty (180) days written notice of their decision.

11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to six (6) months from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs, not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

## 12. DISPUTES AND FORCE MAJEURE

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMG's ability to perform at the Project, DISTRICT, with UMG's assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

# Memo

**TO** : Mountain Water District Board  
**FROM** : Daniel P. Stratton  
**DATE** : March 26, 2013  
**REGARDING** : MWD / UMG

---

## CONTRACT AMENDMENTS

---

In our initial 2005 Contract with UMG, price adjustments were based on customer growth. They were given a fixed fee for each additional customer. This substantially increased their base pay, and caused a decline in the District's revenue, because most of the accounts added were low to moderate income accounts, who paid the minimum bill. Accordingly, our expenses went up faster than our revenue. In 2011, we entered into a new agreement, and to address this problem, we provided that their fees would increase based on a revenue sharing plan. Under this formula, every new dollar of revenue growth was split 70/30, based on the prior year's numbers. At that time, we did not foresee requesting a rate increase, nor did we understand the problems we had with R&M expenditures. The 2011 Contract has a provision that we can cancel it after three (3) years by giving a one hundred twenty (120) day notice (August 30, 2013), which allows us an opportunity to renegotiate the same.

Since 2011, we have seen a rapid increase in our R&M expenses. To address this issue, we commissioned a rate study in 2012, to see if we were justified in seeking a rate increase. The rate study recommended a thirty-one percent (31%) rate increase in our water bill, which would increase revenue \$2,361,714 per year or \$196,609 per month. The increase for sewer rate was eighty-eight point six percent (88.6%) or \$798,248 per year or \$66,520 per month. The total increase was \$3,159,962 per year or \$263,000 per month. The study assumed that all of UMG's expenses and the contract would be deemed reasonable by the PSC.

We can consult Jack Hughes, our PSC attorney, about the rate increase, and he advised that the current formula of revenue sharing would probably not be approved by the PSC, a plan was devised to request that UMG amend the contract to a fixed price for a two (2) year period, after which, the Board would renegotiate their fees subject to whatever rate increase was granted. It was anticipated that UMG would not be getting any rate increase under the current contract because our revenues have been flat, and that this would create an opportunity for them to increase their fees, along with us increasing our revenues, if the PSC gave us a rate increase.

To that end, a Committee was appointed to negotiate a new contract with UMG. The Committee proposed a fixed rate structure, but UMG will not agree to that structure. After discussing various options, they have proposed that their fee increase for 2014 and 2015 be negotiated, and that if that could not be done successfully, the fees would increase based on the CPI index, not to exceed three percent (3%). The CPI index for 2012 was about two percent (2%).

We have reviewed this option with Jack Hughes, and by the PSC has informed us that no contract with a CPI index provision has been approved. He could not find one that had a cap, but he did not believe one would be approved because it was not tied to their actual costs, which is the basic formula that the PSC prefers to use.

In a rate request, the PSC will evaluate the appropriateness of our expenses, including what UMG is paid. If they deem any cost unreasonable (this would include fee increases to UMG), they can disallow all or part of any rate increase to which MWD could otherwise be entitled. They have previously disallowed any expenses tied to the CPI index because it is not tied to our actual increase in cost. The same would be true for the current revenue sharing agreement. However, the PSC will not negotiate or recommend a contract structure for us as that is between the parties. Their decision will only eliminate options that they do not approve.

This leaves us in a dilemma on how to move forward. Under the rate study, if, for discussion purposes, we were to receive half of what the study indicated, that would be \$1,579,981 per year. UMG would be entitled to seventy percent (70%) of that amount or \$1,105,986 and we would be entitled to thirty percent (30%) or \$473,994. If the rate increase is not approved, then the revenue sharing is a moot point, and we will be forced to change the contract before we came back to the PSC.

If we went with the CPI adjustment and a three percent (3%) cap, a three percent (3%) cap would be a fee increase of approximately \$228,000 for 2014, and \$235,000 for 2015, for a total of approximately \$463,000 over a two (2) year period. Based on current revenues and expense trends, we are not sure whether or not we could cover those expenses without a rate increase.

Jack Hughes recommended the following language if we change the contract to adopt the CPI option.

"If the PSC determines any provision of the agreement is unreasonable for rate making or regulatory purposes, or if any payment or portion of payment to UMG is disallowed for recovery and rates, the District shall be relieved of the provision or provisions found to be unreasonable, and shall not be liable to UMG for the disallowed amount of the payment or payments."

Under this option, our interpretation of this provision is that if the PSC disallowed a CPI adjustment, then we would not owe them that money as that section of the agreement would be voided. We have not presented this option to UMG, but we are doubtful they would agree to the same.

There are pros and cons, and significant risks to any option. I have summarized some of those under the attached exhibit.



**MOUNTAIN WATER DISTRICT**

**Fixed Rate Contract** (i.e., price fixed for contract for a term of 2 to 5 years, and prices renegotiated at the end of the term)

MWD Pros:

- 1) The PSC is most likely to approve this structure for some form of rate increase.
- 2) Fixed price allows increased revenues to stay with MWD for R&M and growth issues.
- 3) If sufficient rate increase is granted, UMG's contract could be renegotiated to increase their fees.

MWD Cons:

- 1) A fixed price may create a higher initial price that would have to average out over the term of the contract.
- 2) UMG objects to this format.

**Revenue Sharing Contract** (70/30 split)

MWD Pros:

- 1) Protects against UMG's expense from growing faster than MWD's revenue.
- 2) A 70/30 split would provide additional income if a rate increased were granted.
- 3) UMG has already approved this concept in our existing contract.

MWD Cons:

- 1) The PSC will not approve this format, and may not allow us a rate increase.
- 2) UMG may receive an increase that exceeds their increased cost.
- 3) MWD may not receive sufficient income to cover its increase cost for items outside of the contract with UMG.

**CPI Adjustment Provision** (with a three percent (3%) cap)

MWD Pros:

- 1) This would limit UMG's fee increases to a fixed amount regardless of whether or not their expenses were higher or lower than three percent (3%).
- 2) UMG would accept this option.

MWD Cons:

- 1) PSC will more likely than not, disapprove a contract provision with a CPI index. While there was no specific cases on one involving a cap, the concern is that it would not be approved.
- 2) We would be tying ourselves to this contract for an additional two (2) year period, and if a rate increase was not granted, then we would be obligating ourselves for funds that we may not have in the future.

**Regardless of which type of contract we use, the PSC will evaluate the reasonableness of UMG's operating expenses. To the extent any are deemed unreasonable that will offset any rate increase to which we would be entitled.**

Utility Management Group, LLC.  
MEMORANDUM

**TO:** Dan Stratton & Mike Spears  
**FROM:** Bob Meyer  
**CC:** Greg May  
**DATE:** April 19, 2013  
**RE:** Mountain Water District Contract Renewal

Dan and Mike. Greg and I have discussed at length an approach to annual contract fee increases with Mountain Water District. For many reasons, not the least of which is that we have not had a fee increase in 3 years now, it is our position that a 2% annual fee increase beginning 1/1/14 and another annual increase of 2% beginning 1/1/15 is fair. Converting that percentage increase to a dollar amount, the annual fee for 2014 would be \$7,756,898 and the annual fee for 2015 would be \$7,912,036. In addition to the automatic 2% annual increases, the contract would contain a stipulation that, in the event any of the following direct expense items increase by more than 5% in any 12 month period, UMG would be paid for the additional cost above 5%. Those items are:

Electric  
Vehicle Fuel (gas and diesel combined)  
Purchased Water  
Employee Health Insurance Expense

In other words, UMG would absorb the first 5% of any cost increases in those 4 categories but would be paid an additional amount for any increases in excess of 5%. Keep in mind that both annual electric and purchased water costs are in excess of \$1,000,000 each. Likewise, vehicle fuel costs are pushing \$300,00 and health insurance expense for the MWD project is close to \$400,000. 5% of any of these items is a significant number and we are taking the risk for any increases up to 5%. I have not put any of this into contract language, but if UMG and the commissioners cannot agree on the concept and amounts, the contract language is irrelevant.

We would also agree to the concept that we discussed on Tuesday: Establishing a reasonable Gross Margin amount at this point in time that would be guaranteed to UMG. This Gross Margin amount would not change for the term of the contract (ie: two and a half years). Any UMG contact fee increases would be based on actual documented direct cost increases. The question obviously is what is a reasonable gross margin for UMG. It is our position that anywhere from 10% to 12% is fair and in the range for the industry norm. Depending on how the contract is structured with regard to a fee increase (ie: defining "gross margin", how much detailed documentation for direct costs will be required, whether or not an independent audit is required to verify direct costs, etc.) we would be willing to take 8%. What is the Commissioners' perspective about margin and profit in this context?

Also, from what we have been able to gather, the PSC will not in fact accept a CPI indexed fee increment with a standard rate application. We are not sure why there are contracts out there that we know about which have CPI increases in them that have not been questioned by the PSC. Perhaps because they did not have any rate increases and it was not brought to the PSC's attention. Regardless, the CPI index is not going to work in this particular situation.

We are willing to flesh out either of these two concepts with you and the Commissioners - or any other approaches that are reasonable. Please let us know how to proceed from here.

SquirrelMail

Page 1 of 2

[Compose](#) [Addresses](#) [Folders](#) [Calendar](#) [Tools](#) [Options](#) [Search](#) [Help](#)

[Sign Out](#)  
[Contact Us](#)

Viewing a text attachment - [View message](#)  
[Download this as a file](#)

Sent via iPhone from Mike Spears

Begin forwarded message:

From: Bob Meyer <[bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)>  
Date: April 22, 2013, 11:01:53 AM EDT  
To: Mike Spears <[mikespears@setel.com](mailto:mikespears@setel.com)>  
Subject: RE: woops

Mike-  
What I include in Gross Margin (ie: below the line) are any payments made to a  
"corporate" account in Corbin, items like amortization of that \$500M loan from a couple  
years ago, one time charges (ie: we went through a sales & use tax audit recently and had to  
make a one-time payment to the state for items purchased that were taxable and we thought  
were not. Also below the line are legal fees (ie: defense regarding open records suit, etc.),  
corporate taxes, profit, etc. Included with "direct costs" (ie: above the line) is a prorated  
portion of our Island Creek facility costs (personnel, rent, etc etc). I consider all of the costs  
of this office as "direct" even though they are prorated to all of our contracts "since"  
since we deal with direct operations expenses from here (payroll, accounts payable, mapping,  
safety coordinator, etc.). If any of that changes, then the gross margin % also changes. Let  
me know if that makes sense.  
Bob

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is  
privileged or confidential. If you are not the intended recipient, or an authorized employee,  
agent, or representative of the intended recipient, do not read, copy or disseminate this  
message or any attachment. If you have received this message in error, please call the sender  
immediately at 606.437.4754 and delete all copies of the message and any attachments.  
Neither the transmission of this message or any attachment, nor any error in transmission or  
mis-delivery shall constitute waiver of any applicable legal privilege.*

---

From: Mike Spears [<mailto:mikespears@setel.com>]  
Sent: Monday, April 22, 2013 10:16 AM  
To: Bob Meyer  
Subject: RE: woops

SquirrelMail

Page 2 of 2

Bob,

I corrected Dan on this formula, it hit me that afternoon. So on that we are okay. I am going to analyze the options today that you sent Friday and will get back to you this afternoon. As far as Gross Margin, what would be considered below this line. Is above the line, only direct costs of the district or are you considering other items above the line. This may be the best option as far as the PSC is concerned because we would be tying increases to documented cost. I want to spend some time with this in the afternoon, but the question above would be helpful. We need to resolve these so we can get the board moving on a rate increase filing.

Mike

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Monday, April 22, 2013 9:56 AM  
**To:** [mikespears@setel.com](mailto:mikespears@setel.com)  
**Subject:** woops

Hey Mike-

Just a side note. I realized that, when we had our meeting last week, and I was going on about a formula to back into a gross margin amount, I mis-stated the formula. You have to divide your total amount by 1 plus the margin percent. For instance, take our current contract of 7,604,802. Assume a gross margin of 8%. Divide 7,604,802 by 1.08 (ie: one plus margin of .08) and the number is 7,041,148. 8% of 7,041,148 equals 563,319. Direct costs of 7,041,148 plus an 8% margin of 563,319 gets you back to the total contract amount of 7,604,802. I assume you already figured that out. Anyway, a misleading statement on my part. Are you and Dan going to look at the numbers I sent you last Friday before the board meeting? Let me know if there is any other approach or discussion you and I need to have to get this off of dead center. If you think the approach I laid out in that last email to you and Dan is not going to be acceptable to the board, let me know. You and I both can manipulate numbers all day long. If we can get to some number or % that is in the neighborhood of what the board feels is fair and what UMG feels is fair, surely we can put together something we can all live with. Anyway, if you want to give me any ideas or suggestions aside from the meetings with Dan and Greg, let me know. I'm open.

Bob

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

# Memo

**TO** : Rhonda James, John Collins, Roy  
Sawyers, Mike Spears

**FROM** : Daniel P. Stratton, Esq.

**DATE** : April 2, 2013

**REGARDING** : MWD / UMG

---

## CONTRACT AMENDMENTS

---

Please find attached a revision to the UMG / MWD Contract based on the discussions Mike Spears had with Bob and Greg, and the ideas that have been considered by the Committee.

The changes from the last proposals are as follows:

- 1.3 UMG wants to strike the provision for venue, which is where a court action would be heard, should there be a dispute between the parties. We have agreed to do so, which should make Pike County the proper venue.
- 1.11 We have added in the last sentence, "however, the District shall remain liable for any outstanding debts and any other accrued liabilities due UMG." The addition of "and any other liabilities", is at UMG's request and clarifies any questions.
- 2.24 &
- 2.25 We have agreed not to offset the cost for an inventory against any funds due UMG, if they do not do one.

2.17 This section provides that UMG will provide all of the administrative and financial functions necessary to effectively operate the business affairs of the District, except as designated by the District. UMG wants to state, "UMG shall provide all necessary and supplemental support services for the effective administration and financial functions." I respectfully disagree with that language, because I do not know what "supplemental support services" means. The structure of this paragraph is to insure that they are responsible for all of these functions, except for what the District otherwise designates. Therefore, if something falls through a hole, it is their responsibility, unless they can show that the District specifically assumed that responsibility. The language they have proposed is more ambiguous, and I think may create more problems in the future than what it cures.

I would prefer the original language that we have, but if we have to make a change to address their needs, I would propose the following:

"UMG shall provide all of the administrative and financial functions necessary to effectively operate the business affairs of the District, except as designated by the District. Those exceptions are those duties assigned to the District's Administrator and financial officer."

7.1 UMG's compensation under this agreement shall consist of an annual fee set forth herein. The annual fee for this agreement shall be \$7,604,802.00 (\$633,733.00 per month). We are proposing to add the following language.

"The annual fee for calendar years 2014 and 2015 shall be \$7,718,874 (\$643,239.50/month), subject to the District having been granted, and implemented a rate increase by the Public Service Commission sufficient to cover this increased fee. If the District does not receive a rate increase, or receives one that is not sufficient to cover this increased fee, then the current fee for 2013 will remain in place for 2014 and 2015. If a rate increase sufficient to cover the increase fee is



implemented after January 1, 2014, then UMG's increased fee set out above will be pro-rated to the date the rate increase is implemented."

An issue that I have considered since our last discussion, is what happens if the PSC grants us an increase, but disallows a portion of UMG's expenses. If a portion of their expenses are disallowed, then that is a basis for reducing, not increasing, their fees. It would be very awkward for the Board to then turn around and grant them an increase, when their fees have been deemed to be in excess of what the PSC has determined to be reasonable. I am doubtful that UMG would agree to the language proposed by Jack Hughes to address this issue, but I wanted to point it out to the Committee, before we submitted this proposal to UMG. If you want to address the issue in this proposal, I would suggest the following language to be added:

"If the PSC determines that any of UMG's costs are unreasonable, then to that extent, this fee increase will not be applicable."

Accordingly, they would keep their base rate of pay through the end of the contract term (2015), even if the PSC determines their costs are unreasonable. At the end of this contract term, then the Board would have to make a decision to either renegotiate the contract considering the PSC's findings, or rebid the contract.

Given our history of negotiations, we may not want to add this additional limitation, but I felt I needed to point out this potential problem. Please advise as to how you want me to proceed.

# Memo

**TO :** Mountain Water District Board  
**FROM :** Dan Stratton/Mike Spears/Roy Sawyers  
**DATE :** April 23, 2013  
**REGARDING :** MWD / UMG

---

## CONTRACT

---

Commissioners:

Mike and I met with Greg and Bob on Tuesday, April 16<sup>th</sup> to discuss the MWD/UMG Contract. Attached, please find a memorandum from Dan summarizing that meeting. Also, please find attached an email from Bob to Mike and Dan with UMG's response.

It would appear that we have three options to consider, or a variation of the three. First, is to give them their fixed rate increases of X% for 2014 and 2015, subject to approval of a rate increase by the PSC, and subject to all of their expenses being determined reasonable by the PSC. This is of course our format. Using their numbers, this would be an increase of \$152,096/ \$12,675 per month for 2014 and \$155,138/\$12,928 per month for 2015. The two year total increase would be \$307,234/\$25,612 per month.

The second option would be to use their format where we would give them the above referenced rate increase, and if either the electric, the fuel, the purchased water or the employee health insurance cost increased by more than 5%, then UMG would be paid the additional cost above the 5%. The total cost for these four

elements is currently approximately \$2.7 million dollars. Rounding that to \$3 million dollars as water and electric are a little over a million each, a 1% increase would be an additional \$30,000 per year. It appears that they may be proposing that these be done individually as oppose to a group, but that is a point that will need to be clarified. Their proposal is not subject to a rate increase by the PSC.

The third option is to pay them a fixed percentage over their cost. They have referenced in the past that Kentucky American Water receives approximately a 10-12% margin over and above their cost for the operations of the Central Kentucky Water System. The difference there is that Kentucky American Water owns the system and is responsible for all of the debt service and repair and maintenance, in addition to all of the operational cost. Heretofore, we have been unable to define what the appropriate rate of return should be just to cover operations. They are proposing an 8% rate of return over their cost. Heretofore, there has been an issue as to what is calculated in their cost numbers that will need to be resolved. I have enclosed a chart showing various rates of return for different fee structures to give you an idea of what that return would be for them in actual dollars. This option is also not subject to a rate increase by the PSC.

A hybrid option we have discussed is to arrive at a fixed fee amount that would provide them a fixed margin of X%. The fixed fee would be adjusted annually to cover increased water and power costs. Some details need to be worked out on how that calculation would be made. They would then get X% over the new base amount each year. We would also audit their expenses annually. The cost would be split with them. We will need to determine if we include R&M expenses in their base fee as that will be our fastest growing number in the future. This option would be subject to a PSC rate increase and PSC approval of their expenses.

We would ask that you give us feedback as to how you want us to move forward.

**SAMPLE FEE ANALYSIS**

**2013 ANNUAL FEE = \$7,604,802**

	MARGIN	COSTS
8%	\$ 563,319.00	\$ 7,041,148.00
7%	\$ 497,511.00	\$ 7,107,291.00
6%	\$ 430,461.00	\$ 7,174,341.00

**2013 ANNUAL FEE + 2% = \$7,756,898.00**

	MARGIN	COSTS
8%	\$ 574,586.00	\$ 7,182,312.00
7%	\$ 507,461.00	\$ 7,249,437.00
6%	\$ 439,070.00	\$7,317,828.00

**2013 ANNUAL FEE + 2%**

**LESS 2012 R&M CONTRACT EXPENSES**

**\$7,832,946.00 - \$564,000.00\* = \$7,268,946.00**

	MARGIN	COSTS
8%	\$ 538,441.00	\$ 6,730,505.00
7%	\$ 475,539.00	\$ 6,793,407.00
6%	\$ 411,450.00	\$ 6,857,496.00

\* R&M CONTRACT EXPENSES WERE \$564,000.00, BUT ACTUAL R&M FOR 2012 WERE \$67,007.00 MORE.

**Daniel P. Stratton**

---

**From:** Bob Meyer <bmeyer@umgllc.net>  
**Sent:** Wednesday, May 08, 2013 11:51 AM  
**To:** mikespears@setel.com; dpstratton@setel.com; 'rsawyers@mtwater.org'  
**Cc:** Greg May  
**Subject:** MWD-2012  
**Attachments:** mwd-2012-is.pdf

Mike et al -

Attached is an income statement for the Mountain Water project for 2012 in the same format as 2011. One important note when you start analyzing the numbers. The Mountain Water - UMG contract originally stipulated that semi-monthly payments would be made to UMG in advance. Since the beginning of the contract UMG booked all semi-monthly payments as current revenue. Consequently, each year the last payment of the year was booked by UMG as current revenue even though it was actually a payment for the first half of January in the subsequent year. Last year, in order to accommodate Mountain Water's cash flow problem, I essentially agreed to let Mountain Water make payments to UMG after the semi-monthly period (ie: a fifteen day extension for semi-monthly payments). As a result of this, I have only booked 23 semi-monthly payments from MWD as current year income in 2012 (since the first semi-monthly payment for 2012 was booked as income in December 2011). This is a bookkeeping concern only. However, in order to get a realistic picture of total 2012 revenues and margin, you have to add one semi-monthly payment to the amount of revenue shown on the attached financial statement. Consequently, total O&M revenue for 2012 is \$6,993,359 (\$6,701,859 plus \$291,500). Likewise, the "Net Income from Operations" is \$143,811 rather than a negative amount of <\$147,688>. Future years will have 24 semi-monthly payments on the books. Hope this isn't too confusing - let me know if you need further clarification.

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

Mtn Water District YTD Income Statement  
 For Period 12 Ending 12/31/2011

UTILITY MANAGEMENT GROUP LLC (UMG)

	Year to Date	% of Revenue
<b>Revenue</b>		
O&M Revenue	7,067,550.00	99.84
Miscellaneous Income	11,381.13	0.16
<b>Total Revenue:</b>	<b>7,098,931.13</b>	<b>100.00</b>
<b>Gross Profit:</b>	<b>7,098,931.13</b>	<b>100.00</b>
<b>Expenses</b>		
<b>Payroll and Administrative</b>		
Salaries & Wages: Regular	1,582,118.86	23.70
Salaries & Wages: Overtime	86,071.52	1.21
Salaries & Wages: Paid Leave	243,678.67	3.43
FICA Expense	148,542.40	2.09
FUTA Expense	3,233.51	0.05
SUI Expense	16,689.40	0.24
Health Insurance Expense		6.29
Life Insurance Expense	7,456.00	0.11
LTD Expense	4,503.61	0.06
401K Expense	60,385.19	0.85
Employee Awards / Incentives	567.50	0.01
Training: Fees and Tuition	5,152.64	0.07
Travel: Lodging	8,123.77	0.11
Travel: Meals/Entertainment	8,426.27	0.12
Travel: Mileage	2,614.15	0.04
Vehicle: Lease Expense	85,234.94	1.20
Vehicle: Gasoline	176,782.61	2.41
Vehicle: Diesel	53,268.26	0.75
Vehicle: Miscellaneous	3,471.28	0.05
Office Rent	1,100.00	0.02
Building Maintenance	165.46	0.00
Office Utilities	547.67	0.01
Office Equipment: Lease Expense	9,223.70	0.13
Office Equipment: Purchases	1,078.06	0.02
Office Supplies	27,796.80	0.39
Cleaning/Janitorial Expenses	16,666.82	0.23
Postage Expense	83,816.27	1.18
Freight Charges	126.58	0.00
Professional Fees: Legal	1,200.79	0.02
Professional Fees: Accounting	789.00	0.01
Professional Fees: Other	35,004.08	0.49
Insurance: General Liability	25,337.88	0.36
Insurance: Automobile	61,611.56	0.87
Insurance: Property	50,020.04	0.70
Insurance: Workers Compensation	89,750.53	1.26
Insurance: Other	4,478.00	0.06
Telephone: Office	13,875.78	0.20
Telephone: Mobile	18,096.91	0.25
Telephone: Other	3,366.61	0.05
Security Services	1,306.89	0.02
<b>Total Payroll and Administrative:</b>	<b>3,462,563.41</b>	<b>48.78</b>
<b>Direct Operations</b>		
Uniforms	30,835.14	0.44
Safety Supplies	13,877.27	0.20

Min Water District YTD Income Statement  
 For Period 12 Ending 12/31/2011

UTILITY MANAGEMENT GROUP LLC (UMG)

	Year to Date	% of Revenue
<b>Direct Operations</b>		
(Continued)		
Laboratory Supplies	948.95	0.01
Laboratory Testing Expenses	34,284.58	0.48
Other Outside Services	490.00	0.01
Coagulants	44,239.98	0.62
Disinfectants	86,813.90	1.22
Fluoride	20,538.40	0.29
Polymers	5,981.10	0.08
Dechlorination Agents	12,860.15	0.18
Nitronox	14,824.45	0.21
Other Chemicals	15,957.82	0.22
Purchased Water	1,016,785.84	14.32
Electric	1,159,480.12	16.33
Sewage Fees	186,708.09	2.63
Solid Waste	3,487.93	0.05
Material/Supplies (Non R&M)	-5,100.92	-0.07
Capital Purchases - MWD Project	7,584.11	0.11
Heavy Equipment Lease	11,482.88	0.16
<b>Total Direct Operations:</b>	<b>2,662,229.47</b>	<b>37.50</b>
<b>Corporate and Other Expenses</b>		
Corporate Overhead	401,388.40	5.85
Corporate Fee	300,000.00	4.23
Bank & Finance Chges	35.52	0.00
Depreciation Expense	48,151.14	0.66
Amortization Expense	100,000.00	1.41
Dues/Subscriptions	859.19	0.01
Contributions	400.00	0.01
Public Relations	560.74	0.01
Licenses/Permits	150.00	0.00
Physical Exams/Testing	1,510.00	0.02
Miscellaneous	6,072.72	0.09
<b>Total Corporate and Other Expenses:</b>	<b>857,230.71</b>	<b>12.08</b>
<b>Total Expenses:</b>	<b>6,912,053.58</b>	<b>98.35</b>
<b>Net Income From Operations:</b>	<b>116,877.54</b>	<b>1.65</b>
<b>Repair &amp; Maintenance</b>		
Repair & Maintenance Revenue	564,000.00	7.94
Departmental R&M	-768,748.01	-10.80
Major Equipment R&M	-1,285.39	-0.02
Hand Tools R&M	-15,032.89	-0.21
PS / LS R&M	-156.37	0.00
Vehicle R & M	1,967.47	0.03
<b>Total Repair &amp; Maintenance:</b>	<b>-217,233.19</b>	<b>-3.08</b>
<b>Earnings Before Income Tax:</b>	<b>-100,355.85</b>	<b>-1.41</b>
<b>Net Income (Loss):</b>	<b>-100,355.85</b>	<b>-1.41</b>

**Mike Spears**

---

**From:** Bob Meyer [bmeyer@umgllc.net]  
**Sent:** Monday, April 22, 2013 11:02 AM  
**To:** Mike Spears  
**Subject:** RE: woops

Mike-

What I include in Gross Margin (ie: below the line) are any payments made to a "corporate" account in Corbin, items like amortization of that \$500M loan from a couple years ago, one time charges (ie: we went through a sales & use tax audit recently and had to make a one-time payment to the state for items purchased that were taxable and we thought were not. Also below the line are legal fees (ie: defense regarding open records suit, etc.), corporate taxes, profit, etc. Included with "direct costs" (ie: above the line) is a prorated portion of our Island Creek facility costs (personnel, rent, etc etc). I consider all of the costs of this office as "direct" - even though they are prorated to all of our contracts - since we deal with direct operations expenses from here (payroll, accounts payable, mapping, safety coordinator, etc.). If any of that changes, then the gross margin % also changes. Let me know if that makes sense.

Bob

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

**From:** Mike Spears [mailto:mikespears@setel.com]  
**Sent:** Monday, April 22, 2013 10:16 AM  
**To:** Bob Meyer  
**Subject:** RE: woops

Bob,

I corrected Dan on this formula, it hit me that afternoon. So on that we are okay. I am going to analyze the options today that you sent Friday and will get back to you this afternoon. As far as Gross Margin, what would be considered below this line. Is above the line, only direct costs of the district or are you considering other items above the line. This may be the best option as far as the PSC is concerned because we would be tying increases to documented cost. I want to spend some time with this in the afternoon, but the question above would be helpful. We need to resolve these so we can get the board moving on a rate increase filing.

Mike

---

5/7/2013



**From:** Bob Meyer [mailto:bmeyer@umallc.net]  
**Sent:** Monday, April 22, 2013 9:56 AM  
**To:** mikespears@setel.com  
**Subject:** woops

Hey Mike-

Just a side note. I realized that, when we had our meeting last week, and I was going on about a formula to back into a gross margin amount, I mis-stated the formula. You have to divide your total amount by 1 plus the margin percent. For instance, take our current contract of 7,604,802. Assume a gross margin of 8%. Divide 7,604,802 by 1.08 (ie: one plus margin of .08) and the number is 7,041,148. 8% of 7,041,148 equals 563,319. Direct costs of 7,041,148 plus an 8% margin of 563,319 gets you back to the total contract amount of 7,604,802. I assume you already figured that out. Anyway, a misleading statement on my part. Are you and Dan going to look at the numbers I sent you last Friday before the board meeting? Let me know if there is any other approach or discussion you and I need to have to get this off of dead center. If you think the approach I laid out in that last email to you and Dan is not going to be acceptable to the board, let me know. You and I both can manipulate numbers all day long. If we can get to some number or % that is in the neighborhood of what the board feels is fair and what UMG feels is fair, surely we can put together something we can all live with. Anyway, if you want to give me any ideas or suggestions aside from the meetings with Dan and Greg, let me know. I'm open.  
Bob

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

**Daniel P. Stratton**

---

**From:** Bob Meyer <bmeyer@umgllc.net>  
**Sent:** Wednesday, May 08, 2013 11:51 AM  
**To:** mikespears@setel.com; dpstratton@setel.com; 'rsawyers@mtwater.org'  
**Cc:** Greg May  
**Subject:** MWD-2012  
**Attachments:** mwd-2012-is.pdf

Mike et al –

Attached is an income statement for the Mountain Water project for 2012 in the same format as 2011. One important note when you start analyzing the numbers. The Mountain Water – UMG contract originally stipulated that semi-monthly payments would be made to UMG in advance. Since the beginning of the contract UMG booked all semi-monthly payments as current revenue. Consequently, each year the last payment of the year was booked by UMG as current revenue even though it was actually a payment for the first half of January in the subsequent year. Last year, in order to accommodate Mountain Water's cash flow problem, I essentially agreed to let Mountain Water make payments to UMG after the semi-monthly period (ie: a fifteen day extension for semi-monthly payments). As a result of this, I have only booked 23 semi-monthly payments from MWD as current year income in 2012 (since the first semi-monthly payment for 2012 was booked as income in December 2011). This is a bookkeeping concern only. However, in order to get a realistic picture of total 2012 revenues and margin, you have to add one semi-monthly payment to the amount of revenue shown on the attached financial statement. Consequently, total O&M revenue for 2012 is \$6,993,359 (\$6,701,859 plus \$291,500). Likewise, the "Net Income from Operations" is \$143,811 rather than a negative amount of <\$147,688>. Future years will have 24 semi-monthly payments on the books. Hope this isn't too confusing – let me know if you need further clarification.

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

## Mountain Water District

### Recap of R & M Bills 2012

	Actual	Budget	Over/(Under)	Wascon	% of Total
January	\$ 47,828.80	47,000.00	828.80	25,984.83	55.29%
February	\$ 75,396.82	47,000.00	28,396.82	21,432.11	45.60%
March	\$ 73,876.80	47,000.00	26,876.80	31,241.10	66.47%
April	\$ 44,656.39	47,000.00	(2,343.61)	18,155.32	38.63%
May	\$ 41,648.26	47,000.00	(5,351.74)	13,315.01	28.33%
June	\$ 52,903.80	47,000.00	5,903.80	18,590.90	39.56%
July	\$ 60,051.89	47,000.00	13,051.89	27,427.90	58.36%
August	\$ 54,424.65	47,000.00	7,424.65	28,797.91	61.27%
September	\$ 59,251.57	47,000.00	12,251.57	20,305.01	43.20%
October	\$ 52,846.93	47,000.00	5,846.93	24,531.67	52.20%
November	\$ 44,863.28	47,000.00	(2,136.72)	3,026.47	6.44%
December	\$ 42,024.54	47,000.00	(4,975.46)	19,974.64	42.50%
<b>Total</b>	<b>\$ 649,773.73</b>	<b>\$ 564,000.00</b>	<b>\$ 85,773.73</b>	<b>252,782.87</b>	<b>44.82%</b>
Less November		47,000.00		3,026.47	
Adjusted for November		517,000.00		249,756.40	48.31%
Average	54,147.81				

MOUNTAIN WATER DISTRICT  
 GROWTH ANALYSIS 2005-2013

	JUNE 2005	JUNE 2011	APRIL 2013	SYSTEM GROWTH
WATER CUSTOMERS - 3/4" & 1"	14736	17822	17857	3121
2" OR LARGER WATER METERS	90		147	57
SEWER CUSTOMERS	1491	2337	2382	891
WATER STORAGE TANKS	98	108	108	10
PRESSURE REDUCING VALVES	39	45	46	7
BOOSTER PUMPING STATIONS	100	135	136	36
MASTER METERS	22	27	28	6
WASTEWATER LIFT STATIONS	20	20	20	0*
MILES OF LINE ADDED 2005-2011	WATER	SEWER		
	77.53 MILES	29.41		

\* ADDED THREE (3) QUADPLEX GRINDER STATIONS AT VIRGIE MIDDLE SCHOOL, GF JOHNSON SCHOOL, PHELPS GRADE SCHOOL  
 \*\* AVERAGE WATER PRODUCTION - FROM 2.22 MGD IN 2005 TO 2.56 IN 2012. UPGRADE TO RUSSELL FORK WTP FROM 2 MGD TO 3 MGD COMPLETED IN 2008  
 \*\*\* AVERAGE COST TO PRODUCE WATER PER 1,000 GALLONS - FROM \$.70 IN 2005 TO \$.91 IN 2012

NUMBER OF EMPLOYEES	2005	2013
	70	53

ELECTRICAL COST	2006	2012
KWH MONTHLY AVERAGE USAGE	706,958	894,394
AVERAGE MONTHLY BILL AMOUNT	\$42,518.44	\$87,276.47

**Mountain Water District**

**Recap of R & M Bills  
 2012**

	Actual	Budget	Over/(Under)	Wascon	% of Total
January	\$ 47,828.80	47,000.00	828.80	25,984.83	55.29%
February	\$ 75,396.82	47,000.00	28,396.82	21,432.11	45.60%
March	\$ 73,876.80	47,000.00	26,876.80	31,241.10	66.47%
April	\$ 44,656.39	47,000.00	(2,343.61)	18,155.32	38.63%
May	\$ 41,648.26	47,000.00	(5,351.74)	13,315.01	28.33%
June	\$ 52,903.80	47,000.00	5,903.80	18,590.90	39.56%
July	\$ 60,051.89	47,000.00	13,051.89	27,427.90	58.36%
August	\$ 54,424.65	47,000.00	7,424.65	28,797.91	61.27%
September	\$ 59,251.57	47,000.00	12,251.57	20,305.01	43.20%
October	\$ 52,846.93	47,000.00	5,846.93	24,531.67	52.20%
November	\$ 44,863.28	47,000.00	(2,136.72)	3,026.47	6.44%
December	\$ 42,024.54	47,000.00	(4,975.46)	19,974.64	42.50%
<b>Total</b>	<b>\$ 649,773.73</b>	<b>\$ 564,000.00</b>	<b>\$ 85,773.73</b>	<b>252,782.87</b>	<b>44.82%</b>
Less November		47,000.00		3,026.47	
Adjusted for November		517,000.00		249,756.40	48.31%
Average	54,147.81				

**Mike Spears**

**From:** Bob Meyer [bmeyer@umgllc.net]  
**Sent:** Monday, March 25, 2013 12:48 PM  
**To:** mikespears@setel.com  
**Cc:** Greg May  
**Subject:** contract

Mike-  
Greg and I have talked since you came up last week. It appears to us that there is no magic solution to the contract increase issue that is going to satisfy all parties. We are back to the pricing model we used previously – with a cap. We agree to negotiate a contract price adjustment on an annual basis. If we are not successful, the contract increases by the CPI. The CPI is capped at 3%. This is still no guarantee for us that we will be able to cover all our costs and maintain a reasonable margin. As we pointed out, we did not give out any annual increments to Mountain Water employees last year. Our health insurance increase ended up being almost 20% last year and we're looking at a preliminary increase this year of 38%. While we appreciated the small increase this past year – it was not anywhere near what it needs to be to keep us on an even keel with the MWD contract. Mike – we'll work with you and the board any way we can. We just can't do it for free. We've always felt that we've provided the board with much more than good management – particularly in the context of supplemental funding that is due in large part to Greg's initiative and contacts.  
If you have any suggestions, we are open to them. Or if you have any better insight into an approach that will fly with the PSC, let us know.  
Bob

APPENDIX E

ANNUAL FEE ADJUSTMENT FORMULA

$$AAF = AF (1 + C)$$

where

AAF = Adjusted Annual Fee.

AF = Annual Fee specified in Sections 5.1 and 5.3.

C = Consumer Price Index for All Urban Consumers (U.S. City Average) as published by the U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report or the month three (3) months prior to the beginning of the period for which an adjusted base fee is being calculated.

example of the annual fee adjustment formula

where,

$$AF = \$1,000,000$$

$$C = 2.9\%$$

$$AFF = \$1,000,000 (1 + 2.9\%)$$

$$= \$1,000,000 (1 + 0.029)$$

$$= \$1,000,000 (1.029)$$

$$= \$1,029,000$$

**Daniel P. Stratton**

---

**From:** Mike Spears <mikespears@setel.com>  
**Sent:** Wednesday, April 24, 2013 2:23 PM  
**To:** 'Daniel P. Stratton'; bmspears@setel.com  
**Subject:** FW: overhead

Response I received today. Brandt make sure Dan gets this.

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Wednesday, April 24, 2013 9:16 AM  
**To:** mikespears@setel.com  
**Subject:** overhead

Mike-  
Got busy yesterday and forgot to let you know the % of Island Creek costs that are allocated to MWD. It's about 58% of the total costs. It is based on total revenues we generate for each utility contract in proportion to total revenues. I also allocate a portion of overhead costs to our HVAC and Small Engine Solutions businesses. If the base changes during the year (ie: we get a new contract), then the percentages change.  
Let me know how the board meeting goes. Bob

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*



Page 1 of 1

**Daniel P. Stratton**

---

**From:** Daniel P. Stratton [dpstratton@setel.com]  
**Sent:** Tuesday, April 02, 2013 11:26 AM  
**To:** 'Mike Spears'  
**Cc:** dpstratton@setel.com  
**Subject:** umg contract

Mike,

Here is some alternative language for your review. If we use this option I would drop page three of my memo.

The annual fee for calendar years 2014 and 2015 shall be \$ 7,718,874 (\$643,239.50/month), subject to the District having been granted, and implemented a rate increase by the Public Service Commission sufficient to cover the increased fee. If the District does not receive a rate increase, or receives one that is not sufficient to cover this increased fee, then the current fee for 2013 will remain in place for 2014 and 2015. If a rate increase sufficient to cover the increase fee is implemented after January 1, 2014, then UMG increased fee set out above will be pro rated to the date the rate increase is implemented.

Dan

4/2/2013

# MEMO

**TO** : Greg May and Bob Meyer  
**FROM** : Daniel P. Stratton, Esq.  
**DATE** : June 18, 2013  
**REGARDING** : MWD / UMG

---

## CONTRACT AMENDMENT

---

Please find enclosed the proposed MWD/UMG contract amendment for your review.

The compensation section under 7.1 is of course the major item of concern. The District purposes to give you a 2% increase over your base rate, which will be calculated on the 2013 contract at \$7,604,802 minus R&M expenses, which are being deleted in the amount \$564,000 for a 2013 base rate of \$7,040,802. That number times 2% is \$140,816.04. Had the R&M Budget remained in the calculation, the 2% increase would have been \$152,096. The purpose of removing the R&M Budget from your fee is that it is pass-through cost to you, and therefore, should not be included in a percentage increase of your fee. The proposed contract has been amended to reflect that change. The 2014 fee shall be \$7,181,618. The fee for 2015 would be 2% over the 2014 base rate or \$7,325,241. Any fee increase will be subject to the District receiving a rate increase from the PSC sufficient to cover the same. Further, it will be subject to all of UMG's costs being approved by the PSC. To the extent, any of your costs are disallowed by the

PSC, then your base fee would be reduced by that amount.

In the event the rate increase is implemented after January 1, 2014, (assuming the PSC approves the same) then the fee increase for 2014 will be prorated to the date of implementation.

# MEMO

**TO** : Greg May and Bob Meyer  
**FROM** : Daniel P. Stratton, Esq.  
**DATE** : June 26, 2013  
**REGARDING** : MWD / UMG

---

## CONTRACT AMENDMENT

---

Please be advised that the MWD Board of Commissioners at their monthly meeting, approved the following amendments to the UMG / MWD Contract. Miscellaneous provisions that we have addressed before are included in the proposed amendment that is attached for your review and consideration.

The compensation section under 7.1 is of course the major item of concern. The District has agreed to give you a 2% increase over your base rate, which will be calculated on the 2013 contract at \$7,604,802 minus R&M expenses, which are being deleted in the amount \$564,000 for a 2013 base rate of \$7,040,802. That number times 2% is \$140,816. The purpose of removing the R&M Budget from your fee is that it is pass-through cost to you, and therefore, should not be included in a percentage increase of your fee. The proposed contract has been amended to reflect that change. The 2014 fee shall be \$7,181,618. The fee for 2015 would be 2% over the 2014 base rate or \$7,325,250. Any fee increase will be subject to the District receiving a rate increase from the PSC sufficient to cover the same. Further, it will be subject to all of UMG's costs being approved by the PSC.

To the extent, any of your costs are disallowed by the PSC, then your base fee would be reduced by that amount.

In the event the rate increase is implemented after January 1, 2014, (assuming the PSC approves the same) then the fee increase for 2014 will be effective the date of implementation.

On behalf of the Board, we want to express to you our appreciation for your services to the District. This has been a long and tedious task, and we would appreciate your favorable consideration of this proposal.

If this draft meets with your approval, I will do a final document for signatures. We will then begin to take the necessary steps to apply to the PSC for a rate increase.

Color: Automatic Office: SRGB-Display Press: Commercial Print Quality: Site  
06-26-13 Memo - Stratton to May .. Thu Oct 30 18:16:04 2014 Media Type: Det  
erox WorkCentre

**Agreement For Operations,  
Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_ day of ~~January~~ January, ~~2011~~ 2013, effective the 1<sup>st</sup> day of ~~January~~ January, ~~2011~~ 2013, by and between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box 3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water, wastewater and related treatment, collection and distribution facilities described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation, maintenance and management of these facilities and UMG desires to perform such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by DISTRICT shall remain the exclusive property of DISTRICT unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by UMG without the prior written consent of the DISTRICT.

- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or understanding between the parties which pertain to the subject matter hereof. However, the DISTRICT shall remain liable for any outstanding debt and any other accrued liabilities due UMG.

1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

## 2.1 UMG's SERVICES - GENERAL

2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.

2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.

2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same. The DISTRICT agrees to apply and pay for any and all software licenses necessary to transfer the same to the DISTRICT.

2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles, ~~and~~ equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT'S vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory.



- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory.
- 2.6 UMG shall be responsible for maintaining all manufacturers warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties for the DISTRICT.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment with documentation. They shall report to the DISTRICT on a monthly basis what that preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT'S employees, board members or designated DISTRICT's representative. UMG shall provide keys for the Project shall be provided to the DISTRICT'S Administrator. The Administrator shall sign a receipt for any keys received. by UMG for such visits. All visitors to the Project shall comply with UMGs operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.
- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMGs operations

hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. All Waste and/or byproduct treated and/or generated during UMGs performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. Those exceptions are those duties assigned to the DISTRICT's Administrator, financial officer and CPA. UMG shall submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water

services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.  
  
UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary UMG agrees to replace the DISTRICT's capital assets that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that replacement of capital assets is not essential for their continuing

performance under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.

2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an

allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.

2.28 All repairs and maintenance expenditures shall be approved in advance by the DISTRICT's Administrator, unless an emergency situation exist. Any emergency situation will be reported to the Administrator or Chairperson within twenty-four (24) hours of notice of the situation. All requests will be supported by a work order. UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary. If an expenditure for repair and maintenance is going to exceed the monthly budget set forth above, then such expenditures shall be approved in advance by the DISTRICT Administrator, unless an emergency situation exist.

2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the expressed prior written consent of the DISTRICT.

**3. UMG'S SCOPE OF SERVICES - WASTEWATER**

- 3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.
- 3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.
- 3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary
- 3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

4. **UMG'S SCOPE OF SERVICES - WATER**

- 4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.
- 4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.
- 4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.
- 4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.
- 4.6 UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.

5. **UMGs SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.
- 5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.
- 5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. DISTRICTS DUTIES

- 6.1 The DISTRICT shall pay all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.
- 6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.
- 6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.  
  
In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

- 6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.

- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.
- 6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.

7. **COMPENSATION**

7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2011, January 1, 2013 through December 31, 2013, shall be \$7,632,000 (\$636,000 monthly), each year of this agreement shall be \$ \_\_\_\_\_ (\$ \_\_\_\_\_ monthly), adjusted as hereinafter set out. 2013 shall be \$7,604,802.00 (\$633,733.00 per month), prorated to the effective date of this agreement. The annual fee for 2014 and 2015 shall be \$7,718,874. \$7,181,618 (~~\$643,239.50~~ \$598,468.16 per month), subject to the DISTRICT having been granted, and implemented a rate increase by the Public Service Commission sufficient to cover this increased fee. If the DISTRICT does not receive a rate increase, or receives one that is not sufficient to cover this increased fee, then the current fee for 2013 will remain in place for 2014 and 2015. If a rate increase



sufficient to cover the increased fee is implemented after January 1, 2014, then UMG's increased fee set out above will be prorated to the date the rate increase is implemented. If the Public Service Commission determines that any of UMG's costs are unreasonable, then to that extent, this fee increase will not be applicable your base fee would be reduced by that amount.

~~7.2 The Annual Fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenues based on the DISTRICT's two most recent prior year's audits. If the annual revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Thus the annual fee increase (decrease) for UMG in the second year of the renewal term (January - December 2012) shall be based on the increase (decrease) in the DISTRICT's total operating revenue based on the 2010 audit as compared to the 2009 audit. Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 monthly). The maintenance and repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.~~

7.2 On or before April 1<sup>st</sup> of each year, UMG shall provide the DISTRICT a detailed financial report of its costs to operate the DISTRICT. Such report shall also allocate expenses between water and sewer operations.

7.3 In the event the DISTRICT should make application to PSC for a rate increase in any of its services, UMG agrees to provide the DISTRICT a copy of any and all necessary information required by the PSC for such application.

If the DISTRICT elects to verify any information which is required by the PSC, or to conduct rate study, UMG agrees to allow the DISTRICT's duly authorized agents access to its records to verify the information provided by UMG.

~~In the event that the DISTRICT obtains a rate increase, which was secured in part or in whole, to pay for new or additional debt, the parties agree that the portion of the additional revenue to be allocated for division under the 70/30 formula set forth in Section 7.2, shall be the increased net operating revenue after payment of the new or additional debt incurred and any reserve requirements associated therewith.~~

~~7.4 The Annual Fee (and Maintenance and Repair Limit included therein) shall be calculated within thirty (30) days of approval of the DISTRICT'S annual audit, but in no event, later than thirty (30) days prior to the next anniversary date, at which time the new fee would be effective.~~

~~7.5 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.~~

~~7.64 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.~~

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT'S application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT'S application for reimbursement. If they DISTRICT'S application does not receive final approval, or final approval is delayed due to UMG'S failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

8. **PAYMENT OF COMPENSATION**

8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month

during such Agreement Year for service provided in accordance to Articles 7.1 and 7.2 of this Agreement.

- 8.2 All other compensation to UMG is due upon receipt of UMGs invoice and payable within fifteen (15) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.
- 8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

- 9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement significantly change as a result of one of the following:
  - 9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.
  - 9.1.2 The DISTRICTS request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and routine growth of current services.
- 9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMGs additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

- 10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the

operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.

- 10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.
- 10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.
- 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

11. **TERM, TERMINATION AND DEFAULT**

- 11.1 The ~~initial~~ term of this Agreement shall be ~~five (5) years commencing begin on January 1, 2011~~ 2013, and end on December 31, 2015. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." ~~Either party shall have the right, without cause, to terminate this Agreement at the end of the third Agreement Year. Notice of termination shall be given in writing no less than one hundred twenty (120) days in advance of the effective date of termination.~~

11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party, ~~except as provided in Section 11.1~~ only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.

11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the unamortized balance of the note as of the date of termination as set out in Appendix E.

If either party elects not to renew or extend the current term of the contract, they shall give the other party six (6) months ~~one hundred eighty (180) days~~ written notice of their decision.

11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to six (6) months from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

## 12. DISPUTES AND FORCE MAJEURE

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMGs ability to perform at the Project, DISTRICT, with UMGs assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

erox WorkCentre  
06-26-13 Memo - Stratton to May .. Thu Oct 30 18:16:31 2014 Media Type: De  
Color: Automatic Office: sRGB-Display Press: Commercial Print Quality: Sit

**Agreement For Operations,  
Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_ day of January \_\_\_\_\_, 2011  
2013, effective the 1<sup>st</sup> day of January \_\_\_\_\_ 2011 2013, by and  
between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box  
3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit  
Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water, wastewater  
and related treatment, collection and distribution facilities described on  
Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation,  
maintenance and management of these facilities and UMG desires to perform  
such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the  
attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way,  
equipment and vehicles presently or hereinafter acquired or owned  
by DISTRICT shall remain the exclusive property of DISTRICT unless  
specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance  
with the laws of the Commonwealth of Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations  
hereunder, may be assigned by UMG without the prior written  
consent of the DISTRICT.

- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).



1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or understanding between the parties which pertain to the subject matter hereof. However, the DISTRICT shall remain liable for any outstanding debt and any other accrued liabilities due UMG.

1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

**2.1 UMG's SERVICES - GENERAL**

2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.

2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.

2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same. The DISTRICT agrees to apply and pay for any and all software licenses necessary to transfer the same to the DISTRICT.

2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles, and equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT'S vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory.

- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory.
- 2.6 UMG shall be responsible for maintaining all manufacturers warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties for the DISTRICT.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment with documentation. They shall report to the DISTRICT on a monthly basis what that preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT'S employees, board members or designated DISTRICT's representative. UMG shall provide keys for the Project shall be provided to the DISTRICT'S Administrator. The Administrator shall sign a receipt for any keys received. by UMG for each visit. All visitors to the Project shall comply with UMG's operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.
- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMGs operations

hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. All Waste and/or byproduct treated and/or generated during UMGs performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. Those exceptions are those duties assigned to the DISTRICT's Administrator, financial officer and CPA. UMG shall submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water

services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.  
  
UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary UMG agrees to replace the DISTRICT's capital assets that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that replacement of capital assets is not essential for their continuing

performance under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.

2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an

allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.

2.28 All repairs and maintenance expenditures shall be approved in advance by the DISTRICT's Administrator, unless an emergency situation exist. Any emergency situation will be reported to the Administrator or Chairperson within twenty-four (24) hours of notice of the situation. All requests will be supported by a work order. UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary. If an expenditure for repair and maintenance is going to exceed the monthly budget set forth above, then such expenditures shall be approved in advance by the DISTRICT Administrator, unless an emergency situation exist.

2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the expressed prior written consent of the DISTRICT.

**3. UMG'S SCOPE OF SERVICES - WASTEWATER**

- 3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.
- 3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.
- 3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary
- 3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

4. **UMG'S SCOPE OF SERVICES - WATER**

- 4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.
- 4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.
- 4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.
- 4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.
- 4.6 UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.

5. **UMG's SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.
- 5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.
- 5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICTS DUTIES**

6.1 The DISTRICT shall fund all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.

6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.

6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.



- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.
- 6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.

7. **COMPENSATION**

- 7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2011, January 1, 2013 through December 31, 2013, shall be \$7,632,000 (\$636,000 monthly), each year of this agreement shall be \$\_\_\_\_\_ (\$\_\_\_\_\_ monthly), adjusted as hereinafter set out. 2013 shall be \$7,604,802.00 (\$633,733.00 per month), prorated to the effective date of this agreement. The annual fee for 2014 and 2015 shall be \$7,718,874 \$7,181,618 (~~\$643,239.50~~ \$598,468.16 per month), subject to the DISTRICT having been granted, and implemented a rate increase by the Public Service Commission sufficient to cover this increased fee. If the DISTRICT does not receive a rate increase or receives one that is not sufficient to cover this increased fee, then the current fee for 2013 will remain in place for 2014 and 2015. If a rate increase

sufficient to cover the increased fee is implemented after January 1, 2014, then UMG's increased fee set out above will be prorated to the date the rate increase is implemented. If the Public Service Commission determines that any of UMG's costs are unreasonable, then to that extent, this fee increase will not be applicable your base fee would be reduced by that amount.

~~7.2 The Annual Fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenues based on the DISTRICT's two most recent prior year's audits. If the annual revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Thus the annual fee increase (decrease) for UMG in the second year of the renewal term (January - December 2012) shall be based on the increase (decrease) in the DISTRICT's total operating revenue based on the 2010 audit as compared to the 2009 audit. Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 monthly). The maintenance and repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.~~

7.2 On or before April 1<sup>st</sup> of each year, UMG shall provide the DISTRICT a detailed financial report of its costs to operate the DISTRICT. Such report shall also allocate expenses between water and sewer operations.

7.3 In the event the DISTRICT should make application to PSC for a rate increase in any of its services, UMG agrees to provide the DISTRICT a copy of any and all necessary information required by the PSC for such application.

If the DISTRICT elects to verify any information which is required by the PSC, or to conduct rate study, UMG agrees to allow the DISTRICT's duly authorized agents access to its records to verify the information provided by UMG.

~~In the event that the DISTRICT obtains a rate increase, which was secured in part or in whole, to pay for new or additional debt, the parties agree that the portion of the additional revenue to be allocated for division under the 70/30 formula set forth in Section 7.2, shall be the increased net operating revenue after payment of the new or additional debt incurred and any reserve requirements associated therewith.~~

~~7.4 The Annual Fee (and Maintenance and Repair Limit included therein) shall be calculated within thirty (30) days of approval of the DISTRICT'S annual audit, but in no event, later than thirty (30) days prior to the next anniversary date, at which time the new fee would be effective.~~

~~7.5 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.~~

~~7.64 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.~~

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT's application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT's application for reimbursement. If they DISTRICT's application does not receive final approval, or final approval is delayed due to UMG's failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

8. **PAYMENT OF COMPENSATION**

8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month

during such Agreement Year for service provided in accordance to Articles 7.1 and 7.2 of this Agreement.

8.2 All other compensation to UMG is due upon receipt of UMGs invoice and payable within fifteen (15) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.

8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement significantly change as a result of one of the following:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.

9.1.2 The DISTRICT'S request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and routine growth of current services.

9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMGs additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the

operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.

10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.

10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.

10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.

10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.

10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

#### 11. TERM, TERMINATION AND DEFAULT

11.1 The initial term of this Agreement shall be ~~five (5) years commencing begin on January 1, 2011~~ 2013, and end on December 31, 2015. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." ~~Either party shall have the right, without cause, to terminate this Agreement at the end of the third Agreement Year. Notice of termination shall be given in writing no less than one hundred twenty (120) days in advance of the effective date of termination.~~

11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party, ~~except as provided in Section 11.1~~ only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.

11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the unamortized balance of the note as of the date of termination as set out in Appendix E.

If either party elects not to renew or extend the current term of the contract, they shall give the other party six (6) months ~~one hundred eighty (180) days~~ written notice of their decision.

11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to six (6) months from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

## 12. DISPUTES AND FORCE MAJEURE

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMGs ability to perform at the Project, DISTRICT, with UMGs assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

October 7, 2013

Roy Sawyers, Administrator  
Mountain Water District  
Post Office Box 3157  
Pikeville, Kentucky 41502  
Via email: [rsawyers@mtwater.org](mailto:rsawyers@mtwater.org)

Re: **Mountain Water District/UMG Contract**

Roy:

Please find enclosed a summary of the issues that my notes reflect are still outstanding concerning final resolution of the contract.

The first issue of course is compensation. On June 18, 2013, we offered a 2% increase over their base rate, which would be calculated on 2013 contract at \$7,604,802.00, minus R&M expenses, \$564,000.00, for a base rate of \$7,040,802.00. That number multiplied by 2% is \$140,816.04. Therefore, the 2014 fee would be \$7,181,618.00 and a 2% over the 2014 base rate, as adjusted, would be \$7,325,241.00 for 2015. Any fee increase would be subject to the district receiving a rate increase from the PSC, sufficient to cover same and subject to all of UMG's costs being approved by the PSC. To the extent any costs were disallowed by the PSC, their base rate would be reduced accordingly.

On or about June 21, 2013, UMG rejected this offer, stating they want a 2% raise for 2014, effective January 1, 2014, regardless of whether or not a rate increase is approved. Further, they will not agree to deduction in their fee based upon any costs that are disallowed by the PSC. Third, they are asking for full payment of the \$147,000.00 that we owe them (\$80,000.00 on the 2012 R&M overages and \$57,000.00 due from the contract when it was last amended.) Four, they



Roy Sawyer  
October 7, 2013  
page 2 of 4

requested a fee adjustment for increases in electrical, fuel, and health insurance bills, but subsequently withdrew that proposal. Fifth, they stated that if we're not going to calculate R&M in their fee schedule, that they did not see the need to pay for the same, and that it needs to come out of the agreement entirely. Sixth, they requested that if PSC requires them to get a third-party audit, that we would reimburse their costs for same.

On or about June 24, 2013, these concepts were reviewed with Jack Hughes to get his feedback, and he noted as follows:

1. 2% raise for 2014 should be retroactive, unless we otherwise have the cash flow to pay the same.
2. He strongly believes that we need a provision to offset their fee from any costs disallowed by the PSC. He noted that if PSC disallowed certain expenses and we continue to pay the same, then the commission would be subject to investigation by the PSC as to why we continue to pay an expense that was disallowed.
3. He noted that they should pay their own audit expenses if they are required to have one by the PSC, as that is a cost of doing business.

---

The other responses were not critical to the contract. The Board concurred with Jack's concerns, as noted above.

On or about the 25<sup>th</sup> of June, 2013, I called and talked to Bob May and made the following counteroffer:

1. We would give them a 2% raise for 2014, effective when the rate increase is implemented, but it would be retroactive back to January 1, 2013, instead of effective January 1.
2. We could not agree to assume R&M expenses until we were in a position to do so, which meant after any rate increase was approved.
3. They should pay their own audit expense, if one was required by the PSC.
4. We would review the debt issues owed them, and be prepared to

Roy Sawyer  
October 7, 2013  
page 3 of 4

develop a payment plan to get them paid, based on available cash flow.

5. I shared with them the great concern over their request not to offset their fee for any costs disallowed by the PSC.

Bob said he would review these items with Greg and get back with us.

Subsequently, our offer was rejected, and they have requested a 2% raise for 2014 and 2015 effective at the first of the year.

We then looked at the impact of the 2012 audit, which shows that there was a 1.8% decline in revenue which, pursuant to the current contract, would adjust their fee schedule down approximately \$140,000.00 a year, for 2014. 2013 is currently flat, so more likely than not, there would be no adjustment for 2015. They wanted to review the audit numbers and that has now been done.

In the interim, Mike has bounced off of Bob, the idea of a 1% increase for 2014, effective the first of the year, with the concession that they would forgive the \$147,000.00 in debt due them from the district. This in effect, holds them even for this year and would result in a 1% net increase for 2015. Other issues presented were not discussed.

---

The issues outstanding for our meeting with UMG today would be as follows:

1. DO they get a rate increase for 2015, and if so, how much?
2. Whether or not any disallowed costs by the PSC will be subtracted from the value of the contract.
3. Assuming a reduction of R&M expenses from the contract calculations, will UMG continue to fund R&M until such time as we can have sufficient cash flow to cover the same with the rate increase?
4. Whether they will pay their audit expenses if required to have one by the PSC.

Roy Sawyer  
October 7, 2013  
Page 4 of 4

If you have any questions about this information, please contact my office.

Sincerely,

Stratton Law Firm, PSC



Daniel P. Stratton

email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/gfc

cc: Mike Spears

Via email: [mikespears@setel.com](mailto:mikespears@setel.com)

# Memo

**TO** : MWD / UMG Contract File  
**FROM** : Dan Stratton  
**DATE** : October 15, 2013  
**REGARDING** : Proposed Contract Extension

---

---

I have talked with and/or met with each of the commissioners to update them on the status of the Committee's negotiations with UMG concerning their contract. At our last meeting on Monday, October 7<sup>th</sup>, UMG declined our proposal for a one percent (1%) increase in 2014, trading off the \$147,000 debt. They countered with a one percent (1%) increase in 2014 and a one percent (1%) increase in 2015, along with a contract extension for 2016, 2017 and 2018, with each year receiving an additional one percent (1%) fixed increase. As a part of the inducement to do that proposal, they would reduce the \$147,000 debt we owe them to \$50,000, with a write-off on the balance.

Following that meeting, Mike, Roy and I met, and we felt that this was a viable proposal to present to the Board with the following caveat, being that there be a mutual option out for both sides at the end of 2015, which is termination of the original contract. If we do not get our rate increase, then that would be a basis for getting out, or if we were otherwise displeased. The advantages to this proposal, with the opt out, is that if we get a substantial rate increase, then that will be ours and we will have the full

advantage of it for five (5) years, and not have to renegotiate the contract. If we get a rate increase and then have to renegotiate at the end of two (2) years, then it will be a difficult negotiation because they will want a much larger piece of the revenues, regardless of what their costs are. Also, if the PSC reduces our rate increase based on disallowed costs, we have the out provision if necessary, to move forward without them.

Rhonda James supports the idea of extending the contract, provided that we have the opt-out, and there is a \$90,000 reduction in our debt to UMG. She agrees that this will allow us to move forward with the rate increase, and then we can decide what we want to do with UMG, if anything, at the end of 2015.

Kelsey Friend will support the concept, however, he would prefer that we give them the rate increase for 2014 and 2015, and apply for a rate increase ourselves, and then give serious consideration to going independent. He believes that we operated before, and we can do so again. Therefore, the option out is of critical importance to him as he is not in favor of extending the contract otherwise.

John Collins does not want to extend the contract. He believes the community support for UMG has declined. He will not move or second motion, but will support Board.

Prentis Adkins Does not want to extend the contract and would terminate if he could. He will support a one percent (1%) raise for 2014 and 2015, if debt is forgiven.

Ancie Casey would agree to extend the contract with option out and debt forgiveness. He will support Rhonda's position. He wants an unanimous decision.

*Spears Management and Consulting, Inc.*  
P.O. Box 2932  
Pikeville, KY 41653

October 21, 2010

Utility Management Group  
306 Island Creek Road  
Pikeville, KY 41502

RE: Repair and Maintenance pass through.

Dear Bob,

During my monthly review of the financial statements of the District, I asked for copies of the bills from UMG for the month of September. I wanted to assure the board that the moneys we paid for R&M were offset on UMG's final invoice for the month of September. Obviously they were not; it appears that the R&M portion of the contract was taken off of your bill to the district. This amounted to a reduction to the district of \$42,741, however the district paid out \$51,730 during the month of September for R&M expenditures. My understanding of Resolution No. 10-08-009 is that there is to be a direct offset in the last bill of the month. I spoke with Commissioner James and this was her understanding as well. Also if I am not mistaken, the board paid UMG in August for the period September 1-15 with no offset for R&M resulting in the District paying UMG \$21,370.50 for September R&M and then paying all the bills for R&M. If there is a misunderstanding on this, I recommend we resolve this at the October meeting before we get too far into this arrangement.

Also in talking to Commissioner James, she indicated that she has previously talked to you about the AEP issue and that it is her understanding that the District would settle with UMG on that issue at the end of the current contract, if I understood her correctly.

I came across one other issue during the review, did we address in the contract with UMG or is there a resolution by the Board authorizing billing for the water produced for the Elkhorn City Project. I think this may be an issue similar to the Lois Smith issue. These are issues that need to be addressed in the upcoming contract negotiations as well.

Thanks for your time in this matter.

Sincerely,

Michael Spears

Cc: Rhonda James, Dan Stratton

**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

October 21, 2013

Rhonda James, Chair Person  
Mountain Water District  
146 Main Street  
Pikeville, Kentucky 41501  
via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)

Lester "John" Collins, Secretary  
Mountain Water District  
3979 Raccoon Creek Road  
Raccoon, Kentucky 41557  
via email: [johnbrendacollin@bellsouth.net](mailto:johnbrendacollin@bellsouth.net)

Kelsey Friend, III, Commissioner  
Mountain Water District  
1381 Lizzie Fork Road  
Pikeville, Kentucky 41501  
via email: [kelseyfriend@kelsey.com](mailto:kelseyfriend@kelsey.com)

Ancie Casey, Commissioner  
Mountain Water District  
43860 State Highway 194 East  
Phelps, Kentucky 41553  
email: [ancie.casey@pike.kyschools.us](mailto:ancie.casey@pike.kyschools.us)


Prentis Adkins, Commissioner  
Mountain Water District  
375 Schoolhouse Road  
Shelbiana, Kentucky 41562  
email: [tricity41501@yahoo.com](mailto:tricity41501@yahoo.com)

**RE: MWD / UMG Contract Negotiations**

Dear Board Commissioners:

Please be advised that Roy, Mike and I, cancelled the meeting set for today at 4:00 PM to meet with UMG concerning our counter-offer for their contract. It appears that there is some confusion as to what our position is, and the three of us thought it would be in the best interest to get clarity on the Board's position before we move forward. We will discuss at an appropriate time on how the Board would like us to proceed.

Sincerely,  
Stratton Law Firm, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

cc: Roy Sawyers  
Mike Spears

# Memo

**TO** : MWD / UMG Contract File  
**FROM** : Dan Stratton *DS*  
**DATE** : October 21, 2013  
**REGARDING** : Proposed Contract Extension

---

---

We cancelled today's meeting with UMG by stating that we did not have a response ready to give them at this time, and that we would get back with them when we did. Bob thanked me for the heads-up.

What caused the problem is that the memo that we asked the Board members to sign, raised an issue with Ancie in that Rhonda had not signed it, and when they talked on the phone, Rhonda said that was not her preferred position, but she would go along with it. Ancie felt like we were being deceitful to him because he told me he would agree to what Rhonda said, and this was not what Rhonda said. We talked to Rhonda and she reiterated that if the majority went along with the proposal, she would go along with it, and that there were already three people who would agree to that position.

Mike, Roy and I, felt trapped in between a rock and a hard spot, so we agreed to postpone the meeting accordingly.



# Memo

**TO** : MWD / UMG Contract File  
**FROM** : Dan Stratton  
**DATE** : October 22, 2013  
**REGARDING** : Proposed Contract Extension

---

## REPORT TO THE BOARD

---

This is a status update of our contract negotiations with UMG. As you know, we have sought to amend the contract to a fixed price in order to apply for a rate increase. UMG's offer to us to do that was a two percent increase for 2014 and a two percent increase for 2015. After consulting with the Board Committee, we agreed to counter-offer with one percent for 2014 and one percent for 2015, and forgiveness of \$147,000 in debt we owe them. We also wanted a price adjustment for any costs not allowed by the PSC

At our meeting with them on October 7<sup>th</sup>, they rejected our counter-offer, and made the following counter-offer. They would take one percent for 2014 and 2015, provided that the contract was extended for three more years (2016, 2017 and 2018) with the price to be negotiated, or at least one percent increase each year. They would agree to split the payment on the debt we owe them with us paying them \$50,000 as opposed to the full \$147,000.

We brought their counter-offer back to the Committee, and after reviewing it, we felt that it was a feasible offer, provided that we had an option out at the end of year two (2015). Our major concession will be to concede that any cost disallowed by the PSC would not be offset in their contract.

We met individually with each of the Commissioners. Three stated that their first preference was not to have any extension whatsoever, while two said their first preference would be to extend the contract with the option out provision. All agreed if any extension was given, we had to have an option out after two years. Everyone also wanted all of the debt forgiven. However, everyone said that they could accept a fixed price for 2014 and 2015 at one percent each year, provided that the debt was forgiven. Some Commissioners did not want to give them any raise at all.

Based on the fact that three Commissioners' first preference was not to give any extension at all, the Committee elected to put forth a proposal that everyone said they could agree to, which was the proposal to ask for a fixed price for two year at one percent increase each year for 2014 and 2015, and forgiveness of the debt.

We discussed with all of the Commissioners, what happens if we do not reach an agreement and if termination of the contract was an option, now or in the future. There was a split of opinion concerning termination so we agreed not to discuss it with UMG. When confusion arose about full support for the proposal, we postponed the meeting with UMG, as all the Commissioners wanted unanimity for any proposal.

# Mountain Water District

## Comparison of Offer vs. Current Contract October 21, 2013

### Revenues Under the Current Contract

Contract Year	Current Contract	Adjustment per Audit	Annual Payment	Total Payments
2014	\$ 7,604,808	\$ (122,690)	\$ 7,482,118	
2015 *	7,482,118	-	7,482,118	
<b>Total Revenues under Current Contract</b>				<b>\$ 14,964,237</b>

### Revenues Under the Current Offer

Contract Year	Current Contract	1% Increase Annually	Annual Payment	Total Payments
2014	7,604,808	76,048	7,680,856	
2015	7,680,856	76,809	7,757,665	
<b>Total Revenues under Current Offer</b>				<b>15,438,521</b>
<b>UMG Increase Before Forgiveness per Current Offer</b>				<b>474,284</b>
Amounts per 2011 Contract			57,063	
2012 R & M Overage			81,002	
Total Forgiveness				<b>138,065</b>
<b>Net Cash Flow per Current Offer to UMG</b>				<b>\$ 336,219</b>

### 2014 Adjustment per Audit

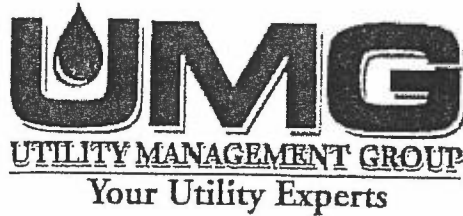
Total Operating Revenues per 2012 Audit	\$ 9,157,910
Total Operating Revenues per 2011 Audit	9,333,181
Decrease in Revenue	<u>(175,271)</u>
Current Provision for Revenue Sharing to M	(52,581)
Current Provision for Revenue Sharing to L	(122,690)
Shared Decrease in Revenue	<u>\$ (175,271)</u>

\* 2015 Adjustment is \$0 Assuming Flat Revenues

# Mountain Water District

**UMG Proposal**  
 October 21, 2013

<u>Contract Year</u>	<u>Base Year</u> <u>2013</u>		<u>1% Annual</u>		<u>Annual Revenue</u>	<u>Cumulative Inc.</u>
2014	7,604,808.00	\$	76,048	\$	7,680,856	\$ 76,048
2015	7,680,856.08		76,809		7,757,665	152,857
2016	7,757,664.64		77,577		7,835,241	230,433
2017	7,835,241.29		78,352		7,913,594	308,786
2018	7,913,593.70		79,136		7,992,730	<u>387,922</u>
Total						1,156,045
Forgiveness of R& M 2012 Overage						<u>(81,002)</u>
Net Cashflow to UMG Per Their Offer						<u><u>\$ 1,075,043</u></u>



January 15, 2014

Rhonda James, Chairperson  
Mountain Water District  
6332 Zebulon Highway  
Pikeville, KY 41501

RE: **Repair & Maintenance Overage 2013**

Rhonda:

I have attached an invoice to Mountain Water District in the amount of \$94,717.30. This is the cumulative amount of actual Repair & Maintenance expenditures in excess of the contracted amount for calendar year 2013.

At the bottom of the month by month billing page, there is a short summary of the outstanding amounts owed to UMG by Mountain Water District. I realize that the District is experiencing serious cash flow problems. However, as I've mentioned before, the District's financial circumstance has a direct bearing on UMG's ability to stay on top of our own cash flow.

Please let Greg or me know if there is – or will be – a time line for repayment of these funds. Knowing the District's position on this will certainly help us in addressing UMG's financial needs. Again, please let us know if there is any additional information that we can provide to assist you in your planning process.

Sincerely,

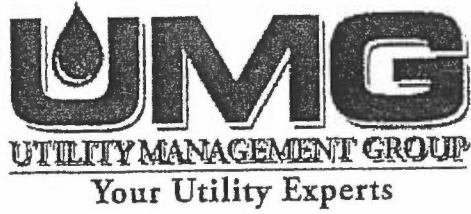


Bob Meyer, Controller

Attachment *mwd-inv-rm-2013.pdf*

Cc: Greg May  
Mountain Water District Commissioners  
Roy Sawyer, Mike Spears, Dan Stratton

287 Island Creek Road - Pikeville, Kentucky 41501  
Phone: 606-437-4754 - Fax: 606-437-5083



INVOICE# 2013

MOUNTAIN WATER DISTRICT

Repair & Maintenance Over Expenditure  
2013

	TOTAL
01/01/2013 - 12/31/13	\$94,717.30
Total Due	\$94,717.30

158 Town Mountain Road, Suite 101 - Pikeville, Kentucky 41501  
Phone: 606-437-4754 - Fax: 606-437-5083

# Mountain Water District

RECAP OF R&M EXPENSES: January 1, 2013 through December 31, 2013

Month					R & M
January					\$55,250.36
February					\$45,577.47
March					\$43,525.14
April					\$55,687.04
May					\$25,084.54
June					\$54,125.48
July					\$80,611.64
August					\$73,099.12
September					\$80,489.75
October					\$74,101.15
November					\$44,547.98
December					\$26,617.63
<b>TOTALS</b>					<b>\$658,717.30</b>

R&M Contract Payments (@ \$47,000 / MONTH)  
 CURRENT INVOICE FOR R&M Overage 2013

\$564,000.00
\$94,717.30

**SUMMARY OF AMOUNTS DUE TO UMG @ 12/31/13**

R&M Overage from 12/31/13:  
 4/29/13 Invoice: Repairs to Turkey Toe Lift Station (out of scope)  
 Negotiated amount due per 1/20/11 Contract Amendment:  
 R&M Overage from 12/31/2012:  
**TOTAL AMOUNT DUE:**

\$94,717.30
\$3,633.23
\$57,062.65
\$81,002.49
<b>\$236,415.67</b>

## Daniel P. Stratton

---

**From:** Mike Spears <mikespears@setel.com>  
**Sent:** Friday, February 14, 2014 10:09 AM  
**To:** 'Daniel P. Stratton'  
**Subject:** FW: contract

See Bobs reply. We did not discuss this as an option.

## Michael R. Spears, CPA

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653

Phone: (606)886-8040

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Thursday, February 13, 2014 8:04 PM  
**To:** mikespears@setel.com  
**Subject:** contract

Mike-

This is a follow up to our phone conversation yesterday. Greg and I did discuss the contract renewal - subsequent to your and my conversation last week. We have not made any definitive decision, but are willing to consider the approach you and I talked about. Specifically: MWD would increase UMG's total fee by 1% each of the next two years. The current contract term would be extended by an additional year (3 years total beyond the current year). With regard to a fee increase in the third year, we would begin formal discussions related to a fee increase 6 months before the end of the 2nd year of the contract term. If we are unable to negotiate an acceptable fee amount for the third year, we would both be free to opt out of the third year within a prescribed period of time. We are not willing to write off the debt which MWD owes to UMG presently. We would ask the District for a proposal as to repayment terms. We still have serious concerns related to both the District's time frame for starting the rate application process and the inadequate amount of funds available on an ongoing basis for R&M. Also, we would like an assurance that our routine monthly payments will be paid on time.

Mike, the last month and a half have been very costly for UMG as a result of extreme weather conditions. Electric costs went through the roof, as did water purchases and overtime. This was not a normal winter - from our perspective it was severe weather conditions and our incremental costs should be considered out of scope expenses. Limiting UMG to a 1% increase while asking us to absorb this type of extraordinary costs out of our normal fee is an issue. Let me know your thoughts. Bob



**Daniel P. Stratton**

---

**From:** Mike Spears <mikespears@setel.com>  
**Sent:** Wednesday, February 19, 2014 1:58 PM  
**To:** 'Daniel P. Stratton'  
**Subject:** FW: Contract

**Michael R. Spears, CPA**

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653

Phone: (606)886-8040

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Wednesday, February 19, 2014 1:44 PM  
**To:** mikespears@setel.com  
**Cc:** Greg May  
**Subject:** Contract

Mike –

Pursuant to the discussion we had this morning along with Greg May and Roy Sawyers, UMG's position on changes to the current operations contract with Mountain Water District is as follows:

1. Contract term would be modified to run through December 31, 2016.
2. The current language related to UMG and the District participating 70/30 in net revenue increases (or decreases) will be eliminated.
3. The contract fee would be increased by 1% beginning January 1, 2014 and increased by another 1% beginning January 1, 2015. The contract fee for 2016 would be 0% increase.
4. A clause will be added, allowing either party to terminate the agreement without cause after January 1, 2016. The termination has to be written and give 120 days notice of the termination.
5. UMG is willing to forgive \$118,208 of the current amount owed by the District for the 2013 R&M overage. A time schedule for repayment of the balance will be negotiated and included with the contract revision.
6. It is our understanding that the board of commissioners will initiate actions within the next month or two to begin the process for a rate increase application to the PSC.

7. There needs to a clear understanding by the board of commissioners that any future R&M expense overages (beginning in January 2014) will be re-paid to UMG as expeditiously as possible.
8. The clause in the present contract that provides for UMG to be reimbursed for additional expenses incurred by UMG as a result of severe weather will be retained in the contract.

Greg and Bob

Bob Meyer, Controller  
**UTILITY MANAGEMENT GROUP, LLC**  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

## Daniel P. Stratton

---

**From:** Mike Spears <mikespears@setel.com>  
**Sent:** Thursday, February 20, 2014 9:43 AM  
**To:** 'Daniel P. Stratton'  
**Subject:** FW: Contract

See attachment

## Michael R. Spears, CPA

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653

Phone: (606)886-8040

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Thursday, February 20, 2014 9:40 AM  
**To:** Mike Spears  
**Subject:** RE: Contract

First day for written notification of termination would be Jan 1, 2016. I'm OK with 180 days but I will also run it by Greg. To pre-op at 12 noon today. I appreciate your prayers. Bob

---

**From:** Mike Spears [mikespears@setel.com]  
**Sent:** Wednesday, February 19, 2014 5:38 PM  
**To:** Bob Meyer  
**Subject:** RE: Contract

Bob,

We would like clarification on Item 4, when is the first day that the termination letter can be given to the other party? One other thing, I am not sure that 120 days would be enough in the event of transition. Would you leave that at 180 days?

Thanks and praying for your surgery tomorrow.

**Daniel P. Stratton**

---

**From:** Mike Spears <mikespears@setel.com>  
**Sent:** Wednesday, February 19, 2014 1:16 PM  
**To:** 'Daniel P. Stratton'  
**Subject:** FW: Contract revision

See attached.

**Michael R. Spears, CPA**

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653

Phone: (606)886-8040

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Mike Spears [mailto:mikespears@setel.com]  
**Sent:** Wednesday, February 19, 2014 12:42 PM  
**To:** 'Bob Meyer'  
**Cc:** rsawyers@mtwater.org  
**Subject:** RE: Contract revision

Bob,

Below are responses and my understanding when we left this morning. Maybe we misunderstood but below was what I thought we were leaving with:

**Item 3.** My understanding when we left was that 2014 – 1%, 2015- 1% and 2016- 0%. As I stated there is no way to negotiate until then due to the timing of the rate increase.

**Item 4.** I also thought that we were going to split the R&M past.

**Item 6.** Until a rate increase is awarded, the district will not be able to guarantee anything until then. We are contractually obligated to pay you and we intend to but as I explained until we file and receive a rate increase, our hands are tied.

**Item 7.** Until the rate increase, I am not sure they could include this clause at this time. This is an item I would agree with at the next contract negotiations.

**Item 8.** Please delete this line as it might be taken as offensive or threatening by the board.

## Michael R. Spears, CPA

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653

Phone: (606)886-8040

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Wednesday, February 19, 2014 1:44 PM  
**To:** mikespears@setel.com  
**Cc:** Greg May  
**Subject:** Contract

Mike –

Pursuant to the discussion we had this morning along with Greg May and Roy Sawyers, UMG's position on changes to the current operations contract with Mountain Water District is as follows:

1. Contract term would be modified to run through December 31, 2016.
2. The current language related to UMG and the District participating 70/30 in net revenue increases (or decreases) will be eliminated.
3. The contract fee would be increased by 1% beginning January 1, 2014 and increased by another 1% beginning January 1, 2015. The contract fee for 2016 would be 0% increase.
4. A clause will be added, allowing either party to terminate the agreement without cause after January 1, 2016. The termination has to be written and give 120 days notice of the termination.
5. UMG is willing to forgive \$118,208 of the current amount owed by the District for the 2013 R&M overage. A time schedule for repayment of the balance will be negotiated and included with the contract revision.
6. It is our understanding that the board of commissioners will initiate actions within the next month or two to begin the process for a rate increase application to the PSC.
7. There needs to be a clear understanding by the board of commissioners that any future R&M expense overages (beginning in January 2014) will be re-paid to UMG as expeditiously as possible.
8. The clause in the present contract that provides for UMG to be reimbursed for additional expenses incurred by UMG as a result of severe weather will be retained in the contract.

Greg and Bob

Bob Meyer, Controller  
UTILITY MANAGEMENT GROUP, LLC  
287 Island Creek Road

Pikeville, Kentucky 41501

Office 606.437.4754

Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

**Mike Spears**

---

**From:** Bob Meyer [bmeyer@umgllc.net]  
**Sent:** Thursday, February 20, 2014 9:40 AM  
**To:** Mike Spears  
**Subject:** RE: Contract

First day for written notification of termination would be Jan 1, 2016. I'm OK with 180 days but I will also run it by Greg. To pre-op at 12 noon today. I appreciate your prayers. Bob

---

**From:** Mike Spears [mikespears@setel.com]  
**Sent:** Wednesday, February 19, 2014 5:38 PM  
**To:** Bob Meyer  
**Subject:** RE: Contract

Bob,

We would like clarification on Item 4, when is the first day that the termination letter can be given to the other party? One other thing, I am not sure that 120 days would be enough in the event of transition. Would you leave that at 180 days?

Thanks and praying for your surgery tomorrow.

*Michael R. Spears, CPA*

**Michael R. Spears, CPA, PSC**  
**P.O. Box 1270**  
**Prestonsburg, KY 41653**

**Phone: (606)886-8040**

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Wednesday, February 19, 2014 1:44 PM  
**To:** mikespears@setel.com  
**Cc:** Greg May  
**Subject:** Contract

Mike –

Pursuant to the discussion we had this morning along with Greg May and Roy Sawyers, UMG's position on changes to the current operations contract with Mountain Water District is as follows:

1. Contract term would be modified to run through December 31, 2016.

2/20/2014

2. The current language related to UMG and the District participating 70/30 in net revenue increases (or decreases) will be eliminated.
3. The contract fee would be increased by 1% beginning January 1, 2014 and increased by another 1% beginning January 1, 2015. The contract fee for 2016 would be 0% Increase.
4. A clause will be added, allowing either party to terminate the agreement without cause after January 1, 2016. The termination has to be written and give 120 days notice of the termination.
5. UMG is willing to forgive \$118,208 of the current amount owed by the District for the 2013 R&M overage. A time schedule for repayment of the balance will be negotiated and included with the contract revision.
6. It is our understanding that the board of commissioners will initiate actions within the next month or two to begin the process for a rate increase application to the PSC.
7. There needs to a clear understanding by the board of commissioners that any future R&M expense overages (beginning in January 2014) will be re-paid to UMG as expeditiously as possible.
8. The clause in the present contract that provides for UMG to be reimbursed for additional expenses incurred by UMG as a result of severe weather will be retained in the contract.

Greg and Bob

Bob Meyer, Controller  
**UTILITY MANAGEMENT GROUP, LLC**  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

2/20/2014



**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

March 10, 2014

Mr. Greg May  
Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [gregmay@umgllc.net](mailto:gregmay@umgllc.net)

Mr. Bob Meyer  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

**RE: MWD/UMG Operating Agreement**

Dear Greg & Bob:

Please find attached a revised Agreement for Operations, pursuant to our discussions. The agreement that has been modified is our 2011 Agreement. I would specifically address your attention to Paragraphs 1.11, 1.12, 2.3, 2.4, 2.5, 2.6, 2.7, 2.9, 2.17, 2.25, 2.26, 2.27, 2.28 and 2.29, which were agreed upon prior to our discussions concerning compensation. Please review these sections carefully, and if there is an issue, please advise.

Of course, the critical language is set forth in Section 7 and 11, which set forth the compensation and term of the agreement. I have also added a new Section 7.6, which provides for the debt forgiveness agreed upon.

**STRATTON LAW FIRM, P.S.C.**

March 10, 2014

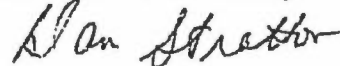
Page 2

I would note that in Paragraph 1.11, I have added a phrase at the end to reflect this debt forgiveness as that had not been agreed upon when we agreed on that paragraph. If you have any additions or corrections to this draft, please advise.

Once we have reached an agreement on the language, I will forward the contract to the full Board. We then plan to schedule a Special Board Meeting, at which time the contract will be submitted to the Board for approval.

I look forward to hearing from you soon.

Sincerely,  
STRATTON LAW FIRM, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

cc: Rhonda James  
Roy Sawyers  
Mike Spears

## **Agreement for Operations, Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_ day of ~~January~~ March, ~~2011~~ 2014, effective the 1<sup>st</sup> day of ~~January~~, ~~2011~~ 2014, by and between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box 3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water, wastewater and related treatment, collection and distribution facilities described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation, maintenance and management of these facilities and UMG desires to perform such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by DISTRICT shall remain the exclusive property of DISTRICT unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by UMG without the prior written consent of the DISTRICT.
- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when

delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.

- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or

understanding between the parties which pertain to the subject matter hereof. However, the DISTRICT shall remain liable for any outstanding debt and any other accrued liabilities due UMG, except as otherwise provided in Section 7.6.

1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

## 2.1 UMG's SERVICES - GENERAL

- 2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.
- 2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.
- 2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same. The DISTRICT agrees to apply and pay for any and all software licenses necessary to transfer the same to the DISTRICT.
- 2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles, ~~and~~ equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT'S vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory.

- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory.
- 2.6 UMG shall be responsible for maintaining all manufacturers warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties for the DISTRICT.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment with documentation. They shall report to the DISTRICT on a monthly basis what that preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT'S employees, board members or designated DISTRICT's representative. UMG shall provide Kkeys for the Project shall be provided to the DISTRICT'S Administrator. The Administrator shall sign a receipt for any keys received. by UMG for such visits. All visitors to the Project shall comply with UMGs operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.
- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMGs operations

hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. All Waste and/or byproduct treated and/or generated during UMGs performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. Those exceptions are those duties assigned to the DISTRICT's Administrator, financial officer and CPA. UMG shall submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water

services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.
- UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary UMG agrees to replace the DISTRICT's capital assets that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that replacement of capital assets is not essential for their continuing



performance under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.

2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an

allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.

2.28 UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary.

2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the expressed prior written consent of the DISTRICT.

### **3. UMG'S SCOPE OF SERVICES - WASTEWATER**

3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.

3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.

3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary

3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

### **4. UMG'S SCOPE OF SERVICES - WATER**

4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.

4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.

- 4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.
- 4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.
- 4.6 UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.

5. **UMGs SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.
- 5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.
- 5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICTS DUTIES**

- 6.1 The DISTRICT shall fund all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure

and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.

- 6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.
- 6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

- 6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.
- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The

Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.
- 6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.

## 7. COMPENSATION

7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for ~~the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2011, January 1, 2013 through December 31, 2013, shall be \$7,632,000 (\$636,000 monthly), each year of this agreement shall be \$\_\_\_\_\_ (\$\_\_\_\_\_ monthly), adjusted as hereinafter set out. 2014 shall be \$7,680,850 (\$640,070.83 per month), to be effective January 1, 2014. That portion of the increased fee for 2014, due from January 1, 2014, until the first full bi-monthly payment made under this agreement shall be spread over the balance of payments for the 2014 term. The annual fee for 2015 and 2016, shall be \$7,757,660 (\$646,471.66 per month).~~

7.2 ~~The Annual Fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenues based on the DISTRICT's two most recent prior year's audits. If the annual revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Thus the annual fee increase (decrease) for UMG in the second year of the renewal term (January - December 2012) shall be based on the increase (decrease) in the DISTRICT's total operating revenue based on the 2010 audit as compared to the 2009 audit. Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 monthly). The maintenance and repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.~~

7.2 On or before April 1<sup>st</sup> of each year, UMG shall provide the DISTRICT a detailed financial report of its costs to operate the DISTRICT. Such report shall also allocate expenses between water and sewer operations.

7.3 In the event the DISTRICT should make application to PSC for a rate increase in any of its services, UMG agrees to provide the DISTRICT a copy of any and all necessary information required by the PSC for such application.

If the DISTRICT elects to verify any information which is required by the PSC, or to conduct rate study, UMG agrees to allow the DISTRICT's duly authorized agents' access to its records to verify the information provided by UMG.

~~In the event that the DISTRICT obtains a rate increase, which was secured in part or in whole, to pay for new or additional debt, the parties agree that the portion of the additional revenue to be allocated for division under the 70/30 formula set forth in Section 7.2, shall be the increased net operating revenue after payment of the new or additional debt incurred and any reserve requirements associated therewith.~~

~~7.4 The Annual Fee (and Maintenance and Repair Limit included therein) shall be calculated within thirty (30) days of approval of the DISTRICT'S annual audit, but in no event, later than thirty (30) days prior to the next anniversary date, at which time the new fee would be effective.~~

7.54 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.

7.65 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT's application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT's application for reimbursement. If they DISTRICT's application does not receive final approval, or final approval is delayed due to UMG's failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

7.6 UMG agrees to forgive \$118,932 of the District's R & M overage due UMG upon execution of this agreement.

## 8. PAYMENT OF COMPENSATION

- 8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month during such Agreement Year for service provided in accordance to Articles 7.1 and ~~7.2~~ of this Agreement.
- 8.2 All other compensation to UMG is due upon receipt of UMGs invoice and payable within fifteen (15) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.
- 8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement significantly change as a result of one of the following:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.

9.1.2 The DISTRICT'S request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and routine growth of current services.

9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMGs additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.

10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.

10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.



- 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

11. **TERM, TERMINATION AND DEFAULT**

- 11.1 The initial term of this Agreement shall be ~~five (5)~~ three (3) years commencing on January 1, 2014, and ending on December 31, 2016. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." Either party shall have the right, without cause, to terminate this Agreement at the end of the ~~third~~ second Agreement Year. Notice of termination shall be given in writing no less than one hundred ~~twenty eighty (120)~~ (180) days in advance of the effective date of termination, and notice cannot be given prior to January 1, 2016.
- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party, except as provided in Section 11.1 only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the unamortized balance of the note as of the date of termination as set out in Appendix E.
- 11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to six (6) months from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

**12. DISPUTES AND FORCE MAJEURE**

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMGs ability to perform at the Project, DISTRICT, with UMGs assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Daniel P. Stratton**

---

**From:** Mike Spears <mikespears@setel.com>  
**Sent:** Thursday, March 13, 2014 4:38 PM  
**To:** 'Daniel P. Stratton'  
**Subject:** FW: Contract revision

**Michael R. Spears, CPA**

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653

Phone: (606)886-8040

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Mike Spears [mailto:mikespears@setel.com]  
**Sent:** Wednesday, February 19, 2014 12:42 PM  
**To:** 'Bob Meyer'  
**Cc:** rsawyers@mtwater.org  
**Subject:** RE: Contract revision

Bob,

Below are responses and my understanding when we left this morning. Maybe we misunderstood but below was what I thought we were leaving with:

**Item 3.** My understanding when we left was that 2014 – 1%, 2015- 1% and 2016- 0%. As I stated there is no way to negotiate until then due to the timing of the rate increase.

**Item 4.** I also thought that we were going to split the R&M past.

**Item 6.** Until a rate increase is awarded, the district will not be able to guarantee anything until then. We are contractually obligated to pay you and we intend to but as I explained until we file and receive a rate increase, our hands are tied.

**Item 7.** Until the rate increase, I am not sure they could include this clause at this time. This is an item I would agree with at the next contract negotiations.

**Item 8.** Please delete this line as it might be taken as offensive or threatening by the board.

As I said this was my understanding. Let me know and I am not forwarding anything until you respond. I feel like we could have accepted what my interpretation was. Let me know and thanks for your quick reply.

## Michael R. Spears, CPA

Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653

Phone: (606)886-8040

**Circular 230 Disclosure:** To ensure compliance with recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax related matters addressed herein.

**Confidentiality Notice:** The information in this e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and legally privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this information in any manner is strictly prohibited and may be unlawful.

When addressed to our clients, any opinions or advice contained in this e-mail, including any attachments, are subject to the terms and conditions expressed in our client engagement letter.

---

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Wednesday, February 19, 2014 12:34 PM  
**To:** mikespears@setel.com  
**Cc:** Greg May  
**Subject:** Contract revision

Mike –

Pursuant to the discussion we had this morning along with Greg May and Roy Sawyers, UMG's position on changes to the current operations contract with Mountain Water District is as follows:

1. Contract term would be modified to run through December 31, 2016.
2. The current language related to UMG and the District participating 70/30 in net revenue increases (or decreases) will be eliminated.
3. The contract fee would be increased by 1% beginning January 1, 2014 and increased by another 1% beginning January 1, 2015. The contract fee for 2016 would be subject to negotiation.
4. UMG is willing to forgive the \$94,717 owed by the District for the 2013 R&M overage. The balance of the District's current debt to UMG (\$141,699) would still have to be repaid. A time schedule for repayment will be negotiated and included with the contract revision.
5. It is our understanding that the board of commissioners will initiate actions within the next month or two to begin the process for a rate increase application to the PSC.
6. Any future R&M expense overages will be paid to UMG within three months of the calendar year in which they were incurred. If the District authorizes the submission of an application to the PSC for a rate increase by March 31, 2013, the time frame for repayment of R&M overages can be re-negotiated based on the anticipated time frame for approval and implementation of the rate increase.
7. The clause in the present contract that provides for UMG to be reimbursed for additional expenses incurred by UMG as a result of severe weather will be retained in the contract. UMG would also like language included authorizing an increase in UMG's fee if there are any increases of more than 5% implemented for electricity and wholesale water rates.
8. Greg will delay a formal meeting with the board of commissioners until March of this year.

Greg and Bob

Bob Meyer, Controller  
**UTILITY MANAGEMENT GROUP, LLC**  
187 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

**Daniel P. Stratton**

---

**From:** Daniel P. Stratton <dpstratton@setel.com>  
**Sent:** Thursday, March 13, 2014 1:03 PM  
**To:** 'Rhonda James'; johnbrendacollins@bellsouth.net; Roy Sawyers; Mike Spears  
**Cc:** Dpstratton@Setel. Com  
**Subject:** FW: Contract  
**Attachments:** mwd-contr-notes-2014.docx

All,

Attached is Bob's response to the final draft we sent him. The only substantive issue appears to be that they want to put a repayment plan for the R and M debt in the contract, which I thought we were going to pay as we could. I'll review the language issues in detail and get back to everyone, but we need to see how to respond concerning the debt repayment.

Dan

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Thursday, March 13, 2014 11:55 AM  
**To:** Daniel P. Stratton  
**Cc:** Greg May  
**Subject:** Contract

Dan-

I have attached some comments on your initial draft of the contract. Greg and I have not discussed the contract draft in detail yet, but will do that next week. Nothing major – primarily clarifications. I will be in Lawrenceburg tomorrow but available on my cell anytime during the week (606.213.6280). I will be back in Pikeville on Monday. Bob

Bob Meyer, Controller  
**UTILITY MANAGEMENT GROUP, LLC**  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

CONTRACT AMENDMENT  
UMG / MOUNTAIN WATER DISTRICT  
March 13, 2014

COMMENTS:

OK

*original 2011 language*

Section 2.7: The word "feasibility" should probably be deleted from the next to last sentence.

?

*original 2011 language*

Section 2.25 "... UMG agrees to replace the DISTRICT's capital assets that are not an integral part of the DISTRICT's water/sewer production..." What capital assets is this making reference to?

Section 2.27 Second sentence... "It shall include any item already under contract, but not yet paid>"

Not sure what the meaning of this is. *Repayment for water tank to be raised*

JA

Section 2.29 Last sentence - I assume "expressed" should be "express".

Detailed financial reports from UMG: My recollection from our discussions a year ago is that we would provide Mountain with a summarized expenditure report monthly and more detail at year end.

I saw no reference in the contract regarding a time frame for repayment of the still outstanding R&M debt owed to UMG.

**Daniel P. Stratton**

---

**From:** Bob Meyer <bmeyer@umgllc.net>  
**Sent:** Thursday, March 13, 2014 11:55 AM  
**To:** Daniel P. Stratton  
**Cc:** Greg May  
**Subject:** Contract  
**Attachments:** mwd-contr-notes-2014.docx

Dan-

I have attached some comments on your initial draft of the contract. Greg and I have not discussed the contract draft in detail yet, but will do that next week. Nothing major – primarily clarifications. I will be in Lawrenceburg tomorrow but available on my cell anytime during the week (606.213.6280). I will be back in Pikeville on Monday. Bob

Bob Meyer, Controller  
**UTILITY MANAGEMENT GROUP, LLC**  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*



**Daniel P. Stratton**

---

**From:** Daniel P. Stratton <dpstratton@setel.com>  
**Sent:** Thursday, March 13, 2014 12:10 PM  
**To:** 'Bob Meyer'  
**Cc:** Dpstratton@Setel. Com  
**Subject:** RE: Contract

Bob,

I will follow up with our group and get back to you next week.

Dan

**From:** Bob Meyer [mailto:bmeyer@umgllc.net]  
**Sent:** Thursday, March 13, 2014 11:55 AM  
**To:** Daniel P. Stratton  
**Cc:** Greg May  
**Subject:** Contract

Dan-

I have attached some comments on your initial draft of the contract. Greg and I have not discussed the contract draft in detail yet, but will do that next week. Nothing major – primarily clarifications. I will be in Lawrenceburg tomorrow but available on my cell anytime during the week (606.213.6280). I will be back in Pikeville on Monday. Bob

Bob Meyer, Controller  
**UTILITY MANAGEMENT GROUP, LLC**  
287 Island Creek Road  
Pikeville, Kentucky 41501  
Office 606.437.4754  
Fax 606.437.5083

*NOTICE: This message is intended only for the addressee and may contain information that is privileged or confidential. If you are not the intended recipient, or an authorized employee, agent, or representative of the intended recipient, do not read, copy or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at 606.437.4754 and delete all copies of the message and any attachments. Neither the transmission of this message or any attachment, nor any error in transmission or mis-delivery shall constitute waiver of any applicable legal privilege.*

# Memo

**To** : Rhonda James, John Collins, Roy Sawyers  
and Mike Spears  
**From** : Daniel P. Stratton *DP*  
**Date** : March 13, 2014  
**Regarding** : Mountain Water District

---

## UMG CONTRACT

---

I have reviewed the contract, and the following addresses each point raised by Bob Mayer in his email of March 13<sup>th</sup>.

Section 2.7 The term "Feasibility" was in the original 2011 language, and was not changed by this contract revision, but I have no problems in deleting the same.

Section 2.25 This is also the original language used in the 2011 contract that was not changed. I believe the capital assets are the vehicles, equipment and other items that would be classified as a capital asset utilized by UMG in the operation of the District. By excluding that which is "not an integral part of the District's water and sewer production, treatment and distribution, or collection systems", we are saying that they are not responsible for replacing the infrastructure through which the system operates.

Section 2.27 The sentence in question, "it shall include any item already under contract, but not yet paid", is in reference to the Water Tank Maintenance Contract that we have signed, but that has been placed in limbo due to our cash flow issues.

- Section 2.29 I have no problem changing the term "expressed" to "express".
- Section 7.2 Detailed financial reports from UMG are set out in sections, but I believe he is in reference to section 7.2, as it provides for an annual detailed financial report of UMG's cost to operate the District. I have no problem in his change to add "a summarized expenditure report monthly, and more detailed at year end", assuming this is the section which he has referenced.
- Section 7.6 In regard to not putting a payment plan in for the outstanding R&M debt owed UMG, it is my understanding from Mike that we are going to pay this as we could, and not put a specific provision in the contract. Section 7.6 provides that UMG agrees to forgive \$118,932 of the District's R&M's overage due UMG upon execution of the contract. They asked us to designate the balance due, and we declined. I have no trouble in putting what the balanced owed is under this section, but I certainly agree with Mike that until we have a rate increase, it would be problematic to put in a schedule for repayment.

This concludes my comments, but I will be happy to answer any questions or make any additional changes that you might recommend. A copy of Bob Meyer's comments are attached for your convenience.

**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

March 14, 2014

Mr. Greg May  
Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [gregmay@umgllc.net](mailto:gregmay@umgllc.net)

Mr. Bob Meyer  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

**RE: MWD/UMG Contract Amendments**

Dear Greg & Bob:

We have reviewed the comments as set forth in Bob's email of March 13, 2014, and would respond as follows:

Section 2.27 We have no problem in deleting the term "feasibility".

Section 2.25 This was original language in the 2011 Contract, and was not changed. The capital assets were the vehicles, equipment and other items that would be classified as a capital asset, being utilized by UMG in the operation of the District. By excluding that which is "not an integral part of the District's water and sewer production, treatment and distribution or collection system", we are saying that you are not responsible for replacing the infrastructure through which the system operates.

## STRATTON LAW FIRM, P.S.C.

March 14, 2014

Page 2

- Section 2.27      The sentence in question, "it shall include any item all ready under contract, but not yet paid", is in reference to the water tank maintenance contract that we have signed and partially executed, but has been placed in limbo based on our cash flow issues. If you want a more specific reference to that contract, we can do so.
- Section 2.29      We have no problem in changing the term "expressed" to "express".
- Section 7.2        In regard to the detailed financial reports from UMG, I am assuming that you are in reference to Section 7.2 of the contract. We are in agreement that we can add, "a summarized expenditure report monthly, and a more detailed report at year end".
- Section 7.6        In regard to repayment of the R&M debt, we have no problem in stating that the total debt is \$237,864, and that UMG is forgiving \$118,932, and the District still owes \$118,932. However, we cannot set forth a repayment schedule, as we do not know if we have a rate increase at this time, and if we do get one, we do not know what our capacity will be to repay this debt on a certain time table.

I realize that Greg has not had a chance to review the proposed contract changes in detail, but I wanted to get this back to you so you would have a chance to review everything at one time. I will be leaving town on the evening of the 19<sup>th</sup>, and will not be back in town until the 24<sup>th</sup>. If you have any other additions or corrections, I would request that you get them to me as soon as possible so we can respond to them prior to Wednesday.

**STRATTON LAW FIRM, P.S.C.**

March 14, 2014

Page 3

At this point in time, we have decided not to have a special meeting to address this issue, and it will be put on the regular agenda for the meeting on the 26<sup>th</sup>. We need to have a final document that UMG has approved to send to the Board prior to the meeting, so they have an opportunity to review the changes prior to it being presented to them for approval.

If you have any questions, please feel free to call.

Sincerely,  
STRATTON LAW FIRM, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

cc: Rhonda James  
Roy Sawyers  
Mike Spears

**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

March 19, 2014

Rhonda James, Chairperson  
Mountain Water District  
146 Main Street  
Pikeville, Kentucky 41501  
via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)

Roy Sawyers, Administrator  
Mountain Water District  
Post Office Box 3157  
Pikeville, Kentucky 41502  
via email: [rsawyers@mtwater.org](mailto:rsawyers@mtwater.org)

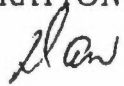
Michael R. Spears, CPA, PSC  
P.O. Box 1270  
Prestonsburg, KY 41653  
via email: [mikespears@setel.com](mailto:mikespears@setel.com)

Re: **UMG Contract Amendments**

Dear Rhonda, Roy and Mike:

Please find attached a proposed response to Bob Meyer's email of March 14<sup>th</sup>. Assuming they approve it, I have also attached a proposed letter to the Board. If anyone has any questions or concerns, please advise. Otherwise, I will forward Greg and Bob this letter, and if they approve, I will forward the Board their letter.

Sincerely,  
STRATTON LAW FIRM, PSC

  
Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

March 19, 2014

Mr. Greg May  
Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [gregmay@umgllc.net](mailto:gregmay@umgllc.net)

Mr. Bob Meyer  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmeyer@umgllc.net](mailto:bmeyer@umgllc.net)

**RE: MWD/UMG Operating Agreement**

Dear Greg & Bob:

In response to Bob's email of March 14<sup>th</sup>, seeking clarifications on the proposed amendments to the MWD/UMG contract, please be advised that we have made the following changes:

Section 2.25 I have added excluded buildings, and other real property improvements from the definition of capital assets, so as to clarify your concerns. I do agree however, that 2.26 addresses this issue.

Section 2.27 This language will remain the same, but for purposes of clarification, we are requesting that UMG reasonably forecast, within the best of its abilities, unforeseen R&M expenses. Clearly there are known R&M expenses, and we have a trend for grinder pumps, etc., that would give an indication of where we are going. We understand it is a soft number, but what we are trying to do is budget sufficient amounts to cover this expense.



services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.
- UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary, UMG agrees to replace the DISTRICT's capital assets (excluding real property and improvements thereon) that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that replacement of capital assets is not essential for their continuing performance

under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

- 2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.
- 2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an

**STRATTON LAW FIRM, P.S.C.**

March 19, 2014  
Page 2

Section 7.2            No change.

Section 7.6            No change

In regard to the review of our current rate structure, the Board has previously given Mike Spears instructions to begin that process, which he has begun. Once the contract is completed, we will be in position to take the next step.

In lieu of sending you the entire agreement again, I have attached page 3 & 4, which contain paragraph 2.25, which includes the additional language noted above for your review. You can insert these pages into the prior document. If all of this is satisfactory, please advise by email so that we may forward the completed document to our entire Board for their review, prior to the Board meeting on the 26<sup>th</sup>.

We appreciate your assistance, and if you have any questions, please feel free to call.

Sincerely,  
STRATTON LAW FIRM, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

cc: Rhonda James  
Roy Sawyers  
Mike Spears

**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

March 19, 2014

Rhonda James, Chair Person  
Mountain Water District  
146 Main Street  
Pikeville, Kentucky 41501  
via email: [rbjames6@msn.com](mailto:rbjames6@msn.com)

Lester "John" Collins, Secretary  
Mountain Water District  
3979 Raccoon Creek Road  
Raccoon, Kentucky 41557  
via email: [johnbrendacollin@bellsouth.net](mailto:johnbrendacollin@bellsouth.net)

Kelsey Friend, III, Commissioner  
Mountain Water District  
1381 Lizzie Fork Road  
Pikeville, Kentucky 41501  
via email: [kelseyfriend@kelsey.com](mailto:kelseyfriend@kelsey.com)

Ancie Casey, Commissioner  
Mountain Water District  
43860 State Highway 194 East  
Phelps, Kentucky 41553  
email: [ancie.casey@pike.kyschools.us](mailto:ancie.casey@pike.kyschools.us)

Prentis Adkins, Commissioner  
Mountain Water District  
375 Schoolhouse Road  
Shelbiana, Kentucky 41562  
email: [tricounty41501@yahoo.com](mailto:tricounty41501@yahoo.com)

**RE: MWD / UMG Contract**

Dear Commissioners:

Please find attached a revised MWD/UMG Contract for Operational Services, which we have negotiated with UMG on your behalf, and UMG has approved. This item will be on the agenda for the March 26<sup>th</sup> meeting, and is being forwarded to you for your review and consideration at that meeting. If you have any questions or concerns about any of the provisions set out in the contract, please advise and we will try to address them prior to the meeting, if possible.

**STRATTON LAW FIRM, P.S.C.**

March 19, 2014

Page 2

As usual, the strike through provisions are being eliminated from the contract, and the underlined provisions are additions to the contract. The biggest structural change to the contract is of course that we will have a fixed price with a fixed rate increase. This will allow for us to budget better, and move forward with a review of our rate structure.

If you have any questions, please feel free to call.

Sincerely,  
STRATTON LAW FIRM, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

cc: Roy Sawyers  
Mike Spears

## **Agreement for Operations, Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_ day of ~~January~~ March, ~~2011~~ 2014, effective the 1<sup>st</sup> day of ~~January~~, ~~2011~~ 2014, by and between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box 3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water, wastewater and related treatment, collection and distribution facilities described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation, maintenance and management of these facilities and UMG desires to perform such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by DISTRICT shall remain the exclusive property of DISTRICT unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by UMG without the prior written consent of the DISTRICT.
- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when

delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.

- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or

understanding between the parties which pertain to the subject matter hereof. However, the DISTRICT shall remain liable for any outstanding debt and any other accrued liabilities due UMG, except as otherwise provided in Section 7.6.

1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

## 2.1 UMG's SERVICES - GENERAL

- 2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.
- 2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.
- 2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same. The DISTRICT agrees to apply and pay for any and all software licenses necessary to transfer the same to the DISTRICT.
- 2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICTS vehicles, ~~and~~ equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT'S vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory.



- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory.
- 2.6 UMG shall be responsible for maintaining all manufacturers warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties for the DISTRICT.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment with documentation. They shall report to the DISTRICT on a monthly basis what that preventive maintenance is being performed on DISTRICT'S owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be feasibility determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT'S employees, board members or designated DISTRICT's representative. UMG shall provide keys for the Project shall be provided to the DISTRICT'S Administrator. The Administrator shall sign a receipt for any keys received. by UMG for such visits. All visitors to the Project shall comply with UMG's operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.
- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMG's operations

hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICTS prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMGs discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMGs reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICTS existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICTS Waste. All Waste and/or byproduct treated and/or generated during UMGs performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. Those exceptions are those duties assigned to the DISTRICT's Administrator, financial officer and CPA. UMG shall submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water

services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICTS Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.
- UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary, UMG agrees to replace the DISTRICT's capital assets (excluding real property and improvements thereon) that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that replacement of capital assets is not essential for their continuing performance

under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.

2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an

allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.

2.28 UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary.

2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the expressed prior written consent of the DISTRICT.

### **3. UMG'S SCOPE OF SERVICES - WASTEWATER**

3.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS wastewater systems.

3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.

3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary

3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

### **4. UMG'S SCOPE OF SERVICES - WATER**

4.1 This Article shall apply to UMGs operations, maintenance and management services for the DISTRICTS drinking water treatment system.

4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.

- 4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.
- 4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.
- 4.6 UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.

5. **UMGs SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMGs services for the DISTRICTS wastewater collection system and potable water distribution system.
- 5.2 The scope of UMGs services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.
- 5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICTS DUTIES**

- 6.1 The DISTRICT shall fund all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICTS failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure

and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.

- 6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.
- 6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMGs net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

- 6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICTS heavy equipment that are available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.
- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT'S vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMGs exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMGs obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The

Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.

6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.

## 7. COMPENSATION

7.1 UMGs compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for ~~the first Agreement Year, which shall be for the period January 1, 2011, through December 31, 2011, January 1, 2013 through December 31, 2013, shall be \$7,632,000 (\$636,000 monthly), each year of this agreement shall be \$\_\_\_\_\_ (\$\_\_\_\_\_ monthly), adjusted as hereinafter set out.~~ 2014 shall be \$7,680,850 (\$640,070.83 per month), to be effective January 1, 2014. That portion of the increased fee for 2014, due from January 1, 2014, until the first full bi-monthly payment made under this agreement shall be spread over the balance of payments for the 2014 term. The annual fee for 2015 and 2016, shall be \$7,757,660 (\$646,471.66 per month).

7.2 ~~The Annual Fee shall be adjusted annually to provide that UMG will be paid seventy percent (70%) of the increase in total operating revenues based on the DISTRICT's two most recent prior year's audits. If the annual revenue decreases, there will likewise be a downward adjustment in the fee based on the same ratio. Thus the annual fee increase (decrease) for UMG in the second year of the renewal term (January - December 2012) shall be based on the increase (decrease) in the DISTRICT's total operating revenue based on the 2010 audit as compared to the 2009 audit. Included in the annual fee is the allowance for maintenance and repair, which shall initially be \$564,000 (\$47,000 monthly). The maintenance and repair budget shall adjust annually in direct proportion with any adjustments in the annual fee.~~



7.2 On or before April 1<sup>st</sup> of each year, UMG shall provide the DISTRICT a detailed financial report of its costs to operate the DISTRICT. Such report shall also allocate expenses between water and sewer operations.

7.3 In the event the DISTRICT should make application to PSC for a rate increase in any of its services, UMG agrees to provide the DISTRICT a copy of any and all necessary information required by the PSC for such application.

If the DISTRICT elects to verify any information which is required by the PSC, or to conduct rate study, UMG agrees to allow the DISTRICT's duly authorized agents' access to its records to verify the information provided by UMG.

~~In the event that the DISTRICT obtains a rate increase, which was secured in part or in whole, to pay for new or additional debt, the parties agree that the portion of the additional revenue to be allocated for division under the 70/30 formula set forth in Section 7.2, shall be the increased net operating revenue after payment of the new or additional debt incurred and any reserve requirements associated therewith.~~

~~7.4 The Annual Fee (and Maintenance and Repair Limit included therein) shall be calculated within thirty (30) days of approval of the DISTRICT'S annual audit, but in no event, later than thirty (30) days prior to the next anniversary date, at which time the new fee would be effective.~~

7.54 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.

7.65 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT's application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT's application for reimbursement. If the DISTRICT's application does not receive final approval, or final approval is delayed due to UMG's failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

7.6 UMG agrees to forgive \$118,932 of the District's R & M overage due UMG upon execution of this agreement.

## 8. PAYMENT OF COMPENSATION

- 8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month during such Agreement Year for service provided in accordance to Articles 7.1 and ~~7.2~~ of this Agreement.
- 8.2 All other compensation to UMG is due upon receipt of UMG's invoice and payable within fifteen (15) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.
- 8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICTS designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMGs Costs of providing services under this Agreement significantly change as a result of one of the following:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.

9.1.2 The DISTRICT'S request of UMG and UMGs consent to provide additional services beyond what is provided in this agreement and routine growth of current services.

9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMGs additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the operation of this Agreement other than those arising from the DISTRICTS negligence or willful misconduct.

10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICTS negligence or willful misconduct.

10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMGs negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.

- 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICTS negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

## 11. TERM, TERMINATION AND DEFAULT

- 11.1 The ~~initial~~ term of this Agreement shall be ~~five (5)~~ three (3) years commencing on January 1, 2014, and ending on December 31, 2016. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." Either party shall have the right, without cause, to terminate this Agreement at the end of the ~~third~~ second Agreement Year. Notice of termination shall be given in writing no less than one hundred ~~twenty eighty (120)~~ (180) days in advance of the effective date of termination, and notice cannot be given prior to January 1, 2016.
- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party, except as provided in Section 11.1 only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the unamortized balance of the note as of the date of termination as set out in Appendix E.
- 11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to six (6) months from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

12. **DISPUTES AND FORCE MAJEURE**

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMGs ability to perform at the Project, DISTRICT, with UMGs assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**STRATTON LAW FIRM, P.S.C.**

POST OFFICE BOX 1530  
PIKEVILLE, KENTUCKY 41502  
TELEPHONE: (606) 437-7800  
FACSIMILE: (606) 437-7569

DAVID C. STRATTON  
dcstratton@setel.com

DANIEL P. STRATTON  
dpstratton@setel.com

BRANDT M. SPEARS  
bmspears@setel.com

HENRY D. STRATTON  
(1925-1989)

P. B. STRATTON  
(1874-1953)

March 28, 2014

Mr. Greg May  
Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [gregmay@umgllc.net](mailto:gregmay@umgllc.net)

Mr. Bob Meyer  
c/o Utility Management Group  
158 Town Mountain Road, Suite 101  
Pikeville, Kentucky 41501  
via email: [bmever@umgllc.net](mailto:bmever@umgllc.net)

**RE: MWD/UMG Operating Agreement**

Dear Greg & Bob:

Please find attached the final contract for your review and approval. This was approved by the Board at its meeting on Wednesday, March 26, 2014.

Please note that I had previously confirmed with Bob that we would amend section 7.6 to include the balance of the date of the debt that was owed on R&M overruns, but in my haste to get this out before I left town last week, I did not make that correction. Accordingly, the draft that was sent to the Board for their review, did not include that change. I would submit that there is no issue as to the debt that is owed UMG on R&M expenses, and since we have placed forgiveness in the contract, the balance owed doesn't need to be there. After talking to Rhonda, we

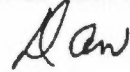
**STRATTON LAW FIRM, P.S.C.**

March 28, 2014  
Page 2

believe that the correspondence that we have exchanged is sufficient to evidence the debt. We would prefer, for obvious reasons, not to do a second vote to approve an amendment to the contract to include just this language.

Otherwise, everything should be as we have agreed upon. If you have any questions, please feel free to call. Otherwise, we would propose that you would sign the same, and then we will bring it to Rhonda for her signature.

Sincerely,  
STRATTON LAW FIRM, PSC



Daniel P. Stratton  
email: [dpstratton@setel.com](mailto:dpstratton@setel.com)

DPS/dsm  
Attachment

cc: Rhonda James  
Roy Sawyers  
Mike Spears

## **Agreement for Operations, Maintenance and Management Services**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of March, 2014, effective the 1<sup>st</sup> day of January, 2014, by and between:

Mountain Water District, with its principal address at 6332 Highway, P.O. Box 3157, Pikeville, Kentucky 41502 (hereinafter "DISTRICT")

AND

UTILITY MANAGEMENT GROUP LLC, with its principal address at 500 Summit Drive, P.O. Box 663, Corbin, Kentucky 40702 (hereinafter "UMG").

**WHEREAS**, DISTRICT owns and provides for the operation of water, wastewater and related treatment, collection and distribution facilities described on Appendix B; and

**WHEREAS**, DISTRICT desires to employ the services of UMG in the operation, maintenance and management of these facilities and UMG desires to perform such services for the compensation provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements

1. **GENERAL**

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by DISTRICT shall remain the exclusive property of DISTRICT unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- 1.4 Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by UMG without the prior written consent of the DISTRICT.
- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given when



delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt required; or received by the party for which notice is intended if given in any other manner.

- 1.6 This Agreement, including its Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "UMG" and "DISTRICT" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of UMG to DISTRICT is that of independent contractor and nothing in this Agreement shall create the relationship of partnership or joint venture. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that UMG is to supply professional engineering services to DISTRICT unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party, the party determined not to be in default or in breach of the Agreement shall be entitled to its cost and reasonable attorney fees which are directly attributed to such litigation in addition to other relief to which it may be entitled. If both sides are found to have defaulted or be in breach each will pay their own cost, and attorney fees.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.11 This agreement sets forth the entire agreement between the parties and fully supersedes all prior and/or verbal agreements or

understanding between the parties which pertain to the subject matter hereof. However, the DISTRICT shall remain liable for any outstanding debt and any other accrued liabilities due UMG, except as otherwise provided in Section 7.6.

- 1.12 This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same documents.

## 2.1 **UMG's SERVICES - GENERAL**

- 2.1 UMG will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky. UMG warrants that it will maintain the necessary licensed and certified personnel as may be required by the Commonwealth of Kentucky for operation of the Project.
- 2.2 UMG shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and/or wastewater process control, operations, maintenance, safety, and supervisory skills.
- 2.3 UMG shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control. In the event this agreement is terminated for any reason, UMG shall provide the DISTRICT within thirty (30) days of notice all computerized programs, codes, records, maps, instruction manuals, and any other items necessary for DISTRICT to execute a complete transfer of their records and the operating systems necessary to access and maintain the same. The DISTRICT agrees to apply and pay for any and all software licenses necessary to transfer the same to the DISTRICT.
- 2.4 Within forty-five (45) days after the Commencement Date, UMG will provide a physical inventory of DISTRICT's vehicles, equipment and tools in use at the Project and a general statement as to the condition of each vehicle or piece of equipment. In the event this Agreement is terminated for any reason, UMG will provide to the DISTRICT, a physical inventory of DISTRICT's vehicles and equipment, and a general statement as to the condition of each vehicle and piece of equipment within ninety (90) days of the end of the contract. If UMG fails to do so, then the DISTRICT may take its own inventory.

- 2.5 Within forty five (45) days after the Commencement Date, UMG will provide DISTRICT with a physical inventory of chemicals and other consumables on hand when UMG begins services under this Agreement. Such chemicals and consumables will be made available to UMG in connection with its performance under this Agreement. UMG will provide DISTRICT with the same quantity of chemicals or equivalent upon termination of this Agreement. If UMG fails to do so, then the DISTRICT may take its own inventory.
- 2.6 UMG shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by DISTRICT and shall assist DISTRICT in enforcing existing equipment warranties and guarantees. UMG shall keep a record of all such warranties for the DISTRICT.
- 2.7 On or before October 1<sup>st</sup> of each year UMG shall provide the DISTRICT an annual schedule for preventive maintenance, along with an estimated budget for the DISTRICT owned equipment. They shall report to the DISTRICT on a monthly basis what preventive maintenance is being performed on DISTRICT owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be determined by the DISTRICT. Such a maintenance program shall include documentation of corrective and preventive maintenance.
- 2.8 UMG shall operate, maintain and/or monitor the Project on a 24 hour per day, seven-day per week schedule.
- 2.9 Visits may be made at a reasonable time by DISTRICT's employees, board members or designated DISTRICT's representative. UMG shall provide keys for the Project to the DISTRICT's Administrator. The Administrator shall sign a receipt for any keys received. All visitors to the Project shall comply with UMG's operating and safety procedures.
- 2.10 UMG shall provide a 24 hour/day 7 days per week customer service phone number.
- 2.11 UMG will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to DISTRICT regarding the need, if any, for DISTRICT to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to UMG's operations hereunder and with federal regulations promulgated pursuant to the Americans With Disability Act ("ADA").

- 2.12 UMG may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, no modification shall be made without DISTRICT's prior written approval.
- 2.13 In any emergency affecting the safety of persons or property, UMG may act without written amendment or change order, at UMG's discretion, to prevent threatened damage, injury or loss. UMG shall be compensated by DISTRICT for any such emergency work notwithstanding the lack of a written amendment. Such compensation shall include UMG's reasonable costs for the emergency. Such cost and the basis for which they were incurred shall be detailed to the Board in any request for additional compensation.
- 2.14 As required by law, permit or court order, UMG will prepare plant performance reports and submit them to DISTRICT for signature and transmittal to appropriate authorities on a timely basis.
- 2.15 UMG will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees.
- 2.16 UMG will provide for the collection, hauling and disposal of solid waste, screening, grit, sludge and scum ("Waste") to DISTRICT's existing or approved disposal sites. It shall be the sole right and responsibility of DISTRICT to designate, approve or select disposal sites to be used by UMG for DISTRICT's Waste. All Waste and/or byproduct treated and/or generated during UMG's performance of services is not and will not be considered property of UMG.
- 2.17 UMG shall provide all the administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT, except as designated by the DISTRICT. Those exceptions are those duties assigned to the DISTRICT's Administrator, financial officer and CPA. UMG shall submit a monthly report to the DISTRICT that illustrates in summary, how much of the current month and year to date invoices submitted by UMG to the DISTRICT, are related to water services and how much are related to waste water services. The summary shall also report the direct operating costs for water services and waste water services on a monthly and year to date basis.

- 2.18 UMG shall consult with the DISTRICT's Commissioners prior to replacement of the Project Manager.
- 2.19 UMG shall comply with all of the DISTRICT's policies and procedures in operating the DISTRICT, and UMG's Project Manager shall certify monthly to the DISTRICT's Board that all operations and activities under their control have been in compliance with the Board's policies and procedures.
- UMG shall submit to the DISTRICT monthly, all reports of project activities in accordance with the DISTRICT's policies and formats.
- 2.20 UMG shall provide for monthly meter reading and billing. All amounts billed and received on behalf of DISTRICT are the property of DISTRICT and shall be promptly deposited into a bank account designated by the DISTRICT. Customer Service offices shall be maintained at locations approved by the DISTRICT.
- 2.21 UMG shall provide its reasonable business efforts in controlling unaccounted for water loss. A monthly report of system accounted for/unaccounted for water loss shall be submitted to the DISTRICT.
- 2.22 UMG shall comply with all applicable federal, state and local laws, regulations and rules as they may be applicable to the operation of the DISTRICT's water and waste water systems and the DISTRICT's operations.
- 2.23 UMG will seek sources of government grants and loans for consideration by the DISTRICT. The DISTRICT must approve in advance all application for such funding.
- 2.24 To protect the DISTRICT and allow for continuity of service UMG will post a surety bond or other surety in the amount of \$1,000,000 to ensure faithful performance of its contract obligations. Such surety shall be released upon termination of this Agreement and compliance by UMG with its obligations hereunder.
- 2.25 Notwithstanding anything herein to the contrary, UMG agrees to replace the DISTRICT's capital assets (excluding real property and improvements thereon) that are not an integral part of the DISTRICT's water/sewer production, treatment, and distribution and/or collection systems. If UMG determines that replacement of capital assets is not essential for their continuing performance under this agreement, they shall notify the DISTRICT that they do not wish to replace an asset, with an explanation as to why. If the DISTRICT agrees, the asset will be removed from the DISTRICT's

asset list. If the DISTRICT does not agree, UMG will be required to replace the asset. UMG shall submit to the DISTRICT at the November DISTRICT meeting a capital budget request for the next calendar year for approval by the DISTRICT. UMG may make subsequent request for a capital asset by petitioning the DISTRICT.

For those capital assets that cost less than \$1,500, UMG will purchase and pay for the same. For those that cost more than \$1,500, they may also be purchased and paid for by UMG or at UMG's option may be financed in the DISTRICT's name, subject to prior approval by the DISTRICT, and all such loan payments shall be made by UMG as long as this contract remains in effect. At the end of the contract term, or upon early termination, if there are any outstanding loans that have been approved by the DISTRICT, which are due and owing, the DISTRICT agrees to pay the balance of the same.

All assets acquired under this paragraph, except as hereinafter provided, will be titled in the DISTRICT's name. Any capital assets that UMG acquires, at its discretion, that is not replacements of the DISTRICT's assets, and/or which are not solely dedicated for use at the DISTRICT's project, shall be titled in the name of UMG and paid for by UMG.

Notwithstanding the above, any individual tool purchased for UMG's use in the operation of the DISTRICT that cost more than \$250 shall be paid for by the DISTRICT, and charged to its repair and maintenance budget. Any tool purchased for UMG's use in the operation of the DISTRICT that cost less than \$250 shall be paid for by UMG. All such tools shall be the property of the DISTRICT.

- 2.26 Routine repair and maintenance of any real property utilized by UMG in the performance of its duties under this contract will be done and paid for by UMG. If such improvements require financing, it will be done pursuant to the capital acquisition procedure outline above. This excludes any major renovation or expansion directed by the DISTRICT, which will be paid by the DISTRICT.
- 2.27 UMG will submit to the DISTRICT by no later than October 1<sup>st</sup> of each year, a repair and maintenance budget and capital budget for the next fiscal year. It shall include any item already under contract, but not yet paid. The R&M Budget shall include an allowance for any unforeseen repairs based on the DISTRICT's actual experience for such items over the last three (3) years.

- 2.28 UMG shall submit a monthly accounting to the DISTRICT detailing all repair and maintenance expenditures, including a brief explanation of the work done and why it was necessary.
- 2.29 All purchases made by UMG using the DISTRICT's Tax Identification Number shall only be for those items utilized in the operation of the DISTRICT. UMG shall not co-mingle, store or have delivered, parts, materials, chemicals or supplies used for any other customer on the DISTRICT's property, nor will the DISTRICT's parts, materials, chemicals and supplies be stored on any other customer's property without the express prior written consent of the DISTRICT.

3. **UMG'S SCOPE OF SERVICES - WASTEWATER**

- 3.1 This Article shall apply to UMG's operations, maintenance and management services for the DISTRICT's wastewater systems.
- 3.2 Within the design capacity and capabilities of the Waste Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that effluent discharged from the Plant(s) outfalls meets the requirements specified in Appendix C-1.
- 3.3 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary
- 3.4 UMG will pay all Costs incurred in normal wastewater utility operations. Any cost determined to be abnormal, for which additional compensation is sought, shall be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.

4. **UMG'S SCOPE OF SERVICES - WATER**

- 4.1 This Article shall apply to UMG's operations, maintenance and management services for the DISTRICT's drinking water treatment system.
- 4.2 Within the design capacity and capabilities of the Water Treatment Plant(s) described in Appendix B, UMG will manage, operate and maintain the Plant(s) so that water produced from the Plant(s) meets the requirements specified in Appendix C-2.
- 4.3 UMG shall operate the water treatment plant(s), pump station(s), and provide for all laboratory testing requirements.

- 4.4 UMG will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to DISTRICT.
- 4.5 UMG will pay all Costs incurred in normal Water operations. Any cost determined to be abnormal, for which additional compensation is sought, will be submitted to the DISTRICT for approval along with an explanation of why it was determined to be abnormal.
- 4.6 UMG will perform all maintenance and repairs for the project, and submit a monthly accounting to the DISTRICT detailing all expenditures incurred, along with a brief explanation of the work done and why it was necessary.

5. **UMG's SCOPE OF SERVICES - WASTEWATER COLLECTION SYSTEM AND WATER DISTRIBUTION SYSTEM**

- 5.1 This Article shall apply to UMG's services for the DISTRICT's wastewater collection system and potable water distribution system.
- 5.2 The scope of UMG's services for the Maintenance and Repair of the collection system and the distribution system are set forth in Appendices C-3 and C-4, respectively.
- 5.3 UMG shall provide for all daily operation and maintenance functions such as line Repairs, customer connections, line and tank maintenance, meter replacement, leak detection, line flushing, valve exercise, system inspection, line locations, and emergency call-outs, etc.

6. **DISTRICTS DUTIES**

- 6.1 The DISTRICT shall fund all necessary Capital Expenditures, except as otherwise provided herein. Such funding shall be provided either (i) in advance from the DISTRICT to UMG if the DISTRICT requests that UMG contract for such Capital Expenditure or (ii) the DISTRICT shall contract for such Capital Expenditure directly. Priorities shall be given to safety and the ADA related expenses described in Section 2.12. Any loss, damage, or injury resulting from the DISTRICT's failure to provide capital as reasonably required by UMG shall be the sole responsibility of the DISTRICT provided that UMG has timely notified the DISTRICT of the need for the capital expenditure and has provided sufficient lead time for acquisition and utilization of the same. Otherwise any such loss damage or injury shall be the sole responsibility of UMG.



- 6.2 The DISTRICT shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to DISTRICT and are not transferred to UMG under this Agreement. UMG shall keep in force all Project warranties, guarantees, easements and license transferred to them under this Agreement.
- 6.3 The DISTRICT shall pay all ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon UMG's net income and/or payroll taxes for UMG employees.

In the event UMG is required to pay any sales tax or use taxes on the value of the services provided by UMG hereunder such payments shall be reimbursed by the DISTRICT unless the DISTRICT furnishes a valid and properly executed exemption certificate relieving the DISTRICT and UMG of the obligation for such taxes. Any items purchased by the DISTRICT to save sales tax for a purchase UMG is required to make on behalf of the DISTRICT, shall be reimbursed by UMG within fifteen (15) days from the date of invoice to UMG. UMG shall make all such invoices on behalf of the DISTRICT to UMG on the next business date after the DISTRICT has made any purchase referenced above.

- 6.4 The DISTRICT shall provide UMG with full use of any and all pieces of DISTRICT's heavy equipment that are available so that UMG may discharge its obligations under this Agreement in the most cost-effective manner.
- 6.5 DISTRICT shall provide all registration and licenses for DISTRICT's vehicles used in connection with the Project.
- 6.6 DISTRICT shall provide for UMG's exclusive use of all vehicles and equipment presently in full time use at the Project except as may be otherwise designated from time to time by Agreement.
- 6.7 DISTRICT shall provide for UMG access to all easements, right-of-ways, and access to discharge UMG's obligation under this Agreement.
- 6.8 The DISTRICT may hire an Administrator to assist the DISTRICT in the oversight of its operations and business affairs. The Administrator's office shall be located in the DISTRICT headquarters and the Administrator shall have full access to all of the DISTRICT's operating and financial records.

UMG agrees to provide administrative assistance to the Administrator, which shall not exceed fifteen (15) hours per week.

- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.
- 6.10 The DISTRICT will be responsible for the purchase of all capital assets (additions and replacements) that are an integral part of the DISTRICT's Water/Sewer production, treatment, distribution and/or collection systems.

## 7. COMPENSATION

- 7.1 UMG's compensation under this Agreement shall consist of an Annual Fee as set forth herein. The Annual Fee for 2014 shall be \$7,680,850 (\$640,070.83 per month), to be effective January 1, 2014. That portion of the increased fee for 2014, due from January 1, 2014, until the first full bi-monthly payment made under this agreement shall be spread over the balance of payments for the 2014 term. The annual fee for 2015 and 2016, shall be \$7,757,660 (\$646,471.66 per month).
- 7.2 UMG shall provide the DISTRICT a summarized expenditure report monthly, and an annual detailed report on or before April 1<sup>st</sup> of each year. Such reports shall allocate expenses between water and sewer operations.
- 7.3 In the event the DISTRICT should make application to PSC for a rate increase in any of its services, UMG agrees to provide the DISTRICT a copy of any and all necessary information required by the PSC for such application.

If the DISTRICT elects to verify any information which is required by the PSC, or to conduct rate study, UMG agrees to allow the DISTRICT's duly authorized agents' access to its records to verify the information provided by UMG.

- 7.4 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement Year, UMG will rebate the entire difference to the DISTRICT in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, the DISTRICT shall pay the excess to UMG (to the extent UMG has paid the same) in accordance with Section 8.2. UMG will notify the DISTRICT when actual

Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit in each Agreement Year throughout the term.

- 7.5 Any additional expenses, reasonably incurred by UMG, including overtime wages as a result of severe weather, a natural disaster or other unplanned events outside of the normal course of operations, will be invoiced by UMG to the DISTRICT for reimbursement in accordance with Section 8.2.

Any additional expense, reasonably incurred by UMG as set forth in the above paragraph, for which the DISTRICT is eligible for reimbursement by a third party (i.e., FEMA), UMG agrees to defer payment from the DISTRICT for such expenses until the DISTRICT receives approval for reimbursement from the third party.

The DISTRICT agrees to pay UMG interest on any expenses paid by UMG described in the above paragraph at the then prime rate of interest charged by Community Trust Bank of Pikeville, Kentucky. Interest would start to accrue six months after the third party has approved the DISTRICT's application for reimbursement and run on the outstanding balance until paid in full. Approval shall be defined as that date when the third party accepts the DISTRICT's application for reimbursement. If they DISTRICT's application does not receive final approval, or final approval is delayed due to UMG's failure to properly process the application or the information therein correctly, then the time table for starting the accrual of interest will not start until the necessary corrections are approved.

- 7.6 UMG agrees to forgive \$118,932 of the District's R & M overage due UMG upon execution of this agreement.

## 8. PAYMENT OF COMPENSATION

- 8.1 One twenty-fourth (1/24) of the Annual Fee for each Agreement Year shall be due and payable on the 1<sup>st</sup> and the 15<sup>th</sup> of each month during such Agreement Year for service provided in accordance to Articles 7.1 of this Agreement.
- 8.2 All other compensation to UMG is due upon receipt of UMG's invoice and payable within fifteen (15) days, except as provided in Article 7.6. Any and all request for additional compensation will be supported by a detailed cost analysis evidenced by appropriate invoices to be attached to the request.

8.3 DISTRICT shall pay interest at an annual rate equal to the DISTRICT's designated financial institution's prime rate on payments not paid and received by UMG within thirty (30) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. **SCOPE CHANGES**

9.1 A Change in Scope of services shall occur when and as UMG's Costs of providing services under this Agreement significantly change as a result of one of the following:

9.1.1 Any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change.

9.1.2 The DISTRICT's request of UMG and UMG's consent to provide additional services beyond what is provided in this agreement and routine growth of current services.

9.2 For Changes in Scope described in Sections 9.1.1 and 9.1.2, the Annual Fee shall be increased (or decreased) in an amount equal to UMG's additional (or reduced) Cost associated with the Change in Scope.

10. **INDEMNITY AND LIABILITY INSURANCE**

10.1 UMG agrees to indemnify and hold DISTRICT harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that DISTRICT shall or may at any time sustain arising from the operation of this Agreement other than those arising from the DISTRICT's negligence or willful misconduct.

10.2 DISTRICT agrees to indemnify and hold UMG harmless against any and all claims, suits, actions, deeds, damages, cost, charge and expenses, including court cost and reasonable attorney fees, and against all liability, losses and damage of any nature whatever that UMG shall or may at any time sustain as a result of DISTRICT's negligence or willful misconduct.

- 10.3 UMG shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, of the effluent quality requirements provided for in Appendices C-1 and C-2 that are a result of UMG's negligence. DISTRICT will assist UMG in contesting any such fines in administrative proceedings and/or in court prior to any payment by UMG. UMG shall pay the cost of any such contest.
- 10.4 UMG shall be liable for all fines or civil penalties imposed by any regulatory or enforcement agencies on DISTRICT and/or UMG that are not a result of DISTRICT's negligence or are otherwise directly related to the operation of the Project and shall indemnify and hold DISTRICT harmless from the payment of any such fines and/or penalties.
- 10.5 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 10.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix E. Each party shall provide the other party with satisfactory proof of insurance.

## 11. **TERM, TERMINATION AND DEFAULT**

- 11.1 The term of this Agreement shall be three (3) years-commencing on January 1, 2014, and ending on December 31, 2016. Each period during the term commencing January 1 and ending the following December 31 shall be referred to as an "Agreement Year." Either party shall have the right, without cause, to terminate this Agreement at the end of the second Agreement Year. Notice of termination shall be given in writing no less than one hundred eighty (180) days in advance of the effective date of termination, and notice cannot be given prior to January 1, 2016.
- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party, except as provided in Section 11.1 only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event this agreement is terminated by the DISTRICT prior to the DISTRICT's payoff of UMG'S loan dated April 1, 2009, which is being forgiven over time, the DISTRICT agrees to pay UMG the unamortized balance of the note as of the date of termination as set out in Appendix E.

11.4 Upon notice of termination by DISTRICT, or the contract is not renewed, UMG shall assist DISTRICT in assuming or transferring operation of the Project, for a period up to six (6) months from the date of notice of termination or non-renewal. UMG's compensation for such services shall be its costs not otherwise uncured in operation of the Project. If additional Cost is incurred by UMG at request of DISTRICT, DISTRICT shall pay UMG such Cost within thirty (30) days receipt of invoice.

11.5 Upon termination of this Agreement and all renewals and extensions of it, UMG will return the Project to DISTRICT in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by UMG for use in the operation or maintenance of the Project shall remain the property of UMG upon termination of this Agreement unless the property was directly paid for by DISTRICT or DISTRICT specifically reimbursed UMG for the cost incurred to purchase the property or this Agreement provides to the contrary. This provision is subordinated to the terms set out in Section 2.25.

12. **DISPUTES AND FORCE MAJEURE**

12.1 In the event activities by employee groups or unions unrelated to UMG cause a disruption in UMG's ability to perform at the Project, DISTRICT, with UMG's assistance or UMG at its own option, may seek appropriate injunctive court orders. During any such disruption, UMG shall operate the facilities on a best-efforts basis until any such disruptions cease.

12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

**MOUNTAIN WATER DISTRICT**

**UTILITY MANAGEMENT GROUP, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_