

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

MOUNTAIN WATER DISTRICT,)
RHONDA JAMES, COMMISSIONER)
AND CHAIRPERSON; LESTER "JOHN")
COLLINS, COMMISSIONER; TONI AKERS,)
FORMER COMMISSIONER; AND)
MIKE LITAFIK, FORMER COMMISSIONER)

Case No. 2015-000353

RESPONSE TO ORDER OF NOVEMBER 2, 2015

Comes now Mountain Water District ("MWD"), by and through counsel, and states as follows:

Response to Allegations:

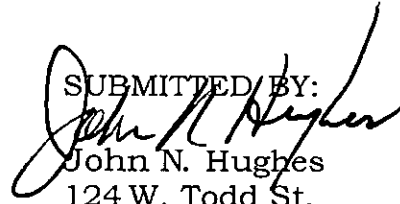
1. MWD is a water district organized pursuant to KRS Chapter 74, which provides water services to Pike County, Kentucky.
2. MWD is a utility subject to the provisions of KRS Chapter 278.
3. On or about July 3, 2005, MWD entered into an Operating Agreement with Utility Management Group ("UMG") for the management and operations of the District.
4. On or about October 29, 2008, MWD voted to terminate UMG'S contract.
5. In March/April of 2009, UMG made a number of contract concessions to induce MWD to keep the 2005 contract.
6. On or about April 29, 2009, MWD amended the 2005 contract with UMG based on the concessions negotiated between the parties as set forth in the PSC order of November 2, 2015. The execution of the \$500,000 loan concession became an enforceable obligation of MWD on that date.
7. Pursuant to the Agreement between MWD and Utility Management Group (UMG), UMG agreed to assume all administrative and

management functions of the district and to indemnify MWD for any violation of regulatory requirements. See sections 2.18 and 10.1 of the 2005 agreement [Exhibit "A"], which was amended in 2009 [Exhibit "B"]. If there was an obligation to get preapproval for the subject loan from the PSC, it was UMG's responsibility to do so as it was responsible for all "administrative and management functions" of the District.

8. MWD reported the loan in its financial disclosure statement to the PSC in July of 2010 [Exhibit "C"].
9. The loan was also disclosed in MWD's financial audit, which was submitted to the PSC in September of 2010 [Exhibit "D"].
10. UMG's contract has extended over the five (5) year amortization period, which ended on April 1, 2014.
11. MWD did not become obligated for an assumption of debt associated with the loan and incurred no liability toward the payment of this loan as one hundred percent (100%) of it was forgiven by UMG pursuant to its terms.
12. The \$500,000 forgivable loan does not meet the definition of an issuance of securities or evidences of indebtedness or the assumption of an obligation or liability in respect to any securities or evidences of indebtedness as required by KRS 278.300.
13. MWD states that any action related to the enforcement of KRS 278.300 for the matters associated with the loan dated April 29, 2009, must have been initiated within five (5) years of its execution. Any action by the PSC to enforce a penalty for violation of KRS 278.300 is barred by KRS 413.120(2), which states that any action upon liability created by statute when no other time is fixed by the statute creating the liabilities, shall be brought within five (5) years.
14. Because the time for any enforcement action against MWD has lapsed, no prima facie or actual violation of KRS 278.300 can be asserted by the Commission and no penalties imposed pursuant to KRS 278.990(1).

WHEREFORE, the Respondent, MWD, requests that the PSC issue an order dismissing this proceeding with prejudice and cancelling the hearing scheduled for January 5, 2016.

SUBMITTED BY:



John N. Hughes

124 W. Todd St.

Frankfort, KY 40601

502 227 7270

inhughes@johnnhughespsc.com

Attorney for Mountain
Water District

Certificate:

I certify that a copy of this response was mailed to:

Rhonda James
146 Main Street
Pikeville, Kentucky 41501

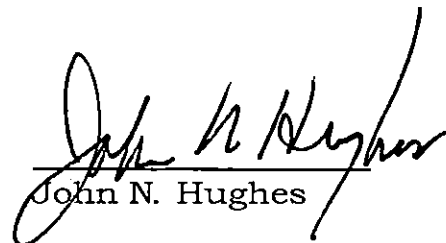
Mike Litafik
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Raccoon, Kentucky 41557

Toni Akers
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Angela Goad
Attorney General's Office
1024 Capital Center Dr.
Frankfort, KY 40601

on the 23th day of November, 2015.



John N. Hughes



**Agreement For Operations,
Maintenance and Management Services**

3rd JMA TCS

THIS AGREEMENT is entered into this 1st day of July, 2005, 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 without the prior written consent of the other party.
- 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 therefor, 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 UMG's 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 UMG's performance under this Agreement and they continue to perform their duties in a satisfactory manner.
- 2.2 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.
- 2.3 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. 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.
- 2.5 Within forty-five (45) days after the Commencement Date, 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. In the event this Agreement is terminated for any reason UMG will provide to DISTRICT a physical inventory of DISTRICT'S vehicle and equipment and a general statement as to the condition of each vehicle and piece of equipment with ninety (90) days of the end of the contract.
- 2.6 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.
- 2.7 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.

- 2.8 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.
- 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 7 days per week 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 made without DISTRICT'S 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.
- 2.14 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 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.
- 2.15 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, hauling and disposal 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. 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 UMG's performance of 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, and any and all other administrative and financial functions necessary to effectively operate the business affairs of the DISTRICT.
- 2.19 UMG shall consult with the DISTRICT'S 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. 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.
- 2.22 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.
- 2.23 UMG shall provide such Capital Expenditure as authorized by the DISTRICT and will invoice the DISTRICT for such Capital Expenditures monthly or upon completion.
- 2.24 UMG will provide additional funding to DISTRICT upon negotiating mutually acceptable terms and conditions of such funding.
- 2.25 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.

- 2.26 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. 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 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, 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 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 for the basis upon which it's been determined to be abnormal.

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. 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.

- 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 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 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 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.
- 6.9 DISTRICT shall promptly review and consider any request by UMG for any additional Capital Expenditures or Costs incurred by UMG.

7. COMPENSATION

- 7.1 UMG's 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.

- 7.2 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 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.
- 7.3 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. 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.
- 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. 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.

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 15th 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 15th 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 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%) 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 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 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 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 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. Each period during the term commencing July 1 and ending the following June 30 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 (180) 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 - all as set forth in Appendix F.
- 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 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, INC.

By: Toni Akers

By: Gregory May

Name: Toni Akers

Name: Gregory May

Title: Chairperson

Title: Chief Operating Officer

Date: 6-10-05

Date: 6-10-05

The undersigned, as counsel for the Mountain Water District in this transaction, hereby certifies that (s)he has examined the circumstances surrounding the selection of UTILITY MANAGEMENT GROUP, LLC (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 Commonwealth of Kentucky and DISTRICT.

Mountain Water District

By: Terry L. Spears

Name: Terry L. Spears

Title: Secretary

Date: 6-10-05

[Signature]
_____, counsel for Mountain Water
District



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

THIS AGREEMENT entered into this 29th day of April, 2009, 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 or about the 3rd 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 29th 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 3rd, 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 Five Hundred Thousand Dollar (\$500,000) loan. This loan will be amortized over a period of five (5) years at a simple interest rate of five percent (5%) per annum according to the Schedule for Amortization that is attached hereto as Exhibit "A" and 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.

4) In consideration of the execution of this Amended Agreement, UMG agrees to forgive \$30,940.00 of the \$61,880.00 incurred by the DISTRICT pursuant to the agreement between the parties relating to the DISTRICT's repair and maintenance expenses of February 28, 2008.

5) Beginning with the first April 2009 invoice to the DISTRICT, UMG will reduce its bi-monthly operating and management fee by the sum of Twenty Three Thousand Dollars (\$23,000) per bi-monthly billing period so as to reduce the total monthly billing by a total of Forty Six Thousand Dollars (\$46,000).

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) 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. Said individual will have access to all of the DISTRICT's records that are in the possession of UMG during regular business hours.

8) Section 11.1 of the CONTRACT shall be amended as follows: Effective January 1, 2010, the DISTRICT shall have the option to terminate the CONTRACT at any time for any reason upon ninety (90) days notice to UMG.

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

BY: Joni Akew

IT'S: Chairperson
4-29-09

UTILITY MANAGEMENT GROUP, LLC

BY: Greg May

IT'S: Chief Operating Officer

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					\$500,000.00
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

EXHIBIT
A

25605 Mountain Water District (Water Division) 01/01/2009 - 12/31/2009

Long Term Debt (Ref Page: 22)

Kentucky Infrastructure Authority B90-11	06/01/92	12/01/11	3.3000	\$1,104.00	\$12,517.00
Kentucky Infrastructure Authority B291-07	06/01/94	12/01/23	2.9000	\$84,854.00	\$2,788,044.00
Kentucky Infrastructure Authority B291-01	06/01/94	12/01/23	3.0000	\$8,097.00	\$183,534.00
Kentucky Infrastructure Authority F01-07	12/01/04	06/01/24	1.8000	\$17,105.00	\$353,991.00
CTB Veh. # 97	12/19/04	12/19/09	5.7000	\$150.00	\$0.00
CTB Consolidation (8,393,78)	02/18/08	01/15/13	4.8400	\$14,527.00	\$189,851.00
CTB Veh. # 101			0.0000	\$1,128.00	\$1,317.00
CTB Veh. # 106	08/01/06	08/01/11	7.1700	\$1,098.00	\$5,448.00
CTB Veh. # 107	08/01/06	09/01/11	7.1700	\$1,098.00	\$5,448.00
CTB Veh. # 111	08/01/06	08/01/11	7.1400	\$1,261.00	\$88.00
CTB Veh. # 112			7.3300	\$324.00	\$0.00
CTB Veh. # 113			7.3300	\$324.00	\$0.00
CTB Veh. # 116			6.2500	\$1,021.00	\$9,474.00
CTB Dump Truck			0.0000	\$3,082.00	\$21,381.00
UMG (500,000)	05/01/09	04/01/14	5.0000	\$15,802.00	\$346,988.00
CTB Veh. # 118, 119, & 120	08/22/08	07/22/11	3.3000	\$1,779.00	\$10,154.00
CTB Veh. # 124	10/25/09	09/25/13	5.2200	\$358.00	\$24,304.00
CTB Veh. # 125	10/25/09	09/25/13	5.2200	\$358.00	\$24,304.00
CTB Veh. # 98	12/19/04	12/19/09	5.7000	\$133.00	\$0.00
CTB Veh. # 82	03/15/04	02/15/09	5.8000	\$4.00	\$0.00
CTB Veh. # 94			0.0000	\$77.00	\$0.00
CTB Backhoe	09/01/04	08/01/09	5.5000	\$148.00	\$0.00



MOUNTAIN WATER DISTRICT
REPORT OF AUDIT
DECEMBER 31, 2009

MOUNTAIN WATER DISTRICT
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2009 AND 2008
"CONTINUED"

9. NOTES PAYABLE AND CAPITAL LEASES (CONTINUED)

Utility Management Group

A Note payable, original balance of \$500,000 at 5.0% interest; secured by assets of the District; payments are \$9,436 for 60 months, maturing April 2014.

440,317 -0-

Community Trust Bank

A lease-purchase agreement, original balance \$70,772 at 6.990% interest; secured by a vehicle; payments are \$1,405 for 60 months, maturing May 2012.

36,126 49,900

Community Trust Bank

A lease purchase agreement, original balance \$34,251; at 5.22% interest; secured by a vehicle; payments are \$792 for 48 months, maturing October 2013.

32,386 -0-

Chrysler Financial

A lease purchase agreement, original balance \$16,172 at 5.57% interest; secured by a vehicle; payments are \$310 for 60 months, maturing February 2009.

-0- 588

Chrysler Financial

A lease purchase agreement, original balance \$34,251 at 5.22% interest; secured by a vehicle; payments are \$792 for 48 months, maturing October 2013.

32,386 -0-

Community Trust Bank

A lease purchase agreement, original balance \$24,777 at 5.59% interest; secured by a vehicle; payments are \$474 for 60 months, maturing August 2009.

-0- 3,693

Brandeis Machinery and Supply Company

A lease purchase agreement, original balance \$37,580 at 0.00% interest; secured by equipment; payments are \$1,044 for 36 months, maturing June 2012.

31,317 -0-

Case Credit

A lease purchase agreement, original balance \$44,843 at 5.50% interest; secured by equipment; payments are \$853 for 60 months, maturing August 2009.

-0- 7,760