

*Agreement For
Planning Assistance / Owner Representation/Operations*

THIS AGREEMENT is entered into this 25 day of March 2019, by and between

The Southern Water and Sewer District with its principal address at 245 KY Route 680, McDowell, KY 41647 (hereinafter "Southern Water and Sewer District")

and

Utility Management Group, LLC, with its principal address at 287 Island Creek Road, Pikeville, KY 41501 (hereinafter "UMG").

WHEREAS, Southern Water and Sewer District plans to provide for the operation of water treatment plant, distribution system and central office.

WHEREAS, Southern Water and Sewer District desires to employ the services of UMG in the operation and maintenance of their 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, Southern Water and Sewer 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 Southern Water and Sewer District shall remain the exclusive property of Southern Water and Sewer 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.

- 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 requested; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, 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 "Southern Water and Sewer 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 the Southern Water and Sewer 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 Southern Water and Sewer 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 Southern Water and Sewer District 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.
- 1.12 This Agreement shall be interpreted in accordance with its plain meaning and not strictly for or against either party hereto.

2 UMG Services – General

- 2.1 UMG will work with SOUTHERN WATER AND SEWER DISTRICT to operate and facilitate the operations and maintenance of the Districts water plant and distribution infrastructure.
- 2.2 UMG will assign and manage (including reprimands and discharge) of Southern Water and Sewer Districts staff who have the ability/inability to operate and facilitate the operations and maintenance of the Districts water plant, distribution infrastructure and the administrative personnel or otherwise.
- 2.3 UMG shall have qualified staff to attend each Southern Water and Sewer District meeting when timely notified of such meeting.
- 2.4 UMG will assist the Southern Water and Sewer District with any meeting with state, federal or any other such governmental or private agencies for the purpose of funding, designing, constructing or for providing operational information.
- 2.5 As required by law, permit or court order, UMG will assist in preparation of reports and submit them to SOUTHERN WATER AND SEWER DISTRICT for signature and transmittal to appropriate authorities.

3 SOUTHERN WATER AND SEWER DISTRICT'S Duties

- 3.1 The SOUTHERN WATER AND SEWER DISTRICT shall inform UMG in a timely manner the time and place of meetings that UMG needs to attend.
- 3.2 The SOUTHERN WATER AND SEWER DISTRICT shall be responsible for all labor's salaries, benefits, retirement contributions and all other financial compensation including all maintenance and repair, chemicals, electricity and insurances cost directly related to the operation of the District including any capital expenditure.
- 3.3 The SOUTHERN WATER AND SEWER DISTRICT shall be responsible for cost of general administration such as the services of auditor, lawyer, liability insurance and engineers.

- 3.4 The SOUTHERN WATER AND SEWER DISTRICT shall readily and in good faith negotiate price and scope with progressively extensive contract amendments.

4 Compensation

- 4.1 UMG's compensation under this Agreement shall consist of an Hourly Fee.
- 4.2 The Hourly Fee schedule will be as attached in Appendix "B".

5 Payment of Compensation

- 5.1 Billed Hours for the current month shall be due and payable on the first of the month for each month that services are provided.
- 5.2 All other compensation to UMG is due upon receipt of UMG's invoice and payable within fifteen (15) days.
- 5.3 SOUTHERN WATER AND SEWER DISTRICT shall pay interest at an annual rate equal to the Community Trust Bank prime rate, said rate of interest not to exceed any limitation provided by , on payments not paid and received with (15) calendar days of the due day, 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.

6 Scope Changes

- 6.1 A Change of Scope of services shall occur when and as UMG's cost of providing services under this Agreement change as a result of
 - 6.1.1 SOUTHERN WATER AND SEWER DISTRICT'S request of UMG and UMG's consent to provide additional services.

7 Indemnity, Liability and Insurance

- 7.1 Neither UMG nor the SOUTHERN WATER AND SEWER DISTRICT shall be liable to the other in any action or claim for consequential or special damages, loss of profits, loss of opportunity, loss of product or loss of use. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies, which are inconsistent with these terms, are waived.
- 7.2 Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement.
- 7.3 UMG will not be responsible for any actions, criminal, civil, regulatory violations prior to the commencement of the Agreement.

8 Term, Termination and Default

- 8.1 The initial term of this Agreement shall be 6 months commencing March 25, 2019 ("Initial Term"). Thereafter, this Agreement shall be automatically renewed for successive terms of three (6) months each unless canceled in writing by either party no less than sixty days (60) prior to expiration.
- 8.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by SOUTHERN WATER AND SEWER 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.

9 Disputes and Force Majeure

- 9.1 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.

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.

SOUTHERN WATER AND SEWER DISTRICT, INC.

UTILITY MANAGEMENT GROUP, LLC

By: [Signature]
Name: Jeff Peater
Title: Board Chairman
Date: 3-25-19

By: [Signature]
Name: Greg May
Title: COO
Date: 3-25-19

CERTIFICATE OF COUNSEL

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

[Signature] Date: 3-25-19

APPENDIX A

DEFINITIONS

- A.1 N/A
- A.2 "Fee" means a predetermined, fixed sum for UMG's services. The Fee includes Cost and profit.
- A.3 N/A
- 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); or (2) major repairs which significantly extend equipment or facility service life and cost more than Two Thousand Dollars (\$2,000) or (3) expenditures that are planned, non-routine and budgeted by the Commission.
- A.5 "Commencement Date" shall mean 3-25-19.
- A.6 "Cost" means all Direct Costs and indirect costs determined on an accrual basis in accordance with generally accepted accounting principles.
- A.7 "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.8 "Maintenance" means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by UMG to maximize the service life of the equipment, water distribution lines and related appurtenances, vehicles and project facilities.
- A.10 "Project" means all equipment, grounds, rights of way, water distribution lines and facilities and, where appropriate, the management, operations and maintenance of such.
- A.11 "Repairs" means those 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 or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (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 (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

APPENDIX B

Utility Management Group
287 Island Creek Road
Pikeville, KY 41501

Phone # 606-437-4754

Fax # 606-437-5083

Utility Management Group (UMG) will provide professional services at an hourly rate for each classification as follows:

<u>Job Classification</u>	<u>Hourly Rate</u>
Principal	\$130.00
Senior Level Professional (licensed)	\$100.00
Technician IV (licensed)	\$ 75.00
Technician III	\$ 60.00
Technician II	\$ 55.00
Technician I	\$ 50.00
Clerical Administration	\$ 40.00
Clerk Typist	\$ 30.00

The above rates would be full compensation, including fringe benefits and overhead items for each hour worked by an employee; except the following expenses properly chargeable to the project, which would be reimbursed at cost:

- (1) Printing, reproduction, photography or special material for said project.
- (2) Travel by 4x4 at \$0.75 per mile. Travel by 4x2 at \$0.53 per mile.
- (3) Other consultant fees as approved by the Owner (or his Agent).

UMG will furnish, at the request of the Owner, monthly time sheets and an hourly breakdown for each employee working on said project with UMG monthly invoice. The invoice and time sheets would be certified that the employee's worked the hours shown, at the classification designated.