

**MUTUAL RELEASE, SETTLEMENT AGREEMENT  
AND CONTRACT AMENDMENT**

This mutual release, settlement agreement and contract amendment executed this 9 day of December, 2010, entered into by and between **S & E ENTERPRISES, INC.**, of 275 Southside Mall Road, South Williamson, Kentucky 41503, hereinafter referred to as ("S & E") and **MOUNTAIN WATER DISTRICT** of Post Office Box 3157, Pikeville, Kentucky 41502, hereinafter referred to as ("MWD").

**WHEREAS**, S & E owns and operates the Southside Mall in South Williamson, Kentucky, and MWD currently provides water to the Southside Mall; and

**WHEREAS**, the S & E's predecessor in interest to the Southside Mall, being South Williamson Development Company of Post Office Box 1539, Owensboro, Kentucky 42301, entered into an agreement with the predecessor of MWD, being the Pond Creek Water District of Post Office Box 129, Belfry, Kentucky 41514, dated July 22, 1983, for installation and maintenance of a water system ("1983 Agreement"); and

**WHEREAS**, the 1983 Agreement provided that MWD assess a "tap fee" to the Mall customers and to pay the same to S & E to reimburse them for the advancement of funds to develop the Mall's water system; and

**WHEREAS**, in the transfer of the Mall to S & E, the contract for the above referenced payment became misplaced, and payments ceased to be made by MWD to S & E; and

**WHEREAS**, the 1983 Agreement provides that MWD will provide at least 100 PSI water pressure to the Mall; and

**WHEREAS**, S & E accidentally damaged a pump station belonging to MWD that serviced an S & E water tank above the Mall; and

**WHEREAS**, MWD has been unable to provide the pressure provided for in the 1983 Agreement on a consistent basis since S & E accidentally damaged the pump station belonging to MWD; and

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**WHEREAS**, both parties agree that the pump station needs to be replaced to ensure adequate pressure; and

**WHEREAS**, S & E has agreed to replace the pump station and provide the work related thereto; and

**WHEREAS**, the parties wish to amend their 1983 Agreement in order to accommodate this release and settlement agreement.

**NOW THEREFORE,**

**WITNESSETH:**

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

1) MWD shall pay to S & E the sum of One Hundred Eight Thousand Eight Hundred Dollars and Forty Cents (\$108,800.40) as full and total consideration due under the 1983 Agreement.

It is agreed and understood that the total amount due and owing is One Hundred Nineteen Thousand Three Hundred Thirty-Eight Dollars and Forty-Three Cents (\$119,338.43), of which Sixty-Eight Thousand Eight Hundred Dollars and Forty Cents (\$68,800.40) is currently due, and the sum of Fifty Thousand Five Hundred Thirty Eight Dollars and Three Cents (\$50,538.03) is due in the future. The parties agree that the future amount due is being discounted to Forty Thousand Dollars (\$40,000) in exchange for receiving full payment now.

2) S & E agrees to purchase or have constructed, a pump station beside of the Mall, and provide the work related thereto that meets the specifications of MWD as set out in Exhibit "1", a copy of which is attached hereto and made a part hereof by reference. Installation of the pump station shall be subject to inspection and approval by MWD during construction.

3) MWD agrees to repair any and all water lines necessary to allow their water tank above the Mall to be filled so as to provide water pressure for the Mall as provided in the 1983 Agreement.

4) It is agreed that S & E will execute a contract for installation of the water pump station within thirty (30) days of the date of this agreement.

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contract will provide for completion of the installation of the booster pump station within one hundred twenty (120) days of the contract date and provide for liquidated damages for failure to install the same in a timely manner.

5) Until S & E <sup>replaces the pump station</sup> restores the Mall's water pressure to 100 PSI, S & E waives any and all claims it could have against MWD for failure to provide 100 PSI to the Mall and related facilities, and releases them from such responsibility to provide such pressure until such time as the corrective actions set out herein have been completed so as to establish the required water pressure.

6) The parties agree that the 1983 Agreement shall remain in place, specifically the surcharge set out in Article XIII, even though full payment is being made by MWD to S & E, until all the funds paid to S & E by MWD have been set off as originally outlined in the 1983 Agreement.

7) It is agreed and understood that this agreement will enure to the benefit of both parties, their successors, assigns and insures, and shall bind their respective legal representatives and successors in interest.

8) This settlement and release is not an admission of liability or default by either party, but is a settlement of disputed matter in order to avoid the cost of litigation.

IN WITNESS WHEREOF, the parties hereto have executed this release the day and the year first above written.

**S & E ENTERPRISES, INC**

By: \_\_\_\_\_

Its: Member

**MOUNTAIN WATER DISTRICT**

By: \_\_\_\_\_

Its: Chairperson

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