

Control Number: 46120



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EXHIBIT MPSUD-1

**SOAH DOCKET NO. 473-16-5823.WS
PUC DOCKET NO. 46120**

**CITY OF MIDLOTHIAN'S NOTICE OF § BEFORE THE STATE OFFICE
INTENT TO SERVE AREA §
DECERTIFIED FROM MOUNTAIN § OF
PEAK SPECIAL UTILITY DISTRICT IN §
ELLIS COUNTY § ADMINISTRATIVE HEARINGS**

**PREFILED DIRECT TESTIMONY OF RANDEL KIRK
ON BEHALF OF
MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

JANUARY 17, 2017

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**DIRECT TESTIMONY OF
RANDEL KIRK**

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Exhibit List:

- RK-1 – CCN Map of Portion of Water Service Area CCN No. 10908
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- RK-3 – 2012 Map of Mountain Peak SUD System Map
- RK-4 – Special Warranty Deed for 2.06 acre tract
- RK-5 – Water Purchase Contract between City of Midlothian and Mountain Peak SUD

**SOAH DOCKET NO. 952-15-3851
PUC DOCKET NO. 46120**

**APPLICATION OF CITY OF § BEFORE THE STATE OFFICE
MIDLOTHIAN NOTICE OF PROVIDE § OF
WATER SERVICE TO LAND § ADMINISTRATIVE HEARINGS
DECERTIFIED FROM MOUNTAIN §
PEAK SPECIAL UTILITY DISTRICT §**

1 **PREFILED DIRECT TESTIMONY OF RANDEL KIRK**
2 **ON BEHALF OF**
3 **MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

4 **I. INTRODUCTION AND QUALIFICATIONS**

5 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

6 A. Randel Kirk---5671 Waterworks Road, Midlothian, Texas, 76065.

7 **Q. HOW ARE YOU CURRENTLY EMPLOYED?**

8 A. I am currently the General Manager of the Mountain Peak Special Utility District, which
9 I will refer to as Mountain Peak SUD or the District in my testimony.

10 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

11 A. Since graduating from high school, I have taken various courses from Texas A&M's
12 Engineering Extension Services, the Texas Water Utilities Association, and the Texas
13 Rural Water Association for water and for operating a water utility system. In addition, I
14 hold a Class B Groundwater License issued by the Texas Commission on Environmental
15 Quality, which I have held since 1991. I also hold a customer service inspection license.

16 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

17 A. My professional experience in the water utility industry consists of serving as the
18 assistant manager and manager for Sardis Lone Elm WSC from 1981 to 1986. I then
19 managed several small, private water suppliers from 1986 to 1988. In 1988, I began
20 working for Mountain Peak Water Supply Corporation ("Mountain Peak WSC"), the

**DIRECT TESTIMONY OF
RANDEL KIRK**

EXHIBIT MPSUD-1

1 predecessor to Mountain Peak SUD, as a field supervisor. I became the General Manager
2 in 2001.

3 **Q. ARE YOU A MEMBER OF ANY PROFESSIONAL ASSOCIATIONS?**

4 A. Yes, I am a member of the Texas Water Utilities Association.

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS?**

6 A. No.

7 **Q. WHAT IS MOUNTAIN PEAK SUD?**

8 A. Mountain Peak Special Utility District is a political subdivision of the State of
9 Texas established under Chapters 65 and 49 of the Texas Water Code with an elected
10 Board of Directors consisting of 7 directors. These directors volunteer their time in
11 an effort to better their community. Mountain Peak, WSC was created in 1969 and
12 converted into a Special Utility District in 2003. It has since grown to over 4,500
13 customers. All operations are under the direction of the General Manager, who is hired by
14 the Board of Directors. Mountain Peak SUD is regulated by the Texas Commission on
15 Environmental Quality (TCEQ) and the Public Utility Commission of Texas (PUC).
16 Mountain Peak SUD has been designated as a "Superior System" by the TCEQ due to the
17 quality of its operations. In order to receive this designation, a water system must meet
18 certain criteria set out by the TCEQ.

19 Mountain Peak SUD's sole purpose is to serve safe, quality drinking water to the
20 customers that reside within the legal boundaries of the District as approved by the TCEQ
21 and within the District's certificated area of convenience and necessity as approved by
22 the PUC. The main concern of the staff and Board of Directors is public health. Drinking
23 water is tested daily for disinfection content, monthly for bacteria, and annually for
24 chemical content and contamination. Ground water is treated at the source with 100%
25 gaseous chlorine in an amount sufficient to kill any bacteria but not so much as to cause
26 taste or odor problems.

EXHIBIT MPSUD-1

1 **Q. WHAT ARE YOUR DUTIES WITH RESPECT TO MOUNTAIN PEAK SUD?**

2 A. As the General Manager, I manage all aspects of the District. I am responsible for
3 managing the District's 11 employees, for managing its outside consultants, including
4 engineers and accountants, for overseeing the operations of the water system and
5 monitoring it on a 24-hour basis, and for overseeing customer service, billing, and
6 accounting. I report to the Mountain Peak SUD Board of Directors.

7 **Q. ARE YOU FAMILIAR WITH THE PHYSICAL PROPERTY OWNED BY**
8 **MOUNTAIN PEAK SUD? IF YES, HOW HAVE YOU DEVELOPED THIS**
9 **FAMILIARITY?**

10 A. Yes, in working with all aspects of Mountain Peak WSC and now Mountain Peak SUD, I
11 have been intimately familiar with all operations and handled the purchase and
12 development of many of the properties.

13 **Q. ARE YOU FAMILIAR WITH MOUNTAIN PEAK SUD'S FINANCES? IF YES,**
14 **HOW HAVE YOU DEVELOPED THIS FAMILIARITY?**

15 A. Yes, I develop all budgets for approval by the Board of Directors and work with the
16 financial aspects of Mountain Peak SUD on a daily basis.

17 **Q. IN A PREVIOUS DOCKET BEFORE THE COMMISSION, WAS A PORTION**
18 **OF MOUNTAIN PEAK SUD'S WATER CERTIFICATE OF CONVENIENCE**
19 **AND NECESSITY ("CCN") DECERTIFIED?**

20 A. Yes. In PUC Docket No. 44394, the City of Midlothian initiated a petition to decertify an
21 approximately 97.7-acre tract of land from Mountain Peak's water CCN (the "Park
22 Property"). On May 1, 2015, the PUC issued an order decertifying the Park Property
23 from Mountain Peak SUD's water CCN. Attached as Exhibit RK-1 to my testimony is a
24 map which was attached to the decertification order removing the Park Property from
25 Mountain Peak SUD's water CCN. The area noted as "released area" on Exhibit RK-1 is
26 the Park Property.

27 **Q. ARE YOU A CUSTODIAN OF RECORDS FOR MOUNTAIN PEAK SUD?**

28 A. Yes.

EXHIBIT MPSUD-1

1 **Q. AS AN EMPLOYEE OF MOUNTAIN PEAK SUD, ARE YOU FAMILIAR WITH**
2 **THE MANNER IN WHICH MOUNTAIN PEAK SUD'S RECORDS ARE**
3 **CREATED AND MAINTAINED?**

4 A. Yes.

5 **Q. BASED ON MOUNTAIN PEAK SUD'S REGULAR PRACTICES, WAS THE**
6 **RECORD IDENTIFIED AS EXHIBIT RK-1 MADE AT OR NEAR THE TIME OF**
7 **THE ACT, EVENT, CONDITION, OPINION, OR DIAGNOSIS SET FORTH IN**
8 **THE RECORD MADE BY, OR FROM INFORMATION TRANSMITTED BY,**
9 **PERSONS WITH KNOWLEDGE OF THE MATTERS SET FORTH, AND KEPT**
10 **IN THE COURSE OF REGULARLY CONDUCTED BUSINESS ACTIVITY?**

11 A. Yes.

12 **Q. IS EXHIBIT RK-1 AN EXACT DUPLICATE OF THE ORIGINAL RECORD?**

13 A. Yes.

14 **Q. IS EXHIBIT RK-1 A TRUE AND CORRECT COPY OF THE CCN MAP ISSUED**
15 **BY THE PUC AND AVAILABLE THROUGH PUBLIC RECORDS IN PUC**
16 **DOCKET NO. 44394?**

17 A. Yes.

18 *Mountain Peak SUD offers Exhibit RK-1.*

19

20 **Q. FOR THE RECORD, IS MOUNTAIN PEAK SUD CONTESTING THIS**
21 **DECISION OF THE COMMISSION?**

22 A. Yes. Mountain Peak SUD filed a petition for judicial review in district court in Travis
23 County appealing the order of the PUC. Mountain Peak SUD's petition was denied by the
24 district court, and on November 22, 2016, the District filed a notice of appeal of the
25 district court's decision to the Third Court of Appeals. That appeal is currently pending
26 with the Third Court of Appeals.

EXHIBIT MPSUD-1

1 **Q. WHAT IS YOUR UNDERSTANDING OF THE PURPOSE OF THE CURRENT**
2 **PROCEEDING?**

3 A. I understand that, pursuant to the Texas Water Code § 13.254, after an area is decertified
4 through the procedures used by the City of Midlothian in PUC Docket No. 44394, but
5 before service can be provided to the decertified area, the Commission must ensure that
6 compensation is paid to the decertified utility. I understand that the purpose of this
7 proceeding is to determine the compensation owed to Mountain Peak SUD. I also
8 understand that the Commission has decided to bifurcate the determination of
9 compensation so that this first phase focuses on what property, if any, has been rendered
10 useless or valueless to Mountain Peak SUD as a result of the decertification of the Park
11 Property.

12 **Q. PLEASE STATE THE PURPOSE OF YOUR TESTIMONY.**

13 A. I will present testimony on (1) a description and history of Mountain Peak SUD's
14 involvement with the Park Property; (2) Mountain Peak SUD's property affected by the
15 decertification; and (3) the expenses incurred by Mountain Peak SUD related to the
16 decertification of the Park Property.

17 **II. DESCRIPTION OF MOUNTAIN PEAK SUD'S INVOLVEMENT**
18 **WITH THE PARK PROPERTY**

19 **Q. DOES MOUNTAIN PEAK SUD CURRENTLY HOLD A WATER CERTIFICATE**
20 **OF CONVENIENCE AND NECESSITY?**

21 A. Yes. It holds water CCN No. 10908.

22 **Q. DOES MOUNTAIN PEAK SUD HAVE A STATUTORY OBLIGATION TO**
23 **PROVIDE CONTINUOUS AND ADEQUATE WATER SERVICE TO THIS**
24 **AREA?**

25 A. Yes.

26 **Q. PRIOR TO THE DECERTIFICATION OF THE PARK PROPERTY IN PUC**
27 **DOCKET NO. 44394, WAS THE PARK PROPERTY WITHIN MOUNTAIN**
28 **PEAK SUD'S WATER CCN AREA?**

29 A. Yes.

EXHIBIT MPSUD-1

1 Q. WERE YOU FAMILIAR WITH THE PARK PROPERTY PRIOR TO THE
2 INITIATION BY THE CITY OF MIDLOTHIAN OF THE PROCESS TO
3 DECERTIFY THE PARK PROPERTY FROM MOUNTAIN PEAK SUD'S
4 WATER CCN?

5 A. Yes.

6 Q. HOW DID YOU BECOME FAMILIAR WITH THE PARK PROPERTY?

7 A. In 2001, a developer, Don Herzog, attempted to purchase the approximately 290-acre
8 Lawson Property, in which the Park Property is included, to develop 1,100 lots for
9 residential use. A failed relationship with Mr. Herzog and Mr. Lawson resulted in Mr.
10 Herzog's exit. Later, SKJ Lawson Farms Development, L.P. requested that Mountain
11 Peak SUD be the water service provider to the Lawson Property. Kim Gill of SKJ
12 Lawson Farms Development, L.P. initially planned for the same 1,100 homes to be
13 constructed on the Lawson Property, including the Park Property, but later reduced that
14 plan to approximately 829 homes.

15 Q. I AM HANDING YOU WHAT HAS BEEN MARKED AS EXHIBIT RK-2. DO
16 YOU RECOGNIZE THIS?

17 A. Yes. Exhibit RK-2 is a copy of the Non-Standard Service Application and Agreement
18 entered into between Mountain Peak SUD and SKJ Lawson Farms Development, L.P.
19 regarding the 290-acre Lawson Property.

20 Q. BASED ON MOUNTAIN PEAK SUD'S REGULAR PRACTICES, WAS EXHIBIT
21 RK-2 MADE AT OR NEAR THE TIME OF EACH ACT, EVENT, CONDITION,
22 OPINION, OR DIAGNOSIS SET FORTH IN THE RECORDS MADE BY, OR
23 FROM INFORMATION TRANSMITTED BY, PERSONS WITH KNOWLEDGE
24 OF THE MATTERS SET FORTH, AND KEPT IN THE COURSE OF
25 REGULARLY CONDUCTED BUSINESS ACTIVITY?

26 A. Yes.

27 Q. IS EXHIBIT RK-2 AN EXACT DUPLICATE OF THE ORIGINAL RECORD?

28 A. Yes.

1 *Mountain Peak SUD offers Exhibit RK-2.*
2

3 **III. MOUNTAIN PEAK SUD'S PROPERTY AFFECTED BY THE**
4 **DECERTIFICATION OF THE PARK PROPERTY**

5 **Q. PLEASE BRIEFLY EXPLAIN THE WATER SYSTEM OWNED AND**
6 **OPERATED BY MOUNTAIN PEAK SUD.**

7 A. As I mentioned before, Mountain Peak SUD is regulated by the TCEQ and the
8 PUC. These agencies set minimum standards and rules with which all water systems in
9 the State of Texas must comply. Currently, the District has a ground storage capacity of
10 2,540,000 gallons (ground tanks) and an elevated storage capacity (water towers) of
11 1,600,000 since the completion of a 1,000,000 gallon elevated storage tank at Plant No.
12 9. Our production capacity is 5,519,520 gallons/day with a high service pump capacity
13 of over 4,000 gallons/minute. The distribution system has grown to over 200 miles
14 of water mains and more than 500 fire hydrants. All processes including production,
15 treatment, pumping, and security are modernized with the latest in control technology and
16 automation. The staff is in constant contact with all aspects of these processes and
17 reliability of the system has greatly improved.

18 Mountain Peak SUD's water originates from artesian wells in the Trinity group of
19 aquifers including the Woodbine strata. The District also buys a pre-determined amount
20 of surface water from Joe Pool Lake. The surface water is purchased through a contract
21 with the City of Midlothian. Mountain Peak Special Utility District operates in three
22 pressure zones. The upper pressure zone is fed by the artesian groundwater supply. This
23 pressure zone is the most populous portion of Mountain Peak SUD's system containing
24 approximately 70% of the District's customers. The middle pressure zone is supplied
25 with the purchased surface water from the City of Midlothian. The lower pressure zone,
26 near the City of Maypearl, is supplied by a single artesian Trinity well.

27 **Q. WHAT IS EXHIBIT RK-3?**

28 A. Exhibit RK-3 is a map of Mountain Peak SUD's water system as of 2011. The facilities I
29 described above are identified on Exhibit RK-3. I understand that Mr. Rauschuber has
30 prepared a map which shows the pressure zones described above.

EXHIBIT MPSUD-1

1 Q. DOES EXHIBIT RK-3 FAIRLY AND ACCURATELY REPRESENT MOUNTAIN
2 PEAK SUD'S WATER SYSTEM AS OF 2011?

3 A. Yes.

4 Q. IS EXHIBIT RK-3 TO SCALE?

5 A. Yes.

6 *Mountain Peak SUD offers Exhibit RK-3.*

7

8 Q. WHY IS MOUNTAIN PEAK SUD'S SYSTEM DIVIDED INTO PRESSURE
9 ZONES?

10 A. There is an approximately 100 foot elevation difference throughout Mountain Peak
11 SUD's system. Differences in these elevations must be maintained by at least a pressure
12 regulating device. Although the water can be gravity fed from the upper pressure zone to
13 the middle pressure zone and from the middle pressure zone to the lower pressure zone,
14 blending of surface water with groundwater can cause disinfection variables, so these
15 waters are kept separate, except in the case of an emergency.

16 Q. IN WHICH PRESSURE ZONE IS THE PARK PROPERTY LOCATED?

17 A. The Park Property is located in the upper pressure zone.

18 Q. WHAT IS THE SIZE OF THE UPPER PRESSURE ZONE?

19 A. The upper pressure zone is approximately 9,000 acres.

20 A. Tangible Property Rendered Useless or Valueless

21 Q. PLEASE DESCRIBE MOUNTAIN PEAK SUD'S ASSETS USED TO PROVIDE
22 WATER SERVICE IN THE PRESSURE ZONE IN WHICH THE PARK
23 PROPERTY IS LOCATED.

24 A. The upper pressure zone consists of: Water Plant No. 1 and the 250 gallons per minute
25 (gpm) Well No. 1 and 200 gpm Well No. 1A with associated high service pumps,
26 building, controls, 210,000 gallon ground storage tank, and yard piping, including real
27 property and easements for these facilities; Water Plant No. 2 and the 200 gpm Well No.
28 2 and the 150 gpm Well No. 2A with associated high service pumps, building, controls,
29 210,000 gallon storage tank, and yard piping, including real property and easements for

EXHIBIT MPSUD-1

1 these facilities; Water Plant No. 4 and the 400 gpm Well No. 4 with associated high
2 service pumps, building, controls, 500,000 gallon ground storage tank, 300,000 elevated
3 storage tank, and yard piping, including real property and easements for these facilities;
4 Water Plant No. 8 and the 650 gpm Well No. 5 with associated high service pumps,
5 building, controls, 1,000,000 gallon ground storage tank, and yard piping, including real
6 property and easements for these facilities; Water Plant No. 9 and the 650 gpm Well No.
7 6 and the 200 gpm Well No. 9A with associated high service pumps, building, controls,
8 1,000,000 gallon elevated storage tank, 500,000 gallon ground storage tank, and yard
9 piping, including real property and easements for these facilities; 12" waterline with road
10 bores, fittings, and appurtenances approximately 2,500 linear feet along FM 663,
11 including real property/easements; 12" waterline including fittings and appurtenances
12 approximately 2,250 linear feet for Plant Nos. 8 and 9, including real property/easements;
13 6" water line at Apple Lane and FM 663, including real property/easements; 12"
14 waterline parallel to Apple Lane from FM 663 to Water Plant No. 2; 12" waterline at FM
15 663, including real property/easements; 12" waterline to Plant 4, including real
16 property/easements; and distribution lines and associated appurtenances.

17 **Q. HAS MOUNTAIN PEAK SUD INCURRED ANY EXPENSES IN PLANNING,**
18 **DESIGN, OR CONSTRUCTION OF SERVICE FACILITIES WHICH WOULD**
19 **HAVE SERVED THE PRESSURE ZONE IN WHICH THE PARK PROPERTY IS**
20 **LOCATED, INCLUDING THE PARK PROPERTY?**

21 A. Yes. Mountain Peak SUD paid its engineers and contractors for the planning, design,
22 and/or construction of these various assets.

23 **Q. WHEN THE PARK PROPERTY WAS INCLUDED WITHIN THE LAWSON**
24 **FARMS SUBDIVISION, WHAT PROPERTY DID MOUNTAIN PEAK SUD**
25 **ANTICIPATE WOULD BE USED TO SERVE THE PARK PROPERTY?**

26 A. All facilities in the upper pressure zone, except Well No. 1A, would have contributed to
27 the service of the Park Property.

EXHIBIT MPSUD-1

1 **Q. DID MOUNTAIN PEAK SUD CONSTRUCT ANY PHYSICAL ASSETS IN**
2 **ANTICIPATION OF THE DEVELOPMENT OF THE LAWSON PROPERTY,**
3 **INCLUDING THE PARK PROPERTY?**

4 A. Yes. Mountain Peak SUD evaluated its water system and planned a new water well
5 production site and upgrade of water lines in the area. Mountain Peak SUD constructed
6 Water Plant No. 8 and the 650 gpm Well No. 5 at 2200 Whitetail Drive with associated
7 high service pumps, building, controls, 1,000,000 gallon ground storage tank, and yard
8 piping, including real property and easements for these facilities; Water Plant No. 9 and
9 the 650 gpm Well No. 6 and the 200 gpm Well No. 9A at 1521 Tower Road with
10 associated high service pumps, building, controls, 1,000,000 gallon elevated storage tank,
11 500,000 gallon ground storage tank, and yard piping, including real property and
12 easements for these facilities; 12" waterline with road bores, fittings, and appurtenances
13 approximately 2,500 linear feet along FM 663, including real property/easements; and a
14 12" Water Line including fittings and appurtenances approximately 2,250 linear feet for
15 Plant Nos. 8 and 9, including real property/easements. The ground storage tank at Water
16 Plant No. 8 and the elevated storage tank at Water Plant No. 9 were both increased in size
17 from 500,000 gallons to 1,000,000 gallons due to the development on the Lawson
18 Property. Water Plant No. 8 is located to the north of the Lawson Property, thus the
19 increase in the storage capacity of this tank was located in an ideal place to serve the
20 proposed development on the Lawson Property. In addition, Mountain Peak SUD
21 purchased from SKJ Lawson Development, L.P. a 2.06-acre portion of the Park Property
22 to be used for locating a well and pump station.

23 **Q. DID MOUNTAIN PEAK SUD INCUR ANY EXPENSES IN PLANNING, DESIGN,**
24 **OR CONSTRUCTION OF THESE FACILITIES?**

25 A. Yes. Mountain Peak SUD paid its engineers and contractors for the planning, design,
26 and/or construction of these assets.

27 **Q. WERE ANY OF THE STEPS YOU DESCRIBED ABOVE TAKEN WITH THE**
28 **PARK PROPERTY SPECIFICALLY IN MIND?**

29 A. Yes. The 2.06-acre tract of land purchased by Mountain Peak SUD was intended for a
30 well and pump station which would specifically be used to serve the Park Property.

EXHIBIT MPSUD-1

1 **Q. DOES MOUNTAIN PEAK SUD HAVE ANY PROPERTY LOCATED WITHIN**
2 **THE PARK PROPERTY?**

3 A. Yes. Mountain Peak SUD owns a 6" waterline which was constructed sometime in the
4 1970s. This waterline is located in a private easement which traverses the southern edge
5 of the Park Property. This waterline is a distribution line used to serve existing customers
6 to the east of the Park Property, but it is not at capacity at this time. It could have – and
7 would have – been used to serve the Park Property if not for the decertification. In
8 addition, a waterline was planned within the Park Property to connect the other sections
9 of the Lawson Property development to this 6" waterline to create a loop in Mountain
10 Peak SUD's system.

11 **Q. OTHER THAN THE REAL PROPERTY ASSOCIATED WITH THE ASSETS**
12 **DESCRIBED ABOVE, IS THERE ANY OTHER REAL PROPERTY**
13 **BELONGING TO MOUNTAIN PEAK SUD THAT HAS BEEN RENDERED**
14 **USELESS OR VALUELESS TO MOUNTAIN PEAK SUD DUE TO THE**
15 **DECERTIFICATION OF THE PARK PROPERTY?**

16 A. Yes, the 2.06 acres which was purchased from SKJ Lawson Farms Development, L.P.
17 and is directly adjacent to the Park Property.

18 **Q. I AM HANDING YOU WHAT HAS BEEN MARKED AS EXHIBIT RK-4, DO**
19 **YOU RECOGNIZE THIS?**

20 A. Yes. This is the Special Warranty Deed through which Mountain Peak SUD purchased
21 the 2.06-acre tract of land I described above.

22 **Q. IS EXHIBIT RK-4 A BUSINESS RECORD OF MOUNTAIN PEAK SUD?**

23 A. Yes.

24 **Q. BASED ON MOUNTAIN PEAK SUD'S REGULAR PRACTICES, WAS THE**
25 **RECORD MADE AT OR NEAR THE TIME OF EACH ACT, EVENT,**
26 **CONDITION, OPINION, OR DIAGNOSIS SET FORTH IN THE RECORDS**
27 **MADE BY, OR FROM INFORMATION TRANSMITTED BY, PERSONS WITH**
28 **KNOWLEDGE OF THE MATTERS SET FORTH, AND KEPT IN THE COURSE**
29 **OF REGULARLY CONDUCTED BUSINESS ACTIVITY?**

EXHIBIT MPSUD-1

1 A. Yes.

2 **Q. IS EXHIBIT RK-4 AN EXACT DUPLICATE OF THE ORIGINAL RECORD?**

3 A. Yes.

4 *Mountain Peak SUD offers Exhibit RK-4.*

5

6 **Q. DID YOU PROVIDE DOCUMENTATION REGARDING THE ASSETS YOU**
7 **DESCRIBED ABOVE TO DONALD RAUSCHUBER, P.E., IN PREPARATION**
8 **OF HIS TESTIMONY IN THIS CASE?**

9 A. Yes. I supplied Exhibit RK-5, a copy of the Water Purchase Contract between Mountain
10 Peak SUD and the City of Midlothian.

11 **Q. IS EXHIBIT RK-5 BUSINESS RECORDS OF MOUNTAIN PEAK SUD?**

12 A. Yes.

13 **Q. BASED ON MOUNTAIN PEAK SUD'S REGULAR PRACTICES, WAS THE**
14 **RECORD MADE AT OR NEAR THE TIME OF EACH ACT, EVENT,**
15 **CONDITION, OPINION, OR DIAGNOSIS SET FORTH IN THE RECORD**
16 **MADE BY, OR FROM INFORMATION TRANSMITTED BY, PERSONS WITH**
17 **KNOWLEDGE OF THE MATTERS SET FORTH, AND KEPT IN THE COURSE**
18 **OF REGULARLY CONDUCTED BUSINESS ACTIVITY?**

19 A. Yes.

20 **Q. IS EXHIBIT RK-5 AN EXACT DUPLICATE OF THE ORIGINAL RECORD?**

21 A. Yes.

22 *Mountain Peak SUD offers Exhibit RK-5.*

23

24 **B. Impairment of Service or Increase of Cost to Consumers**

25 **Q. DID MOUNTAIN PEAK SUD EXPERIENCE AN IMPAIRMENT OF SERVICE**
26 **OR INCREASE OF COST TO ITS REMAINING CUSTOMERS DUE TO THE**
27 **DECERTIFICATION OF THE PARK PROPERTY?**

28 A. Yes. In planning to serve the Lawson Property, Mountain Peak SUD intended for a
29 waterline to be constructed through the Park Property and to connect to its 6" waterline

EXHIBIT MPSUD-1

1 located on the southern border of the Park Property to create a loop system which would
2 increase the reliability and availability of emergency and extended fire flow within the
3 Lawson Property. Now that the Park Property will not be developed, Mountain Peak will
4 be required to pay the additional costs to create a loop within its system in that general
5 area for redundancy and to ensure emergency and extended fire flow to the remainder of
6 the Lawson Property. Typically, this type of line extension would be borne by the
7 developer of the Park Property, even if SKJ Lawson Farms Development L.P. had simply
8 sold the Park Property to another developer. However, now that the Park Property has
9 been decertified from Mountain Peak SUD's CCN, no owner of the Park Property will
10 seek service from Mountain Peak SUD which would necessitate the owner to construct
11 this line extension to create a loop in Mountain Peak SUD's system.

12 C. Legal Expenses and Professional Fees

13 Q. DID MOUNTAIN PEAK SUD INCUR ANY LEGAL EXPENSES ASSOCIATED
14 WITH THE DECERTIFICATION OF THE PARK PROPERTY IN PUC
15 DOCKET NO. 44394?

16 A. Yes.

17 Q. PLEASE DESCRIBE THOSE EXPENSES.

18 A. Mountain Peak SUD incurred legal expenses in defending itself against the
19 decertification of the Park Property from Mountain Peak SUD's water CCN. Mountain
20 Peak SUD hired the law firm of Jackson Walker, LLP, in addition to its general counsel,
21 Miller, Mentzer, Walker, P.C., to represent it in front of the Commission and to appeal
22 the Commission's order. Mountain Peak SUD also incurred engineering fees associated
23 with the decertification. I understand that because this phase is focused on what property
24 of Mountain Peak SUD has been affected by the decertification, the value of these
25 expenses will be discussed in the second phase of this proceeding.

26 Q. DID MOUNTAIN PEAK SUD INCUR ANY LEGAL EXPENSES OR
27 PROFESSIONAL EXPENSES ASSOCIATED WITH THIS COMPENSATION
28 PROCEEDING?

29 A. Yes, it has, and it is continuing to incur those expenses.

EXHIBIT MPSUD-1

1 **Q. PLEASE DESCRIBE THOSE EXPENSES.**

2 A. Mountain Peak SUD has incurred, and is continuing to incur, both legal expenses for its
3 attorneys and professional expenses for its expert to protect its interests in this
4 compensation proceeding. Again, Mountain Peak SUD hired the law firm of Jackson
5 Walker, LLP, in addition to its general counsel, Miller, Mentzer, Walker, P.C., to
6 represent it in front of the Commission in this proceeding. Mountain Peak SUD also
7 hired Mr. Donald Rauschuber to provide expert testimony and, if the proceeding calls for
8 it, to appraise the value of property determined by the Commission to have been rendered
9 useless or valueless. Again, I understand that because this phase is focused on what
10 property of Mountain Peak SUD has been affected by the decertification, the value of
11 these expenses will be discussed in the second phase of this proceeding.

12 **Q. DID MOUNTAIN PEAK SUD INCUR ANY OTHER EXPENSES ASSOCIATED**
13 **WITH THE DECERTIFICATION AND COMPENSATION PROCEEDINGS?**

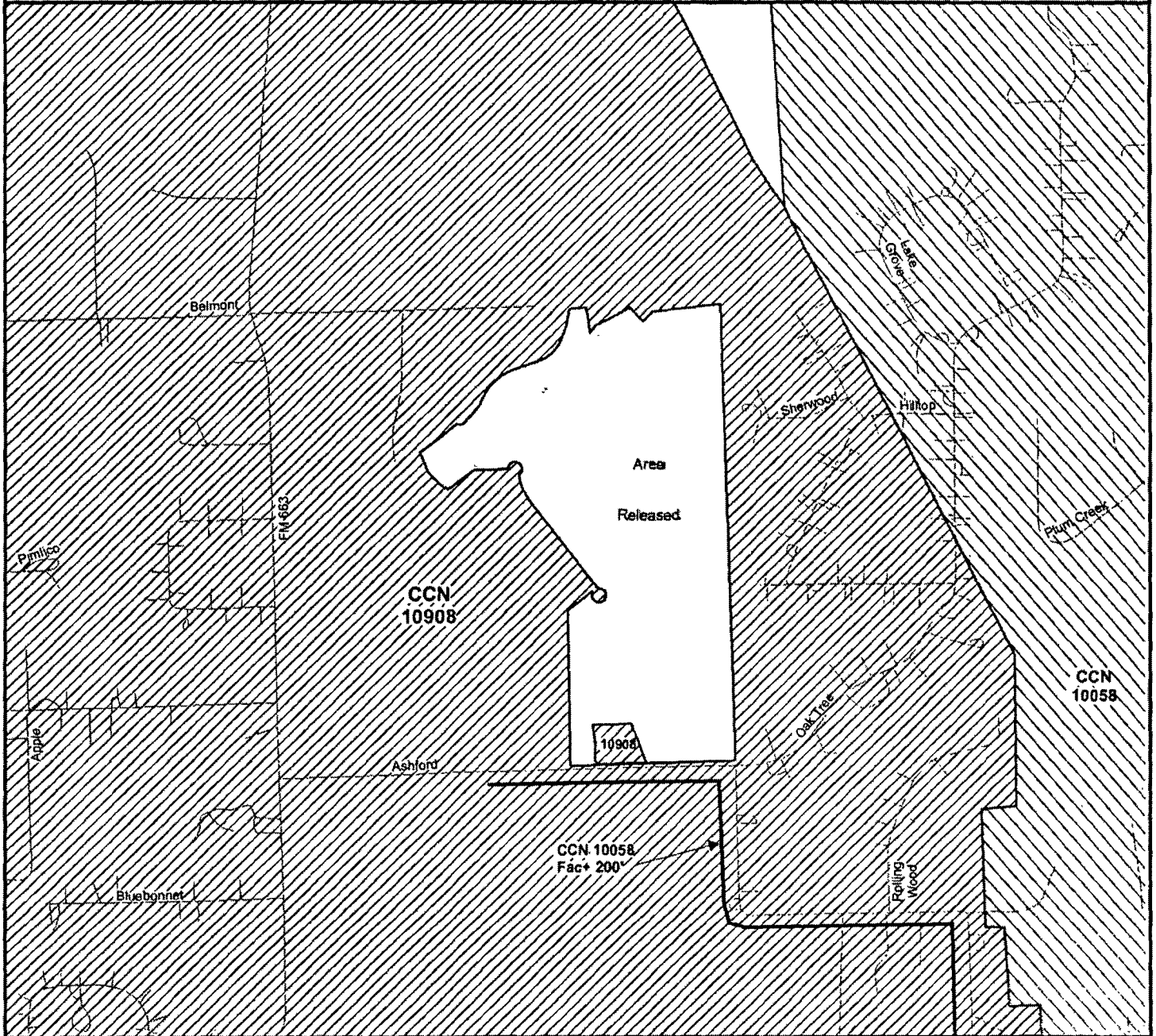
14 A. Yes. Mountain Peak's staff, including me, has spent numerous hours of our professional
15 time on these proceedings. Once again, I understand that the valuation of these
16 expenditures of staff time and resources will be addressed in the second phase of this
17 proceeding.

18 **IV. CONCLUSION**

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**



20 A. Yes. However, I reserve the right to amend or supplement my testimony, if necessary.

Mountain Peak Special Utility District
 Portion of Water Service Area
 CCN No. 10908
 PUC Docket No. 44394
 Petition by City of Midlothian to Amend Mountain Peak SUD's CCN by Expedited Release
 in Ellis County



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN Service Areas

-  10908 - Mountain Peak SUD
-  10058 - Sardis-Lone Elm WSC



Facilities + 200' Water CCN

-  10058 - Sardis-Lone Elm WSC

Map by: Suzanne Burt
 Date created: March 17, 2015
 Project path: n:\gis\projects\applications\44394.mxd

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT
NON-STANDARD SERVICE APPLICATION AND AGREEMENT**

COUNTY OF Ellis

THIS AGREEMENT is made and entered into by and between SKJ Lawson Farms Development, LP. hereinafter referred to as "Developer", and Mountain Peak Special Utility District, hereinafter referred to as "SUD".

WHEREAS, Developer is engaged in developing that certain 290 acres of land in Ellis County, Texas, more particularly known as the Lawson Farms subdivision, according to the plat thereof recorded at Vol. _____, Page _____ of the Plat Records of _____ County, Texas, said land being hereinafter referred to as "the Property"; and

WHEREAS, SUD owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and

WHEREAS, Developer has requested SUD to provide such water service to the Property through an extension of SUD's water system, such extension being hereinafter referred to as "the Water System Extension";

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and SUD agree as follows:

1. Engineering and Design of the Water System Extension.
 - a. The Water System Extension shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the SUD and all governmental agencies having jurisdiction. All plans and specifications must be reviewed and approved by SUD's consulting engineer prior to the issuance of any request for bids for the construction of the Water System Extension. After such approval of the plans and specifications by the SUD's consulting engineer, the plans and specifications shall become part of this Agreement by reference and shall more particularly define "the Water System Extension".
 - b. The Water System Extension must be sized to provide continuous and adequate water service to the property based on plans for the development of the Property provided to SUD by the Developer. SUD may require the Water System Extension to be oversized in

anticipation of the needs of other customers of the SUD, subject to the obligation to reimburse the Developer for any such oversizing as provided below.

2. **Required Easements or Rights-of-Way.**

- a. Developer shall be responsible for dedicating or acquiring any easements across privately owned land, which are necessary for the construction of the Water System Extension and for obtaining any Governmental approvals necessary to construct the Water System Extension in public right-of-way.
- b. Any easements acquired by the Developer shall be assigned to SUD upon proper completion of the construction of the Water System Extension. The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to SUD must be approved by SUD's attorney.

3. **Construction of the Water System Extension.**

- a. The Corporation shall or instruct the Developer Engineer to advertise for bids for the construction of the Water System Extension in accordance with generally accepted bidding practices and shall award the contract for the construction of the Water System Extension subject to the approval of the SUD. SUD may reject any bids.
- b. The Water System Extension shall be constructed in accordance with the approved plans and specifications. SUD shall have the right to inspect all phases of the construction of the Water System Extension. Developer must give written notice to SUD of the date on which construction is scheduled to begin so that SUD may assign an inspector. SUD may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 10% overhead.

4. **Dedication of Water System Extension to SUD.**

Upon proper completion of construction of the Water System Extension and final inspection thereof by SUD, the Water System Extension shall be dedicated to the SUD by no appropriate legal instrument approved by SUD's Attorney. The Water System Extension shall thereafter be owned and maintained by SUD.

5. **Cost of the Water System Extension.**

- a. Developer shall pay all costs associated with the Water System Extension as a contribution in aid of construction, including without limitation to the cost of the following:
 - (1) engineering and design;
 - (2) easement or right-of-way acquisition;
 - (3) construction;
 - (4) inspection;
 - (5) attorneys' fees;
 - (6) governmental or regulatory approvals required to lawfully provide service.
 - b. Developer shall indemnify SUD and hold SUD harmless from all of the foregoing costs. Performance or maintenance Bond may be required and will be furnished by Developer upon request by SUD.
 - c. Provided, however, nothing herein shall be construed as obligating the Developer to maintain the Water System Extension subsequent to its dedication and acceptance for maintenance by SUD.
 - d. The SUD may require the Water System Extension to be oversized in anticipation of the needs of the other customers of SUD. This would be determined by the SUD's consulting engineer and the board of directors.
 - e. All of the foregoing costs will be paid by Developer to SUD within ten days of SUD's invoice.
6. **Service From the Water System Extension.**
- a. After proper completion and dedication of the Water System Extension to SUD shall provide continuous and adequate water service to Property, subject to all duly adopted rules and regulation of SUD and the payment of the following:
 - (1) All standard rates, fees and charges are reflected in SUD's approved policies;
 - (2) Any applicable impact fee adopted by SUD;
 - (3) Any applicable reserved service charge adopted by SUD.
 - b. It is understood and agreed by the parties that the obligation of SUD to provide water service in the manner contemplated by this Agreement is subject to the issuance by the Texas Natural Resource Conservation Commission and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service.
 - c. Unless the prior approval of SUD is obtained, the Developer shall not:
 - (1) construct or install additional water lines or facilities to service areas outside the Property;
 - (2) add any additional lands to the Property for which water service is to be provided pursuant to this agreement; or

- (3) connect or serve any person or entity that, in turn, sells water service directly or indirectly to another person or entity.
- d. Impact fees are due upon approval of the plat by the SUD; provided, however, that upon written application by the Developer, SUD may allow a deferral of payment of such impact fees on the following terms:
 - (1) The impact fees are due within sixty (60) days of written notice to Developer by SUD, but in no event later, for each meter, than the date such meter is installed;
 - (2) SUD may demand payment of all or less than all of the impact fees, at its discretion;
 - (3) Upon the failure of a Developer to pay impact fees when due hereunder, the entire amount of the deferred impact fees shall be immediately due and payable, no other meters will be installed within the area of the approved plat until payment in full of all of the deferred impact fees is received by the SUD, and Developer will not be eligible for this deferred payment arrangement in the future.
 - (4) Before impact fees can be deferred, Developer must furnish to SUD a letter of credit, performance bond or other security for payment of the full amount of the deferred impact fees satisfactory to the SUD, and in each event subject to the approval of SUD's counsel.

7. Effect of Force Majeure.

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The terms "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability's of either party, whether similar to those enumerated or have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement or strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all

reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

8. Notices.

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to the SUD shall be addressed:

Mountain Peak W.S.C.
5671 Waterworks Rd.
Midlothian, TX 76065

Any notice mailed to Developer shall be addressed:

SKJ Lawson Farms Development, LP
411 W. 7th Street, #1004
Fort Worth, TX 76102

Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

9. Severability.

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

10. Entire Agreement.

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

11. Amendment.

No Amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the SUD and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

12. Governing Law.

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Ellis County, Texas.

13. Venue.

The obligations hereunder are performable in Ellis County, Texas.

14. Successors and Assigns.

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

15. Assignability.

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the SUD.

16. Effective Date.

This Agreement shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representatives in multiple copies, each of equal dignity, on the date or dates indicated below.

"SUD"

By: [Signature]

Name: Rardel Ruiz

Title: GM.

DEVELOPER

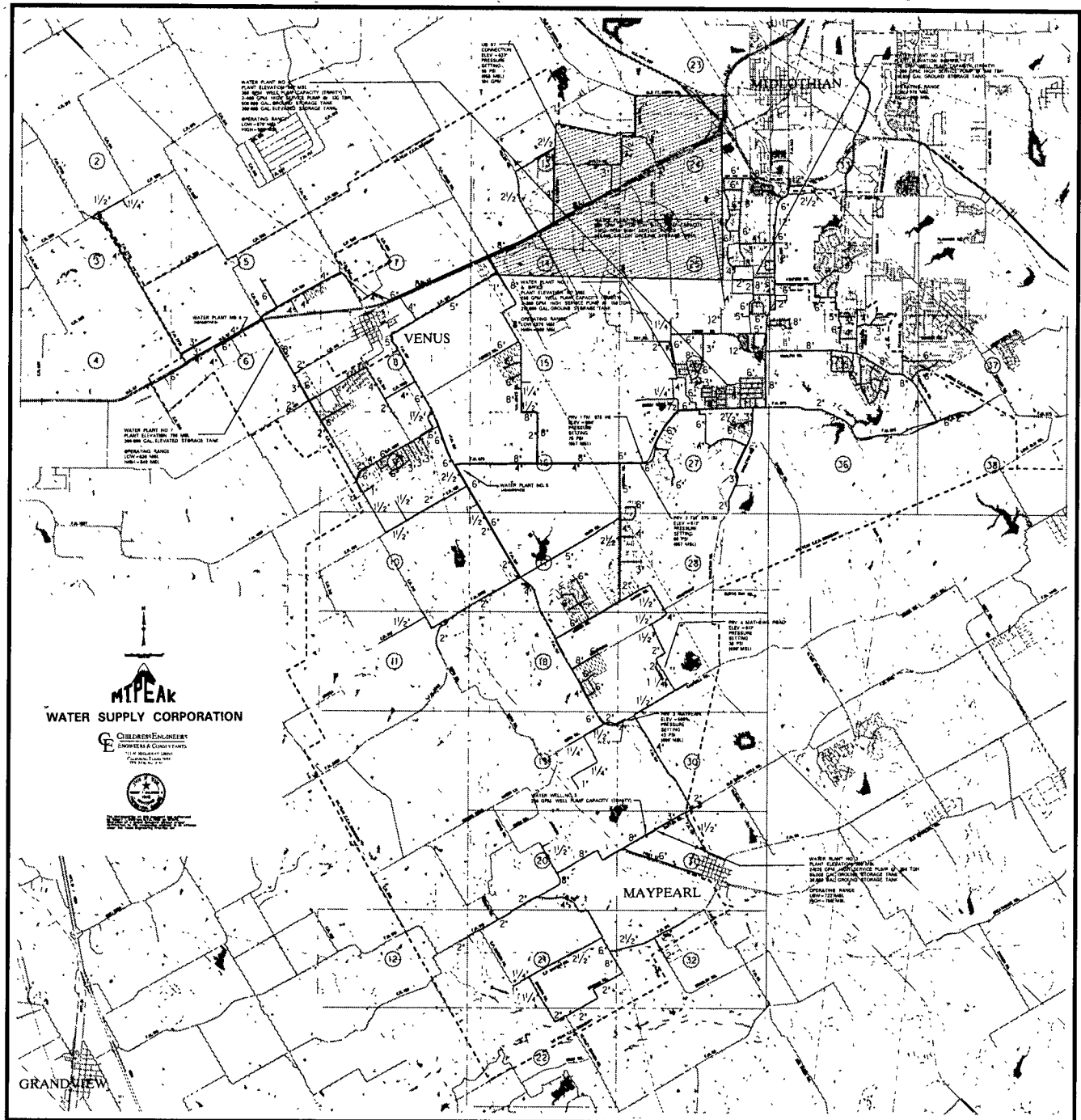
SKJ Lawson Farms Development, LP,
a Texas limited partnership

By: 5409 Miramar, LLC, a Texas limited liability company, its General Partner

By: [Signature]
Name: Kim Hill

Title: Sole Managing Partner

Date: 5-19-04




MTPeak
 WATER SUPPLY CORPORATION

 CHILDREN'S ENGINEERS
 ENGINEERS & CONSULTANTS

 REGISTERED PROFESSIONAL ENGINEER
 STATE OF TEXAS
 NO. 12345

CML

EXHIBIT RK-4

RETURN TO:

Mailing Address of Grantee:

Chicago Title Insurance Company
8808 N. Central Expressway, Suite 560
Dallas, Texas 75206 214-381-6771

5671 Waterworks Road
Midlothian, Texas 75065

**SPECIAL WARRANTY DEED
(With Restrictions)**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS.

§

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF ELLIS

§

§

THAT, **SKJ LAWSON FARMS DEVELOPMENT, L.P.**, a Texas limited partnership (hereinafter referred to as "Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration to the undersigned paid by **MOUNTAIN PEAK SPECIAL UTILITY DISTRICT** (hereinafter referred to as "Grantee"), the receipt and sufficiency of which consideration are hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto Grantee, all of the following described property in Ellis County, Texas, to-wit (the "Property"):

See Exhibit "A" attached hereto and made a part hereof; subject, however, to those matters set forth on Exhibit "B" attached hereto and made a part hereof (but only to the extent that same remain in full force and effect and pertaining to such Property).

TO HAVE AND TO HOLD the above described Property, together with (but without warranty, except that Grantor has not previously conveyed the same to any third party) all and singular the rights and appurtenances thereto in anywise belonging to Grantor, unto the said Grantee, its successors, legal representatives and assigns forever, and Grantor does hereby binds itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said Property unto the said Grantee, its successors, legal representatives and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, or through the Grantor; but not otherwise, and subject as aforesaid.

DISCLAIMER AND RELEASE.

(A) GRANTEE ACKNOWLEDGES AND AGREES THAT IT IS EXPERIENCED IN ACQUIRING, OWNING, DEVELOPING, MARKETING, LEASING, OPERATING, MANAGING AND SELLING OF PROPERTIES SIMILAR TO THE PROPERTY, AND THAT GRANTEE HAS THOROUGHLY INSPECTED, TESTED, STUDIED, REVIEWED AND INVESTIGATED ALL ASPECTS OF THE PROPERTY TO ITS FULL

Handwritten initials and date: 3/12/05

FILED FOR RECORD - ELLIS COUNTY, TX
INST NO: 0507291 FILING DATE/TIME: Mar 10, 2005 @ 10:44:00 AM

23

SATISFACTION, AND THAT GRANTEE IS RELYING SOLELY THEREON IN MAKING ITS DECISION TO ACQUIRE THE PROPERTY. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THAT CERTAIN CONTRACT FOR PURCHASE AND SALE DATED DECEMBER 20, 2005 (THE "CONTRACT"), EXECUTED BY GRANTOR AND GRANTEE, AND/OR IN THIS DEED OR ANY OTHER DOCUMENT DELIVERED BY GRANTOR TO GRANTEE PURSUANT TO THE CONTRACT ON EVEN DATE HERewith (THE "CLOSING DOCUMENTS"), GRANTOR IS NOT MAKING, AND HEREBY SPECIFICALLY DISCLAIMS MAKING ANY WARRANTY, GUARANTY OR REPRESENTATION, OF ANY KIND OR CHARACTER, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING BY OPERATION OF LAW, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (I) THE PHYSICAL AND ENVIRONMENTAL NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY ELECT TO CONDUCT THEREON, AND THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS SUBSTANCES) OR THE COMPLIANCE OF THE PROPERTY WITH ANY AND ALL APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (II) ANY MATTERS AFFECTING TITLE TO THE PROPERTY; (III) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, STATUTES, ORDINANCES, RULES, REQUIREMENTS OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY; (IV) THE ECONOMIC VIABILITY OR MARKETABILITY OF THE PROPERTY; (V) TAX MATTERS PERTAINING TO THE TRANSACTION CONTEMPLATED HEREBY; (VI) THE ACCURACY OR COMPLETENESS OF ANY REPORTS OR OTHER INFORMATION FURNISHED BY GRANTOR TO GRANTEE WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ENGINEERING, ENVIRONMENTAL OR OTHER REPORTS, STUDIES OR INVESTIGATIONS, IF ANY; (VII) ZONING; (VIII) VALUATION; (IX) HABITABILITY; (X) MERCHANTABILITY; OR (XI) SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, GRANTEE HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED THE CONTRACT AND/OR THE CLOSING DOCUMENTS, THE PURCHASE OF THE PROPERTY IS BEING MADE ON AN "AS IS" BASIS, "WITH ALL FAULTS," AND GRANTEE HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY EXIST WITH RESPECT TO THE PROPERTY AND WITH FULL KNOWLEDGE AND ACCEPTANCE BY GRANTEE OF ALL INFORMATION AND MATTERS DISCLOSED IN ANY AND ALL REPORTS, STUDIES, ASSESSMENTS, INVESTIGATIONS, PROPOSALS AND DOCUMENTS FURNISHED TO, OR OBTAINED BY, GRANTEE WITH RESPECT TO THE PROPERTY. FURTHER, GRANTEE ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PURCHASE OF THE PROPERTY WHICH HAVE BEEN MADE BY GRANTOR OR ANY THIRD PARTY.

(B) EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ANY FACTUAL INFORMATION SUCH AS PROPERTY TAXES, UTILITY INFORMATION, PROPERTY DIMENSIONS, SQUARE FOOTAGE OR SKETCHES SHOWN TO GRANTEE ARE OR MAY BE APPROXIMATE. GRANTEE REPRESENTS TO GRANTOR THAT GRANTEE HAS INSPECTED AND VERIFIED OR, DURING THE REVIEW PERIOD, SHALL INSPECT AND VERIFY THE FACTS AND INFORMATION TO GRANTEE'S SATISFACTION. NO LIABILITY FOR ANY INACCURACIES, ERRORS OR OMISSIONS IS ASSUMED BY GRANTOR OR OTHER AGENTS OR REPRESENTATIVES OF GRANTOR. GRANTEE UNDERSTANDS AND ACKNOWLEDGES THAT SALES BROCHURES AND OTHER DOCUMENTS, IF ANY, DELIVERED TO GRANTEE PRIOR THE DATE HEREOF MAY HAVE BEEN PREPARED BY PARTIES OTHER THAN GRANTOR AND THAT GRANTOR MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE COMPLETENESS, CONTENT OR ACCURACY OF THE SAID SALES BROCHURES AND OTHER DOCUMENTS WHICH WERE PREPARED BY THIRD PARTIES. GRANTEE SPECIFICALLY RELEASES GRANTOR AND GRANTOR'S PARTNERS, EMPLOYEES, OFFICERS, DIRECTORS AND AFFILIATES (COLLECTIVELY, THE "GRANTOR PARTIES"), FROM ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, WHETHER SUIT IS INSTITUTED, OR NOT, AND ENVIRONMENTAL CONSULTANTS' FEES) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT (COLLECTIVELY "CLAIMS") ASSERTED AGAINST OR INCURRED BY GRANTEE BY REASON OF THE INFORMATION CONTAINED IN, OR THAT SHOULD HAVE BEEN CONTAINED IN, THE SAID SALES BROCHURES AND OTHER DOCUMENTS PREPARED BY THIRD PARTIES.

(C) IN THE EVENT THAT FROM AND AFTER THE DATE HEREOF ANY INVESTIGATION, REMOVAL, ABATEMENT, REMEDIATION, OR OTHER CORRECTIVE ACTION IS AT ANY TIME REQUIRED IN CONNECTION WITH THE PORTION OF THE PROPERTY PURCHASED OR ANY ADJACENT OR NEARBY PROPERTY AS A RESULT OF THE PRESENCE OF ANY ENVIRONMENTAL PROBLEMS, HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, OR ENVIRONMENTAL CONTAMINATION AT OR ON THE PROPERTY OR ANY ADJACENT OR NEARBY PROPERTY, INCLUDING, WITHOUT LIMITATION, ASBESTOS AND PETROLEUM PRODUCTS AND BYPRODUCTS AND ANY CONSTITUENTS THEREOF, REGARDLESS OF WHEN SAME OCCURRED, GRANTEE ACKNOWLEDGES AND AGREES THAT: (I) GRANTOR SHALL NOT BE RESPONSIBLE FOR THE COST OF ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION; AND (II) THE GRANTOR HAS NO DUTY OR OBLIGATION TO PERFORM OR CAUSE TO BE PERFORMED ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THE GRANTEE, FOR ITSELF, AND ITS SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, RELEASES, AND RELINQUISHES, GRANTOR FROM ANY AND ALL CLAIMS OR RIGHTS OF CONTRIBUTION (INCLUDING ANY RIGHT TO CONTRIBUTION UNDER 42 U.S.C. §9613(F)) WHICH THE GRANTEE OR ITS SUCCESSORS, LEGAL REPRESENTATIVES OR ASSIGNS NOW HAS OR MAY HAVE AGAINST ANY OF THE

GRANTOR PARTIES BY REASON OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCE (INCLUDING, BUT NOT LIMITED TO, ASBESTOS AND PETROLEUM PRODUCTS AND BYPRODUCTS AND THE CONSTITUENTS THEREOF) OR ANY OTHER ADVERSE ENVIRONMENTAL CONDITION, DEFECT, OR PROBLEM WITH RESPECT TO THE PROPERTY (WHETHER SUCH CONDITION, DEFECT, OR CONDITION BE KNOWN OR UNKNOWN, LATENT OR PATENT, OR WHETHER OR NOT ANY INVESTIGATION, REMEDIATION, OR CORRECTIVE ACTION MAY BE REQUIRED OR DESIRABLE WITH RESPECT TO THE PROPERTY).

(D) EXCEPT AS PROVIDED IN PARAGRAPH (C) ABOVE, EFFECTIVE UPON THE DATE HEREOF, GRANTEE HEREBY UNCONDITIONALLY AND IRREVOCABLY RELEASES GRANTOR FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) ARISING FROM OR RELATED TO THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PORTION OF THE PROPERTY. THE RELEASE SET FORTH IN THIS SECTION SPECIFICALLY INCLUDES ANY CLAIMS UNDER ANY ENVIRONMENTAL LAWS. "ENVIRONMENTAL LAWS" INCLUDES, BUT IS NOT LIMITED TO, THE RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. 6901, ET SEQ.), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED BY THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (42 U.S.C. 9601, ET SEQ.); THE CLEAN AIR ACT (42 U.S.C. 4701, ET SEQ.); THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (42 U.S.C. §1101, ET SEQ.); THE HAZARDOUS MATERIALS TRANSPORTATION ACT OF 1974 (49 U.S.C. §1801, ET SEQ.); THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. §1251, ET SEQ.); THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (7 U.S.C. §137, ET SEQ.); THE SAFE DRINKING WATER ACT (42 U.S.C. §3001, ET SEQ.); AND THE TOXIC SUBSTANCE CONTROL ACT (15 U.S.C. §2601, ET SEQ.), AS ANY OF THE SAME MAY BE AMENDED FROM TIME TO TIME, AND ANY COMPARABLE OR SUCCESSOR PROVISIONS OF FEDERAL, STATE OR LOCAL LAW, AND ANY REGULATIONS, ORDERS, RULES, PROCEDURES, GUIDELINES AND THE LIKE PROMULGATED IN CONNECTION THEREWITH.

Notwithstanding anything seemingly to the contrary contained herein, as part of the consideration of Grantee to Grantor for the Property, Grantee hereby covenants and agrees that the conveyance effectuated hereby shall be subject to the following covenants, conditions and restrictions, each of which shall be a covenant running with the land and binding upon Grantee, and its successors and assigns with respect to the Property, for the benefit of Grantor with respect to that certain real property being fully described on Exhibit "C" attached hereto and made a part hereof for all purposes (the "Grantor's Property"), but only for as long as Grantor owns any portion thereof:

1. Restricted Use. Grantee hereby covenants and agrees that the development and/or use of the Property by any person or party, in whole or in part, while the Property is owned by Grantee, shall be restricted solely to one (1) or more water wells, pumps, towers and appurtenant facilities for the production and delivery of water.

2. Right of First Refusal. Grantee hereby grants to Grantor (and Grantor only) a right of first refusal and option to repurchase the Property in accordance with this Paragraph 2. If, as and when Grantee receives an acceptable, bona fide written offer to purchase all or any portion of the Property from a third-party (the "Offer"), Grantee shall promptly provide written notice thereof to Grantor, setting forth the price, amount of earnest money, and key time periods and closing schedule for same, accompanied by a copy of the Offer (collectively, the "Option Notice"). Within thirty (30) days following Grantee's delivery of an Option Notice, Grantor may elect to exercise its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by the Offer) on the same terms and conditions set forth therein by delivering written notice thereof to Grantee. In the event that Grantor timely exercises its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by the Offer), Grantee shall prepare (or cause to be prepared), execute and deliver to Grantor, a contract (the "Option Contract") substantially identical to the Contract, but embodying the terms set forth in the Offer, and Grantor shall execute and deliver same to the Title Company within two (2) business days following delivery thereof. If, for any reason, Grantor does not timely and properly exercise its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by the Offer), or thereafter fails to timely and properly execute and deliver the Option Contract, as aforesaid, then Grantor shall be deemed to have waived its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by such Offer). Further, in the event that Grantee and Grantor enter into the Option Contract with respect to the Property (or the applicable portion thereof covered by an Offer), but Grantee fails to consummate the closing thereunder, for any reason other than Grantor's default, Grantee shall have waived its right to purchase the Property (or the applicable portion thereof covered by such Offer).

For purposes of the foregoing covenants, conditions and restrictions, the Property shall be the burdened estate and the Grantor's Property shall be the benefited estate. Grantor and Grantee (or the then owner(s) of any portion of the benefited estate) shall have the right, but not the obligation, to cause the foregoing covenants, conditions and restrictions to be carried out and performed, together with the right to bring any suit or take any legal process that may be proper to specifically enforce the performance thereof, to enjoin any violation thereof, or to recover damages, or any other recourse or remedy as may be available at law or in equity with respect to the breach of such covenants, conditions and restrictions; it being the intention hereby to attach to each benefited estate the right to have the applicable covenants, conditions and restrictions strictly complied with, and the failure by Grantor, Grantee and/or any owner of any portion of the benefited estate to enforce same shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding anything seemingly to the contrary contained herein, Paragraphs 1 and 2 above shall only burden the Property for so long as Grantee owns the same and Grantor owns any portion of the Grantor's Property.

By its acceptance hereof, Grantee hereby assumes and agrees to pay all ad valorem taxes assessed against the above-described property for 2005 and all subsequent years, and agrees to save, defend, indemnify and hold Grantor harmless from all such taxes and assessments; subject, however, to the reparation requirements set forth in Paragraph 11 of the Contract.

EXECUTED effective as of (although not necessarily on) the 7th day of March 2005.

GRANTOR:

SKJ LAWSON FARMS DEVELOPMENT, L.P.,
a Texas limited partnership

BY: 5409 MIRAMAR, LLC,
a Texas limited liability company, general partner

By: 
Kim Gill, Sole Member

STATE OF TEXAS

COUNTY OF ELLIS

BEFORE ME, the undersigned authority, a Notary Public on this day personally appeared Kim Gill, the sole member of 5409 MIRAMAR, LLC, a Texas limited liability company, the general partner of SKJ LAWSON FARMS DEVELOPMENT, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, on behalf of such limited liability company and limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 4 day of March, 2005.

TYPE, STAMP OR PRINT
NAME AND COMMISSION
EXPIRATION DATE


Notary Public in and for the State of Texas



GRANTEE:

MOUNTAIN PEAK SPECIAL UTILITY DISTRICT

By: [Signature]
Name: Randall Kirk
Title: General Manager

STATE OF TEXAS §
 §
COUNTY OF Ellis §

BEFORE ME, the undersigned authority, a Notary Public on this day personally appeared Randall Kirk, the General Manager of MOUNTAIN PEAK SPECIAL UTILITY DISTRICT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, on behalf of such utility district.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 26 day of March, 2005.

TYPE, STAMP OR PRINT
NAME AND COMMISSION
EXPIRATION DATE

[Signature]
Notary Public in and for the State of Texas



Legal Description

Being a 2.060 acre tract of land in the Martha Brennan Survey, Abstract No 43, and being a portion of that certain tract of land described in deed to SKJ Lawson Farms Development, L.P., recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. The bearings for this description are based on the North line of said SKJ Lawson Farms tract, recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. Said 2.060 acre tract of land being described by metes and bounds as follows:

Commencing at a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Southeast corner of said SKJ Lawson Farms tract and the North right-of-way line of Ashford Lane;

Thence South 89 degrees 40 minutes 39 seconds West, along the South line of said SKJ Lawson Farms tract and the North right-of-way line of Ashford Lane, a distance of 629.54 Feet,

Thence North 0 degrees 19 minutes 21 seconds West, departing the North right-of-way line of Ashford Lane and the South line of said SKJ Lawson Farms tract and over and across said SKJ Lawson Farms tract, a distance of 5.00 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set for the POINT OF BEGINNING;

Thence continuing over and across said SKJ Lawson Farms tract the following courses and distances:

South 89 degrees 40 minutes 39 seconds West, a distance of 335.91 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a tangent curve, concave to the Northeast, having a radius of 25.00 Feet, a central angle of 90 degrees 39 minutes 56 seconds and a chord which bears North 44 degrees 59 minutes 23 seconds West, a distance of 35.56 Feet;

Westerly along said curve, a distance of 39.56 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set;

North 0 degrees 20 minutes 35 seconds East, a distance of 78.96 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a tangent curve, concave to the West, having a radius of 530.00 Feet, a central angle of 8 degrees 05 minutes 22 seconds and a chord which bears North 3 degrees 42 minutes 06 seconds West, a distance of 74.77 Feet;

Northerly along said curve, a distance of 74.83 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a reverse curve, concave to the East, having a radius of 475.00 Feet a central angle of 8 degrees 05 minutes 22 seconds, and a chord of 67.01 Feet bearing North 3 degrees 42 minutes 06 seconds West;

COUNTY CLERK'S MEMO
Instrument UNSATISFACTORY **30**
For microfilm recording

Legal Description cont.

Northerly along said curve, a distance of 57.06 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set;

North 0 degrees 20 minutes 35 seconds East, a distance of 39.29 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Northwest corner of herein described tract;

North 89 degrees 40 minutes 39 seconds East, a distance of 271.71 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Northeast corner of herein described tract;

South 18 degrees 58 minutes 06 seconds East, a distance of 300.85 Feet to the POINT OF BEGINNING and containing a computed area of 2.060 Acres, more or less.

COUNTY CLERK'S MEMO
Instrument UNSATISFACTORY
For microfilm recording

EXHIBIT "B"
PERMITTED EXCEPTIONS

1. Rights of tenants in possession, as tenants only, under any unrecorded lease agreements.
2. Memorandum Regarding Right of First Refusal, dated March 7, 2005, executed by and between SKJ Lawson Farms Development, L.P. and Mountain Peak Special Utility District and recorded or to be recorded in the Real Property Records of Ellis County, Texas.

EXHIBIT "C"DESCRIPTION
(112.261 ACRES)

BEING a 112.261 acre tract of land situated in the M.T. HAWKINS SURVEY, ABSTRACT NO. 463, the MARTHA BRENAN SURVEY, ABSTRACT NO. 43, and the J.M. GARVIN SURVEY, ABSTRACT NO. 424 and being a portion of that tract of land described in deed to SKJ Lawson Farms Development, L.P. and recorded in Volume 2005, Page 2309, Deed Records, Ellis County, Texas, said 112.261 acre tract of land being more particularly described as follows:

BEGINNING at a point in the east right-of-way line of F.M. 663 (an 80 foot public right-of-way), said point being the most westerly southwest corner of said SKJ Lawson Farms Development, L.P. and the northwest corner of a tract of land described in deed to John G. Hedrick and recorded in Volume 526, Page 973, Official Public Records, Ellis County, Texas;

THENCE N00°15'55"W, along the east right-of-way line of said F.M. 663, a distance of 1209.28 feet to a point;

THENCE N89°44'05"E, leaving the east right-of-way line of said F.M. 663, a distance of 15.00 feet to a point;

THENCE S37°55'30"E, a distance of 93.48 feet to a point;

THENCE N89°44'05"E, a distance of 636.00 feet to a point;

THENCE N85°07'40"E, a distance of 110.23 feet to a point;

THENCE N55°41'42"E, a distance of 107.78 feet to a point;

THENCE N53°25'56"E, a distance of 50.00 feet to a point at the beginning of a non-tangent curve to the right having a radius of 725.00 feet and whose long chord bears S26°47'15"E, a distance of 246.32 feet;

THENCE along said curve to the right, through a central angle of 19°33'39", an arc length of 247.52 feet to a point at the beginning of a curve to the left having a radius of 375.00 feet and whose long chord bears S35°04'45"E, a distance of 232.66 feet;

THENCE along said curve to the left, through a central angle of 36°08'39", an arc length of 236.56 feet to a point at the end of said curve;

THENCE N53°25'56"E, a distance of 229.59 feet to a point;

THENCE N89°40'28"E, a distance of 270.62 feet to a point at the beginning of a non-tangent curve to the right having a radius of 465.00 feet and whose long chord bears N17°17'44"E, a distance of 281.53 feet;

THENCE along said curve to the right, through a central angle of 35°14'32", an arc length of 286.02 feet to a point at the end of said curve;

THENCE S52°00'05"E, a distance of 235.97 feet to a point;

THENCE N37°59'55"E, a distance of 170.83 feet to a point;

THENCE N89°03'07"E, a distance of 120.12 feet to a point;

THENCE S16°44'17"E, a distance of 92.10 feet to a point;

THENCE S42°16'38"E, a distance of 31.30 feet to a point;

THENCE S67°48'59"E, a distance of 93.93 feet to a point;

THENCE N89°37'31"E, a distance of 892.53 feet to a point in the east line of said SKJ Lawson Farms Development, L.P., said point also being in the west line of Lot 11, Block 3, Lakegrove, Revised, as recorded in Cabinet A, Slides 753/754, Plat Records, Ellis County, Texas;

THENCE S00°22'29"E, a distance of 2243.56 feet to a point in the north right-of-way line of Ashford Lane (a 50 foot right-of-way) for the southeast corner of said SKJ Lawson Farms Development, L.P. tract of land;

THENCE S89°40'39"W, along the north right-of-way line of said Ashford Lane, a distance of 1170.81 feet to a point for the most southerly southwest corner of said SKJ Lawson Farms Development, L.P. tract of land and the southeast corner of a tract of described in deed to John R McMichael and recorded in Volume 805, Page 113, Deed Records, Ellis County, Texas;

THENCE N00°20'35"E, along the common line of said SKJ Lawson Farms Development, L.P. and McMichael tracts of land, a distance of 1108.71 feet to a point for an ell corner and the northeast corner of said Hedrick tract of land;

THENCE S89°35'35"W, along the common line of said SKJ Lawson Farms Development, L.P. and Hedrick tracts of land, a distance of 2050.12 feet to the POINT OF BEGINNING.

SAVE AND EXCEPT the following described tract of land:

COMMENCING at a point in the north right-of-way line of Ashford Lane (a 50 foot right-of-way) for the most southerly southwest corner of said SKJ Lawson Farms Development, L.P. tract of land;

THENCE N89°40'39"E, along the north right-of-way line of said Ashford Lane, a distance of 205.36 feet to a point;

THENCE N00°19'21"W, leaving the north right-of-way line of said Ashford Lane, a distance of 5.00 feet to the POINT OF BEGINNING of the herein described tract of land, said point being at the beginning of a non-tangent curve to the right having a radius of 25.00 feet and whose long chord bears N44°59'23"W, a distance of 35.56 feet;

THENCE along said curve to the right, through a central angle of 90°39'56", an arc length of 39.56 feet to a point at the end of said curve;

THENCE N00°20'35"E, a distance of 78.96 feet to a point at the beginning of a curve to the left having a radius of 530.00 feet and whose long chord bears N03°42'06"W, a distance of 74.77 feet;

92107 2273

VOL. PG.

EXHIBIT RK-4

Any provision herein which restricts the sale, rental, or use of this described real property because of color or race is invalid and unenforceable under federal law. STATE OF TEXAS; COUNTY OF ELLIS I hereby certify this instrument was filed on the date and time stamped herein and was duly recorded in the volume and page of the OFFICIAL PUBLIC RECORDS of Ellis County Texas as stamped hereon.



Cindy Polley

COUNTY CLERK, ELLIS COUNTY, TEXAS

FILED FOR RECORD - ELLIS COUNTY, TX
Inst No: 0507291
ON Mar 10, 2005 at 10:44:00 AM

MPSUD03790

(2)

CS

EXHIBIT R274

VOL. PG.

GTIC MEMORANDUM REGARDING RIGHT OF FIRST REFUSAL

Pursuant to that certain Special Warranty Deed (with Restrictions) dated as of the 7th day of March, 2005 (the "Deed"), **MOUNTAIN PEAK SPECIAL UTILITY DISTRICT** ("Mountain Peak") has granted **SKJ LAWSON FARMS DEVELOPMENT, L.P.**, a Texas **limited partnership** ("SKJ") the first right of refusal to purchase from Mountain Peak the real property more particularly described on Exhibit A attached hereto and made a part hereof, together with all easements, rights of way, permits, approvals, privileges and entitlements appurtenant thereto and all right, title and interest of Mountain Peak in and to all streets and water courses adjacent thereto, abutting or serving the real property (collectively, the "Property").

[Handwritten initials]

Mountain Peak and SKJ are entering into this Memorandum for the purpose of providing record notice of the existence of the Right of First. Reference is hereby made to the Deed which sets forth more fully the rights and obligations of the parties with respect to the Property.

Date: As of March 7, 2005

We hereby certify this to be a true and correct copy of the original instrument.
CHICAGO TITLE INSURANCE CO.
[Signature]
Authorized Signature

SKJ LAWSON FARMS DEVELOPMENT, L.P.,
a Texas limited partnership

5409 MIRAMAR, LLC,
a Texas limited liability company

By: *[Signature]*
Kim Gill, Sole Member

MOUNTAIN PEAK SPECIAL UTILITY DISTRICT

By: _____
Name: _____
Title: _____

FILED FOR RECORD - ELLIS COUNTY, TX
INST NO: 0507292 FILING DATE/TIME: Mar 10, 2005 at 10:44:50 AM

36

MEMORANDUM REGARDING RIGHT OF FIRST REFUSAL

VOL. PG.

Pursuant to that certain Special Warranty Deed (with Restrictions) dated as of the 7th day of March, 2005 (the "Deed"), **MOUNTAIN PEAK SPECIAL UTILITY DISTRICT** ("Mountain Peak") has granted **SKJ LAWSON FARMS DEVELOPMENT, L.P.**, a Texas **limited partnership** ("SKJ") the first right of refusal to purchase from Mountain Peak the real property more particularly described on Exhibit A attached hereto and made a part hereof, together with all easements, rights of way, permits, approvals, privileges and entitlements appurtenant thereto and all right, title and interest of Mountain Peak in and to all streets and water courses adjacent thereto, abutting or serving the real property (collectively, the "Property").

Mountain Peak and SKJ are entering into this Memorandum for the purpose of providing record notice of the existence of the Right of First. Reference is hereby made to the Deed which sets forth more fully the rights and obligations of the parties with respect to the Property.

Date: As of March 7, 2005

SKJ LAWSON FARMS DEVELOPMENT, L.P.,
a Texas limited partnership.

5409 MIRAMAR, LLC,
a Texas limited liability company.

By: _____
Kim Gill, Sole Member

MOUNTAIN PEAK SPECIAL UTILITY DISTRICT

By: _____
Name: Randall Kirk
Title: General Manager

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on March _____, 2005, by Kim Gill, the sole Member of 5409 Miramar, LLC, a Texas limited liability company, the general partner of SKJ Lawson Farms Development, L.P., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

[Personalized Seal]

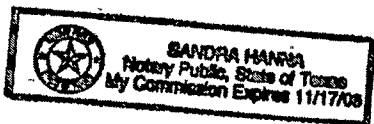
Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF Ellis)

This instrument was acknowledged before me on March 7th, 2005, by Randel Kirk, the General Manager of MOUNTAIN PEAK SPECIAL UTILITY DISTRICT, on behalf of said utility district.



Sandra Hanna
Notary Public for the State of Texas

My Commission Expires:

When Recorded, Return To:

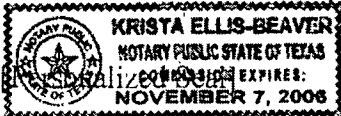
Leonard A. Stern II
Smith, Stern & Friedman PC
6688 N. Central Expressway, Suite 550
Dallas, Texas 75206

RETURN TO:
Chicago Title Insurance Company
588 N. Central Expressway, Suite 560
Dallas, Texas 75206 214-361-8771

ACKNOWLEDGMENT

THE STATE OF TEXAS)
COUNTY OF Tarrant)

This instrument was acknowledged before me on March 4, 2005, by Kim Gill, the sole Member of 5409 Miramar, LLC, a Texas limited liability company, the general partner of SKJ Lawson Farms Development, L.P., a Texas limited partnership, on behalf of said limited liability company and limited partnership.



Krista Ellis Beaver
Notary Public, State of Texas

My Commission Expires:
11-7-06

ACKNOWLEDGMENT

THE STATE OF TEXAS)
COUNTY OF _____)

This instrument was acknowledged before me on March _____, 2005, by _____, the _____ of MOUNTAIN PEAK SPECIAL UTILITY DISTRICT, on behalf of said utility district.

Notary Public for the State of Texas

My Commission Expires:

When Recorded, Return To:

Leonard A. Stern II
Smith, Stern & Friedman PC
6688 N. Central Expressway, Suite 550
Dallas, Texas 75206

661869G5
RETURN TO:
Chicago Title Insurance Company
6688 N. Central Expressway, Suite 560
Dallas, Texas 75206 214-361-6771

Legal Description

Being a 2.060 acre tract of land in the Martha Brennan Survey, Abstract No. 43, and being a portion of that certain tract of land described in deed to SKJ Lawson Farms Development, L.P., recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. The bearings for this description are based on the North line of said SKJ Lawson Farms tract, recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. Said 2.060 acre tract of land being described by metes and bounds as follows:

Commencing at a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Southeast corner of said SKJ Lawson Farms tract and the North right-of-way line of Ashford Lane;

Thence South 89 degrees 40 minutes 39 seconds West, along the South line of said SKJ Lawson Farms tract and the North right-of-way line of Ashford Lane, a distance of 629.54 Feet;

Thence North 0 degrees 19 minutes 21 seconds West, departing the North right-of-way line of Ashford Lane and the South line of said SKJ-Lawson Farms tract and over and across said SKJ Lawson Farms tract, a distance of 5.00 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set for the POINT OF BEGINNING;

Thence continuing over and across said SKJ Lawson Farms tract the following courses and distances:

South 89 degrees 40 minutes 39 seconds West, a distance of 335.91 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a tangent curve, concave to the Northeast, having a radius of 25.00 Feet, a central angle of 90 degrees 39 minutes 56 seconds and a chord which bears North 44 degrees 59 minutes 23 seconds West, a distance of 35.56 Feet,

Westerly along said curve, a distance of 39.56 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set;

North 0 degrees 20 minutes 35 seconds East, a distance of 78.96 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a tangent curve, concave to the West, having a radius of 530.00 Feet, a central angle of 8 degrees 05 minutes 22 seconds and a chord which bears North 3 degrees 42 minutes 06 seconds West, a distance of 74.77 Feet;

Northerly along said curve, a distance of 74.83 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a reverse curve, concave to the East, having a radius of 475.00 Feet a central angle of 8 degrees 05 minutes 22 seconds, and a chord of 67.01 Feet bearing North 3 degrees 42 minutes 06 seconds West;

Legal Description cont.

Northerly along said curve, a distance of 67.06 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set;

North 0 degrees 20 minutes 35 seconds East, a distance of 39.29 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Northwest corner of herein described tract;

North 89 degrees 40 minutes 39 seconds East, a distance of 271.71 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Northeast corner of herein described tract;

South 18 degrees 58 minutes 06 seconds East, a distance of 300.85 Feet to the POINT OF BEGINNING and containing a computed area of 2.060 Acres, more or less.

COUNTY CLERK'S MEMO
Instrument UNSATISFACTORY
For microfilm recording

Any provision herein which restricts the sale, rental, or use of this described real property because of color or race is invalid and unenforceable under federal law. STATE OF TEXAS, COUNTY OF ELLIS I hereby certify this instrument was filed on the date and time stamped herein and was duly recorded in the volume and page of the OFFICIAL PUBLIC RECORDS of Ellis County Texas as stamped hereon.



Cindy Polley

COUNTY CLERK, ELLIS COUNTY, TEXAS

FILED FOR RECORD - ELLIS COUNTY, TX
Inst No: 0507292
on Mar 10, 2005 at 10:44:00 AM

4

WATER PURCHASE CONTRACT

2.75

~~THIS AGREEMENT~~ is made and entered into this 10th day of December, 1996, by and between the CITY OF MIDLOTHIAN, TEXAS, a municipal corporation, and MIDLOTHIAN WATER DISTRICT (hereinafter collectively called "City"), and MOUNTAIN PEAK WATER SUPPLY CORPORATION (hereinafter called "WSC"), a nonprofit corporation of Ellis and Johnson Counties;

WITNESSETH:

WHEREAS, the WSC is a nonprofit corporation, organized under the laws of the State of Texas and operates a water supply system serving water users within a portion of Ellis and Johnson Counties, Texas; and

WHEREAS, the City owns and operates a water supply distribution system with the capacity capable of serving a portion of WSC service area; and

WHEREAS, the City has agreed to sell WSC water for the use of its customers for the consideration and upon the terms and conditions hereinafter set forth herein;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

SALE TO PURCHASER

City agrees to sell, furnish and make available to purchaser at the delivery point hereinafter defined, treated water in the quantities and subject to the terms and provisions as set forth in this Agreement.

ARTICLE II

QUANTITY

1. The City will furnish the volume of water requested by WSC, subject to (a) thirty (30) days notice of a substantial increase in volume and (b) the terms of this Agreement.
2. The maximum amount of water which City shall be obligated to furnish to WSC in any day during the term of this Agreement shall be as follows:

1997-2000	.20 MGD
2001-2007	.50 MGD
2008-2012	.80 MGD
2013-2017	1.00 MGD

3. Upon written request from WSC, the City may allow more than the prescribed maximum obligation.
4. City will provide water at the delivery point at a reasonably constant rate of flow calculated to meet the maximum daily demand at a constant pressure of not less than fifty pounds per square inch (50 psi) until 2010 and not less than sixty pounds per square inch (60 psi) thereafter, but in any event at a pressure sufficient to deliver the requested volumes.

ARTICLE III

RATES AND COMPENSATION

1. WSC agrees to pay City for all water delivered by City to WSC an amount equal to \$1.90 per one thousand gallons of water (herein called "Minimum Rate"). WSC must purchase at least an average per day, on an annualized basis, whether or not WSC actually takes and utilizes said water amount, for each year of this Agreement as follows:

1997 (prorated)	.03 MGD
1998	.03 MGD
1999	.04 MGD
2000	.04 MGD
2001	.05 MGD
2002	.05 MGD
2003	.05 MGD
2004	.06 MGD
2005	.14 MGD
2006	.15 MGD
2007	.15 MGD
2008	.16 MGD
2009	.17 MGD
2010	.22 MGD
2011	.23 MGD
2012	.24 MGD
2013	.25 MGD
2014	.25 MGD
2015	.26 MGD
2016	.27 MGD
2017	.27 MGD

2. Twelve (12) months from the date of this Agreement, and at the end of each twelve-month period thereafter, during the terms of this Agreement, the minimum rate may be increased or decreased on the same percentage increase or decrease in the cost to the City of producing and distributing water within the City. This computation shall exclude capital improvements, if any, to be made to the City's water system. Annually, on request, the City shall furnish to WSC a sworn statement with supporting documents setting forth the cost of producing and distributing one thousand (1,000) gallons of water in the City in accordance with generally accepted standards for the previous twelve-month period. Notwithstanding any such calculation, the price under this Agreement will never exceed by more than five cents (\$.05) the price paid to the City by any other wholesale purchaser of water.

3. In the event any sales or use taxes, or taxes or user fee of any similar nature are imposed on gathering, impounding, taking, sale, use, or consumption of the water received by WSC from City, the amount of the tax or user fee allocable to WSC shall be borne by WSC. Whenever City shall be required to pay, collect, or remit any tax or user fee on water received by WSC, then the tax or user fee will be added to the charges otherwise payable to City under this Agreement, and WSC shall promptly pay or reimburse City for the tax or user fee.

4. If a court, the Texas Natural Resource Conservation Commission or its successors, or any federal or state regulatory authority finds that City rates or policies for delivering water to WSC under this Agreement are unreasonable or otherwise unenforceable, any party hereto has the option to terminate this Agreement without liability to the others.

ARTICLE IV

POINT OF DELIVERY

The Point of Delivery for water delivered and taken under this Agreement is at the distribution line of the Midlothian water system on the east side of FM663 at the intersection of FM 663 and Roundabout Road.

ARTICLE V

TITLE TO AND RESPONSIBILITY FOR WATER

1. Title to, possession and control of the water shall remain in the City to the Point of Delivery, as that term is defined herein, where title to, possession and control shall pass to WSC.

2. WSC will install an "airgap" separation at WSC's facilities. There shall be no connections or taps by WSC from the Point of Delivery to the "airgap."

ARTICLE VI

METERING FACILITIES

1. City shall furnish, install, operate and maintain at its own expense at the Point of Delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard types for properly measuring and recording the quantity of water taken by WSC.

2. The metering equipment shall be of such type, size and design as shall be satisfactory to and approved by WSC and shall be located near the Point of Delivery at a location to be approved by City and WSC.

3. The properly authorized officers, agents and representatives of City shall at all times have free access to the metering equipment and all other facilities herein provided for the purpose of shutting off water, for the failure to pay the water rates, or for other violations of this Agreement as provided herein, and for the purpose of reading the registration of said meters and to examine, shut off and test the same to ascertain whether or not they are in good condition and repair and to make such repairs upon same as may be necessary, the expense of any and all necessary repairs to be borne by City.

4. City shall test such metering equipment for accuracy upon request by WSC, but not more frequently than once in any twelve-month period. In the event the percentage of accuracy of such metering equipment is found to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of water taken hereunder. If, however,

upon any test the percentage of the accuracy tolerance; such tolerance is found to be in excess of two percent (2%), then such meter shall be adjusted at once to register correctly and accurately, and the amount paid by WSC to City for the three-month period immediately preceding such test shall be adjusted in accordance with the percentage of inaccuracies found by such test.

5. In the event such metering equipment is taken out of service or out of repair and the amount of water taken cannot be ascertained or computed by the reading thereof, water taken during this period shall be estimated and agreed upon by both City and WSC.

ARTICLE VII

INITIAL DELIVERY

Commencement of the obligations to deliver and take water under the terms of this Agreement, shall occur on the earlier of (i) thirty (30) days after notice by WSC to City of its intention to accept water or (ii) August 30, 1997 (unless construction of WSC's facilities necessary to receive water hereunder is delayed by some act or omission of the City, whereupon commencement shall be delayed until such construction is complete).

ARTICLE VIII

DEFAULT

In the event any party hereto breaches any obligation hereunder and fails to cure within twenty (20) days of written notice of such breach, the other may (i) enforce this Agreement by specific performance, (ii) sue for damages (excluding consequential and incidental damages), or (iii) terminate this Agreement by written notice of such election.

ARTICLE IX

WATER QUALITY

City, at the Point of Delivery, does warrant the suitability, quality, purity and palatability of the water to be taken under the terms hereof and that said water shall be treated according to the requirements of all state and federal laws and regulations. City shall be solely responsible for any breach of this warranty and shall indemnify, defend and hold harmless from any and all claims for damages, loss of life, injury or illness to any person or persons or for damages to property arising from any such breach of warranty, including, without limitation, the attorneys fees and litigation costs, if any, of WSC.

ARTICLE X

PRIORITY

1. In the event City finds the necessity to reduce water supply to its own users, the same pro rata delivery will be effected to WSC. In the event of a reduction of delivery of water, City agrees to give WSC not less than ten (10) days notice of such reduction and the terms of such reduction.

2. WSC shall comply with City's water rationing plans and ordinances and require its retail customers to comply with City's water rationing plans to the extent necessary to ration the water delivered by City to WSC under this Agreement. City's obligations under this Agreement shall be subject to water rationing plans and drought contingency plans required by federal or state regulatory authority with power to require or approve such plans.

ARTICLE XI

FORCE MAJEURE

In the event either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than the obligation to make payments of amounts accrued and due hereunder at the time thereof, it is agreed that upon such party's giving notice in full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the cause relied upon, then the obligations of the party giving such notice, so far as they are affected by such cause, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch. The term "force majeure," as employed herein, shall mean interference not reasonably within the control of the party claiming force majeure.

ARTICLE XII

TERM

The term of this Agreement shall commence upon the initial delivery of water hereunder and shall extend for an initial term of twenty (20) years with an option of WSC to extend for an additional twenty (20) years under the same terms and conditions.

During the term of this Agreement, on request of either party to this Agreement, a meeting will be called to discuss any problems that may exist concerning this Agreement.

ARTICLE XIII

ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their successors, but the same shall not be otherwise assignable in whole or in part by either party without first obtaining the written consent of the other, except by WSC to a Special Utility District, if duly created according to law to provide the service being provided by WSC.

ARTICLE XIV

APPLICABLE LAW

The Constitution and the laws of the State of Texas and the decisions of its courts shall govern with respect to any question or controversy which may arise hereunder. Venue is fixed by agreement of the parties in Ellis County, Texas.

ARTICLE XV

NOTICES

Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by any party to the other party upon either of the following:

1. Three days after the date of the mailing thereof, as shown by a post office receipt, if mailed to the party hereto by registered or certified mail at the address specified below each party's signature for such other party; or

2. The date of the receipt thereof by such other party if not so mailed registered or certified mail.

ARTICLE XVI

MISCELLANEOUS

1. All headings of the Articles and particular sections of this Agreement have been inserted for convenience and reference only and are not to be considered as part of the Agreement, and in no way shall they affect the interpretation of any provision of this Agreement.

2. A waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of default of the other which may thereafter occur.

3. In case any one or more of the Articles, sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other Articles, sections, provisions, clauses or words of this Agreement, and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, section, provision, clause or word had not been included herein.

ARTICLE XVII

BILLING PROCEDURE

1. WSC shall pay to the City, within thirty (30) days of receipt of a bill from the City, for the water delivered to WSC hereunder (or WSC's minimum payment obligation, if greater).

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals
on this 10th day of December, 1996.

ATTEST:

[Signature]

THE CITY OF MIDLOTHIAN

By: [Signature]

Its: _____
235 North 8th Street
Midlothian, Texas 76065

ATTEST:

[Signature]

MIDLOTHIAN WATER DISTRICT

By: [Signature]

Its: _____
235 North 8th Street
Midlothian, Texas 76065

ATTEST:

[Signature]

MOUNTAIN PEAK WATER SUPPLY CORPORATION

By: [Signature]

Its: President
5761 Waterworks Road
Midlothian, Texas 76065