



BRADLEY ARANT  
BOULT CUMMINGS  
LLP

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T.R.A. DOCKET ROOM

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January 14, 2013

Sharla Dillon  
Dockets and Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

RE: *12-00046*  
~~12-00046~~


Dear Sharla:

Please accept for filing the attached management contract between Utility Consultants of TN, Inc. and Berry's Chapel Utility, Inc.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:

  
Henry Walker

HW/mkc

Enclosure

cc: Shiva Bozarth  
Ryan McGehee

## **MANAGEMENT CONSULTANT AGREEMENT**

This Management Consultant Agreement is entered into this 1st day of January, 2013, by and between Utility Consultants of TN, Inc., a Tennessee corporation (the "Consultant"), and Berry's Chapel Utility, Inc. (the "Utility").

### **RECITALS**

Whereas, Tyler Ring and Scott Davis are employees of Consultant, have been responsible for managing the day-to-day operations of Utility for several years as President and General Management of the Utility and of Lynwood Utility Corporation before its merger into Utility.

Whereas, the Utility has become a Tennessee nonprofit corporation with members which shall elect a new board of directors and new officers upon the initial meeting of the members;

Whereas, the Tennessee Regulatory Authority ("TRA") has requested that the Utility enter into a three year management consultant agreement to continue the facility management, managerial and accounting services to ensure the long term stability of the Utility's operations;

Whereas, the Utility desires to continue to use the services of Tyler Ring and Scott Davis through Consultant in the management of the Utility because of their knowledge and experience in the operation of the Utility's sewer treatment and collection system; and

Whereas, Tyler Ring and Scott Davis have formed or will form Consultant as a management consulting company to provide consulting services, including consulting services for sewer utilities.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Management Consulting Services. Utility agrees to hire Consultant as a management consultant to provide the advisory, management and consulting services described in Sections 2 and 3 of this Agreement.

2. Management of Day-to-Day Operations (the "Services").

(a) During the term of this Agreement, Consultant agrees to provide management and consulting services to the Utility to assist it in managing the day-to-day operations of the Utility's sewer treatment and collection system. These services will initially be provided by Tyler Ring and Scott Davis as employees of Consultant.

(b) The Consultant will manage the following tasks for Utility's sewer system:

- (1) creating, monitoring and maintaining the Utility's financial budgets and reviewing the Utility's financial statements;
- (2) conducting all inventory and ordering all supplies needed for the sewer system;
- (3) performing all estimating and negotiations for repairs, maintenance and improvements for the Utility's laboratory, treatment plant and collection system;
- (4) tracking and maintaining all data analysis for effective decision making for the Utility's system;
- (5) overseeing the performance and recording of daily lab analysis for effective permit parameter management;
- (6) overseeing the creation, monitoring and submission of all monthly operating reports and discharge monitoring reports; and
- (7) performing all training of new employees and independent contractors used in the Utility's day-to-day operations.

(c) The Consultant shall recommend the hiring and retention of employees and independent contractors to the Utility's board of directors to perform the following functions for the Utility and, the Consultant shall oversee and manage the work of these employees and independent contractors for the Board:

- (1) certified operators as necessary to operate the Utility's sewer treatment and collection system and to meet the requirements of the Tennessee Department of Environment and Conservation (TDEC) for the operation of the Utility's sewer treatment and collection system;
- (2) proper maintenance of the Utility's sewer treatment plant and collection system;
- (3) customer service for the Utility's customers;
- (4) construction of Utility infrastructure;
- (5) billing and collection;
- (6) bookkeeping and accounting services;
- (7) engineering services;

- (8) legal services;
- (9) any other services the Consultant deems appropriate for the day-to-day operation of the Utility's sewer system

(d) The Utility's board of directors shall hire the Utility's employees and independent contractors taking into consideration the recommendations of the Consultant. The Utility's board of directors shall be responsible for establishing the terms and conditions of employment and evaluating the job performance of the Utility's employees taking into account the reports and recommendations of the Consultant on each employee's work. The board of directors shall be responsible for modifying, changing or terminating the Utility's agreements with independent contractors taking into account the reports and recommendations of the Consultant on the services being provided. While the Utility's board of directors will consider the Consultant's reports and recommendations, the Utility's board of directors is not required to follow the Consultant's recommendations and will exercise its own independent judgment in making decisions for the Utility on the matters set forth in this Section.

(e) The Consultant shall not be responsible for the means, manner or methods by which the employees and independent contractors perform the work for which they are hired. The independent contractors hired by the Utility will be responsible for performing the work and services they provide and shall be responsible for meeting their contractual obligations with the Utility.

(f) The Consultant shall prepare for and attend four meetings of the Utility's board of directors a year.

3. Additional Services. Upon request the Consultant will provide the following services in addition to the Services:

(a) work to obtain and or renew any permits for the Utility's operations including the Utility's NPDES permit;

(b) work in connection with any proceeding before the TRA including rate cases, regulatory compliance proceedings, enforcement proceedings and any other regulatory proceeding;

(c) work in connection with any proceeding before the TDEC or any boards working under TDEC's purview;

(d) work in connection with discussions or negotiations with any other environmental or utility organizations or administrative agency proceedings or court cases;

(e) work in connection with any capital improvement project in excess of \$10,000;  
and

(f) work when emergencies in the operation of the Utility's sewer treatment and collection system when the Utility's employees or independent contractors are unable or unwilling to take the necessary steps to fully address an emergency.

4. Limits on Purchases and Contracts. Consultant is hereby authorized to make purchases and enter into contracts of \$10,000 or less without the board of directors' approval. The Utility shall authorize one of its Board members or a District employee to sign checks and to authorize payments for the sewer system.

5. Compensation.

(a) In consideration for performance of the Services, the Utility agrees to pay the Consultant a monthly fee of \$4,500.00.

(b) In consideration for its performance of the Additional Services set forth in Section 3, the Utility agrees to pay the Consultant hourly rates for all time worked as follows:

Tyler Ring	\$75.00 per hour
Scott Davis	\$45.00 per hour.

In the alternative, the Utility and the Consultant may agree upon a flat rate fee for performing any of the Additional Services. Unless the parties agree upon a flat rate fee for performing an Additional Service, the hourly rates set forth in this subsection 5(b) will be paid to the Consultant for the Additional Services.

(c) Utility agrees to reimburse the Consultant's employees for the use of personal vehicles performing the Services and Additional Services at the rate approved by the Internal Revenue Service as well as the reimbursement of any other out-of-pocket expenses.

(d) On the anniversary date of the effective date of this Agreement, the flat monthly rate set forth in subsection 5(a) and the hourly rates set forth in subsection 5(b), shall be increased by a percentage equal to the percentage of increase of the Consumer Price Index for All Urban Consumers (US), not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics during the preceding twelve (12) month period.

(e) Utility shall reimburse Consultant for its administrative fees and expenses of operation, to include but not limited to, costs of incorporation, annual filing fees, preparation of organizational documents, preparation of tax returns, licenses, franchise and excise fees and reasonable attorneys fees incurred therefor.

6. Billing for Services. The Consultant shall provide the Utility with an invoice by the 5<sup>th</sup> day of each month for any flat monthly fee for services set forth in Section 2 for that month and for charges for Additional Services performed under Section 3, including any mileage or other expense reimbursement, for the previous month. The Utility shall pay the Consultant by the 15<sup>th</sup> day of the month.

## 7. Indemnity, Liability and Insurance.

(a) Utility agrees to defend, indemnify and hold harmless the Consultant, its officers, directors, members and employees, from and against any liability or damage for property damage or bodily injury, including death, which may arise from all causes of any kind, other than the Consultant's willful misconduct or the Consultant's default under this Agreement, including the reimbursement of the reasonable attorney's fees and litigation expenses the Consultant incurs to defend against any such claims.

(b) The Utility shall be liable for any fines or civil penalties imposed by any regulatory or enforcement agencies for violations by the Utility's sewer treatment and collection system of the rules and regulations of TDEC, any federal agency or local government agency or of Tennessee law, federal law or local law. The Utility shall be liable for those fines or civil penalties imposed by any federal, state or local government regulatory or enforcement agency related to the Utility's provision of sewer service or related to any of the Utility's property that are not a result of Consultant's willful misconduct. The Utility shall defend, indemnify and hold harmless the Consultant from the payment of any such fines and/or civil penalties, including the reimbursement of the reasonable attorney's fees and litigation expenses the Consultant incurs to defend against any such claims.

(c) The Consultant shall not be liable to the Utility for any indirect, incidental, aggravated, exemplary, punitive or consequential damages incurred the Utility, whether brought on an action for breach of contract, breach of warranty, tort, strict liability, or otherwise and irrespective of whether caused or allegedly caused by the Consultant's negligence or willful misconduct and none shall be awarded by any tribunal against the Consultant.

(d) The obligation to defend, indemnify and hold harmless the Consultant in this Section are intended to survive the termination, cancellation, completion or expiration of this Agreement shall continue as valid and enforceable obligations of the parties, notwithstanding any such termination, cancellation, completion or expiration.

(e) The Utility shall include Consultant's employees in its workers' compensation and employer's liability insurance policy and pay any premiums which such coverage may require.

(f) The Utility shall provide for coverage for Consultant and its directors and officers under the Utility's directors and officers insurance policy. In the event the Utility cannot include Consultant and its directors and officers in the Utility's directors and officers insurance policy, the Utility agrees to pay the premiums for Consultant and its directors and officers to obtain similar coverage.

(g) The Utility shall continue to maintain and keep in force all other insurance coverage for the Utility as is being provided on the date of this Agreement.

## 8 Term, Termination and Default

(a) The initial term of this Agreement shall be three (3) years commencing on the effective date of this Agreement.

(b) Utility may terminate this Agreement for a material breach of or default under the Agreement by the Consultant but only after giving the Consultant written notice of breach and allowing the Consultant sixty (60) calendar days to cure or commence taking reasonable steps to cure the breach.

(c) In the event of a breach by the Utility of non-payment of the Consultant's invoices, the Consultant may terminate this Agreement immediately.

(d) In the event the Utility refuses to follow any recommendation or course of action of the Consultant in the operation of the sewer treatment and collection system which the Consultant, in its sole discretion, believes will violate or will lead to the violation by the Utility, of the Utility's NPDES permit, any TDEC or any other federal, state or local administrative agency rules and regulations or federal, state or local law, the Consultant may terminate this Agreement immediately upon giving notice to the Utility of such violation or any potential violation.

(e) Consultant may terminate this Agreement, with or without cause, at its sole discretion, upon giving Utility thirty (30) days prior written notice of such termination.

9. Transition of Management To Member Elected Board. The Consultant agrees to assist the Utility's current board of directors to transition its board responsibilities to a member elected board during 2013.

10. Permissible Activities. Nothing herein shall in any way preclude the Consultant or its officers, employees, agents, representatives or members from engaging in any business activities or from performing services for its or their own account or for the account of others.

11. Relationship of Consultant and Utility. The parties agree and acknowledge that the relationship of the Consultant to the Utility established by this Agreement is that of independent contractor.

#### 12. General Provisions.

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee is located without giving effect to the conflict of laws rules or other rules that might render such law inapplicable or unavailable. Any legal proceeding to enforce this Agreement shall be filed in a court of competent jurisdiction in Williamson County, Tennessee.

(b) Neither party shall assign this Agreement without the prior written consent of the other party.

(c) This Agreement is the entire Agreement between the Parties and supersedes all other agreements, whether written or verbal, between the Parties on the subject matter of this Agreement. This Agreement may not be modified or amended except by written instrument signed by authorized representatives of both Parties.

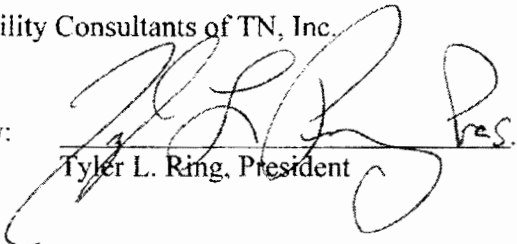
(d) Any waiver by either Party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of any subsequent breach of the same provision or condition.

(e) If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

WHEREFORE, this Agreement has been entered into the day and year first above written.

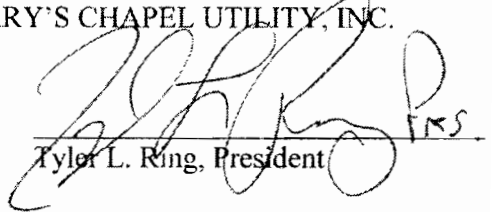
Utility Consultants of TN, Inc.

By:

  
Tyler L. Ring, President

BERRY'S CHAPEL UTILITY, INC.

By:

  
Tyler L. Ring, President

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