

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (hereafter the “Agreement”) is made and entered into effective as of the 28th day of January, 2014 by and between Durango Mountain Utilities, LLC (“DMU”) and DSC/Purgatory, LLC, d/b/a Durango Mountain Resort (“DMR”).

RECITALS

A. DMU provides propane utility services and provides communications services (which include cable television, high speed internet, and voice over internet communication (“VoIP”)) to its customers. DMU’s propane division is a public utility regulated by the Colorado Public Utilities Commission (the “Commission”). DMU’s communication services division is not regulated.

B. DMU is a subsidiary of DMR; and both parties desire that business conducted between the entities is transparent and in the public interest.

C. Decision R13-0926 of the Administrative Law Judge of the Commission, at Ordering paragraph 9, required that DMU “enter into a written contract, written memorandum of understanding, or other formal written agreement with DSC/Purgatory, LLC...that meets [listed] requirements” enumerated therein.

D. DMR has historically provided management services to DMU similar to those described in this Agreement, but without a formal written agreement. DMU has requested that DMR enter into such a formal written agreement with DMU regarding the governance and identification of the manner in which DMU conducts business with, and will engage in transactions with, DMR for management services.

E. DMU desires to contract with DMR and DMR desires to accept such contract to manage, maintain and operate DMU. DMU and DMR desire to set forth in writing the terms of such services in this contract.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DMU and DMR agree as follows:

1. EXCLUSIVE CONTRACT AND TERMS.

A. This Agreement defines the manner and scope of services pursuant to which DMU will conduct business with, and will engage in transactions with, DMR, as requested to fulfill management and general business needs of the utility described in Section 2, below.

B. Subject to the renewals provided for herein, DMU shall utilize the exclusive services of DMR for the purposes of managing DMU commencing as of the effective date of this Agreement and terminating after five years (the “Initial Term”). The provisions of this

Agreement shall be automatically extended for two additional periods of five (5) years each (individually a “Renewal Term”) upon the terms and conditions set forth in this Agreement.

C. This contract shall allow, but not require, DMU to utilize DMR’s services. As a result, this contract can be amended at any time by mutual agreement of the parties, to address changes in the scope and degree of the services to be provided.

2. SCOPE OF SERVICES TO BE PROVIDED BY DMR.

During the Initial Term and any Renewal Term of this Agreement, DMR shall perform or cause to be performed DMU’s undertakings, duties, and responsibilities with respect to DMU’s operations, as set forth generally below and detailed in the income statement and worksheet attached as **EXHIBIT A**, which Exhibit is incorporated herein by reference.

A. Direct Labor:

- i. President: DMR shall employ a part-time officer to provide strategic management (planning, regulatory, marketing, projects, finance, and growth) and operational oversight including budgeting, billing, customer service, technology platforms, vendor negotiations, etc.
- ii. General Manager: DMR shall employ and train a full time General Manager to lead all day to day operations and business of the utility.
- iii. Field Technician: DMR shall employ and train one or more technicians with the skills necessary to safely and reliably operate DMU’s infrastructure and assist in customer service as DMU determines is warranted.
- iv. Operations Support: DMR shall employ and train one or more officers or other personnel to provide management of operations and support for DMU’s maintenance, testing and regulatory compliance obligations.
- v. Administrative Services: DMR shall employ and train one or more personnel to perform administrative services, including communications with customers and on-call emergency duties.

B. Labor and Overhead Allocations:

- i. Corporate resources: DMR shall provide property, liability, workers compensation, and health insurance, 401K and other employee benefits, facility resources (including all taxes, utilities, and equipment, and any associated office supplies and meeting management. DMR will also provide DMU with access to DMR senior management as needed for consultation and assistance.
- ii. Accounting and Finance: DMR shall perform all accounting,

budgeting, billing, collections, and financial reporting and will provide DMU access to its accounting and finance personnel as requested. *See*, Section 3 of this Agreement. DMR shall also provide third party audit services to DMU.

- iii. Information Technology: DMR shall provide all information technology services for DMU including, but not limited to, computing services and servers, including software, copy machines, phone system and data storage.
 - iv. Human Resources: DMR shall perform all human resource management for DMU personnel, including managing benefits, taxes, health care, retirement and, without limitation, all payroll and other human resource requirements of DMU. *See*, Section 3 of this Agreement.
 - v. Risk Management/Insurance: DMR shall include DMU within its risk management and insurance service pool and shall procure and maintain sufficient insurance to meet DMU's insurance obligations. DMR shall further provide assistance to DMU in processing claims.
 - vi. Engineering/Maintenance: DMR shall provide engineering, operations and maintenance services related to existing and future DMU infrastructure. DMR shall provide maintenance services which benefit DMU operations, including but not limited to: snow removal, easement maintenance, and road maintenance.
- C. Direct Expenses and Legal Fees: DMU will be responsible for its own direct operating expenses other than those contemplated in this Agreement, including legal fees incurred.
- D. Nothing in this Agreement shall prevent DMU from direct acquisition or lease of any property it deems necessary to fulfill its obligations to customers outside of this Agreement.

3. **DMR RESPONSIBILITIES.**

A. In connection with the scope of services described above and set forth in EXHIBIT A, during the Initial Term and any Renewal Term of this Agreement, DMR's duties are further described by the following specific undertakings, duties, and responsibilities:

- i. Employees/Labor: DMR shall hire, supervise, and discharge all of its own employees required for the performance of DMR's duties under this Agreement. All such employees shall be employees of DMR and not DMU, and DMR shall be responsible for the performance of all duties and responsibilities of an employer with respect to such employee, including FICA and worker's compensation insurance.

ii. **Contractors:** On behalf of DMU, DMR shall assist in retaining necessary third party laborers and contractors to accomplish the management and maintenance and operational responsibilities of DMU, at DMU's expense, which work shall be billed directly to DMU only if it is over and above amounts provided for in EXHIBIT A. DMR shall obtain approval from DMU if expenses necessary to implement this Agreement may exceed the amounts budgeted for in Exhibit A prior to incurring such expenses.

iii. **Accounting:** DMR shall maintain such accounts in accordance with this Agreement and within the DMU-approved budgets set forth by its revenue requirements approved by the Commission, including reserve accounts for repair and replacement of such items as need repair or replacement due to damage, deterioration or obsolescence. DMR shall make an accounting to DMU of such accounts and of all receipts and expenditures on a monthly basis, shall prepare monthly financial statements, and shall prepare and submit annual budgets for the approval of DMU. Working in conjunction with an accountant approved by DMU, DMR shall prepare tax forms and all forms, reports, and returns required by law to be filed by DMU. All records, books, and accounts of DMU shall be the property of DMU and shall be subject to inspection by DMU at all reasonable hours, and upon reasonable notice.

iv. **Deposits:** DMR shall be responsible for depositing all receipts from whatever source in a financial institution or institutions insured by an agency of the federal government in an account or accounts not co-mingled with any other party or affiliate of DMR, established and maintained in a manner to indicate the custodial nature thereof, with authority to disburse any liabilities or obligations to the approved budget or valid resolution of DMU for the payment of the management fee set forth in this Agreement.

v. **Disbursements:** From the funds collected and deposited in DMU account, DMR shall cause to be disbursed regularly and punctually all amounts specified in any approved operating and capital budget, and all sums otherwise due and payable as operating expenses authorized to be incurred under the terms of this Agreement, including DMR's compensation. DMR will have authorization to spend up to 5% in excess of these amounts for contingency as necessary.

vi. **Financing:** When necessary, DMR shall assist DMU in obtaining financing for its infrastructure improvements or expansions, and assist in negotiating or procuring equity or debt financing on behalf of DMU.

B. DMU hereby delegates to DMR all power and authority necessary in order for DMR to perform its duties under this Agreement. DMR shall at all times be deemed to be an independent contractor and not an employee or servant of DMU. Obligations, costs, or expenses incurred by DMR on behalf of DMU in accordance with this Agreement shall be paid by DMU under the terms of Section 5, below.

C. DMR shall exercise reasonable care in performing its duties and obligations arising out of this Agreement.

4. **RECOGNITION OF COMMISSION ROLE AND AUTHORITY**

A. DMR acknowledges and agrees that Commission approval of this Agreement is a condition precedent to DMU's acceptance of the same.

B. DMR acknowledges and agrees that DMU's propane utility operations exist as a Colorado public utility with certificated territory granted by, and regulated by, the Commission. As such, DMR understands that services provided to DMU under the terms of this Agreement may be audited, and DMU may be obligated to produce this Agreement, as well as other documents or communications not protected, to the Commission to demonstrate the prudence of the services provided by DMR and that DMU's actions are in the public interest such that DMU's propane operations may recover the costs incurred under this Agreement.

C. DMR understands that the Commission may find and attach certain terms and conditions to DMU's operations through its Advice Letters, applications, rules and regulations, and other means. DMU has an obligation to meet the requirements of the Commission's rules and regulations, as they may exist or be amended or modified.

D. DMR acknowledges and understands that DMR enjoys no special rights as a DMU ratepayer by virtue of this Agreement, and that DMU must interact with DMR, as a customer, pursuant to its Commission approved rates and tariffs.

5. FEES.

A. During the Initial Term hereof, DMR shall be paid an annual fixed fee of \$343,000.00 for the direct labor provided and labor/overhead allocated resources assigned as set forth on the Scope of Services attached as Exhibit A, payable in equal monthly installments of \$28,583.33 on the first day of each calendar month, beginning when this Agreement and the associated rates and tariffs are approved by the Commission and are effective.

B. The annual fixed fee under Section A, above, shall increase at a percentage rate determined by the CPI Index for Denver-Boulder-Greeley, Colorado to accommodate wage, benefits, and tax increases in the costs of service to DMR.

C. If DMR determines that a Material Change to its costs or services requested under this Agreement has occurred during the term this Agreement is in effect, then it shall provide written notice to DMU setting forth: i) a basis for that determination, and ii) cost impact for that Material Change. A Material Change is one that is defined as: i) a service or cost increase not contemplated by this Agreement or by Exhibit A thereto, and ii) which raises cost to DMR above contingencies and budget flexibility provided for in Exhibit A. In that instance that DMU agrees with the Material Change, Exhibit A shall be amended to reflect that Material Change.

D. DMR's fees are provided based on cost and do not result in a rate of return to DMR.

E. Additional Transactions: The expenses and duties of DMR, as described in Sections 2 and 3 and which costs are detailed in EXHIBIT A, represent fixed costs. To the extent unanticipated expenses or one-time expenses are required by DMU from DMR, such

expenses are not contemplated by the fees set forth in this section. As a result, DMU shall notify DMR if any expenses not contemplated in the annual fixed fee are to be incurred. In that event, barring emergency situations, DMR shall provide an estimate of such expense to DMU, and payment for such expense shall be noted through separate invoice and accounting to DMU.

6. **ACCESS.** DMU does hereby grant to DMR a reasonable right of access to the DMU Facilities for the purpose of enabling DMR to carry out its duties and responsibilities with respect to this Agreement.

7. **DEFAULT AND REMEDIES.**

A. DMU may terminate this Agreement upon written notice to DMR if DMR has breached this Agreement, and such breach is not cured within fifteen (15) days after receipt of written notice thereof specifying with reasonable particularity the nature of the breach and the curative action required (the "Default Notice") or such long a time as may be necessary to cure such breach so long as such curative action is diligently pursued within the fifteen (15) day notice period. DMU may also elect to seek specific performance of this Agreement.

B. If DMU fails to pay DMR the fee set forth in Paragraph 3 of this Agreement or fails to reimburse DMR for any expenses incurred by DMR for the account of DMU within ten (10) business days following the date on which payment is due or reimbursement is requested, or if DMU defaults under any other obligations contained in this Agreement, DMR may exercise any one or more of the following remedies: (i) Terminate this Agreement upon thirty (30) business days' prior written notice to DMU; (ii) seek specific performance of this Agreement; or (iii) perform on behalf of DMU and be entitled to interest at the annual rate of Eighteen Percent (18%) on all expenditures from the date of payment until repaid.

C. DMR may terminate this Agreement upon written notice to DMU if DMU has breached this Agreement, and such breach is not cured within fifteen (15) days after receipt of written notice thereof specifying with reasonable particularity the nature of the breach and the curative action required (the "Default Notice") or such long a time as may be necessary to cure such breach so long as such curative action is diligently pursued within the fifteen (15) day notice period. DMR may also elect to seek specific performance of this Agreement.

D. Upon the expiration or earlier termination of this Agreement, DMR shall, within ten (10) days after such expiration or termination, deliver to DMU: (i) All books and records of DMU; (ii) An itemized statement of the amount due from DMU as of the date of the expiration or termination of this Agreement; and (iii) All bank records with respect to bank accounts of DMU on which DMR was a signatory or over which DMR otherwise had possession or control. DMR, at its expense, shall have the right to duplicate any records provided to DMU.

8. **LIABILITY AND RESPONSIBILITY OF DMR.** DMR is not responsible for and does not warrant for the work of any independent contractor or laborer. DMR shall not be liable under or by reason of this Agreement either directly or indirectly for any accident, injury, breakage or damage to any machinery or property, unless such damage is directly attributable to the gross negligence of DMR or of any of its employees. DMR shall not be held responsible for any loss or damage, detention or delay in

furnishing materials or failure to perform its directed duties herein provided when such is caused by fire, flood, strikes, acts of civil or military authorities, insurrection or riot, or by any other cause which is unavoidable or beyond the control of DMR or of any of its employees, agents or contractors, and not caused by the negligence of DMR or of any of its employees, agents or contractors. In addition, DMR, by this Agreement, does not assume nor contract to replace any streets, sidewalks, water pipes, sewer lines, light poles, underground wiring or any building of any type unless arrangements for such work are agreed upon by DMR and DMU. DMU shall indemnify, defend and hold DMR harmless for and against any claims or causes of action brought against DMR in any way related to this Agreement by third parties, except in cases where DMR is found to be in material breach of this Agreement.

9. **ARBITRATION AND ATTORNEYS' FEES.** Any controversy or claim arising out of or related to this Agreement, or the breach thereof, shall be settled by arbitration pursuant to C.R.S. §13-22-201 et seq., and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. The parties agree that there shall be one arbitrator for any dispute, and in the event the parties cannot agree on an arbitrator, one shall be appointed by the court as set forth in C.R.S. §13-22-205. A demand for arbitration shall be made within the time limits of the applicable statute of limitations that would apply to the filing of a legal or equitable proceeding. The arbitrator shall award reasonable attorney fees and other reasonable costs of arbitration to the prevailing party in such arbitration. In the event that DMU or DMR shall institute a lawsuit proceeding to enforce any rights pursuant to this Agreement, then the prevailing party in such litigation shall receive an award of its reasonable attorney's fees and costs. Further, in the event of any litigation brought by a third party against DMR or DMU, which results in a counterclaim between DMR and DMU that pertains in any way to this Agreement, the prevailing party in such counterclaim shall receive an award of its reasonable attorney's fees and costs.

10. **RESERVED.**

11. **ENTIRE AGREEMENT; AMENDMENT** This Agreement is the entire agreement between the parties covering the management of the Project. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution of this Agreement or in effect between the parties. No change or addition may be made to this Agreement except by a written agreement executed by the parties, and the parties may not waive this requirement.

A. If an amendment to this Agreement is proposed by either party, then no amendment shall proceed before the Standards of Conduct, executed for the benefit of this Agreement, are reinstated and acknowledged appropriately.

12. **BINDING EFFECT.** This Agreement inures to the benefit of and is binding upon the parties hereto, and their respective successors and assigns.

13. **NOTICES.** All notices to be given by either party to the other shall be in writing and shall be served by personal delivery or by depositing such notice in the United States Postal Service, postage prepaid, addressed and directed to the party to receive the same at 327 S. Camino del Rio, Durango, Colorado 81301. Either party may designate a different person or entity or place at which

notices shall subsequently be sent by written notice given pursuant to this section.

14. **RESERVED.**

15. **BENEFIT.** None of the provisions of this Agreement shall be for the benefit of or enforceable by persons not parties hereto.

16. **RELATIONSHIP OF PARTIES AND INDEMNIFICATION.** The parties shall not be deemed partners or joint ventures of the other and the parties agree to indemnify and hold the other harmless from any and all claims, actions or causes of action, arising out of or having to do with, directly or indirectly, the business operations of the other.

17. **RULES OF CONSTRUCTION.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provision. The captions used in this Agreement are for convenience and reference only, and shall not be held to explain, modify, amplify, or aid in the interpretation or construction of any provision of this Agreement. Both parties have had an opportunity to review this Agreement with counsel and to negotiate the terms hereof. Therefore, this Agreement shall not be interpreted for or against any party as a result of which party drafted it.

18. **NO ASSIGNMENT.** Neither party shall assign this Agreement or any portion thereof without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided that at least 30 days' notice of any such assignment and any assignees shall expressly assume the assignor's obligations under this Agreement. Any assignment of this Agreement shall not take effect until the assignee first obtains such approvals as may be required by all applicable regulatory agencies, including but not limited to the Commission.

19. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall constitute the same agreement.

In Witness Whereof, DMR and DMU have executed this Agreement on the date set forth above.

<p>DSC/PURGATORY, LLC D/B/A DURANGO MOUNTAIN RESORT:</p> <hr/> <p>By: <u></u></p> <p>Title: <u>CEO</u></p>	<p>DURANGO MOUNTAIN UTILITIES, LLC:</p> <hr/> <p>By: <u></u></p> <p>Title: <u>President</u></p>
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Exhibit A to the Management Services Agreement

	Budget for Year Ending April 2014			Annual Proforma with Management Services Fee and Regulatory Tariff			Notes
	Comm	Propane	Total	Comm	Propane	Total	
Revenue	558	449	1,007	558	550	1,108	
Percent of total	55%	45%	100%	50%	50%	100%	
Cost of Goods Sold	172	265	437	172	272	444	
Gross Margin	386	184	570	386	278	664	
Direct Labor							% Time
President			30	15	15	30	15%
General manager			54	27	27	54	100%
Administration			10	5	5	10	30%
Operations advisor			20	10	10	20	25%
Field technician			20	0	20	20	50%
Network technicians (3)			72	72	0	72	50%
Taxes and benefits (10%)			21	13	8	21	
Total direct labor			227	142	85	227	
Labor and overhead allocations (see allocations below)							
Corporate overhead			0	37	26	63	A
Accounting			0	15	10	25	B
Information systems			0	4	3	6	
Human resources			0	4	3	7	
Risk management			0	1	1	1	
Engineering			0	6	4	10	
Taxes and benefits (10%)			0	2	1	3	
Total labor and overhead allocations			0	68	48	117	
DMR management services fee				210	133	343	

Durango Mountain Utilities
Annual Proforma Income Statement
Exhibit A to the Management Services Agreement

	Budget for Year Ending April 2014			Annual Proforma with Management Services Fee and Regulatory Tariff			Notes
	Comm	Propane	Total	Comm	Propane	Total	
Direct expense							
Rental & leases			80	80	0	80	
Contract services			48	33	15	48	
Parts & maintenance			15	5	10	15	
Electrical			5	3	2	5	
Other			4	2	2	4	
Small tools			3	0	3	3	
Legal - annual regulatory			0	0	10	10	
Credit card fees			2	1	1	2	
Postage & freight			2	1	1	2	
Telephone			2	1	1	2	
Insurance			2	0	2	2	
Vehicle			1	1	0	1	
Total direct expenses			164	127	48	174	
Total expenses			391	337	181	517	
EBITDA			179	49	98	147	
Percent of revenue			18%	9%	18%	13%	
Other							
Repair and maintenance - contingency				5	5	10	
Debt service			72	50	23	73	C
Depreciation - assets			75	46	29	75	D
Depreciation - infrastructure			22	7	15	22	E
Legal fees - CPCN application			0		5	5	F
Legal fees - initial tariff/rate case			0		10	10	F
Total other			169	108	87	195	
Net income (loss)			10	(59)	11	(48)	G
Percent of revenue			1%	(10%)	2%	(4%)	

Durango Mountain Utilities
Annual Proforma Income Statement
Exhibit A to the Management Services Agreement

	Budget for Year Ending April 2014			Annual Proforma with Management Services Fee and Regulatory Tariff			Notes
	Comm	Propane	Total	Comm	Propane	Total	
Allocation percentages							
Audited revenue - year ending April 2013							
Consolidated				22,199	22,199	22,199	
DMU				519	448	967	
Revenue as a percent of total							
				2.34%	2.02%	4.36%	
Full time equivalents							
President				0.08	0.08	0.16	
General manager				0.50	0.50	1.00	
Operations advisor				0.12	0.12	0.24	
Administration				0.15	0.15	0.30	
Field technician				0.00	0.50	0.50	
Network technician				1.50	0.00	1.50	
Total							
				2.4	1.4	3.7	
Resort year round FTE							
				81.0	81.0	81.0	
FTE as a percent of total							
				2.90%	1.67%	4.57%	
Average revenue and FTE allocation percentages							
				2.62%	1.84%	4.46%	
DMR labor and overhead							
Corporate overhead		1,414		37	26	63	A
Accounting							
Labor		314		8	6	14	
Expenses		241		6	4	11	B
Information systems							
Labor		72		2	1	3	
Expenses		68		2	1	3	
Human resources							
Labor		97		3	2	4	
Expenses		70		2	1	3	
Risk management							
Labor		16		0	0	1	
Expenses		17		0	0	1	
Engineering							
Labor		220		6	4	10	
Expenses		10		0	0	0	
Taxes and benefits (10%)				2	1	3	
Total		2,539		68	48	117	

Durango Mountain Utilities
Annual Proforma Income Statement
Exhibit A to the Management Services Agreement

	Budget for Year Ending April 2014			Annual Proforma with Management Services Fee and Regulatory Tariff			Notes
	Comm	Propane	Total	Comm	Propane	Total	
Tariff calculation							
Total expenses, other, and profit					318		
Gallons sold (estimate)					<u>200</u>		
Facility and service charge per gallon					1.59		
Affordability adjustment					(0.20)		
Adjusted facility and service charge per gallon					1.39		
Forecasted commodity cost per gallon					<u>1.36</u>		
Total cost, facility, and service per gallon					2.75		
Gallons sold (estimate)					<u>200</u>		
Annual revenue					550		
Annual cost of sales					<u>272</u>		
Annual gross margin					<u><u>278</u></u>		

Exhibit A to the Management Services Agreement

Budget for Year Ending April 2014			Annual Proforma with Management Services Fee and Regulatory Tariff			Notes
<u>Comm</u>	<u>Propane</u>	<u>Total</u>	<u>Comm</u>	<u>Propane</u>	<u>Total</u>	

Notes

- A Corporate overhead includes insurance (liability, property, health, and workers comp), property taxes, utilities, 401K, rentals, leases, etc.
- B Accounting expenses includes audit/tax fees, contract services (i.e. payroll), office supplies, etc.
- C \$231,000 of the \$750,000 loan (31%) is propane related debt.
- D The non-infrastructure propane assets on the DMU balance sheet (net of depreciation) are \$182,000 as of April 2013. Annual depreciation on these assets approximates \$29,000.
- E Propane infrastructure installed and financed by the developer totals \$512,000, and was dedicated to the DMU effective February 2006. This infrastructure is being depreciated over a 35 year life for purposes of cost assignment. The net book value at April 2013 is \$406,000 406
- F CPCN issuance costs approximate \$50,000 amortized over ten years and CPCN initial tariff/rate case costs are estimated at \$50,000 amortized over 5 years.
- G Return on net invested capital:

Infrastructure and capital assets	587
Less tap fees received inception to date	(179)
Legal fees - CPCN application	50
Average propane inventory	25
Average working capital (est.)	<u>25</u>
 Total net invested capital	 508
Return percentage	<u>10%</u>
 Return	 <u><u>51</u></u>