

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE LOUISVILLE AND)	
JEFFERSON COUNTY METROPOLITAN SEWER)	
DISTRICT FOR APPROVAL TO ACQUIRE THE)	CASE NO.
ASSETS OF WINDING FALLS SEWERAGE)	90-329
SYSTEM)	

O R D E R

On October 26, 1990, the Louisville and Jefferson County Metropolitan Sewer District ("MSD") submitted an application for approval of an agreement to transfer ownership of the Winding Falls wastewater treatment plant ("Winding Falls") to MSD. Winding Falls is listed in Commission records as the S.C.C. Development Company d/b/a Falls Treatment Company; however, it is now wholly owned by Frank and Betty Sue Crawley.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Frank and Betty Sue Crawley own and operate a wastewater treatment plant which serves approximately 284 customers in the Winding Falls Subdivision of Jefferson County, Kentucky, and which is therefore a "utility" as defined by KRS 278.010(3)(f).

2. MSD is a public body corporate and political subdivision created for the purpose of providing adequate sewer and drainage facilities in and around Jefferson County, Kentucky. KRS 76.010.

3. MSD and Frank and Betty Sue Crawley have agreed to the transfer of ownership of Winding Falls and all real property

interest associated therewith to MSD for a total consideration of \$171,800. The Agreement which sets out the terms and conditions of the transfer is attached hereto as the Appendix and incorporated herein by reference.

4. Paragraph 2 of the Appendix provides that the transfer will not formally occur until Exhibits A and B, a Deed and Bill of Sale attached to the Appendix are executed, and that payment by MSD of the consideration will be deferred until MSD obtains the necessary funds. The Appendix further provides that it shall become null and void, unless extended by written amendment executed by the parties, if formal closing does not occur within one year from the date of its execution.

5. Paragraphs 3 and 4 of the Appendix provide that MSD does not expect to obtain the necessary funds to pay the consideration prior to April of 1991, and that Frank and Betty Sue Crawley will continue to operate and maintain the wastewater treatment facility during the interim before formal closing occurs.

6. KRS 278.020 requires Commission approval of the proposed transfer of ownership of Winding Falls.

7. As of June 30, 1989, MSD had total assets of \$436,216,166 and total liabilities of \$42,690,879.

8. MSD has approximately 81 employees licensed as wastewater treatment plant operators.

9. MSD has the financial, managerial, and technical abilities to provide reasonable utility service to the persons currently served by Winding Falls.

10. The Commission will retain jurisdiction over Winding Falls until such time as formal closing occurs.

IT IS THEREFORE ORDERED that:

1. The transfer of ownership of Winding Falls to MSD, per the terms of the Appendix, is hereby approved.

2. MSD shall file an executed copy of the Appendix with the Commission within 21 days of the date of this Order. Should any of the terms and conditions set out therein change before the formal transfer of ownership, the approval granted herein shall be null and void and MSD shall refile for Commission approval of the transfer.

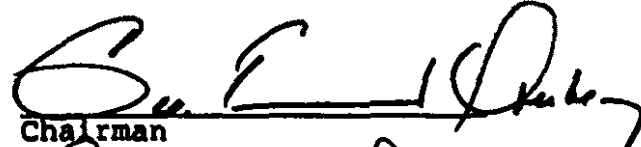
3. Within 10 days of the date of formal closing, which is conditioned in the Appendix upon execution of Exhibits A and B thereto and payment of the consideration, MSD shall file executed and fully completed copies of Exhibits A and B with the Commission.

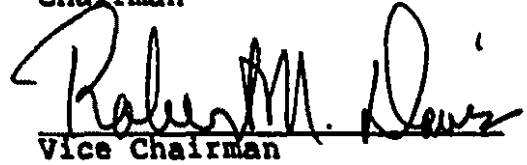
4. If formal closing does not occur before May 1, 1991, MSD shall file a statement with the Commission describing the status of the proposed transfer and the date by which it expects to formally close.

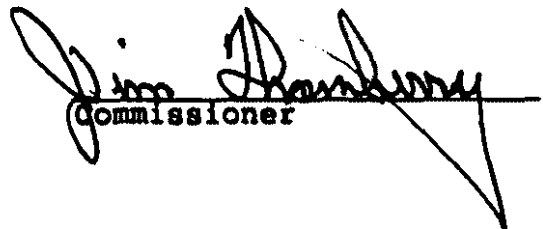
5. Until formal closing occurs, the Commission shall retain jurisdiction over Winding Falls, and Frank and Betty Sue Crawley shall continue to be responsible for complying with all Commission rules and regulations, including those which require the timely filing of any information, notice, or reports.

Done at Frankfort, Kentucky, this 9th day of November, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 90-329 DATED 11/09/90

AGREEMENT

THIS AGREEMENT, made and entered into at Louisville, Kentucky, this _____ day of _____, 1990, by and between FRANK D. CRAWLEY AND BETTY SUE CRAWLEY (hereinafter referred to as "Owner"), and the LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, a public body corporate and political subdivision organized pursuant to Chapter 76 of the Kentucky Revised Statutes (hereinafter referred to as "MSD");

W I T N E S S E T H

WHEREAS, Owner and MSD have negotiated terms of an Agreement whereby MSD will assume operation of the Winding Falls Wastewater Treatment Plant located off Fallsview Road west of I-71 and I-264 interchange in Jefferson County, Kentucky, and will serve the present customers of said Plant and will connect the present customers to MSD's comprehensive collection and treatment system when said system becomes available; and

WHEREAS, Owner wishes to avoid the cost of updating, repairing, and renovating the Winding Falls Wastewater Treatment Plant;

NOW THEREFORE, in consideration of the foregoing premises and in consideration of the mutual undertakings and obligations hereinafter set forth, the parties hereto agree as follows:

1. Owner agrees, pursuant to the Deeds and Bill of Sale attached hereto and marked Exhibits A and B, to transfer and sell to MSD the real property and facilities described therein and associated with the Winding Falls Wastewater Treatment Facility, including the easements, rights-of-way, licenses, privileges, improvements and appurtenances (including sewer mains, lines, manholes, pumping stations, etc., located in public ways or in dedicated public easements) necessary to the operation of the Winding Falls Wastewater Treatment Facility and its attendant system, for a total agreed upon consideration of

ONE HUNDRED SEVENTY-ONE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$171,800.00), being the agreed upon value of said facilities as of August 2, 1990, the date said facilities were inspected by MSD personnel.

2. MSD and the Owner agree that formal closing of this transaction by execution of Exhibits A and B, and the payment by MSD of the consideration described in Section 1 hereinabove, shall be deferred until MSD obtains the funds for said payment through the sale of revenue bonds, by other borrowing, or by any other means available to MSD; however, if formal closing does not occur within one year from the date of this Agreement, this Agreement shall become null and void and Owner and MSD shall have no further obligations under this Agreement unless the initial one-year term of this Agreement is extended by written amendment hereto executed by both parties.

3. MSD agrees to pursue all available options in order to obtain the funds for the aforesaid payment within the initial one-year term of this Agreement and to hold formal closing as soon as possible thereafter; however, MSD does not expect to obtain said funds prior to April 1, 1991.

4. Owner agrees to operate the Winding Falls Wastewater Treatment Facility and to maintain all equipment, buildings and appurtenances at Owner's expense during the interim before formal closing occurs, at which time said Facility must be in as good a condition or better condition than existed on the original MSD inspection date of August 2, 1990, except for normal wear and use. To assure compliance with this provision, Owner agrees to allow MSD personnel access to said Facility to determine if there are any deficiencies, prior to formal closing, which did not exist at the time of MSD's original inspection date. Should any such deficiencies be found by MSD, Owner shall be notified of the specific deficiencies and shall have thirty days before closing in which to correct the deficiencies to MSD's satisfaction. If said deficiencies are not corrected by the Owner within the thirty-day period, closing shall be held, but

the amount of cost estimated by MSD to correct the uncorrected deficiencies shall be withheld from the payment amount described in Section 1 above and be held in escrow by MSD and be used to pay for correcting said uncorrected deficiencies, provided, however, any escrow balance remaining after said deficiencies are corrected by MSD shall be paid to Owner.

5. Owner agrees to transfer the property described in Exhibits A and B free and clear of all encumbrances, except for easements, restrictions, and rights-of-way of record at the office of the clerk of the Jefferson County Court, and free of all hazardous or toxic materials or substances.

6. Owner shall be responsible for and shall pay all claims, obligations or liabilities in existence prior to the date of execution of Exhibits A and B or arising out of events occurring prior to the date of execution of Exhibits A and B, including, but not limited to, any and all taxes assessed or payable, liens, operating debt and expenses, and claims for personal injury or property damage. Real estate taxes shall be prorated as of the date of the closing. The Owner shall defend and indemnify or shall hold MSD harmless from any claims, obligations, or liabilities which arise out of any event, incident, or liability involving injury or damage to the person or property of others occurring prior to the date of execution of Exhibits A and B, including reimbursement of MSD for any attorney fees, court costs, or other expenses incurred by MSD in defense of such claims, obligations, or liabilities. Before Owner shall have any liability under this indemnity paragraph, Owner must receive prompt and reasonable written notice of any claim, obligation or liability for which MSD seeks indemnity as soon as MSD receives notice of the claim, obligation or liability, and Owner must have an opportunity to defend any such claim, obligation or liability. Owner warrants that no litigation is known by Owner to be contemplated or pending with reference to any matters relating to the wastewater treatment facility and its attendant collector system.

7. MSD agrees to indemnify, defend, and hold Owner harmless from any claims, obligations, or liabilities arising from events, incidents, or liabilities occurring after the date of execution of Exhibits A and B, hereto, which claims, obligations, or liabilities are related to MSD's ownership and operation of the wastewater treatment facility and its attendant collector system. Before MSD shall have any liability under this indemnity paragraph, it must receive prompt and reasonable written notice of any claim, obligation, or liability for which the Owner seeks indemnity as soon as Owner receives notice of the claim, obligation, or liability, and MSD must have an opportunity to defend any such claim, obligation or liability.

8. When MSD determines its comprehensive collection and treatment system is available, MSD will install, at MSD's expense, a connection to divert the wastewater away from the Winding Falls Wastewater Treatment Facility and into MSD's sewer system. After said connection, MSD shall then demolish the treatment plant above-grade structures and holding tanks and restore the site to rough grade and deed the plant property back to the Owner or the Owner's designee for the sum of ONE DOLLAR AND NO CENTS (\$1.00), with MSD retaining any easements or rights-of-way it deems necessary for its operations. MSD agrees to remove any hazardous or toxic materials or substances deposited by MSD on the property described in Exhibits A and B.

9. Effective with the first full Louisville Water Company meter-reading period following the day Exhibits A and B are executed, MSD shall charge all customers of the Winding Falls Wastewater Treatment Facility in accordance with its regular schedule of rates, rentals and charges for wastewater service. After execution of Exhibits A and B, MSD shall receive all billing collections and shall pay Owner all collections of billings rendered prior to the aforesaid initial MSD billings.

10. In conjunction with the acquisition by MSD, Owner shall tender to MSD on the date of execution of Exhibits A and B any and all deposits, security deposits, developer deposits, or other funds held by Owner for the benefit of or future use by or credit to customers of the Winding Falls Wastewater Treatment Plant, together with any records or documents related to said funds. MSD shall hold said funds under the same terms for the benefit, use, or credit of the customers. Owner further agrees to tender to MSD one set of keys to the facilities, all records, documents, files, billing lists, customer lists, etc. related to the operation of the Winding Falls Wastewater Treatment Facility on the date of execution of Exhibits A and B. MSD shall takeover operation, possession and responsibility for the Winding Falls Sewage Treatment Plant and facilities at 12:00 midnight following the execution of Exhibits A and B.

11. Owner declares there are no written or oral contracts or other obligations to be assumed by MSD except for the obligation to continue to provide wastewater service to the current customers of the Winding Falls Wastewater Treatment Facility. MSD shall not honor or be responsible for any other agreements entered into by Owner but not identified herein and made a part of this Agreement. Owner agrees that, during the term of this Agreement, Owner shall not enter into additional agreements with respect to services to be provided by or use of the Winding Falls Wastewater Treatment Facility without the written consent of MSD. The intent of this provision is not for MSD to unnecessarily withhold consent of agreements for additional use of the Winding Falls Wastewater Treatment Facility, but to assess the impacts of such agreements entered into during the term of this Agreement with respect to the agreed consideration described in Section 1 above. Owner agrees that MSD shall withhold from its payment to Owner at formal closing \$2.56 for each gallon-per-day of design capacity utilized or to be utilized by agreement with the Owner entered into during the term of this Agreement, with MSD determining

said usage of design capacity by use of standard criteria for the design of wastewater treatment facilities. The last sentence of this paragraph shall not apply to the property specified in paragraph 12 hereafter.

12. MSD agrees to reserve for Owner 7,200 gallons per day of wastewater treatment capacity, but not in excess of the unused design capacity available as of the date of formal closing, for the following properties to be connected at Owner's cost to the Winding Falls Wastewater Treatment Facility, and with the waiver of MSD's Connection Fees and Capacity Charges:

Lots 238 thru 243, Section 4A, Winding Falls Estates

Lots 244 thru 255, Section 4, Winding Falls Estates

When the properties hereinabove described are developed and the individual connections approved by the Louisville and Jefferson County Department of Health for hook-up to the Winding Falls sewerage system are installed, MSD will determine, based on MSD's design criteria, the gallons per day of wastewater treatment capacity to be assigned each connection and shall deduct same from the gallons per day reserved for the OWNER to determine the balance of unused reserved capacity.

Owner agrees this provision shall expire ten years from the date of execution of this Agreement, and any unused reserved capacity as of that date cannot be later used without payment of MSD's regular fees for connections.

13. This Agreement shall be binding upon, and shall inure to the benefit of the executors, heirs, successors and assigns of the parties hereto.

14. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, among the parties.

15. If any section, clause or provision of this Agreement shall be held invalid, such holding of invalidity shall not effect the validity of any

remaining section, clause, paragraph, portion or provision of this Agreement.

16. No part of this Agreement may be altered, modified, or changed in any way except in writing signed by the parties hereto or signed by the duly authorized representative of said parties.

17. The Parties hereto agree that the terms and conditions of the Agreement shall survive and remain in effect after the transfer of the real estate and property of the Winding Falls Wastewater Treatment Facility and the execution of Exhibits A and B.

IN TESTIMONY WHEREOF, witness the signatures of the Parties hereto where appropriate by their proper officers and duly authorized by resolution of their respective governing bodies, the day, month and year first above written.

LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT

BY: _____
GORDON R. GARNER

STATE OF KENTUCKY)
) SS
COUNTY OF JEFFERSON)

I, the undersigned Notary Public, within and for the state and county aforesaid do hereby certify that the foregoing instrument was this day presented to me by Gordon R. Garner, who being by me first duly sworn, did acknowledge and declare that he signed the foregoing instrument as Executive Director of the Louisville and Jefferson County Metropolitan Sewer District, by authority and direction of its Board of Directors, as his free and authorized act and deed.

Witness my hand this _____ day of _____, 1990.

My commission expires: _____.

NOTARY PUBLIC

FRANK D. CRAWLEY and
BETTY SUE CRAWLEY

BY: _____

BY: _____

STATE OF KENTUCKY)
) SS
COUNTY OF JEFFERSON)

I, the undersigned Notary Public, within and for the state and county aforesaid do hereby certify that the foregoing instrument was this day presented to me by Frank D. Crawley and Betty Sue Crawley, who being by me first duly sworn, did acknowledge and declare that they signed the foregoing instrument as their free and authorized act and deed.

Witness my hand this _____ day of _____, 1990.

My commission expires: _____.

NOTARY PUBLIC

DEED

THIS DEED made and entered into this _____ day of _____, 19____, by and between FRANK D. CRAWLEY and BETTY SUE CRAWLEY, Post Office Box 6668, Louisville, Kentucky 40206 (hereinafter referred to as "GRANTOR") and the LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, a public body corporate and political subdivision, 400 South Sixth Street, Louisville, Kentucky 40202 (hereinafter referred to as "GRANTEE"),

WITNESSETH:

For good and valuable consideration, including the payment of ONE HUNDRED SEVENTY-ONE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$171,800.00), the receipt of which is hereby acknowledged, the GRANTOR hereby conveys to GRANTEE, in fee simple with covenant of general warranty, the hereinafter described property, and further covenants that it is lawfully seized of all the property and estates hereby conveyed, having full right to dispose of same, and that same is free of all encumbrances, excepting easements, rights-of-way and restrictions of record in the office of the Clerk of Jefferson County, Kentucky, and applicable zoning rules and regulations, and, to the best of GRANTOR's knowledge, is free of all hazardous or toxic materials or substances, and the lien of all unpaid ad valorem real estate taxes that are not yet due and payable.

The property herein is described as follows:

(Property description to be added)

This conveyance also includes all of the right, title and interest of the GRANTOR in and to all improvements located on the above described property, together with all of the right, title and interest of GRANTOR in and to the Winding Falls Sewerage System, including the sewage treatment plant, all buildings, easements, rights-of-way, licenses, privileges and all sewers, sewer lines, mains, manholes and other appurtenances and connections connected to the sewage system and the sewage treatment plant located on the above described property, and any other interest existing in favor of GRANTOR for the passage or placement of the sewerage system and its appurtenances.

GRANTOR and GRANTEE hereby certify that the consideration reflected in this Deed is the full consideration paid for this property.

IN TESTIMONY WHEREOF, witness the signatures of the GRANTOR and GRANTEE by its duly authorized officers, the day, month and year first above written.

LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT

FRANK D. CRAWLEY and
BETTY SUE CRAWLEY

By: _____
Gordon R. Garner
Executive Director

By: _____
By: _____

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

I, the undersigned Notary Public, in and for the Commonwealth and County aforesaid do hereby certify that the foregoing instrument was this day presented to me by Frank D. Crawley and Betty Sue Crawley, who being by me first duly sworn, did acknowledge and declare that they signed the foregoing instrument as owners of the Winding Falls Sewerage System, as their free and authorized act and deed.

Witness my hand this _____ day of _____, 19____.

My Commission expires: _____.

NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

I, the undersigned Notary Public, in and for the Commonwealth and County aforesaid do hereby certify that the foregoing instrument was this day presented to me by Gordon R. Garner, who being by me first duly sworn, did acknowledge and declare that he signed the foregoing instrument as Executive Director of the LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, by authority and direction of its governing body as his free and authorized act and deed.

Witness my hand this _____ day of _____, 19____.

My Commission expires: _____.

NOTARY PUBLIC

This Instrument Prepared by:

Sheila Wachsman
Attorney at Law
400 South Sixth Street
Louisville, Kentucky 40202

BILL OF SALE

THIS BILL OF SALE, made and entered into this ____ day of _____, 19____, by and between FRANK D. CRAWLEY and BETTY SUE CRAWLEY, ("GRANTOR"), and the LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, a public body corporate and political subdivision, 400 South Sixth Street, Louisville, Kentucky ("GRANTEE"),

WITNESSETH:

That for a valuable consideration, the receipt of which is hereby acknowledged, GRANTOR does hereby grant, bargain, sell, transfer and deliver unto the GRANTEE, all its right, title and interest in and to all of the buildings, fixtures and equipment used in connection with the operation and maintenance of the wastewater treatment plant located on the property described in a deed recorded in Deed Book _____, Page _____, in the office of the Clerk of Jefferson County, Kentucky, including, but not limited to, its improvements, sewers, manholes, fixtures, equipment, supplies, pumps, pumping stations, lines, appurtenances, and other personal property located at, connected to, a part of, or necessary to the ordinary operation of the Winding Falls Wastewater Treatment Plant and its related wastewater collection system.

The GRANTOR covenants and agrees that it is the lawful owner of all the items herein conveyed, that it is free and clear of all encumbrances, that it has full right and power to sell and convey same, and that it will warrant and defend the title hereby conveyed against all claims and demands against same. With the exception of the aforesaid warranty of title, the sale of all equipment described herein shall be "as is, where is" and without further warranties whatsoever, whether expressed or implied.

IN TESTIMONY WHEREOF, GRANTOR has hereunto subscribed its signature by
its duly authorized officer the date first above written.

FRANK D. CRAWLEY and
BETTY SUE CRAWLEY

By: _____

By: _____

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

I, the undersigned Notary Public, in and for the Commonwealth and County aforesaid do hereby certify that the foregoing instrument was this day presented to me by Frank D. Crawley and Betty Sue Crawley, who being by me first duly sworn, did acknowledge and declare that they signed the foregoing instrument as owners of the Winding Falls Sewerage System, as their free and authorized act and deed.

Witness my hand this _____ day of _____, 19____.

My Commission expires: _____

NOTARY PUBLIC