

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE LOUISVILLE AND)	
JEFFERSON COUNTY METROPOLITAN SEWER)	CASE NO.
DISTRICT FOR APPROVAL TO ACQUIRE)	90-399
THE ASSETS OF PINETREE SANITATION,)	
INC.)	

O R D E R

On December 4, 1990, the Louisville and Jefferson County Metropolitan Sewer District ("MSD") submitted an application for approval of an agreement to transfer ownership of Pinetree Sanitation, Inc. ("Pinetree") to MSD.

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

1. Pinetree owns and operates a wastewater treatment plant serving approximately 20 customers in the Julia Kaye Manor Subdivision of Jefferson County, Kentucky, and 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 Pinetree have agreed to the transfer of ownership of the Pinetree wastewater treatment plant and all real property interest associated therewith to MSD for a total consideration of \$125,000. 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 Agreement provides that the transfer will not formally occur until Exhibits A and B, a Deed and Bill of Sale attached to the Agreement are executed, and that payment by MSD of the consideration will be deferred until MSD obtains the necessary funds. The Agreement 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 Agreement provide that MSD does not expect to obtain the necessary funds to pay the consideration prior to April of 1991, and that Pinetree 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 the Pinetree wastewater treatment plant.

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 Pinetree.

10. The Commission will retain jurisdiction over the Pinetree wastewater treatment plant until such time as formal closing occurs.

IT IS THEREFORE ORDERED that:

1. The transfer of ownership of the Pinetree wastewater treatment plant to MSD, per the terms of the Agreement, is hereby approved.

2. MSD shall file an executed copy of the Agreement 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 Agreement upon execution of Exhibits A and B thereto and payment of the consideration, MSD shall file an executed copy of Exhibits A and B with the Commission.

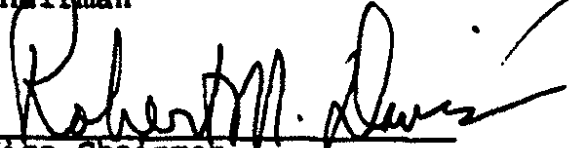
4. If formal closing does not occur before May 1, 1991, MSD shall file a statement with the Commission describing the status of the proposed transfer and the date by which it expects to formally close.

5. Until formal closing occurs, the Commission shall retain jurisdiction over the Pinetree wastewater treatment plant and Pinetree 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 12th day of December, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

AGREEMENT

THIS AGREEMENT, made and entered into at Louisville, Kentucky, this _____ day of _____, 1990, by and between PINETREE SANITATION, INC., 1418 Bluegrass Avenue, Louisville, Kentucky 40215 (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 I H

WHEREAS, Owner and MSD have negotiated terms of an Agreement whereby MSD will assume operation of the Pinetree Wastewater Treatment Plant located in the 6200 Block of Terry Road in the Julia Kaye Manor Subdivision 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

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 Pinetree 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 Pinetree Wastewater Treatment Facility and its attendant system, for a total agreed upon consideration of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$125,000.00), being the agreed upon value of said facilities as of January 10, 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 Pinetree 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 January 10, 1990. 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; and the 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 Pinetree 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 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 Pinetree 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 Pinetree 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 Pinetree Wastewater Treatment Facility on the date of execution of Exhibits A and B. MSD shall takeover operation, possession and responsibility for the Pinetree 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. MSD shall not honor or be responsible for any 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 Pinetree 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 Pinetree 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. Except with respect to the reserve capacity as set out in numerical paragraph 12 below, 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.

12. MSD agrees to reserve for Owner 32,000 gallons per day of wastewater treatment capacity, but not in excess of the unused design capacity available as of the date of formal closing, to be used for all or part of the following properties to be connected at Owner's cost to the Pinetree Wastewater Treatment Facility, and with the waiver of MSD's Connection Fees and Capacity Charges:

Lots 49-51, 54, 55 and 65-67 of Julie Kay Manor Subdivision, Section 1; and, the vacant ground surrounding the sewer plant which has a legal description attached hereto and made a part hereof as Exhibit C.

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 Pinetree 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 Pinetree 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

AS: EXECUTIVE DIRECTOR

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

PINETREE SANITATION, INC.

BY: _____

AS: _____

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 _____, who being by me first duly sworn, did acknowledge and declare that he signed the foregoing instrument as _____ of PINETREE SANITATION, INC., 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

DEED

THIS DEED made and entered into this _____ day of _____, 19____, by and between PINETREE SANITATION, INC., 1418 Bluegrass Avenue, Louisville, Kentucky 40215 (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 TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$125,000.00), 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 Pinetree 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

PINETREE SANITATION, INC.

By: _____
Gordon R. Garner
Executive Director

By: _____
As: _____

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 _____, who being by me first duly sworn, did acknowledge and declare that he signed the foregoing instrument as _____ of PINETREE SANITATION, INC., 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

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 PINETREE SANITATION, INC., ("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 Pinetree 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.

VACANT GROUND SURROUNDING PINE TREE SEWER PLANT
TRACT III

BEGINNING at the intersection of the Westerly line of Terry Road as established in instrument of record in Deed Book 4402, Page 189, in the Office of the Clerk of the County Court of Jefferson County, Kentucky, with the Northly line of the tract conveyed to Lyman Terry and wife, by deed of record in Deed Book 3535, Page 481, in the office aforesaid; thence with the Westerly line of Terry Road, North 3 degrees 49 minutes 15 seconds East 131.49 feet, and North 39 degrees 19 minutes 24 seconds West 58.75 feet to the Southwesterly line of Lower Hunters Trace Road as established in Instrument of record in Deed Book 4402, Page 189, in the office aforesaid; thence with same North 63 degrees 54 minutes 55 seconds West 41.53 feet; thence South 25 degrees 52 minutes 18 seconds West 143.65 feet; thence North 64 degrees 07 minutes 42 seconds West 157.84 feet to the most Westerly corner of the tract conveyed to T. J. Franke and wife, by deed of record in Deed Book 3471, Page 206, in the office aforesaid; thence with the Northwesterly line of said tract, North 25 degrees 52 minutes 18

seconds East 143.89 feet to the Southwesterly line of Lower Hunters Trace Road as established aforesaid; thence with same North 64 degrees 07 minutes 42 seconds West 60 feet to the Southeasterly line of the tract conveyed to Thomas L. Coomes and wife, by deed of record in Deed Book 3487, Page 78, in the office aforesaid; thence with said Southeasterly line South 25 degrees 52 minutes 18 seconds West 143.89 feet to the most Southerly corner of said last mentioned tract; thence with the Southwesterly line of same and extended North 64 degrees 07 minutes 42 seconds West 232.50 feet to the most Westerly corner of the tract conveyed to Hubert C. Henon and wife, by deed of record in Deed Book 3617, Page 518, in the office aforesaid; thence with the Northwesterly line of said tract North 25 degrees 52 minutes 18 seconds East 126.79 feet to the Southwesterly line of Lower Hunters Trace Road as established aforesaid thence with the same North 66 degrees 08 minutes 15 seconds West 154.46 feet and North 66 degrees 04 minutes 43 seconds West 236.20 feet to the Westerly line of the tract conveyed to Mill Lea, Inc., by deed of record in Deed Book 3387, Page 40; as corrected by deed of record in Deed Book 3392, Page 302, both in the office aforesaid; thence with said Westerly line South 9 degrees 9 minutes 25 seconds West 1728.31 feet to the Southwesterly corner of said last mentioned tract; thence with the Southerly line of same, South 70 degrees 50 minutes 35 seconds East 970.94 feet to the Westerly line of Terry Road as established aforesaid; thence with same North 7 degrees 39 minutes 52 seconds East 222.88 feet to the Southerly line of the tract conveyed to Ezra S. Lamb and wife, by deed recorded in Deed Book 3631, Page 86, in the office aforesaid; thence with same North 82 degrees 21 minutes West 143.89 feet; thence North 7 degrees 44 minutes 36 seconds East 604.78 feet to the Westerly line of the tract conveyed to John R. Bell and wife, by deed recorded in Deed Book 3754, Page 243, in the office aforesaid; thence with the Westerly line of said last mentioned tract and same extended, North 7 degrees 39 minutes East 675.22 feet to the Northwesterly corner of the tract conveyed to Lyman Terry and wife, by deed aforesaid; thence with the Northerly line of said tract, South 82 degrees 21 minutes East 136.10 feet to the beginning.

BEING the same property acquired by JOHN LAWSON REALTY CO. by deed dated 10-19-78 of record in Deed Book 5048, Page 552 in the Office of the Clerk aforesaid.
AS CORRECTED IN DB 5059 x 743