

HAZELRIGG & COX, LLP

ATTORNEYS AT LAW

415 WEST MAIN STREET, SUITE 1

P.O. Box 676

FRANKFORT, KENTUCKY 40602-0676

JOHN B. BAUGHMAN
ROBERT C. MOORE
THOMAS J. HELLMANN

DYKE L. HAZELRIGG (1881-1970)
LOUIS COX (1907-1971)

FAX: (502) 875-7158
TELEPHONE: (502) 227-2271

August 20, 2012

Via Hand-Delivery

Mr. Jeff R. Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

AUG 20 2012

PUBLIC SERVICE
COMMISSION

Re: Joint Application of Hillridge Facilities, Inc. and Louisville and Jefferson County Metropolitan Sewer District for Approval of Transfer of the Hillridge Wastewater Treatment Plant and Collection System to Louisville and Jefferson County Metropolitan Sewer District

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of the above-referenced Joint Application for Approval of the Transfer of the Hillridge Wastewater Treatment Plant and Collection System and appurtenances serving the Hillridge Subdivision in Jefferson County, Kentucky to the Louisville and Jefferson County Metropolitan Sewer District. Please contact me should you have any questions concerning this Joint Application.

Respectfully submitted,



Robert C. Moore

RCM/neb
Enclosures

cc: Sonja Ridge
Scott Porter - via electronic mail
Gerald Wuetcher - via electronic mail

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF)
HILLRIDGE FACILITIES, INC., AND)
AND LOUISVILLE AND JEFFERSON) Case No. 2012- _____
COUNTY METROPOLITAN)
SEWER DISTRICT FOR APPROVAL OF TRANSFER)
OF THE HILLRIDGE WASTEWATER TREATMENT)
PLANT AND COLLECTION SYSTEM)
TO LOUISVILLE AND JEFFERSON COUNTY)
METROPOLITAN SEWER DISTRICT)

RECEIVED

AUG 20 2012

PUBLIC SERVICE
COMMISSION

JOINT APPLICATION FOR APPROVAL OF TRANSFER

Pursuant to KRS 278.020(4), Hillridge Facilities, Inc. (“Hillridge”), and the Louisville and Jefferson County Metropolitan Sewer District (“MSD”), hereby submit to the Public Service Commission of Kentucky (“Commission”) this application for the transfer to MSD of the Hillridge Wastewater Treatment Plant and Collection System and Appurtenances serving the Hillridge Subdivision in Jefferson County, Kentucky, in accordance with the Assets Purchase Agreement executed by the Joint Applicants, a copy of which is attached hereto as Exhibit A. In support of their application, Hillridge and MSD state the following.

1. Hillridge, the Seller under the Agreement, is a Kentucky Corporation in good standing, with its principal place of business at 17825 Bradbe Road, Fisherville, Kentucky 40023. A copy of the Articles of Incorporation of Hillridge is attached hereto as Exhibit B. Hillridge is subject to Commission jurisdiction under KRS 278.010(3)(f). Sonja Ridge is the Vice-President and Secretary of Hillridge and has been duly authorized to execute this Joint Application on behalf of the corporation. A copy of the resolution of the Board of Directors of Hillridge authorizing the execution of the Agreement transferring to MSD the Wastewater

Treatment Plant and Collection System and Appurtenances (“WWTP”) serving the Hillridge Subdivision in Jefferson County, Kentucky, and this Joint Application is attached hereto as Exhibit C.

2. MSD is a metropolitan sewer district created pursuant to KRS Chapter 76. MSD provides sanitary sewer and drainage services to approximately 226,430 customers in Jefferson County, Kentucky. MSD operates six or more large waste water treatment facilities and 15 or more small waste water treatment plants, including the connected collection systems and the combined daily treatment capacity of MSD’s treatment facilities exceeds 173.5 million gallons. Greg Heitzman, as the Interim Executive Director of MSD, is duly authorized to execute this joint application on behalf of MSD.

3. As of June 30, 2012, MSD employs over 625 persons and approximately 70 of these employees are certified waste water treatment plant operators. For the year ending June 30, 2012, MSD had total operating revenues of \$190,000,000 and total operating expenses of \$81,000,000.

4. MSD has been in existence since 1946. MSD is governed by a Board that consists of eight members who are appointed by the Mayor of the Louisville Metro government, subject to the approval of the Louisville Metro Council. The approval of the Louisville Metro Council is required before MSD may implement a change in its rates for service.

5. The WWTP and collection system owned by Hillridge serves over 700 single family residences in Hillridge Subdivision, Jefferson County, Kentucky.

6. Under the Agreement, Hillridge will sell to MSD the WWTP and Collection System currently serving the Hillridge Subdivision located in Jefferson County, Kentucky. The assets purchased by MSD are described more fully in the Assets Purchase Agreement, but

include the Hillridge Subdivision wastewater treatment plant and collection system and appurtenances. The conveyance under the Agreement will occur within thirty (30) days after receipt of the approval of this Application for Transfer by the Public Service Commission.

7. Pursuant to the Assets Purchase Agreement, Hillridge is conveying the Hillridge Wastewater Treatment Plant and collection system to MSD, and MSD will be demolishing the WWTP within 120 days of the closing of the transaction, and the flow from the Hillridge Subdivision will be diverted to MSD's sanitary sewer system.

8. The Public Service Commission has previously found that in view of MSD's financial assets and its status as a political subdivision of the Commonwealth of Kentucky, MSD has sufficient financial integrity to ensure the continuity of utility services to the former customers of Hillridge. Furthermore, the Public Service Commission has previously found that MSD has the financial, technical, and managerial abilities to provide reasonable service to Hillridge's present customers. Therefore, MSD's acquisition of Hillridge's collection system is in accordance with law and for a proper purpose. (See Attachment D, Order entered in Application of the Louisville and Jefferson County Metropolitan Sewer District for an Order approving a Transfer of Ownership and Control, Case No. 2009-00494, p.10). MSD is not a utility subject to commission regulation.

9. The proposed transfer of the assets of the Hillridge Collection System to MSD will be accomplished in accordance with law, is for a proper purpose and is consistent with the public interest: (a) On or before closing, MSD will have all necessary permits for the operation of the Hillridge Collection System; (b) The public interest would be served by the transfer of the Collection System to MSD, as it has the technical expertise to operate the system in accordance with the requirements of the Kentucky Division of Water. As stated in Paragraphs 2 through 8,

MSD has the requisite managerial ability to provide adequate sewer services to the residents of the Hillridge Subdivision in Jefferson County, Kentucky, consistent with the public interest.

10. MSD tenders this application in conjunction with Hillridge only in order to facilitate a transfer in ownership to MSD as per the letter of the Energy and Environment Cabinet which was issued on April 12, 2012. In joining in this application, MSD does so without waiving the holding and rights afforded to it by the ruling and opinion of the Franklin Circuit Court in *MSD v. PSC, Civil Action No. 10-CI-00357* which confirmed that as a public, municipally owned sewer district, and political subdivision, it is exempt from PSC oversight under KRS 278.040(2), the statutory exemption afforded special districts. Based on this ruling, MSD joins in this application as a perfunctory matter and not as a mandatory requirement.

WHEREFORE, the undersigned Joint Applicants respectfully request the Public Service Commission to issue an Order finding that MSD has the financial, technical, and managerial abilities to provide reasonable service to the wastewater customers of Hillridge; that the proposed transaction is in accordance with law, is for a proper purpose, and is consistent with the public interest; and that the proposed transfer of the Hillridge Wastewater Treatment Plant and Collection System by Hillridge to MSD is authorized and approved.

Respectfully submitted,

HILLRIDGE FACILITIES, INC.

Sonja Ridge

Sonja Ridge, Vice-President and Secretary

Date: August 17, 2012

LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT

Douglas Scott Porter, attorney

Date: 8-17-12

STATE OF KENTUCKY)
)
COUNTY OF JEFFERSON)

Signed and sworn to before me by Sonja Ridge, as Vice-President of Hillridge Facilities, Inc., this the 17th day of August, 2012.

My commission expires: 2/22/14

Kent C. Moon
Notary Public

STATE OF KENTUCKY)
)
COUNTY OF JEFFERSON)

Signed and sworn to before me by Douglas Scott Porter, as a ATTORNEY of the Louisville and Jefferson County Metropolitan Sewer District, this the 17th day of August, 2012.

My commission expires: 2/22/14

Kent C. Moon
Notary Public

EXHIBIT A

ASSETS PURCHASE AGREEMENT

This is an Assets Purchase Agreement (“Agreement”) dated as of the 17th day of August, 2012, between Hillridge Facilities, Inc. (“Hillridge”), and the Louisville-Jefferson County Metropolitan Sewer District (“MSD”).

RECITALS

WHEREAS, Hillridge owns and operates a wastewater collection, conveyance and treatment facility known as the Hillridge Wastewater Treatment Plant and Collection System that serves land located in Jefferson County, Kentucky.

WHEREAS, Hillridge desires to sell, and MSD desires to purchase, the Hillridge Wastewater Treatment Plant (“WWTP”) and Collection System serving the Hillridge subdivision located in Jefferson County, Kentucky, and MSD desires to serve the customers of the Hillridge WWTP in accordance with and subject to the provisions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged by the parties, and in consideration of the mutual covenants and agreements contained in this Agreement, and intending to be legally bound, the parties hereto agree as follows:

SECTION I PURCHASE AND SALE

Section 1.1 Sale of Assets. Hillridge hereby agrees to sell and convey to MSD, and MSD hereby agrees to purchase from Hillridge the following assets (the “Assets”);

- (a) Hillridge WWTP and Collection System. Hillridge agrees to convey to MSD all of its right, title and interest in and to the Hillridge WWTP and Collection System serving the Hillridge subdivision located in Jefferson County, Kentucky.
- (b) Records. Copies of all of Hillridge’s records relating to the maintenance and design of the Collection System.
- (c) Easement. Deeds of Easement granting MSD permanent sanitary sewer easements and temporary construction easements over the two lots that will be impacted by said easements as set forth on Attachments A and B. Hillridge will also execute a Right of Access Agreement, as set forth in Attachment C, providing MSD with the immediate right of access to Hillridge’s collection system and Hillridge’s property where the WWTP is located.

Section 1.2 Assumption of Liabilities by MSD. MSD does not assume, agree to perform or

discharge, or otherwise have any responsibility for, any liabilities or contractual obligations of Hillridge arising prior to the Closing Date. Hillridge agrees to retain and satisfy or discharge in full, all liabilities existing on the Closing Date or arising out of the operation of the Hillridge WWTP and Collection System prior to October 1, 2012.

Section 1.3 Terms and Conditions of Sale.

- (a) The purchase price (the "Purchase Price") to be paid by MSD to Hillridge for the Assets described in Section 1.1 above shall be One Hundred Fifty Thousand Dollars (\$150,000.00), and this amount shall be paid to Hillridge at Closing. The parties further agree:
 - (i) that any Real and Personal Property Taxes and Public Service Commission Assessments due and payable for 2012 shall be pro-rated as of the Date of Closing; and
 - (ii) That Hillridge shall be entitled to receive from the Louisville Water Company ("LWC") the checks issued by LWC in the months of October and November of 2012 for sanitary sewer services provided up to and including September 30, 2012, and shall remit to MSD, within fifteen (15) days of receipt of the November LWC check, any amounts due for sanitary sewer services provided after September 30, 2012. Likewise, MSD shall remit to Hillridge, within fifteen (15) days of receipt of the December 2012 check, any amounts due for sanitary sewer services provided prior to October 1, 2012. MSD shall receive the checks issued by LWC in December of 2012 and thereafter for sanitary sewer services provided to the Hillridge subdivision beginning October 1, 2012. Each party shall be responsible for substantiating its respective claim.
- (b) Demolition of Hillridge WWTP. MSD agrees to complete the demolition of the Hillridge WWTP pursuant to MSD's specifications, to dispose of the demolished material at a properly permitted landfill and to restore the site of the Hillridge WWTP on or before March 1, 2013.
- (c) MSD agrees that after the Closing of the Collection System and Hillridge WWTP, it shall notify Hillridge's customers that it shall be providing sanitary sewer service to these customers beginning **October 1, 2012**. Notice of the sale may be provided to the media after the Closing.
- (d) Hillridge agrees that it shall prepare and file the Joint Application for Approval of Transfer of the Hillridge Collection System with the Kentucky Public Service Commission ("PSC") and shall prepare the documents and make the filings necessary to obtain the approval of the transfer of the Collection System and

service of the Hillridge customers to MSD. This Joint Application for Approval of Transfer of the Hillridge Collection System shall be signed at the Closing and filed within two (2) business days of Closing. The Joint Application shall contain a statement that MSD is not waiving any of its rights to its claims that it is not subject to PSC jurisdiction and the filing of the Joint Application shall not prejudice its claims that it is not subject to PSC jurisdiction.

- (e) MSD agrees that Hillridge will be allowed to purchase capacity for 10 additional taps onto the MSD system at the purchase price, according to the current MSD rates, rentals and charges policy in effect on the date of payment of the tap fee.
- (f) Hillridge shall, within ten (10) days of the signing of this Agreement by both parties, file motions to dismiss the following actions appealing the denial of Hillridge's application for KPDES permit: Hillridge Facilities, Inc. v. Energy and Environment Cabinet, Administrative File No. DOW-43685-039 and Hillridge Facilities, Inc. v. Energy and Environment Cabinet, Franklin Circuit Court, Civil Action No. 12-CI-643.
- (g) Hillridge and MSD shall execute at the Closing, a joint full and final release of claims that each may have against the other, in the form set forth as Attachment D to this Agreement.
- (h) In the event that MSD decides that it is necessary to operate the Hillridge WWTP after September 30, 2012, it shall be responsible for all aspects of said operation, including any maintenance, repairs and/or upgrades to the WWTP, and, in addition, shall pay a pro-rated amount of rent at the rate of \$3,000 per month to Hillridge during the first twelve (12) months it operates said WWTP, and the amount of \$4,000 per month to Hillridge during the second twelve months it operates said WWTP. In no event shall MSD operate the Hillridge WWTP for a period of time longer than twenty-four (24) months after the date of closing.

SECTION II

CLOSING

Section 2.1. Closing. The purchase and sale (the "Closing") provided for in this Agreement will take place at the offices of MSD, on August 17, 2012, at 2:00 p.m., or at such other time and place as the parties agree. If the Closing shall not take place on the Closing Date, then the party not at fault shall, in addition to all other rights and remedies available at law, in equity, or under this Agreement against the defaulting party, have the right to cancel and terminate this Agreement.

Section 2.2. Closing Obligations. At the Closing:

- (a) Hillridge will deliver to MSD:
 - (i) A Bill of Sale documenting the sale of all of Hillridge's right, title and interest in the Hillridge WWTP and a Deed or Bill of Sale documenting the conveyance of all of Hillridge's right, title and interest in the Collection System to MSD;
 - (ii) Copies of all of Hillridge's records relating to the maintenance and design of the Collection System, and copies of correspondence forwarded to the appropriate government agencies requesting the transfer to MSD of all permits, licenses, orders, tariffs and other similar rights. Hillridge will also provide its customer list to MSD, including contact information;
 - (iii) A resolution of Hillridge authorizing Hillridge to enter into this Agreement;
 - (iv) Deed of Easements granting MSD, its successors and assigns forever, perpetual rights of easement and temporary construction easements over two lots for the purpose of constructing, operating, upgrading, servicing, repairing and maintaining a sanitary sewer line(s) and appurtenances within the easements. The Temporary Construction Easements will terminate upon completion of construction; and,
 - (v) Right of Access Agreement, as set forth in Attachment C, providing MSD with the right of access to Hillridge's collection system and Hillridge's property where the WWTP is located; and,
 - (vi) Joint full and final release of claims that Hillridge and MSD may have against the other, in the form set forth as Attachment D to this Agreement.
- (b) MSD will deliver to Hillridge:
 - (i) Payment to Hillridge of immediately available funds in the full amount of One Hundred Fifty Thousand Dollars (\$150,000.00);
 - (ii) a resolution of MSD authorizing MSD to enter into and to perform this Agreement; and,
 - (iii) Joint full and final release of claims that Hillridge and MSD may have against the other, in the form set forth as Attachment D to this Agreement.

SECTION III

REPRESENTATIONS AND WARRANTIES OF HILLRIDGE

Section 3.01. Authority, No Conflict. This Agreement constitutes the legal, valid, and binding obligation of Hillridge, enforceable against Hillridge in accordance with its terms

Section 3.02. Brokers or Finders. Hillridge and its agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

SECTION IV

REPRESENTATIONS AND WARRANTIES OF MSD

MSD represents and warrants to Seller as follows:

Section 4.01. Authority, No Conflict. This Agreement constitutes the legal, valid, and binding obligation of MSD, enforceable against MSD in accordance with its terms.

Section 4.02. Brokers or Finders. MSD and its agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

Section 4.03 Examination of Properties and Records. MSD has examined and is familiar with the Collection System and its current condition, and has had the opportunity to inspect the Collection System. MSD has received or has examined to its satisfaction Hillridge's records concerning the maintenance and design of the Collection System.

ARTICLE V

GENERAL PROVISIONS

Section 5.01. Expenses. Each party will bear its own expenses regarding the preparation and closing of this Agreement. Hillridge shall bear the expenses of preparing and filing the Joint Application for Approval of Transfer, and the documents to be filed in said case, with the exception of any answers to information requests required to be filed by MSD.

Section 5.02. Public Announcements. Any public announcements or similar publicity with respect to this Agreement shall be issued after closing.

Section 5.03. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if served personally on the party to whom notice is to be given, (b) on the day of transmission if sent via facsimile transmission to the facsimile number given below, provided that

telephonic confirmation of receipt is obtained promptly after completion of transmission, (c) on the day after delivery to a nationally recognized overnight courier service, or the Express Mail service maintained by the United States Postal Service, or (d) on the fifth (5th) day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and addressed as follows:

If to Hillridge, to:

Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street
P.O. Box 676
Frankfort, Kentucky 40602-0676

With a copy to:

Hillridge Facilities, Inc.
C/O Sonja Ridge
17825 Bradbe Road
Fisherville, Kentucky 40023

If to MSD, to:

Scott Porter
Louisville-Jefferson County
Metropolitan Sewer District
700 W. Liberty Street
Louisville, Kentucky 40203-1911

With a copy to:

Any party may change its address for the purpose of this Section by giving the other parties written notice of its new address in the manner set forth above.

Section 5.04. Headings. The article, section, and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Section 5.05. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement, and, in the event of an ambiguity, or, a question of intent or a need for interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 5.06. Entire Agreement. This Agreement contains the entire understanding between the parties to this Agreement with respect to the transactions contemplated by this Agreement and supersedes and replaces all prior and contemporaneous agreements and understandings, oral or written, with regard to those transactions. All exhibits and schedules to this Agreement are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 5.07. Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by the parties to this Agreement, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any condition or of the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

Section 5.08. Parties in Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any person other than Hillridge and MSD and their respective successors and permitted assigns.

Section 5.09. Successors and Assigns. No party to this Agreement shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other parties to this Agreement, and any attempted assignment or delegation without prior written consent shall be void and of no force or effect.

Section 5.10. Governing Law, Jurisdiction. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Kentucky (without giving effect to the principles of conflicts of laws thereof). The parties to this Agreement irrevocably agree and consent to the jurisdiction of the courts of the Commonwealth of Kentucky for the adjudication of any matters arising under or in connection with this Agreement.

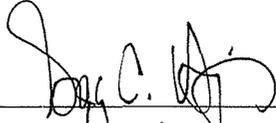
IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement effected as of the date first above written.

HILLRIDGE UTILITIES, INC.

Donja U Ridge

Date: August 17, 2012

LOUISVILLE-JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT

By:  **GREG C. HEITZMAN**
Date: 8/17/12 **INTERIM EXECUTIVE DIRECTOR**
LOUISVILLE MSD

Approved: As To Form & Legality

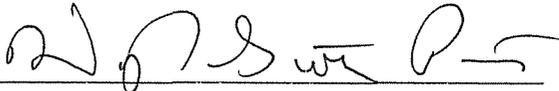

Date: 8-17-12

EXHIBIT B

TO BE PROVIDED

EXHIBIT C

MINUTES OF HILLRIDGE FACILITIES, INC.

A special meeting of the Board of Directors of Hillridge Facilities, Inc. ("Hillridge"), was held at Jefferson County, Kentucky at approximately 6 p.m., on August 16, 2012. Present were Sonja Ridge and Donald Ridge, constituting the full membership of said Board. All members of the Board of Directors waived formal written notice of said Special Meeting. By unanimous consent, Sonja Ridge presided as Chairman and Secretary.

The Chairman discussed the negotiation of the sale of the Hillridge Subdivision Wastewater System located in Jefferson County, Kentucky, including the wastewater treatment plant and the collection system, to the Louisville-Jefferson County Metropolitan Sewer District ("MSD"). On motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, that Hillridge is hereby authorized to negotiate and complete the sale of the Hillridge wastewater treatment plant and the collection system to MSD, to enter into and execute the documents necessary to consummate the sale of said wastewater system, which will include an Assets Purchase Agreement, and to take all actions necessary to consummate the sale of the Hillridge wastewater treatment plant and the collection system to MSD, including the signing of a Joint Application for Approval of Transfer to be submitted to the Public Service Commission.

BE IT FURTHER RESOLVED, Sonja Ridge is hereby authorized to enter into and execute any and all documents necessary to consummate the sale of the Hillridge wastewater treatment plant and the collection system to MSD, including but not limited to signing the Joint Application for Approval of Transfer .

There being no further business to come before the meeting, the same was adjourned by unanimous consent.

Sonja W. Ridge V. Pres / Sec
Secretary
Aug 16, 2012

Sonja W. Ridge V. Pres / Sec
Sonja Ridge
Date: Aug 16, 2012