

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A REQUEST TO THE KENTUCKY PUBLIC)
SERVICE COMMISSION FOR A CERTIFICATE)
OF CONVENIENCE AND NECESSITY AND THE) CASE NO. 9982
ESTABLISHMENT OF SEWER RATES FOR)
OLDHAM WOODS SANITATION, INC.)

O R D E R

IT IS ORDERED that Oldham Woods Sanitation, Inc., ("Oldham Woods") shall file an original and seven copies of the following information with the Commission with a copy to all parties of record no later than November 30, 1987. If the information cannot be provided by this date, Oldham Woods should submit a motion for an extension of time stating the reason a delay is necessary and include a date by which it will be furnished. Such motion will be considered by the Commission. Oldham Woods shall furnish with each response the name of the witness who will be available at the public hearing for responding to questions concerning each item of information requested.

1. Provide the following information for the construction of water supply lines and hydrants.

a. Explain who is making the application with the Commission for the proposed construction.

b. Detailed plans and specifications for the proposed construction.

c. Name of the water supplier, and rates charged to each customer.

d. Who will be responsible for the operation of the water supply system.

e. Any other information required by the Commission for review of the proposed construction.

2. Provide a copy of the approval issued by the Natural Resources and Environmental Protection Cabinet for construction of the proposed sewage treatment and collection facilities.

3. Provide a detailed map of the treatment and collection facilities showing the collection mains, manholes, utility service area, location of plant and effluent discharge. Also provide plans outlining the details of the size and capacity of the treatment plant.

4. Provide clarification as to which of the bidders will be awarded the construction contract and the exact cost of the construction. Also provide a breakdown of the total project cost; this should include engineering, legal, administrative, construction, etc.

5. Provide specifications for the proposed construction.

6. Provide a detailed customer listing showing number of customers in each class and average water consumption per customer.

7. As stated in the application, there should be no operational expense until 1990. Does Oldham Woods anticipate charging the proposed monthly flat rate during the year of initially filling the three lagoon basins?

8. Please provide all projected financial data as soon as it becomes available.

9. A portion of the proposed rate schedule is to be based on water usage. How does Oldham Woods propose to acquire the necessary billing information?

10. Please file the proposed tariffs stating the rules and regulations for sewer service.

11. Provide an executed Third Party Agreement which conforms to current Commission regulations (see attached sample agreement).

Done at Frankfort, Kentucky, this 11th day of November, 1987.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:

Executive Director

SAMPLE

SEWER TREATMENT PLANT THIRD PARTY AGREEMENT

This SEWER TREATMENT PLANT THIRD PARTY AGREEMENT ("Agreement") is made and entered into at _____, Kentucky, this ____ day of _____ 19__, by and between _____, a Kentucky corporation, with its principal office and place of business at _____, _____, Kentucky _____ ("Company"), and _____, a _____ corporation, _____, _____, Kentucky _____ ("Representative").

Witnesseth:

WHEREAS, Company plans to construct a sewer collecting and disposal system (which includes a sewage collecting and disposal plant and all fixtures, appurtenances and connections thereto, a main trunk line and lateral sewers, pumping station, force mains and all other parts of the collection system, effluent lines to the point of final disposal, easements incident to the ownership and operation of the system and all tangible personal property presently used in connection therewith), herein collectively called "CDS Facility."

WHEREAS, the Company hereby warrants that existing and future encumbrances, liens or other indebtedness, if any, to the title of the CDS Facility shall be subordinated and made subject to this Agreement; and

WHEREAS, the Company intends to construct, operate and maintain the CDS Facility for the purpose of adequate sewage collection and disposal to buildings, residences and other improvements located in _____ Subdivision, and for that purpose will construct, lay and maintain sewer mains, lateral lines, manholes, pumping stations, and all other facilities and appurtenances necessary for the purpose of supplying adequate sewage collection and disposal to such buildings, residences and other improvements; and

WHEREAS, the Public Service Commission of Kentucky ("Commission") requires sewage utilities to file a copy of a valid third party beneficiary agreement with it so as to guarantee the continued operation of the sewage treatment facilities pursuant to 807 KAR 5:071; and

WHEREAS, the parties intend that there be continuous operation and maintenance of the CDS Facility according to the approved standards set forth in this Agreement, and that rate changes by the Company for its services will be reasonable, and the Company is desirous of assuring that its rates will be reasonable and also assuring the continuance of the operation and maintenance of said sewage systems, for the benefit of the present and future owners of properties, buildings, residence and other improvements, and mortgagees holding mortgages covering such buildings, residences and other improvements, including the Representative.

NOW, THEREFORE, in consideration of the premises and to comply with the requirements of the Public Service Commission of Kentucky, and in reliance upon this Agreement by the Representative and present and future owners and occupants of properties in _____ Subdivision to be served by the CDS Facility and any mortgagees who may make and hold mortgage loans thereon and any governmental agencies which may insure or guarantee such loans, the Company and Representative hereby agree as follows:

Section 1: The Representative. This Agreement is made by the Representative in its individual capacity and as the Representative of and for the benefit of all present and future owners and occupants of each of the Properties which are now or may hereafter be served by the CDS Facility and as the Representative of all present and future holders of mortgages on such Properties and any governmental agencies which insure or guarantee such loans and the Public Service Commission of Kentucky which is vested with exclusive jurisdiction over the rates of service of sewage utilities within the Commonwealth pursuant to KRS 278.440, (herein collectively called "Third Party Beneficiaries").

1.01 Action by Representative. Any Third Party Beneficiary (a) served by the CDS Facility, (b) holding or guaranteeing or insuring any mortgage on any Property connected to and served by the CDS Facility, or (c) a charged by law to regulate sewage

utilities' rates and service is hereby granted the right and privilege request the Representative on his, her, its or their behalf (i) to notify the Company of any default by the Company under this Agreement and to require the Company to remedy such default within the time specified herein, (ii) to notify the Commission of such default, and (iii) to take such other action as is contained in such request and provided for herein for the benefit of such Third Party Beneficiary.

Section 2: Covenants by Company. Company shall provide at all times for each of the Properties adequate, safe and sanitary sewage collection, treatment and disposal service for all domestic sewage from such Properties and shall operate and maintain the CDS Facility in accordance with all applicable rules and regulations of the Commission and the National Resources and Environmental Protection Cabinet.

2.01 Maintenance of Records. Company will maintain adequate records of any tests relating to the CDS Facility and such records shall be open to inspection by the Commission, the Natural Resources Environmental Protection Cabinet and all Third Party Beneficiaries.

2.02 Company to Remedy Defaults. Company shall at its own cost and expense remedy such defaults in the CDS Facility and make such adjustments, repairs, installations or improvements to the CDS Facility as may be reasonably necessary for the operation of the CDS Facility in accordance with this Agreement or to conform

its operations to the lawful and reasonable requirements of the Commission or any other governmental agency having jurisdiction over its operations.

Section 3: Rates. Company reserves and has the continuing right (a) to establish and collect such charge or charges for Sewer services furnished to the owners or occupants of the Properties as shall, from time to time, be authorized or permitted by the Commission, and (b) to maintain, increase, reduce or otherwise alter such rates and the method of collection of sewer service charges as may be prescribed by or not prohibited by the Commission.

Section 4: Rights and Duties of Representative.

4.01 Rights and Duties on Default by Company. Upon any material and continuing default by the Company in complying with the requirements of this Agreement for the operation and maintenance of the CDS Facility and upon the failure of the Company to remedy such default within thirty days after notice of such default has been received by the Company from any consumer, mortgagee, the Public Service Commission of Kentucky or the Representative (or two days in the event of a complete shut down of the CDS Facility or the suspension of sewer services to the owners or occupants of the Properties), except in cases of disaster, war, riots, insurrection, labor troubles, strikes or other causes beyond the control of the Company in any of which events the provisions of this Section 4.01 shall not apply, or if Company attempts to collect from users of the CDS Facility charges

in excess of the rate or rates permitted by the Commission, then and in any such event, subject to the exception hereinabove set forth, the Representative shall have the right and duty to take possession of the CDS Facility and operate it in accordance with this Agreement or the Representative may delegate its operation in accordance with this Agreement to an operator capable of operating it as contemplated herein; and in any such event the Representative shall have the right and duty to operate, manage and control the CDS Facility for the benefit of the Third Party Beneficiaries for whose benefit this Agreement is made and to collect for the account and benefit of the Company, subject only to the reimbursement and compensation provisions of Section 4.02, the charges for such sewer services at rates not in excess of those authorized or permitted by the Commission.

4.02 Compensation of Representative. During the period of any operation of the CDS Facility by the Representative pursuant to this Agreement, it shall be entitled to be reimbursed for and to recover all expenses incurred by it, including reasonable attorneys fees, and to such reasonable compensation for its services as may be approved by the Commission.

Section 5: Rules and Regulations of the Company. The Company may from time to time establish, amend, alter and enforce reasonable rules and regulations ("Rules and Regulations") for providing sewer services to the Properties served by the CDS Facility, provided that such Rules and Regulations shall not violate any rules and regulations formulated by the Commission.

Such Rules and Regulations shall be binding upon any owner, occupant or mortgagee of any of the Properties and on the user of any services provided by the CDS Facility.

Section 6: Restoration of Operations to the Company. In the event the Representative shall assume and take over the operation of the CDS Facility under the provisions of this Agreement and thereafter the Company shall take such necessary action as may be required to remedy any default by it so that it is in a position to operate the CDS Facility in accordance with this Agreement and applicable Rules and Regulations of the Commission and the company is willing to operate the CDS Facility in accordance therewith, having fulfilled all of these conditions, at the request of the Company, the Representative shall turn over the possession, control and operation of the CDS Facility to the Company to be again operated by the Company under the terms and conditions contained in this Agreement.

Section 7: Company to Retain title to CDS Facility. Notwithstanding any provision of this Agreement, neither the Representative nor any Third Party Beneficiary or any other person shall have or claim to have any right, title, interest, lien, encumbrance or claim of any kind or character whatsoever in or to the CDS Facility or any properties or facilities of the Company by reason of this Agreement. The Company may mortgage, pledge, encumber, lease, sell or otherwise dispose of all or any part of the CDS Facility without the consent of the Representative or any Third Party Beneficiary.

Section 8: Successors and Assigns. This Agreement shall insure to the benefit of and be binding upon the respective successors and assigns of the Company and Representative and the executors, administrators and personal representatives of each Third Party Beneficiary.

Section 9: Notices. All notices and other communications required or contemplated to be given hereunder by the Company or the Representative shall also be given to the holder of any mortgage on the CDS Facility, shall be in writing, and shall be actually delivered to the company or representative, as appropriate, and to the holder of any mortgage on the CDS Facility or shall be mailed, postage prepaid, by first class, certified or registered mail, return receipt requested, to the company or representative, as appropriate, and to the holder of any mortgage on the CDS Facility (and the date of any notice by certified or registered mail shall be deemed to be the date of certification or registry thereof), delivered or addressed to the parties as follows:

To Company:

To Representative:

To Holder of Mortgage:

or at such other address or attention such other person or department as either party or the holder of such mortgage may designate to the others by written notice in the manner provided above.

Section 10: Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

Section 11: Duration of Agreement. This Agreement shall remain in full force and effect and for the benefit of all parties mentioned herein so long as the Commission shall have jurisdiction over the operation of the CDS Facility and the establishment of rates for the sewage services herein contemplated.

IN WITNESS WHEREOF, _____ and
_____ have caused this
Agreement to be duly executed, all as of the day and year first
above written.

By: _____

ATTEST:

Secretary

By: _____

ATTEST:

Secretary

STATE OF KENTUCKY

COUNTY OF _____

The foregoing instrument was acknowledged before me this
____ day of _____, 19____, by _____,
of _____, a Kentucky corporation, on
behalf of the corporation.

My commission expires: _____

Notary Public

STATE OF KENTUCKY

COUNTY OF

The foregoing instrument was acknowledged before me this
____ day of _____, 19____, by _____,

_____ of _____
_____, a _____ corporation, on behalf of the cor-
poration.

My commission expires: _____

Notary Public

This Instrument Prepared by

