



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 26, 1999
TO: Division of Records and Reporting
FROM: Stephanie Clapp, Division of Water and Wastewater *BSM WJF*
RE: Docket 981992-WS: Application for transfer of majority organizational control of Sandy Creek Utilities, Inc., holder of Certificate Nos. 514-W and 446-S in Bay County from Sandy Creek Properties, Inc., to Mr. Gary L. Souders.

Sandy Creek Utilities, Inc., recently submitted revised or corrected documents in partial response to the deficiency letter dated February 1, 1999. Please add to the docket file:

1. Revised Application for Transfer of Majority Organizational Control form.
2. Revised Exhibit A-1.
3. Replace Exhibit B.

Please note that two copies of each item are provided.

Thank you.

Attachments

cc: Division of Water and Wastewater (Messer, Redemann)
Division of Legal Services (Crosby)

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- ROH _____
- SEC 1 _____
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE

~~981992-WS~~ FEB 26 99

FPSC-RECORDS/REPORTING

APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

(Pursuant to Section 367.071, Florida Statutes)

TO: Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

The undersigned hereby makes application for the transfer of the majority organizational control of SANDY Creek Utilities, INC utility operating under Water Certificate No. 514-W and/or Wastewater Certificate No. 446-S located in _____ County, Florida, and submits the following information:

PART I APPLICANT INFORMATION

A) The full name (as it appears on the certificate), address and telephone number of the seller:

SANDY Creek Utilities, INC
Name of utility

(850) 874-8393 (850) 874-8395
Phone No. Fax No.

1732 Hwy 2297
Office street address

Panama City, FL 32404
City State Zip Code

N.A.
Mailing address if different from street address

N.A.
Internet address if applicable

B) The name, address and telephone number of the person to contact concerning this application:

GARY L. Souders (850-763-3466
Name Phone No.

7328 Littleton Rd
Street address

Panama City FL 32404
City State Zip Code

C) The full name (as it appears on the certificate), address and telephone number of the buyer:

SANDY Creek Utilities, Inc
Name of utility

(850) 874-8393 (850) 874-8395
Phone No. Fax No.

1732 Hwy 2297
Office street address

Panama City FL 32404
City State Zip Code

Mailing address if different from street address

Internet address if applicable

D) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners and any other person(s) who will own an interest in the utility.

GARY L. Souders CEO - Pres - 100%

7328 Littleton Rd

Panama City, FL 32404

PART II FINANCIAL AND TECHNICAL INFORMATION

A) Exhibit A-1 - A statement by the buyer indicating how the transfer is in the public interest, including a summary of the buyer's experience in water and/or wastewater utility operations, a showing of the buyer's financial ability to provide service and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.

B) List the names and locations of other water and/or wastewater utilities owned by the buyer and PSC certificate numbers, if any.

N. A.

C) Exhibit B - A copy of the purchase agreement.

D) Exhibit C - A statement of how the buyer is financing the purchase.

E) Exhibit D - A list of all entities, including affiliate which have provided or will provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility.

F) Exhibit E - A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the DEP.

If the system is in need of repair or improvement, has any outstanding Notice of Violation(s) of any standard(s) set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violations, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost.

PART III NOTICE OF ACTUAL APPLICATION

A) Exhibit F - An affidavit that the notice of actual application was given in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, by regular mail to the following:

- (1) the governing body of the municipality, county, or counties in which the system or the territory proposed to be served is located;
- (2) the privately owned water and wastewater utilities that hold a certificate granted by the Public Service Commission and that are located within the county in which the utility or the territory proposed to be served is located;
- (3) if any portion of the proposed territory is within one mile of a county boundary, the utility shall notice the privately owned utilities located in the bordering counties and holding a certificate granted by the Commission;
- (4) the regional planning council;
- (5) the Office of Public Counsel;
- (6) the Public Service Commission's Director of Records and Reporting;
- (7) the appropriate regional office of the Department of Environmental Protection; and
- (8) the appropriate water management district. Copies of the Notice and a list of entities noticed shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

B) Exhibit G - An affidavit that the notice of actual application was given in accordance with Rule 25-30.030, Florida Administrative Code, by regular mail or personal delivery to each customer of the system being transferred. A copy of the Notice shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

C) Exhibit H - Immediately upon completion of publication, an affidavit that the notice of actual application was published once in a newspaper of general circulation in the territory in accordance with Rule 25-30.030, Florida Administrative Code. A copy of the proof of publication shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

PART IV FILING FEE

Indicate the filing fee enclosed with the application:

\$ 750⁰⁰ (for water) \$ 750⁰⁰ (for
wastewater).

Note: Pursuant to Rule 25-30.020, Florida Administrative Code, the amount of the filing fee as follows:

- (1) For applications in which the utility to be transferred has the capacity to serve up to 500 ERC's, the filing fee shall be \$750.
- (2) For applications in which the utility to be transferred has the capacity to serve from 501 to 2,000 ERC's the filing fee shall be \$1,500.
- (3) For applications in which the utility to be transferred has the capacity to serve from 2,001 ERC's to 4,000 ERC's the filing fee shall be \$2,250.
- (4) For applications in which the utility to be transferred has the capacity to serve more than 4,000 ERC's the filing fee shall be \$3,000.

PART V OTHER

- A) Exhibit I - Evidence that the utility owns the land where the utility treatment facilities are located. If the utility does not own the land, a copy of the agreement which provides for the long term, continuous use of the land such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative.
- B) Exhibit J - The original and two copies of revised tariff sheet(s) reflecting the change in ownership. **Sample tariff sheets are attached.**
- C) Exhibit K - The utility's current certificate(s). If not available, an explanation of the steps taken to obtain the certificate(s).

Part 6

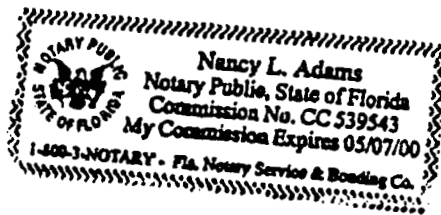
AFFIDAVIT

I, Gary Souders, do solemnly swear or affirm that the facts stated in the foregoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitute a complete statement of the matter to which it relates.

BY: *Gary Souders*
Applicant's Signature
Gary Souders
Applicant's Name (Typed)
President
Applicant's Title

Subscribed and sworn to before me this December 22 of
19 98.

Nancy L. Adams
Notary Public



Part 2

Exhibit A-1

I, Gary Souders, have been employed by the City of Panama City Beach for the past 14 years, as the supervisor for 70 lift stations and two sewer plants. For eight years I operated another small utility company, water and sewer. Also for eight years I operated a plant called the Commodore Condominium. Pride Resorts is another plant that I operated for approximately 4 years. I feel that my experience in this field qualifies me to own and improve the utility company at Sandy Creek. There are several things that I feel can be improved that will make Sandy Creek Utilities system perform more efficiently. I know the laws and regulations concerning utilities in the state of Florida and will be committed to the obligations of running a safe and efficient utility system. I do the necessary testing and see the plant everyday, therefore I know the condition of the plant. The absentee owner wanted to sell and I wanted to buy, this making it better for the public concerned.

BY: Gary Souders
Applicant's Signature

GARY SOUDERS
Applicant's Name (Typed)

PRESIDENT
Applicant's Title

EXHIBIT A-1

Gary L. Souders

Personal Financial Statement

Assets

Cash In Bank	2000.00	
MPS Income Yearly Income	17000.00	
Trailer Income Yearly Income	19200.00	
City Employment Yearly Income	36000.00	
Collins Rd	75304.00	- MHP
Littleton Rd	10057.00	
Tractors & Equipment	9000.00	
76 Harley Davidson	8000.00	
53 Ford Panel Truck	8000.00	
94 Ford Ranger	6000.00	
93 Jeep Cherokee	8500.00	
99 Toyota Truck	21000.00	
7 Mobile Homes	31500.00	
Exotic Animals	22000.00	
Storage Building	3800.00	
Total	277361.00	

Liabilities

Collins Rd.	33000.00
93 Jeep	5900.00
99 Toyota	22700.00
Signature Loan	3800.00
Visa Card	6800.00
Tyndall Loan Personal	2800.00
Sears	1000.00
Discover Card	1000.00
Commercial Credit	920.00
Total	77920.00

CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT FOR SALE AND PURCHASE is made and executed by and between SANDY CREEK PROPERTIES, INC., whose address is 1345 Campbell, Suite 222, Houston, Texas 77055, (the "Seller"), and GARY SOUDERS, whose address is 7328 Littleton Road, Panama City, Florida 32404, (the "Buyer"), this 4th day of November, 1998, for good and valuable considerations each to the other, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. SALE AND PURCHASE. Seller agrees to sell and Buyer agrees to purchase all of the issued and outstanding shares of stock (the "Shares") of Sandy Creek Utilities, Inc., a Florida corporation (the "Corporation") on the hereinafter set forth terms and conditions.

THIS AGREEMENT IS NOT FINAL OR ENFORCEABLE UNTIL APPROVED BY THE PUBLIC SERVICE COMMISSION AND ALL OTHER INTERESTED REGULATORY AGENCIES WHOSE APPROVAL IS REQUIRED. BUYER IS TO OBTAIN ALL NECESSARY APPROVALS BY OCTOBER 31, 1999 OR THIS CONTRACT IS VOID. BUYER MUST DILIGENTLY PURSUE SUCH APPROVALS. IF PROGRESS ACCEPTABLE TO THE SELLER IS NOT MADE, SELLER SHALL GIVE BUYER WRITTEN NOTICE OF SUCH DEFECT. IF BUYER DOES NOT THEN DILIGENTLY PURSUE REGULATORY APPROVALS, WITHIN 5 DAYS OF RECEIVING SAID NOTICE, SELLER MAY DECLARE THE CONTRACT NULL AND VOID.

2. PROPERTY OWNED BY THE CORPORATION. As a material inducement to Buyer entering into this agreement, Seller has represented, and hereby represents, to Buyer that the Corporation owns the real property described in "Exhibit A" attached hereto (the "Real Property"), subject only to the encumbrances set forth in "Exhibit A" attached hereto and the tangible and intangible personal property described in "Exhibit B" attached hereto (the "Personal Property"), subject only to the encumbrances set forth in "Exhibit B" attached hereto and that the only liabilities of the Corporation, including contingent liabilities, are as set forth in "Exhibit C" attached hereto.

3. DEPOSIT. Seller acknowledges receipt of \$1.00 as an earnest money deposit which shall be held pursuant to the terms of this agreement and applied to the purchase price.

4. SALES AND PURCHASE PRICE. The total sales and purchase price for the Property shall be \$150,000.00. The sales and purchase price shall be payable as follows:

- A. \$2,490.18 per month and as per attached note. Buyer shall be given credit on the purchase price as outlined in the lease agreement at the time of purchase.

- B. Promissory note from Buyer to Seller in an amount equal to \$150,000, balance on the date of closing. The promissory note shall bear interest at ten percent (10%) per annum and the entire principal and accrued interest shall be due and payable seven (7) years from the date of closing. The promissory note shall be in the form attached hereto as "Exhibit D" and shall be secured by the stock in Sandy Creek Utilities, Inc. and by a mortgage on the real and personal property of Sandy Creek Utilities, Inc. described on Exhibit "D".

5. CLOSING DATE. This transaction shall be closed and Seller shall deliver title to the Property on or before October 31, 1999, unless extended by other provisions of this agreement. The closing shall be held in Panama City, Florida.

6. TITLE TO REAL PROPERTY. This agreement is contingent upon Seller delivering to Buyer prior to closing, through a title agent selected by Buyer, a title search or commitment for title insurance reflecting fee simple, marketable title to the Real Property being vested in the Corporation and providing for the issuance of a policy of title insurance, subject only to the following: standard, pre-printed exceptions, which include taxes for the year of closing and subsequent years, zoning ordinances or other governmental regulations and restrictions, mechanic's liens, matters of survey, parties in possession, and unrecorded easements; matters set forth in this agreement; other easements and restrictive covenants of records, if any, acceptable to Buyer; and matters to be discharged at closing. If the commitment shows any encumbrances or exceptions other than those identified herein, Buyer shall notify Seller in writing of such title defects. Seller shall make all reasonable attempts to cure any title deficiencies within 90 days from the written notification of same. If such defects cannot be resolved within the time period stated herein, or within an extended period agreed to in writing by Buyer and Seller, Buyer may declare this agreement to be null and void and of no further force and effect and receive a return of all deposits, or Buyer and applicable credits, at Buyer's sole discretion, may elect to accept title with any such outstanding deficiencies but without reduction in the purchase price.

7. INSPECTION AND RIGHT OF ENTRY. Seller shall deliver to Buyer within thirty (30) days from the date of this agreement true and correct copies of the following which relate to or affect the Corporation. All contracts between the Corporation and any third party of Seller now in force and effect. Buyer, including Buyer's agents and representatives, shall have the right of access to the Real Property for the purpose of investigation and testing of the Property including, without limitation, appraisals, surveying, engineering, environmental studies, structural studies, inspections for wood destroying organisms, soil borings and such other investigation as Buyer deems necessary and appropriate. Seller agrees to cooperate with Buyer in its investigative efforts by providing Buyer such documentation as may be reasonably available to Seller. Buyer shall indemnify and hold Seller harmless of and from all claim, demand, cause of action, suit, damage, cost and expense incurred or suffered by Seller as a result of any act or omission of Buyer or Buyer's agents or representative made in connection with the entry upon and physical inspection of the Real Property, and Buyer shall fill all holes made in connection with any such tests or inspections and shall otherwise restore

the Real Property to a condition at least equivalent to the condition before the tests or inspections were conducted.

8. RESIGNATIONS. Seller shall deliver at closing resignations of all officers and directors of the Corporation. Seller shall further execute such documents as required to change signature cards on all bank accounts of the Corporation.

9. CONTINGENCIES. This agreement and Buyer's obligation to close are specifically contingent upon Buyer's obtaining necessary approvals from the Public Service Commission within one (1) year of today's date.

10. CLOSING EXPENSES. Seller shall be responsible for and pay for Seller's attorneys' fees, documentary tax on the assignment and transfer of the Shares, the preparation and recording of any corrective instruments, and the satisfaction of any liens and the costs of the recording thereof. Buyer shall be responsible and pay for Buyer's attorneys' fees, any fees and costs incurred by Buyer in connection with any appraisal, environmental study, engineering or survey ordered by or on behalf of Buyer, and documentary tax on the purchase money promissory note and any fees to the Public Service Commission.

11. PRORATIONS. Real property taxes and personal property taxes for the year of closing and other expenses or income of the Corporation shall be prorated.

12. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer and agrees as follows:

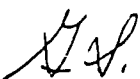
A. The Corporation shall not dispose of any property except in the normal course of business.

B. All bank accounts of the Corporation shall remain in place except for checks drawn in the normal course of business.

C. Seller is the owner of the Shares and has the full right and authority to enter into and perform this agreement. No third party has any right or interest in and to the Shares, and no third party has the right to acquire any other shares of the Corporation.

D. The Corporation is the owner of all right, title and interest in the Real property and the Personal Property.

E. The Corporation has prepared in good faith and duly and timely filed all federal, state and local income, franchise, sales, real and personal property, intangible tax and other tax returns and reports required to be filed on or before the date of this agreement and has paid all amounts reflected on such returns and reports. There is no examination pending by the Internal Revenue Service or any other taxing authority with respect to the Corporation.



F. The Corporation has paid any and all income tax, sales taxes and tangible and intangible personal property taxes, together with any interest and penalties, payable by the Corporation under the laws of the State of Florida, any other state and the United States, including without limitation, state and federal income taxes.

G. The Corporation does not provide any employee bonus, deferred compensation, pension, retirement, stock option, stock purchase, or other similar employee benefit plan.

H. All employees of the Corporation are "at will" and there are no outstanding employment consulting or similar agreements, written or oral, expressed or implied.

13. **DEFAULT.** If for any reason other than a contingency not being met or a failure of title or breach of any other covenant, condition or warranty made, to be performed or met by Seller, Buyer fails to close, the sums deposited by Buyer as the earnest money deposit shall be forfeited to Seller as liquidated damages for non-performance under the terms of this agreement, and all rights and obligations hereunder shall be terminated. Seller and Buyer specifically understand and agree as follows: (i) the foregoing remedy is intended to be the sole and exclusive remedy of Seller should Buyer default under this agreement; (ii) the foregoing remedy is intended to operate as a liquidated damages clause and not as a penalty or forfeiture provision; (iii) the actual damages that Seller may suffer if Buyer defaults are impossible of precise ascertainment and therefore the earnest money deposit represents the parties' reasonable estimate of such damages considering all of the circumstances existing on the date of this agreement; (iv) the earnest money deposit is intended to fully compensate Seller for entering into this agreement and therefore Seller shall not be entitled to bring any action at law or in equity against Buyer for an alleged default under this agreement, except such actions as are necessary to obtain the earnest money deposit, and (v) upon receipt by Seller of the earnest money deposit, this agreement shall cease and terminate and be of no further force and effect and Seller shall have no further claims against Buyer hereunder. In the event of a default by Seller, buyer shall have the option of demanding and receiving all deposits paid hereunder, and upon such payment all rights and obligations under this agreement shall be terminated.

14. **NOTICE AND ADDRESSES.** All notices and other items required to be given and delivered under the terms of this agreement shall be addressed to the parties as follows:

SELLER: Sandy Creek Properties, Inc.
1345 Campbell, Suite 222
Houston, Texas 77055

BUYER: GARY SOUDERS
7328 Littleton Road
Panama City, Florida 32404

15. COSTS AND ATTORNEYS' FEES. In the event any litigation arises from any dispute under this agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees, both at the trial and appellate levels.

16. GOVERNING LAW. This agreement shall be construed in accordance with the laws of the State of Florida.

17. NOTICES. Any notice required or provided for under this agreement shall be effective if hand delivered during regular business hours or mailed by certified mail, return receipt requested, or delivered by express mail.

18. DATE OF AGREEMENT. The date of this agreement shall be the date that it becomes fully executed by both parties.

19. ENTIRE AGREEMENT AND AMENDMENTS. There are no agreements, promises or understandings between the parties except as specifically set forth herein. No modification, waiver, amendment, discharge or other change to this agreement shall be valid unless the same is in writing and signed by both parties.

20. HEADINGS. The headings on each paragraph and subparagraph are for the convenience of the parties and shall not be construed to alter or amend any provision of this agreement.

21. TIME OF THE ESSENCE. Time is of the essence with respect to each provision in this agreement where a time or date for performance is stated. All time periods or dates for performance stated in this agreement are material provisions of this agreement.

22. THIS IS A LEGALLY BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND IT SEEK THE ADVICE OF YOUR ATTORNEY PRIOR TO SIGNING.

IN WITNESS WHEREOF, the Buyer and Seller have executed this agreement as of the date indicated below.

DATED this 13th day of NOVEMBER, 1998 as to Seller.

WITNESSES
Signature of witness [Signature]
Printed name of witness David R. Davis
Signature of witness [Signature]
Printed name of witness Cyndi F. Alexander

SANDY CREEK PROPERTIES, INC
By: [Signature]
Its: Authorized Agent

Handwritten initials

DATED this 4 day of November, 1998 as to Buyer.

A. Amick
Signature of witness

Gary Souder
GARY SOUDERS

DAWN C GAELN
Printed name of witness

Jacalyn N Kolic
Signature of witness

JACALYN N KOLIC
Printed name of witness

CASANDYCREEKSAUDER.CONSP

STATE OF FLORIDA
COUNTY OF BAY

Sworn to (or affirmed) and subscribed before me this 4th day of November, 1998 by GARY SOUDERS.

Joseph A. Buchmeyer
NOTARY PUBLIC - STATE OF FLORIDA

Personally Known or Produced Identification
Type of Identification Produced

Florida license 5362-292-52-094-0