

# STORMWATER QUALITY MAINTENANCE AGREEMENT

BETWEEN THE

## LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT

AND

---

PERTAINING TO:

### LONG-TERM OPERATION AND MAINTENANCE RESPONSIBILITIES

**THIS COVENANT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between, \_\_\_\_\_ (**"PROPERTY OWNER"**) whose mailing address is \_\_\_\_\_, and who is the owner of property located at \_\_\_\_\_ with a recorded deed on said property, filed in the Office of the Clerk of Jefferson County, Kentucky in Deed Book \_\_\_\_\_ Page \_\_\_\_\_ which is the property restricted by this Maintenance Agreement and the **LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT ("MSD")**, public body corporate subdivision organized pursuant to Chapter 76 of the Kentucky Revised Statues, 700 West Liberty Street, Louisville, Kentucky 40203.

#### WITNESSETH:

WHEREAS, MSD is a public body corporate and political subdivision organized pursuant to Chapter 76 of the Kentucky Revised Statutes whose primary responsibilities are the operation, maintenance, and regulation of public and private sewers and drains, and the discharge of waste and waters into the sewer system; and

WHEREAS, MSD has statutory and regulatory authority to undertake projects to improve the public sewer and drainage system, which includes green infrastructure best management practices (GMPs), also known as Green Management Practices or long-term stormwater quality controls, for the purpose of managing the inflow of storm water runoff pollutants into the Combined Sewer System (CSS) and/or Municipal Separate Storm Sewer System (MS4) as is required of Louisville, MSD and its co-permittees through Kentucky Pollutant Discharge Elimination System Permit KYS000001; and

WHEREAS, the Property Owner's proposed GMPs are required to operate over the long-term use of the property in order to reduce runoff into the public CSS and/or runoff pollutants into the public MS4.

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the Parties hereto agree as follows:

- (1) **PROJECT SCOPE OWNER AND LOCATION:** The Property is owned by \_\_\_\_\_ the \_\_\_\_\_ property that this agreement pertains to):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
and, is required to implement green infrastructure best management practices at its property located at

\_\_\_\_\_, Louisville, Kentucky (“the Property”); and the Property Owner agrees to and shall construct and install green infrastructure at the Property set forth in “Exhibit A” attached hereto, which Exhibit is hereby incorporated into and made a part of this Agreement (“the Project”) as if fully set forth herein. The GMPs shall be constructed in accordance with plans prepared by a qualified professional in accordance with the MSD Design Manual and in accordance with the construction methodology described within “Exhibit A.”

- (2) **TERM OF AGREEMENT:** The term of this Agreement shall continue in perpetuity unless terminated in accordance with Section (8) herein below.
- (3) **COSTS:** The Property Owner shall be solely responsible for the cost of design, construction, installation, maintenance, self-inspection, and operation of the GMPs. MSD shall be responsible for costs associated with compliance inspections needed to confirm implementation of this Agreement.
- (4) **DRAINAGE SERVICE CHARGE INCENTIVES ELIGIBILITY:** This Agreement does not preclude eligibility of the Property or Property Owner’s participation in incentives programs as defined by the MSD Policies. However, MSD may restrict the Property or Property Owner’s participation in the policies for other properties for failure to implement the terms of this agreement.
- (5) **OPERATION, MAINTENANCE, AND INSPECTION:** The Property Owner agrees to and shall, to the extent practicable, maintain and operate the GMPs for the purpose of achieving MSD’s defined infiltration and other water quality benefits, which maintenance and operation activities shall include, at a minimum, the following (as noted applicable):

Checked as:

<u>Applicable</u>	<u>Not Applicable</u>	
<input type="checkbox"/>	<input type="checkbox"/>	Consistent and routine observations of infiltration rates. This is for all GMPs that infiltrate and can be found in Chapter 18 of the MSD Design Manual or alternative GMPs that MSD approved.
<input type="checkbox"/>	<input type="checkbox"/>	Annual maintenance of GMPs to remove excess sediment, leaf or other vegetative debris, etc. to keep inflow points free of clogging and to confirm infiltration rates of approximately 0.5 inches per hour as estimated through observation or basic on-site testing.
<input type="checkbox"/>	<input type="checkbox"/>	Annual inspections of vegetated areas of GMPs for trimming, pruning, and dividing perennials to prevent overcrowding and to address stress indicators.
<input type="checkbox"/>	<input type="checkbox"/>	Monthly inspections in spring (April – June) and fall (September – October) of vegetated areas of GMPs to determine the need for and maintain removal of excess sediment, debris, etc. to keep inflow points free of clogging, as well as consistent and routine pruning, trimming, and weeding, removal of fallen, clipped, and trimmed plant material, removal and replacement of dead or damaged plants, and removal of trash and debris.
<input type="checkbox"/>	<input type="checkbox"/>	Inspect media, soil, and/or mulch every 2 to 3 years to determine necessity to re-aerate or replace media, soil, and/or mulch layers to achieve infiltration rates of approximately 0.5

inches per hour as estimated through observation or basic on-site testing.

Quarterly inspections of pre-treatment and post-treatment systems including, but not limited to: filters, swirl separators, oil-water separators, grit controllers, absorbents, adsorbents, etc. to determine the need for media replacement and/or maintain removal of sediment, trash, leaf or other vegetative debris, etc. to keep inflow and emergency overflow points free of clogging or re-suspension of collected materials. \_\_

The Property Owner or third party entity, such as a Management Group or Homeowners Association, is responsible for notifying MSD when potential structural maintenance is required at the outlet structure, overflow bypasses, culverts, pipes, observation well, and/or other structural elements. The responsible entity will be responsible for the following activities for GMPs: mowing; debris, sediment, and trash removal; and vegetation replacement and maintenance.

Operation, inspection, and maintenance requirements for pre-treatment or post-treatment water quality treatment devices as provided in "Exhibit B".

Operation, inspection, and maintenance requirements for harvesting, storage or blue roof technologies as provided in "Exhibit B".

Preparing and submitting to MSD an "Annual Inspection Checklist" as provided in the MSD Design Manual (Chapter 18), which shall be due on each anniversary of the Effective Date of this Agreement. If requested, MSD agrees to and shall assist the Property Owner in preparing the first inspection report to be submitted during the first year of this Agreement.

The "Annual Inspection Checklist" shall be prepared under the direction of and signature of a Qualified Post-Construction Inspector (QPCI) currently registered with the MSD.

Operation, inspection, and maintenance requirements for outlet of GMPs.

Other:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (6) **ACCESS AND USE:** Property Owner agrees to provide site access to MSD personnel for the purposes of green infrastructure inspection, observation, testing, maintenance, and repairs. Property Owner agrees to allow MSD to collect data, review records, collect samples, and take photographs.
- (7) **INDEMNIFICATION:** Property Owner agrees to hold harmless and indemnify MSD from any and all claims or damages, to the fullest extent permitted by law, which may arise as a result of the implementation, planning, design, construction, installation, operation or maintenance of the GMPs and does release MSD fully, finally and completely from any and all claims, liabilities, obligations, and warranties associated herewith and any and all damages which may result from any work performed in connection with this agreement.
- (8) **TERMINATION and ENFORCEMENT:** The removal of, or failure to maintain the GMPs described in Exhibit "A" may subject property to an enforcement action which may include notices of violation and fines. In the event of the occurrence of default, MSD shall provide the Property Owner written notice (by certified, first class, or overnight mail) of default setting forth the nature of the default, and the Property Owner shall have sixty days (60) days after receipt of such notice to cure such default. If the Property Owner fails or refuses to cure said default within this time period, MSD may institute enforcement procedures provided in the Wastewater / Stormwater Discharge Regulations.

The GMPs described in Exhibit "A" may only be removed and this agreement terminated if MSD approval is given and all impervious area on the site has been removed and vegetation is established.

- (9) **SUCCESSORS AND ASSIGNS:** This Agreement shall inure to the benefit of and shall be binding on the Parties hereto and their successors, grantees, and assigns.
- (10) **ENTIRE AGREEMENT:** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter herein, and may only be amended or modified in writing signed by the Parties hereto.
- (11) **GOVERNING LAW/ENFORCEABILITY:** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event any provision is determined to be invalid or unenforceable, the same shall not impair the validity or enforceability of the remainder of the Agreement.

**IN TESTIMONY WHEREOF**, witness the signatures of the Parties hereto, each by its proper officer duly authorized.

LOUISVILLE AND JEFFERSON COUNTY

METROPOLITAN SEWER DISTRICT \_\_\_\_\_ (Company/Agency)

\_\_\_\_\_ (Printed Name)

\_\_\_\_\_ (Printed Name)

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Signature)

MSD Chief Engineer

\_\_\_\_\_ (Title)

COMMONWEALTH OF KENTUCKY )

) SS.

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public within and for the State and County aforesaid, do hereby certify that the foregoing instrument was this day produced before me by \_\_\_\_\_, (name) who, being by me first duly sworn, did acknowledge and declare that he/she signed the foregoing instrument as \_\_\_\_\_ (title) of \_\_\_\_\_, by authority and direction of its \_\_\_\_\_ (members/directors/partners) as his/her free and authorized act and deed.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY )

) SS.

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public within and for the State and County aforesaid, do hereby certify that the foregoing instrument was this day produced before me by \_\_\_\_\_, (name) who, being by me first duly sworn, did acknowledge and declare that he signed the foregoing instrument as Chief Engineer 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 \_\_\_\_\_, 20\_\_

My Commission Expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

This Instrument prepared by:

\_\_\_\_\_  
Legal Counsel  
Louisville and Jefferson County  
Metropolitan Sewer District  
700 West Liberty Street  
Louisville, Kentucky 40203-1911  
(502) 540-6000  
(502) 540-6565 (Fax)