

**PRELIMINARY RESOLUTION BY THE BOARD
OF THE LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT AMENDING ITS 2022
SCHEDULE OF RATES, RENTALS AND CHARGES
FOR WASTEWATER AND DRAINAGE SERVICES
PURSUANT TO KRS CHAPTER 76**

WHEREAS, the Louisville and Jefferson County Metropolitan Sewer District was created and established pursuant to Chapter 76 of the Kentucky Revised Statutes (“KRS”) in the interest of public health for the purpose of providing adequate sewer and drainage facilities in the City of Louisville and Jefferson County, Kentucky; and

WHEREAS, on the 10th day of May, 1947, by Resolution of its Board, the Louisville and Jefferson County Metropolitan Sewer District (“MSD”) adopted and established a schedule of rates, rentals and charges for its services and thereafter has amended said schedule from time to time as authorized pursuant to KRS Chapter 76; and

WHEREAS, pursuant to KRS Chapter 76, the schedule of rates, rentals and charges shall be established and revised from time to time so as to produce aggregate revenues to MSD sufficient for the payment of interest on and principal of all revenue bonds and other obligations of MSD, all cost and expenses of operating and maintaining MSD’s sewer and drainage system, and for the payment of all costs of renewals and replacements of such system; and

WHEREAS, on August 12, 2005, MSD entered into a Consent Decree with the United States Environmental Protection Agency and the Commonwealth of Kentucky in the United States District Court for the Western District of Kentucky, pursuant to civil action number 3:05-cv-236-S, subsequently amended and superseded by the Amended Consent Decree entered on April 15, 2009 pursuant to civil action number 3:08-cv-00608-CRS, whereby MSD committed to rehabilitating portions of its sewer systems and to construct other capital improvements to reduce and/or eliminate combined sewer overflows and sanitary sewer overflows to comply with state and federal environmental laws with all work to be completed by the year 2024; and

WHEREAS, on February 12, 2010, an Integrated Overflow Abatement Plan (“IOAP”) was incorporated into the Amended Consent Decree which includes as components the final Sanitary Sewer

Discharge Plan ("SSDP") and final Long-Term Control Plan ("LTCP") as required by the Amended Consent Decree; and

WHEREAS, a non-material modification to the Amended Consent Decree occurred through adjustments set forth in a revised IOAP (the "2012 IOAP Modification") approved on June 19, 2014; and

WHEREAS, after approval of the 2012 IOAP Modification, MSD began experiencing changed circumstances including an increase in the failures of aging critical interceptor sewers, and accelerated deterioration of biosolids processing equipment due to higher solids and grit loadings, creating risks of non-compliance with its KPDES permits and potential risks to public health and safety; and

WHEREAS, also partnered with the United States Corp of Engineers to complete a Preliminary Feasibility Study for sixteen (16) Ohio River Flood Pump Stations which identifies approximately \$188.1 million in critical projects for ensuring that flood protection infrastructure will meet current standards for both the protection of public health and safety and protection of the combined sewer system, including new infrastructure constructed in compliance with MSD's final LTCP; and

WHEREAS, due to the changed circumstances and Feasibility Study, MSD, the Commonwealth of Kentucky and United States Environmental Protection Agency have negotiated a tentative agreement to enter into a Second Amended Consent Decree which will supersede and replace the 2009 Amended Consent Decree and update the 2012 IOAP Modification with a 2021 IOAP Modification; and

WHEREAS, the Second Amended Consent Decree was negotiated to integrate the development of an asset management plan that provides for a long-term maintenance and funding strategy for rehabilitation and renewal of MSD's aging biosolids systems, and failing critical interceptors and flood protection system; and

WHEREAS, since entry of the Consent Decree, MSD has spent approximately \$1 billion developing and completing many of the IOAP projects, and completing other projects and compliance measures mandated by the Amended Consent Decree; and

WHEREAS, to facilitate MSD's ability to reprioritize projects and capital spending, the Commonwealth of Kentucky and United States Environmental Protection Agency have tentatively agreed to extend the time for completion of remaining IOAP projects to 2035; and

WHEREAS, in exchange for the time extension, MSD has agreed to invest a minimum of \$25 million on average each fiscal year in asset management projects for a total of \$375 million by June 30, 2035, and to incorporate \$70 million in its 5-year Capital Improvement Program for critical sewer rehabilitation; and

WHEREAS, final approval of the Second Amended Consent Decree by the Commonwealth of Kentucky and United States Environmental Protection Cabinet, and entry by the United States District Court for the Western District of Kentucky, are subject to the requirements of 28 C.F.R. §50.7, which provides for notice of the lodging of the Second Amended Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments; and

WHEREAS, in order to comply with the terms of the Second Amended Consent Decree, and to operate and maintain its wastewater and drainage system in compliance with the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), the Clean Water Act of 1977 (Pub. L. 95-217), and United States Environmental Protection Agency rules and regulations, MSD must maintain a schedule of sewer service rates that will proportionally charge operation and maintenance costs to all users of the MSD wastewater and drainage system and that will generate sufficient revenue to offset the cost of repair and replacement of its aging biosolids, and failing interceptor sewers and flood protection system; and

WHEREAS, pursuant to KRS Chapter 76, the Board of Aldermen of the City of Louisville, by Ordinance No. 152, Series 1979, as amended by Ordinance No. 388, Series 1986, and the Fiscal Court of Jefferson County, by Ordinance No. 25, Series 1979, as amended by Ordinance No. 32, Series 1986, and Louisville Metro Ordinance No. 62, Series 2003, as amended by Ordinance No. 155, Series 2007, which ratified the aforementioned ordinances, approved a schedule of wastewater and drainage service charges for MSD which includes the following Debt Service Adjustments provision:

“Whenever MSD’s net revenues are less than 1.10 times the debt service on MSD’s outstanding revenue bonds for any consecutive six-month period, by order of the Board of MSD, the schedule of wastewater service charges and drainage service charges shall be amended in order to maintain a 1.10 debt service coverage required by MSD’s 1971 Bond Authorizing Resolution which was approved by City of Louisville Ordinance Number 86, Series 1971; provided the aggregate of such adjustments for any 12-month period shall not generate additional revenue from wastewater service charges and drainage service charges in excess of 7%.

The term ‘net revenues’ is defined as gross revenue from wastewater service charges and drainage service charges, less operating expenses and debt payments other than debt service payments on MSD’s outstanding revenue bonds[;]” and

WHEREAS, the Board of MSD has been advised by MSD’s Chief Financial Officer that net revenues, as defined by Louisville Metro Ordinance No. 155, Series 2007, for the six-month period ended March 31, 2022, will be less than 1.10 times the debt service on MSD’s outstanding revenue bonds for the same six-month period; and

WHEREAS, MSD’s current schedule of rates, rentals and charges (wastewater and drainage service charges) will not continue to generate sufficient revenue for the proper operation and maintenance of the existing sewerage, drainage, and flood protection system and for the retirement of MSD’s outstanding debt and, therefore, will not be in compliance with the Kentucky Revised Statutes, MSD’s Bond Authorizing Resolutions and relevant ordinances; and

WHEREAS, in order to generate sufficient revenue to maintain the required debt service coverage, continue the proper operation and maintenance of MSD’s existing sewerage, drainage, and flood protection system, and meet the obligations of MSD’s Second Amended Consent Decree, the Board is proposing that the schedule of wastewater and drainage rates, rentals and charges be amended; and

WHEREAS, pursuant to KRS Chapter 76 and 424, the proposed amended schedule of wastewater and drainage rates, rentals and charges will be published, giving notice that objections and/or comments on the schedule may be filed within a period of thirty (30) days from the date of said publication.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MSD that,

The above recitals are hereby incorporated into this Resolution as if set forth fully within, and

MSD's schedule of wastewater and drainage rates, rentals, and charges be, and they are hereby amended to include the following new rates in addition to current rates and said new rates shall be used for billings rendered on and after August 1, 2022:

I. Sections 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.4, 3.0, 3.1, 3.2, 3.2.2, 3.2.3, 4.1 and 4.2 of MSD's current *Schedule of Rates, Rentals and Charges*, which establish wastewater service charges, wastewater volume charges, wastewater quality charges, and a flat rate charge for residential customers, are hereby amended and shall read as follows:

1.0 WASTEWATER SERVICE CHARGES

The Wastewater Service Charge is a fixed service charge based on the size of the water meter and applies to all wastewater service charge billings. The Wastewater Service Charge shall be calculated using the table below and may be prorated based on the number of actual days in a billing cycle:

1.1 Commercial/Industrial Charges:

<u>Meter Size</u> Inches	<u>Monthly Billing</u> \$/Bill	<u>Daily Proration</u> \$/Bill	<u>Bi-Monthly Billing</u> \$/Bill	<u>Daily Proration</u> \$/Bill
5/8 or 3/4	19.85	0.65244	39.69	0.65244
1	39.85	1.31005	79.70	1.31005
1 1/2	66.30	2.17963	132.59	2.17963
2	90.93	2.98948	181.86	2.98948
3	202.69	6.66385	405.38	6.66385
4	327.73	10.77455	655.45	10.77455
6	643.97	21.17145	1287.92	21.17145
8	965.96	31.75752	1931.92	31.75752
10	1269.05	41.72222	2538.10	41.72222
12	1869.87	61.47523	3739.73	61.47523
16	2266.45	74.51329	4532.91	74.51329

1.2 Residential Charges:

<u>Meter Size</u> Inches	<u>Monthly Billing</u> \$/Bill	<u>Daily Proration</u> \$/Bill	<u>Bi-Monthly Billing</u> \$/Bill	<u>Daily Proration</u> \$/Bill
5/8 or 3/4	19.85	0.65244	39.69	0.65244
1	39.85	1.31005	79.70	1.31005
1 1/2	66.30	2.17963	132.59	2.17963
2	90.93	2.98948	181.86	2.98948
3	202.69	6.66385	405.38	6.66385
4	327.73	10.77455	655.45	10.77455

1.3 Meter Read Charge:

An additional charge of **\$100.00** shall be applied for each reading of the first meter per location owned by a customer for the purpose of determining billable consumption. Each additional meter per location will be charged at \$10.00 per reading. Examples of these meters are effluent flow meters, addition and subtraction meters.

2.0 WASTEWATER VOLUME CHARGES

The Wastewater Volume Charge is based on either water used as measured by a Louisville Water Company (LWC) meter(s) or wastewater discharged to the public sewer that is directly measured by either a private effluent flow meter(s) or calculated using a combination of addition meters (LWC meters/effluent flow meters) and subtraction meters that have been certified by the MSD Finance Division for billing purposes. Wastewater Volume Charges may be modified from time to time by contractual agreement with individual customers. Wastewater Volume Charges are calculated based on the following rates:

2.1 Regular Volume Rate

The Regular Volume Rate shall be applicable to all water used and not meeting the requirements of Optional Volume Rate as described in Section 2.2 below. The Residential Regular Volume Rate is calculated to provide a year-long 15% discount for lawn watering and other uses of water which does not enter the public sewer. In addition, the Regular Volume Rate is calculated to provide automatic year round volume rate discounts of 10% for Commercial customers and 5% for Industrial customers.

Residential - \$5.42 per 1,000 gallons of volume billed
Commercial - \$6.27 per 1,000 gallons of volume billed
Industrial - \$6.52 per 1,000 gallons of volume billed

Commercial and Industrial facilities on the Regular Volume Rate that are subject to a Quality Charge Rate shall pay Excess Quality Charges as described in Section 3.1 below.

2.2 Optional (Clean) Volume Rate

The Optional Volume Rate shall be available to customers whose average water use or wastewater discharged to the public sewer during any consecutive twelve-month period exceeds 1,000,000 gallons per month. Commercial and Industrial customers on the Optional Volume Rate that are subject to a Quality Charge Rate shall pay Total Quality Charges as described in Section 3.2 below.

\$3.72 per 1,000 gallons of volume billed

2.3 Sewer Only Volume Rate

The Sewer Only Volume Rate shall be applicable to wastewater discharged to the public sewer that is directly measured by either a private effluent flow meter(s) or calculated using a combination of addition meters (LWC meters/effluent flow meters) and subtraction meters. All effluent flow meters, addition and subtraction meters shall be inspected and certified by the MSD Finance Division prior to being used for billing purposes.

Residential - \$6.25 regular rate
Commercial - \$7.00 regular rate or \$3.97 optional rate/1,000 gallons
Industrial - \$7.05 regular rate or \$3.97 optional rate/1,000 gallons

2.4 Consent Decree Surcharge

The Consent Decree Surcharge shall be applicable to the following billings:

Residential - \$16.22 per month or \$32.45 bi-monthly
Condominium complexes without water meters for each condominium - greater of \$16.22 per month or \$2.72 per thousand gallons of water billed
Commercial Regular Volume Rate - greater of \$16.22 per month or \$1.94 per thousand gallons of water billed
Commercial Sewer Only Volume Rate - greater of \$16.22 per month or \$2.15 per thousand gallons of wastewater discharged
Industrial Regular Volume Rate - greater of \$16.22 per month or \$2.02 per thousand gallons of water billed
Industrial Sewer Only Volume Rate - greater of \$16.22 per month or \$2.15 per thousand gallons of wastewater discharged
Optional (clean) Volume Rate - greater of \$16.22 per month or \$1.16 per thousand gallons of water billed
Optional (sewer only) Volume Rate - greater of \$16.22 per month or \$1.24 per thousand gallons of wastewater discharged

3.0 WATER QUALITY CHARGES

Commercial and Industrial customers that discharge wastewater to the public sewer characterized by excess strength of Biochemical Oxygen Demand (BOD) and/or Total Suspended Solids (TSS) shall be assessed a Quality Charge Rate established by MSD.

Any Commercial or Industrial customer who is deemed eligible to be placed on a Quality Charge Rate by MSD shall have their wastewater tested for the purpose of accessing a quality charge billing rate in addition to the volume rate applied.

MSD shall at all times have access to the premises of a customer for the purpose of determining an appropriate Quality Charge Rate. Quality Charge Rates shall be based on sampling and analyses conducted by MSD personnel using MSD protocols and methods, unless otherwise approved by the MSD Board.

MSD shall set the frequency and duration for Quality Charge Rate sampling events. MSD will take business cycle fluctuations that may affect loadings into consideration when determining sampling frequency and duration.

MSD may establish standard BOD and TSS loadings for a specific customer class which shall be used to assess applicable Quality Charge Rates.

MSD may use other methods such as contractual agreements to determine a Quality Charge Rate for individual customers for which standard sampling and analyses do not represent the actual BOD and/or TSS concentrations being discharged to the public sewer.

3.1. Excess Quality Charges

Excess Quality Charges shall apply to Commercial and Industrial customers paying the Regular Volume Rate as follows:

BOD Concentration: **\$0.005167** per mg/liter in excess of 250 mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter; and/or

TSS Concentration: **\$0.00208782** per mg/liter in excess of 270 mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter.

3.2. Total Quality Charges

3.2.1 Total Quality Charges shall apply to Commercial and Industrial customers paying the Optional Volume Rate as follows:

3.2.2 BOD Concentration: **\$0.005069** per mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter; and/or

3.2.3 TSS Concentration: **\$0.00212835** per mg/liter billed per 1,000 gallons of water recorded by a LWC meter OR wastewater discharged to the public sewer as directly measured by an effluent flow meter.

4.0 FLAT RATE CHARGE FOR RESIDENTIAL CUSTOMER

4.1 The following flat rate wastewater service charges shall be applicable to any single-family residential customer without metered public water service:

\$46.94 monthly plus \$16.22 Consent Decree Surcharge

-OR-

\$93.87 bi-monthly plus \$32.45 Consent Decree Surcharge

4.2 The following flat rate wastewater service charges shall be applicable to any single-family residential customer connected to a master-metered public water service:

\$19.85 monthly plus \$16.22 Consent Decree Surcharge

-OR-

\$39.69 bi-monthly plus \$32.45 Consent Decree Surcharge

II. Section 6.0, which establishes MSD's Unusual Discharge Fee, is hereby amended and shall read as follows:

6.0 Unusual Discharge Fee

Any business, firm or individual introducing into MSD's sewer system a substance detrimental to MSD's sewers, wastewater treatment facilities, pumping facilities or wastewater treatment processes, or which results in abnormal costs for MSD, shall be charged and shall pay the actual

total costs incurred as determined by MSD. For additional information, please see <https://louisvillemSD.org/industrial-waste-programs/udr>.

- III.** Section 9.7, which authorizes MSD’s Wastewater Facility Review and Inspection Fees, is hereby amended and shall read as follows:

9.7 Wastewater Facility Review and Inspection Fees

The MSD Board may establish fees for the review and approval of plans and designs of wastewater facilities and for the inspection of the construction of wastewater facilities and the review, approval and programming of telemetry for wastewater facilities, all in accordance with KRS 76.085. For additional information, please see <https://louisvillemSD.org/what-we-do/stormwaterdrainage/permitting>.

- IV.** Sections 10.1.13, 10.1.15, 10.1.16, 10.1.17, 10.1.18, 10.1.19, 10.1.20, 10.2 through 10.2.2.4, and 10.3 through 10.3.6, which establish MSD’s Drainage Service Charges, and Sections 10.4, 10.5 10.6 and 10.7, which establish and set for the provisions of MSD’s Drainage Service Charge Credit, are hereby amended and shall read as follows:

10.0 Drainage Service Charges

A system and structure of drainage service charges to be applied to all developed parcels of land within the MSD drainage service area and other drainage service fees are hereby established in accordance with the following:

10.1 Definitions

The words or phrases below shall have the following meanings:

- 10.1.1** “MSD” shall mean the Louisville and Jefferson County Metropolitan Sewer District.
- 10.1.2** “Developed” shall mean the condition of real property altered from its natural state by the addition to or construction on such property of impervious ground cover or other man-made physical improvements such that the hydrology of the property or a portion thereof is affected.
- 10.1.3** An “Equivalent Service Unit” (ESU) is the measure of impervious ground cover for a typical single-family residential property and is used by MSD in assessing the drainage service charges for each parcel of property.
- 10.1.4** “Impervious Surface” shall mean those hard surface areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions pre-existent to development, or which cause water to run off the surface in greater quantities or at an increase rate of flow than that present under natural conditions pre-existent to development, including, without limitations, such surfaces as roof tops, compacted gravel, asphalt or concrete paving, driveways and parking lots, walkways, patio areas, storage areas, or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development.

- 10.1.5** “**Drainage Master Plan**” shall mean the plan for managing storm drainage and surface water runoff facilities and features within MSD’s drainage service area and the drainage basins therein.
- 10.1.6** “**Drainage Service Charge**” means the fee levied by MSD upon all developed real property within the boundaries of MSD’s drainage service area.
- 10.1.7** The “**System**” shall mean the entire system of flood protection and stormwater drainage and surface water runoff facilities owned or leased by MSD or over which MSD has right of use for the movement and control of storm drainage and surface water runoff, including both naturally occurring and man-made facilities.
- 10.1.8** “**Drainage Service Area**” shall mean all areas within Jefferson County not including Anchorage, Jeffersontown, St. Matthews and Shively, except as those areas or portions thereof are included in the district area by agreement with MSD. The term "district area" as used in this definition shall mean the service area of MSD as defined in KRS 76.005(3).
- 10.1.9** “**Undeveloped**” shall mean that condition of real property unaltered by the construction or addition to such property by man of impervious ground cover or physical man-made improvements of any kind which change the hydrology of the property from its natural state.
- 10.1.10** “**Residence**” shall mean a building or structure or portion thereof, designed for and used to provide a place of abode for human beings. The term residence includes the term “residential” and “residential unit” as referring to the type of or intended use of a building or structure.
- 10.1.11** “**Single-Family Residential Property or Parcel**” means any property or parcel which contains one structure with one or two residential dwelling units. Any such property or parcel containing more than one water meter, however, shall be deemed a Non-Single Family Residential Property or Parcel.
- 10.1.12** “**Non-Single-Family Residential Property or Parcels**” shall mean properties or parcels which contain more than one residential structure or one residential structure with more than two residential dwelling units and institutional, commercial, or industrial properties. This definition shall include a residential property or parcel containing two or more water meters.
- 10.1.13** “**Stormwater Flow Rate**” shall mean the stormwater discharge rate from a site based on the 100-year, 24-hour storm event as calculated using methods described in Chapter 10 of the MSD Design Manual.
- 10.1.14** “**Stormwater Retention or Detention Facilities**” shall mean stormwater drainage structures such as a basin, best management practice or facility that detains or retains (infiltrates) surface drainage / rainwater runoff.
- 10.1.15** “**Stormwater Infiltration**” shall be based on the rainfall and runoff from surfaces that flow into and through Post-Construction BMPS into the subsurface soil.

- 10.1.16 “Post-Construction BMPs”** shall mean pervious pavers, rain gardens, green roofs, infiltration drains, wetlands, bioswales, etc. consistent with Chapter 18 of the MSD Design Manual.
- 10.1.17 “Water Quality Benefits”** shall be based on the threshold rain event the Post-Construction BMPs are able to treat through infiltration and/or pollutant removal. The Post-Construction BMPs, or series of Post-Construction BMPs, must at a minimum, treat the threshold/minimum water quality rain event, as defined in the MSD Design Manual, imposed upon new development.
- 10.1.18 “Post-Construction BMP Signage”** shall mean static Post-Construction BMP Signage educational signage that is installed at a credited site, and that is designed and placed in accordance with MSD standards and guidance.
- 10.1.19 “Stormwater Infiltrated”** shall mean the depth, in inches, of rainfall applied to the impervious surface that is captured and infiltrated by a Post-Construction BMP.
- 10.1.20 “Connected Downspout”** shall mean the conveyance of roof drainage on private property, by pipe or other means, directly to an MSD collection system that conveys flow to a WQTC.

10.2 Service Charge

A drainage service charge is imposed on every parcel of land within the drainage service area except exempted properties. The following charges are hereby established and imposed for all parcels of real property within the drainage service area, excluding exempted properties:

10.2.1 Class A properties or Single-Family Residential

The single-family residential charge rate shall be **\$12.47** per month for each parcel having one or two residential dwelling unit(s). This flat rate fee is based on each single-family residential parcel being equal to one equivalent service unit (ESU). MSD shall determine the number of single-family residential parcels in the drainage service area and designate each as a single ESU irrespective of the size of parcel is segregated or the use of the land is modified to other than single-family. Drainage Charges may be pro-rated based on the number of actual days in a billing cycle.

10.2.2 Class B or other Parcels

The charge for all other parcels within the drainage service area shall be based upon the number of square feet of measured impervious surface, as determined by MSD through aerial photography and surface feature evaluation processes, expressed in whole ESUs by rounding to the next highest ESU (an ESU has been determined to be 2,500 square feet of impervious surface). The charge for Class B property may be computed by multiplying the number of ESUs for a given parcel by the unit rate established by MSD of **\$12.47** per month. Drainage Charges may be pro-rated based on the number of actual days in a billing cycle. Any owner of Class B property may request a drainage charge credit adjustment for approved on-site stormwater retention or detention facilities provided:

- 10.2.2.1 The property owner remains responsible for all costs of operation and maintenance of the facility;
- 10.2.2.2 The facility has been constructed in accordance with all approved plans;
- 10.2.2.3 The owner has obtained MSD required permits for the facility; and
- 10.2.2.4 MSD has access to the facility for purposes of inspecting for compliance with design, maintenance and operating standards.

10.3 The following properties are exempt from drainage service charges:

- 10.3.1 City-owned property where that incorporated city has entered into an interlocal drainage service agreement with MSD providing for detention basin sites, easements, drainage right-of-way or other assets of value comparable to applicable drainage service charges;
- 10.3.2 Properties owned by the Metro Government, or their budgeted agencies, which have offset their drainage service charges by the dedication of drainage facilities and future considerations through concomitant cooperative agreements;
- 10.3.3 MSD-owned property;
- 10.3.4 Public roads;
- 10.3.5 All undeveloped parcels of land; and
- 10.3.6 Properties owned by a fire district organized pursuant to KRS Chapter 75.

10.4 Credits-Monthly Drainage Service Credit

If MSD approves a drainage charge credit for on-site stormwater retention or detention facilities, the credit will be applied by reducing the number of billable ESUs by the percent of reduction in stormwater runoff due to such on-site facilities, as determined by MSD. The net billable ESUs after such credit is applied shall be expressed in whole ESUs by rounding to the next highest ESU. The adjusted drainage service charge shall not be less than 50% of the drainage service charge before the credit adjustment.

Applications for credits and stipends utilizing Post-Construction BMPs that exceed minimum requirements established by local ordinance and the MSD Design Manual will be reviewed to consider potential credit for peak flow reduction, total site runoff reduction, water quality benefit and outreach/education. The credit shall be calculated differently depending on the system to which the project drains, either the combined sewer area or MS4 area. The basis of the credit computation is as follows:

MSD Drainage Credit Program					
	Category	Max Credit	Design Condition	Credit Allocation	
MS4 Area	Flow Rate Reduction	30%	2yr Post Developed Flow = (1/2) 2yr Pre Developed Flow	10%	
			10yr Post Developed Flow = (1/2) 10yr Pre Developed Flow	10%	
			100yr Post Developed Flow = (1/2) 100yr Pre Developed Flow	10%	
	Stormwater Infiltration	15%	Stormwater Infiltration Credit = [(Stormwater Infiltrated) X 10%] with a maximum credit of 15%	15%	
	Post-Construction BMP Signage	5%	<u>Signage</u>	5%	
	Maximum Credit Available				50%
Combined Sewer Area	Stormwater Flow Rate Reduction	15%	Post Developed 100 yr. Flow = Pre Developed 2 yr. Flow	15%	
	Stormwater Infiltration	30%	Stormwater Infiltration Credit = [((Stormwater Infiltrated) X 20%) - 30%] with a maximum credit of 30%	30%	
	Post-Construction BMP Signage	5%	Signage	5%	
	Maximum Credit Available				50%

Credit and stipend applications must include proposed operation, maintenance, and inspection plans. Applicants will be required to provide annual certifications documenting that required inspections and maintenance were performed to maintain the credit. In addition, access must be granted to MSD to perform inspections for the life of the credit. Applications for a credit or stipend must also include construction plans prepared in accordance with standards defined in the MSD Design Manual. This requirement includes preparation of plans by a qualified professional.

10.5 Monthly Stormwater Drainage Service Charge Credit Duration

Existing drainage service charge credits granted as of July 31, 2018 will remain in effect until July 31, 2028, subject however to a reduction in rates as set forth below. New

applications for drainage service charge credits may be granted for a maximum period of up to 10 years provided that all credit program requirements are met at the time of application and continue to be met for the life of the credit. Prior to the expiration of a credit, a new application may be submitted but the new application must meet the most current drainage service charge credit program requirements and conditions and all other applicable terms and conditions. Failure to submit a new application prior to the expiration of a credit will result in the loss of the credit. In fiscal year 2028, customers must reapply for the drainage service charge credit. If approved, 50% will be the maximum credit allowed.

Existing drainage service charge credits will be subject to reduction beginning January 1, 2021 to reduce credits to the maximum of 50% by January 1, 2028, and shall be reduced annually according to the following schedule, provided the credit is above the maximum credit allowed:

January 1	Max Credit %
2023	70%
2024	66%
2025	62%
2026	58%
2027	54%
2028	50%

In addition, the following conditions apply to obtaining and maintaining the credit:

10.5.1 The existing facility must be maintained to acceptable condition or repairs must be made within the time prescribed by MSD.

10.5.2 MSD must be given access to enter the properties to perform inspections.

Loss of credit due to non-performance shall be permanent and irreversible after 60 days of failure to comply with notices of violations (NOVs).

10.6 Capital Recovery Stipend

Capital Recovery Stipends are payments from MSD offered to defray the cost of implementing Post-Construction BMP components that exceed minimum requirements established by local ordinance and the MSD Design Manual. Acceptance of the Capital Recovery Stipend will reduce the monthly stormwater drainage service charge credit for which the Applicant is eligible. If a Capital Recovery Stipend is accepted, the drainage service charge shall not be less than 75% (i.e. monthly drainage service charge credit shall be no more than 25%). MSD will not incur costs associated with an Applicant’s engineering, design, or analysis required for completion of the application.

Stipend values will be determined by MSD utilizing hydraulic modeling of the incorporation of the green project into the Combined Sewer System. The project value will include the treatment savings cost, as well as any size reduction savings to downstream gray infrastructure as outlined in the Integrated Overflow Abatement Plan (IOAP).

Should a customer already enrolled in the program request to participate in the Capital Recovery Stipend program for either a new property or an improved property, the customer must enter into a new agreement for the new or improved property which sets forth the stipend amount that adheres to the current credit policy and must terminate any preexisting agreement pertaining to that specific property.

Capital Recovery Stipends are available on a priority basis and as MSD budgets allow. Priority will be given to potential projects based on performance indicators, location in relation to priority sewersheds and watersheds, potential for sustainable partnerships, constructability, and public exposure potential.

Applications for Capital Recovery Stipend must be prepared by qualified professionals and must also include operation and maintenance plans, and designs prepared in accordance with standards defined in the MSD Design Manual. Annual certifications must also be submitted by the property owner who will be required to document that inspections and maintenance needs have been performed.

Applications are required one year prior to the agreement expiration to ensure no lapse in credit. Applications will be reviewed to consider potential credit for peak flow rate reduction, total site runoff reduction, water quality benefit and water quality outreach/education. The sites will be subject to access by MSD for inspection and maintenance certifications.

Capital Recovery Stipend agreements will reflect MSD's value recovery if Post-Construction BMPs are removed or altered beyond the original intent. Recovery will be required, if within 10 years of stipend agreement approval date, a property owner chooses to remove the Post-Construction BMP or make modifications that negate the intended purpose associated with a capital recovery stipend. In that case, the property owner shall be responsible for reimbursing MSD the greater of: 25% of the stipend amount; or, a straight line 10-year depreciation of the stipend amount.

As an alternative to the Capital Recovery Stipend, credit applications will be accepted to allow for reduction in impervious area by the amount controlled by Post Construction BMPs. This credit, based on alternative impervious area calculation, will be available for a maximum of 10 years. The Post Construction BMP must control drainage to a level acceptable to MSD (i.e. capacity to manage the first 0.75-inches of precipitation of a storm event). These sites will also be subject to access by MSD for inspection and maintenance certifications.

For single family residential customers, incentives for disconnection of downspouts may be available at a rate of \$100/downspout if the homeowner disconnects. Disconnection incentives are subject to MSD inspection and approval. Details on the program are outlined at www.msdstormwaterquality.org.

10.7 Drainage Design Review and Inspection Fees

The MSD Board may establish fees for the review and approval of plans and erosion prevention and sediment control measures, and for the inspection of the construction of drainage facilities and erosion prevention and sediment control measures, all in accordance with KRS 76.085, and may establish policies for the sharing of the costs of developing

regional drainage systems serving multiple developments/properties. For additional information, please see:

<https://louisvillemsd.org/what-we-do/stormwaterdrainage/permitting>.

- V. Sections 12.1 through 12.1.4.2, and 12.2 through 12.2.7, which establish and set forth the provisions of MSD's Stormwater Regional Facility Fee, and Post-Construction Fee-In-Lieu-Of, are hereby amended and shall read as follows:

12.0 Regional Stormwater Facilities

12.1 Stormwater Regional Facility Fee

12.1.1 All new sewerage systems, whether involving wastewater or stormwater facilities, shall be sized, located, designed and constructed in accordance with MSD's Design Manual, Standard Specifications, and Master Plan or Action Plan so as to provide optimum and adequate service to existing and future users within the affected service area(s).

12.1.2 If regional stormwater facilities are required for a development in accordance with MSD's Design Manual, Standard Specifications and Master Plan or Action Plan, MSD may require a developer to participate in the cost of regional stormwater facilities. The requirement to build or participate in the cost of regional stormwater facilities shall be determined concurrently with the review by MSD of the developer's proposed development plans by an analysis of the development's impact on the general community and watershed, other development, existing service facilities and its conformance with MSD's Master or Action Plans.

12.1.3 The capacity used for sizing a regional facility and for determining the needs of each development shall be the capacity determined by the Development and Stormwater Services Director based on MSD's design criteria and sound engineering judgment.

12.1.4 Fees for participating in a regional stormwater facility constructed by MSD shall be determined as follows:

12.1.4.1 For development within MSD's Stormwater Service Area, the current fee is \$ **0.85** per cubic foot of stormwater volume mitigation required.

12.1.4.2 For development outside of MSD's Stormwater Service Area, the fee listed in 12.1.4.1 shall be increased by twenty percent (20%) to account for the estimated cost of maintenance of the regional facility by MSD. This additional cost is applicable to all development within the corporate limits of any city within Jefferson County that has elected not to participate in MSD's stormwater service.

12.2 Post-Construction Fee-In-Lieu Of

- 12.2.1** The Post-Construction Fee-In-Lieu-Of (FILO) program provides an alternative option for development projects that are required to meet water quality requirements, but are unable to provide Post-Construction Best Management Practices (BMPs) onsite. MSD's Municipal Separate Storm Sewer System (MS4) permit and Wastewater Discharge Regulations require Post-Construction BMPs for all development projects that have one acre or more of disturbance and for development projects that are part of a greater common development that have one acre or more of disturbance. The post construction BMPs must be maintained as long as the impervious areas remain. MSD's Wastewater Discharge Regulations include an option for a FILO program as an alternative to constructing BMPs onsite for development projects. The FILO funds will be used to construct alternative BMPs offsite, including but not limited to, regional green infrastructure, small local green infrastructure, and other water quality projects as approved, to meet the water quality requirements.
- 12.2.2** The FILO program allows a developer the option to pay a proportionate share of the cost of stormwater quality management practices that have been or are proposed to be constructed by MSD, and/or local water quality projects on private property when approved through the MSD FILO grant program. MSD will determine, at its sole discretion, whether a development is eligible to participate in the FILO Program, and will determine whether the payment of the fee or another mitigation measure is appropriate for each development during the review of construction plans.
- 12.2.3** The following development project types will be considered for FILO approval:
- 12.2.3.1** Projects in the combined sewer area;
 - 12.2.3.2** Linear projects, such as road or sidewalk projects;
 - 12.2.3.3** Projects with less than 2 acres of disturbance;
 - 12.2.3.4** Projects that are located on contaminated soils;
 - 12.2.3.5** Projects with site conditions that make it difficult to capture the minimum runoff to meet the water quality treatment requirement (i.e. the majority of a site goes to an onsite post-construction best management practice and the remaining portion is paid through FILO program. Areas with high groundwater tables);
 - 12.2.3.6** Projects in karst areas;
 - 12.2.3.7** Projects with significant hazardous materials storage; and
 - 12.2.3.8** Other projects as approved by MSD's Development & Stormwater Services Director.

The list above should not be considered inclusive or exhaustive in regard to a development's qualification for the FILO program. FILO program approval is at the sole discretion of MSD. Projects must be located

within MSD's Drainage Service Area to be eligible for the FILO program.

12.2.4 Request for participation in the FILO program must be made to MSD Development Review in writing by submitting the Stormwater Quality Fee-In-Lieu Application.

12.2.5 Use of the FILO must be approved by the Development & Stormwater Services Director. The fee shall be based on the untreated impervious area for the proposed development per the submitted construction plans. The FILO must be paid prior to permit issuance.

12.2.6 The FILO rate shall be based on untreated impervious area. The rate shall be \$1.60 per square foot of untreated impervious area. The FILO will be payable to MSD and tracked in a separate account (tracked via a General Ledger Account).

The fees collected by MSD will be separated into four watershed banks: Northeast Ohio River, Floyds Fork, Southwest Ohio River, and MSD combined sewer system. The fees shall be paid into the appropriate watershed bank based on the location of the development project being mitigated. The watershed areas are defined below:

12.2.6.1 Northeast Ohio River Watershed including Harrods Creek, Goose Creek, Beargrass Creek (South, Middle, and Muddy Forks), and areas in the Northeast portion of Jefferson County that drain directly to the Ohio River;

12.2.6.2 Floyds Fork Watershed including Floyds Fork main stem and tributaries within Jefferson County, Cedar Creek, and Pennsylvania Run;

12.2.6.3 Southwest Ohio River Watershed including Pond Creek, Mill Creek, and areas in the Southwest portion of Jefferson County that drain directly to the Ohio River; and

12.2.6.4 Combined Sewer System Watershed.

12.2.7 Fees collected in each watershed bank will be used to construct alternative BMPs offsite, including but not limited to, regional green infrastructure, small local green infrastructure, and other water quality projects as approved, to meet the water quality requirements. These projects will benefit water quality within the defined watershed area in which they were collected (Northeast Ohio River, Floyds Fork, Southwest Ohio River, and Combined Sewer System). These funds may be used to fund the FILO grant program as defined in the FILO Grant and Administration Procedures.

VI. Sections 17.2, 17.3.6, 17.4, 17.6, and 17.8, which establish and set forth the provisions of MSD's Emergency Wastewater Rate Assistance Program, are hereby amended and shall read as follows:

17.0 Emergency Wastewater Rate Assistance Program

17.1 Definitions

For purposes of this Section only, the words or phrases below shall have the following meanings:

17.1.1 “Household” means an individual or group of individuals who are living together in the principal residence sharing common living arrangements.

17.1.2 “Gross Household income” means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

17.1.3 “Low-income residential customer” means a direct residential customer of MSD having a gross total household income at or below one hundred fifty percent (150%) of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. 9902(2), or who is eligible for the Low Income Home Energy Assistance Program state plan prepared by the Kentucky Cabinet for Health and Family Services, Department for Community Based Services at the time of application.

17.1.4 “Principal residence” means the place where the customer is living voluntarily and not on a temporary basis; the place the customer considers home; the place to which, when absent, the customer intends to return; and is identifiable from another residence, commercial establishment or institution.

17.2 Wastewater Discount

All eligible low-income residential customers may receive a thirty percent (30%) discount on the wastewater charges on their sewer bill beginning October 1, 2022. The discount, known as the Emergency Wastewater Rate Assistance Program (“EWRAP”/ “Program”) discount, shall apply to wastewater service charges, wastewater volume charges and Consent Decree surcharges. Program participation is limited to 2,500 customers and/or will only be offered until available funding is expended.

17.3 Eligibility Criteria

The Emergency Wastewater Rate Assistance Program discount shall be available to low-income residential customers who:

17.3.1 Apply for and are approved for the discount. Customers shall provide required information upon forms and in the manner required by Program rules to certify their eligibility.

17.3.2 Are receiving water by separate metered water service for a property or dwelling used solely for residential purposes owned or leased by the customer as his or her principal residence.

17.3.3 Are named customers with MSD and are responsible for paying the sewer bill received from the Louisville Water Company for the customer’s principal residence.

17.3.4 Verify and certify gross household income and ownership or leasehold of their principal residence in the manner required by the Program.

17.3.5 Have total gross household income, when computed annually, including the income of all occupants, and regardless of age, that does not exceed 150% of the official poverty income guidelines referenced in section 17.1.3 computed annually.

17.3.6 Are not receiving and have not been approved to receive MSD's Senior Citizen's Discount as of the date of application for the Program.

17.3.7 Satisfy all other terms and conditions established by the Program for eligibility.

17.4 Exclusions

MSD customers, age 65 years of age or older, receiving or who have been approved to receive MSD's Senior Citizen's discount, shall not be eligible for the Emergency Wastewater Rate Assistance Program. MSD customers receiving MSD's Senior Citizen's discount are disqualified from receiving the Emergency Wastewater Rate Assistance Program discount.

17.5 LIHEAP Customer Qualification

MSD Customers approved for the Low Income Home Energy Assistance Program (LIHEAP) state plan prepared by the Kentucky Cabinet for Health and Family Services, Department for Community Based Services at the time of application for the Emergency Wastewater Rate Assistance Program discount, shall automatically qualify for the wastewater charge discount. If a customer's LIHEAP approval is terminated or ends, however, and for any reason, the customer's automatic eligibility for the Emergency Wastewater Rate Assistance Program Discount shall also terminate or end and the customer must apply for the discount and meet the eligibility requirements set forth in Section 17.3 to qualify.

17.6 Effective Date of EWRAP Discount

Except as set forth in Section 17.8, the EWRAP discount shall commence on the next subsequent billing date following approval of the customer's application and shall continue until **September 30, 2023**, conditioned upon the customer's continued eligibility. If the Program is continued after September 30, 2023, customers will be required to re-apply to continue to receiving the discount.

17.7 Program Administration

The Executive Director or his designee may prescribe such policies, regulations and procedures, consistent with the provisions of this Section, as deemed necessary and appropriate to administer and enforce the Emergency Wastewater Rate Assistance Program.

17.8 Program Modification / Termination

The Emergency Wastewater Rate Assistance Program shall continue through September 30, 2023, unless earlier terminated at the discretion of MSD, and may be modified by MSD at any time.

VII. ADDITIONAL PROVISIONS AFFECTING SCHEDULE:

All remaining provisions of MSD's current schedule of wastewater rates, rentals and charges not amended herein shall continue in full force and effect. MSD's *Schedule of Rates, Rentals and Charges* as amended herein shall become effective **August 1, 2022**.