

MSD Use Only	
WM No.	_____
SDP No.	_____

# 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 (**“Property”**) and the **Louisville and Jefferson County Metropolitan Sewer District (“MSD”)**, public body corporate subdivision organized pursuant to Chapter 76 of the Kentucky Revised Statutes, 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 of public sewers, and regulation private sewers, 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 post-construction water quality best management practices (BMPs), also known as 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 BMPs are required to operate over the long-term use of the property in order to reduce pollutant runoff into the public CSS and/or 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:** The Property Owner shall construct BMP(s) on the PROPERTY in accordance with approved construction plans on file with MSD and identified as WM# \_\_\_\_\_ and project name \_\_\_\_\_.

The type, quantity and location of each BMP is identified in the table below:

BMP Type	Location (Latitude/Longitude)

(2) **TERM OF AGREEMENT:** This agreement is effective as of the date of release of the MSD site disturbance permit for the aforementioned WM# Project. 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, operation, and replacement of the BMPs. 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, INSPECTION AND REPLACEMENT:** The Property Owner shall maintain and operate the BMPs for the purpose of achieving MSD’s defined infiltration and/or other water quality benefits. Maintenance, operation, inspection, and replacement activities shall include:

BMP(s) shall be maintained in accordance with the applicable Maintenance Schedule as provided in the current MSD Design Manual Chapter 18 and included herein as “Exhibit A”.

An “Annual Inspection Checklist” shall be prepared and submitted to MSD by each July 1<sup>st</sup>. An “Annual Inspection Checklist” is provided for the applicable BMP(s) at [www.louisvillemisd.org](http://www.louisvillemisd.org). The “Annual Inspection Checklist” shall be prepared under the direction of and signature of a Qualified Post-Construction Inspector currently registered with the MSD. If requested, MSD may assist the Property Owner in preparing the first inspection report to be submitted during the first year of this Agreement.

If the BMP is no longer meeting the intended water quality treatment requirement, and cannot be repaired, owner is responsible for the replacement of the BMP or MSD approved equivalent.

(6) **ACCESS AND USE:** Property Owner agrees to provide site access to MSD personnel for the purposes of BMP inspection, observation, testing. In the event the property owner fails to maintain BMPs, property owner agrees to provide site access to MSD personnel for 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 BMPs 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 BMPs described in the above Project Scope may subject property to an enforcement action, which may include notices of violation, fines and cost recovery in the event that MSD maintains the BMPs. 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 time period for the Property Owner to correct said default. If the Property Owner fails or refuses to correct said default within this time period, MSD may institute enforcement procedures provided in the Wastewater / Stormwater Discharge Regulations. The BMPs described in the above Project Scope may only be removed and this agreement terminated if MSD written approval is given. MSD is under no obligation to maintain or repair BMPs, and this Agreement shall not be construed to impose such an obligation on MSD. The Property Owner shall reimburse MSD upon demand the costs incurred in the maintenance or repair of the BMPs. If the Property Owner fails to pay for the above expenses after 30 day written notice, the Property Owner authorizes MSD to collect said expenses from the Property Owner through appropriate legal action and the Property Owner shall be liable for the reasonable expenses of collection, court costs, and attorney fees.

**(9) SUCCESSORS AND ASSIGNS:** This Agreement shall inure to the benefit of and shall be binding on the Parties hereto, or their successors, grantees, or 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.



