

MEMORANDUM OF AGREEMENT

BETWEEN THE

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT

AND

Louisville Metro Public Works

PERTAINING TO:

GREEN INFRASTRUCTURE PROJECT

West Market Street Pilot Project

THIS MEMORANDUM OF AGREEMENT (“MOA”), made and entered into on this _____ day of _____ 2015 (“Effective Date”) by and between the Louisville and Jefferson County Metropolitan Sewer District (“MSD”), 700 West Liberty Street, Louisville, Kentucky 40203, and Louisville Metro Public Works (“Property Owner”), 444 South 5th St, Suite 400, Louisville, Kentucky 40202, (MSD and Property Owner hereinafter referred to as the “Parties”).

WITNESSETH:

Whereas, MSD is a public body corporate and political subdivision organized pursuant to Chapter 76 of the Kentucky Revised Statutes whose primary responsibility is 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 the development and implementation of a green infrastructure best management practices (as defined in MSD’s Schedule of Rates, Rentals, and Charges) incentive program the purpose of which is to minimize the inflow of storm water runoff into the Combined Sewer System; and

WHEREAS, the incentive program is designed to promote and encourage public and private use of green infrastructure on existing multi-family, commercial, industrial, and institutional properties, new development, and redevelopment; and

WHEREAS, the Property Owner is a Kentucky _____ in the business of providing _____ and desires to participate in MSD’s green infrastructure best management practices incentive program by developing green infrastructure best management practices at its property located at 3800-3900 W. Market St., Louisville, Kentucky (“the Property”); and

WHEREAS, the Property Owner's proposed green infrastructure practices are intended to and will have the potential to reduce the high amount of runoff into the public Combined Sewer System which will provide a significant environmental benefit to the Metro Louisville community and will be ideally suited to showcase green infrastructure.

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) **SCOPE OF PROJECT:** The Property Owner agrees to and shall construct and install green infrastructure at the Property consisting of the green infrastructure best management practices (BMPs) 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 BMPs 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 MOA shall be for a period of ten (10) years from the Effective Date unless earlier terminated in accordance with Section (8) herein below.

(3) **COST AND COST RECOVERY:** The Property Owner shall be solely responsible for the cost of design, construction, installation, maintenance, and operation of the BMPs except that MSD agrees to and shall pay Property Owner a stipend per the terms of its Schedule of Rates, Rentals, and Charges in the amount of Seventy Thousand Nine-Hundred Sixty-Five Dollars (\$ 70,965.00) to enable recovery of a portion of the Property Owner's capital construction costs ("Capital Recovery Stipend"). The Capital Recovery Stipend shall be paid by MSD in accordance with the payment schedule set forth in Exhibit "B" attached hereto and incorporated herein, which is connected with completion by Property Owner and approval by MSD of certain defined milestones.

(4) **DRAINAGE SERVICE CHARGE DISCOUNT:** Contingent upon approved credit application that is separate from and in addition to Capital Recovery Stipend application, MSD also agrees to and shall apply up to a twenty-five percent (25%) discount to the Drainage Service Charge levied by MSD upon that part of the Property (defined by Equivalent Service Units) serviced by the green infrastructure BMPs. The discount, which shall become effective the first billing cycle after approval, shall be applied throughout the term of this Agreement.

(5) **OPERATION AND MAINTENANCE:** The Property Owner agrees to and shall, to the extent practicable, maintain and operate the BMPs during the Term 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:

- Consistent and routine observation of infiltration rates.

- Annual inspections of bioswale, rain garden and green roof growth rates for trimming, pruning and dividing perennials to prevent overcrowding and to address stress indicators.
- Monthly inspections in spring and fall of bioswales, rain gardens, and green roofs 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 to maintain attractive appearance, removal of fallen, clipped, and trimmed plant material, removal and replacement of dead or damaged plants, and removal of trash and debris.
- Replacing of bioswale and rain garden mulch every 2 to 3 years except that Property Owner shall be required to re-aerate or replace soil and mulch layers sooner if necessary to achieve infiltration rates of approximately 0.5 inches per hour.
- Preparing and submitting to MSD an “annual inspection report” as defined 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.

(6) **ACCESS AND USE:** Property Owner agrees to provide site access to MSD personnel for the purposes of green infrastructure inspection, observation, testing, and demonstration to third parties. Property Owner agrees to allow MSD to collect data, review records, and take photographs for the purpose of demonstrating green infrastructure feasibility and effectiveness in technical studies, promotional materials, etc. MSD agrees to provide reasonable notice for access and to seek Property Owner’s consent if MSD intends to be accompanied by third parties.

(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:** If, within the term of this agreement, the Property Owner chooses to remove the green infrastructure BMPs, make modifications that negate the intended purpose of the Project, or fails to operate, maintain, or repair the green infrastructure BMPs as required by this Agreement, then the Property Owner shall be deemed to be in default of this Agreement and shall be obligated to reimburse MSD the

greater of: 25% of the Capital Recovery Stipend; or, a straight line 10 year depreciation of the stipend amount.

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 Property Owner shall have sixty days (60) days after receipt of such notice to cure such default. If the Property fails or refuses to cure said default within this time period, the reimbursement shall become immediately due and payable and this Agreement shall terminate. The Parties also agree that performance of reimbursement shall be enforceable notwithstanding termination.

(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 and shall run with the property after it is recorded by MSD.

(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 METRO PUBLIC WORKS

Name

Title

My Commission expires: _____

NOTARY PUBLIC

Witness my hand this _____ day of _____, 2015.

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)