

MEMORANDUM OF AGREEMENT

BETWEEN THE

**LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT**

AND

**JEFFERSON COUNTY SCHOOL DISTRICT FINANCE
CORPORATION**

AND

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY

PERTAINING TO:

GREEN INFRASTRUCTURE PROJECT

THIS MEMORANDUM OF AGREEMENT (“MOA”), made and entered into on this the ____ of _____ 2013 (“Effective Date”) by and between the Louisville and Jefferson County Metropolitan Sewer District (“MSD”), 700 West Liberty Street, Louisville, Kentucky 40203, the Jefferson County School District Finance Corporation (“Property Owner”), 3332 Newburg Road, Louisville, Kentucky 40232-4020, and the Board of Education of Jefferson County, Kentucky (the “Board”), 3332 Newburg Road, Louisville, Kentucky 40232-4020 (MSD, Property Owner, and the Board 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 nonprofit finance corporation established pursuant to KRS 162.385 *et seq.* for the purpose of holding title to certain property used by the Board in its public school system;

WHEREAS, the Board desires to participate in MSD's green infrastructure best management practices incentive program by developing green infrastructure best management practices at Fairdale High School, 1001 Fairdale Road, Louisville, Kentucky ("the Property"), because the Property Owner and the Board have determined that such participation and development are in the best long-term interest of the Board's public school system and that the costs to the Board for such participation and development will bear a reasonable and rational relationship to the value to be provided to the Board's public school system; and

WHEREAS, the Board'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 both the Metro Louisville community and the Board's public school system, and will be ideally suited to showcase green infrastructure to the Board's public school students and to the general public; and

WHEREAS, MSD will reimburse the Board for the total cost to design, construct, and install the green infrastructure pursuant to the terms set forth herein;

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 Board 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." The total cost to design, construct, and install, the BMPs shall not exceed, and the Board shall not be required to expend, more than \$440,000 for the BMPs under this Agreement.

(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 (7) herein below.

(3) **COST AND COST RECOVERY:** The Board 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 \$440,000 to enable recovery of the Board'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 Board and approval by MSD of certain defined milestones.

(4) **DRAINAGE SERVICE CHARGE DISCOUNT:** Contingent upon approved credit 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 Board 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 the Board 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 and the Board agree to provide site access to MSD personnel for the purposes of green infrastructure inspection, observation, testing, and demonstration to third parties. Property Owner and the Board agree 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 and the Board's consent if MSD intends to be accompanied by third parties.

(7) **TERMINATION:** If, within the term of this Agreement, the Board 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 Board shall be deemed to be in default of this Agreement and shall be obligated to reimburse MSD as damages for such default 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 and the Board written notice (by certified, first class, or overnight mail) of default setting forth the nature of the default, and the Board shall have sixty days (60) days after receipt of such notice to cure such default. If the Board 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.

(8) **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.

(9) **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.

(10) **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

JEFFERSON COUNTY SCHOOL
DISTRICT FINANCE CORPORATION

Greg Heitzman, PE., Executive Director

Dr. Donna M. Hargens, President

BOARD OF EDUCATION OF JEFFERSON
COUNTY, KENTUCKY

Dr. Donna M. Hargens, Superintendent

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 Dr. Donna M. Hargens who, being by me first duly sworn, did acknowledge and declare that she signed the foregoing instrument as President of the Jefferson County School District Finance Corporation, by authority and direction of its Board of Directors, and as Superintendent of the Board of Education of Jefferson County, Kentucky, by authority and direction of the members of the Board of Education, as her free and authorized act and deed.

Witness my hand this _____ day of _____ 2013.

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 Greg Heitzman, PE., who, being by me first duly sworn, did acknowledge and declare that he signed the foregoing instrument as Executive Director 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 _____, 2013.

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)

EXHIBIT A

(MOA between MSD and Jefferson County School District Finance Corporation
re: Green Infrastructure Project at Fairdale High School)

SCOPE OF PROJECT

The goal of the Fairdale High School Green Infrastructure Project is to assess, design, and construct sustainable stormwater practices to collect and treat stormwater runoff from impervious surfaces on the Fairdale High School campus. Project activities will include an assessment of the stormwater runoff characteristics, and design of a stormwater management plan utilizing green infrastructure BMPs, such as bioswales, bioretention basins, and pervious pavement, to collect runoff from a minimum of 293,300 square feet of impervious surface for a minimum 0.6-inch rain event. The project will include the establishment of an approximately 0.6-acre bioretention cell to be located north of the school building and east of the baseball field. The project will also include improvements to the student parking lot south of the existing high school buildings to promote positive drainage toward sustainable stormwater areas.

Upon execution of the Memorandum of Agreement, the Board shall retain a civil engineer to design stormwater runoff plan including the green infrastructure measures described herein that will provide maximum flood control for the monies available under this Agreement. As the project is designed and developed, activities shall be identified in which the contractor will coordinate with Fairdale High School (Heavy Equipment Magnet Program) to involve students in the implementation of the project. .

EXHIBIT B

Option Two

MOA between MSD, the Jefferson County School District Finance Corporation, and the Board of
Education of Jefferson County, Kentucky
Re: Green Infrastructure Project at Fairdale High School

Milestone Schedule

Prior to commencement of work to be performed under the Agreement, the Board shall submit a schedule apportioning the Capital Recovery Stipend among the various elements of the Project for purposes of periodic and final payment. Requests for periodic payments of the Capital Recovery Stipend shall be submitted to MSD from the Board on the first day of each month following work performed through the duration of the Project, and each request shall include a written summary of work integral to the construction of the green infrastructure BMPs completed as of that date. The Board's request for payment shall also be backed-up by a detailed pay application from the Board's Contractor, signed by the Contractor and documenting the work completed to include unit prices applicable to each element. A copy of the Contractor's pay application to the Board will be required to initiate an MSD milestone inspection.

Milestone inspections, which shall be conducted following receipt of a pay request, shall include an inspection of the work at the Property (Project site) to determine whether the quantity of work performed has been properly performed and/or installed as required and has reached the level for which payment is being requested. MSD shall approve in writing the amount which, in the opinion of MSD, is properly owing to the Board and shall make payment within thirty (30) days following written approval of each such request. When payment is received by the Board, the Board shall immediately pay the Contractor(s) for any unpaid work included in the pay request.

MSD shall have the right to refuse to make payment and may demand the return of a portion or all of the amount previously paid the Board in the event (i) the quantity or quality of the Contractor's work is not as represented in the Board's written summary, the Contractor's pay request, and/or the Agreement and the Board has failed to reconcile or correct deficiencies, (ii) the Project has been inexcusably delayed such that it has jeopardized completion and/or the Board's ability to fulfill the terms of the Agreement, or (iii) the Board has failed to use the Capital Recovery Stipend payments to pay its Contractor as required.

When the Board believes the Project is finally complete and is ready for a final inspection, the Board shall notify MSD in writing. Thereupon MSD will perform a final inspection. If MSD confirms that the Project is complete and that all work performed by the Contractor per its final pay request has been completed in accordance with the Agreement, MSD will tender a written approval certifying completion and that the Board is entitled to the remainder of the unpaid Capital Recovery Stipend, which shall be paid within thirty (30) days following written approval of the final pay request.