

**INTERLOCAL COOPERATION AGREEMENT FOR  
WASTEWATER SERVICES AND ACQUISITION OF FACILITIES**

This Interlocal Cooperation Agreement for Wastewater Services and Acquisition of Facilities (the "Agreement") is made and entered into this 20 of July, 2022 (the "Effective Date") in accordance with the Kentucky Interlocal Cooperation Act, KRS 65.210 *et seq.*, by and between the City of Hillview, a municipal corporation and city of the home rule class located in Bullitt County, Kentucky ("Hillview"), and the Louisville and Jefferson County Metropolitan Sewer District, a political subdivision and public body corporate, duly created and existing pursuant to KRS Chapter 76, acting by and through its duly appointed Board as its statutory governing body ("MSD") (Hillview and MSD collectively, the "Parties").

**WITNESSETH**

**WHEREAS**, Hillview owns a wastewater treatment plant commonly referred to as the Prologis Wastewater Treatment Plant (the "Prologis WWTP") and also known as the Hillview Wastewater Treatment Plant, located at 285 Brooks Way, Bullitt County, Kentucky;

**WHEREAS**, on March 12, 2010, Hillview and the Bullitt County Sanitation District ("BCSD") entered into a certain Operation and Maintenance Agreement (the "Prologis Operation and Maintenance Agreement"), pursuant to which BCSD agreed to operate and maintain the Prologis WWTP, and to become permittee of the Kentucky Pollutant Discharge Elimination System ("KPDES") Permit applicable to the Prologis WWTP (KPDES Permit No. KY-0103900) issued by the Kentucky Energy and Environment Cabinet ("KEEC"), Division of Water ("KDOW");

**WHEREAS**, on May 6, 2021, BCSD and MSD entered into a certain Interlocal Cooperation Agreement (the "BCSD-MSD ILA") whereby BCSD sold substantially all of its wastewater collection and treatment system assets to MSD and assigned to MSD the Prologis Operation and Maintenance Agreement, effective November 30, 2021;

**WHEREAS**, MSD also became permittee of KPDES Permit No. KY-0103900 and agreed to assume, on terms and conditions acceptable to MSD, BCSD's obligations under a certain Amended Agreed Order with the KEEC, Division of Enforcement (Case No. DOW 140177B) applicable the Prologis WWTP;

**WHEREAS**, as a requirement of the BCSD-MSD ILA, Hillview executed a certain Consent to Assignment Agreement (the "Prologis Consent Agreement") consenting to the assignment of BCSD's right, title and interest in the Prologis Operation and Maintenance Agreement to MSD, including the right of BCSD to collect rates, rentals and charges from properties benefited by the Prologis WWTP;

**WHEREAS**, in a continued effort to develop a long-range regional wastewater solution for the residents of Hillview and throughout Bullitt County, that will be cost-effective, improve water quality, add capacity, and provide mutual benefits to the Parties hereto and their customer base, Hillview now desires to sell and MSD desires to purchase the Prologis WWTP;

**WHEREAS**, pursuant to the Kentucky Interlocal Cooperation Act, KRS 65.210 *et seq.*, any public agency may enter into agreements with another public body to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of its municipal or jurisdictional boundaries in connection with the acquisition, construction, operation, repair or maintenance of any sewage, wastewater, or stormwater facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying or limiting their authority to do so, except as set forth in KRS 278;

**WHEREAS**, subject to receipt of all requisite approvals, Hillview is willing to sell, convey, and transfer to MSD, and MSD is willing to accept from Hillview, ownership of the Prologis WWTP pursuant to the terms and conditions of this Agreement; and

**WHEREAS**, in furtherance of the performance of the Parties' obligations hereunder, and the provision of wastewater collection and treatment services to be performed from and after the consummation of the sale and purchase, the Parties desire to enter into this Agreement to set forth the powers, privileges and authority to be jointly exercised and enjoyed.

**NOW THEREFORE**, in consideration of the promises and mutual covenants set forth herein, the Parties hereto agree, each with the others, as follows:

#### **ARTICLE 1 – INCORPORATION OF RECITALS**

**1.1** The recitals above are hereby incorporated by reference as if fully set forth herein and are adopted as true and correct findings of fact by the Parties.

#### **ARTICLE 2 – AUTHORIZATIONS**

**2.1** Each Party represents and warrants that, except for obtaining the approvals as may be statutorily required pursuant to KRS 65.241(2), 65.260(2), 65.300, and any other such approvals as may be necessary by governmental authorities, and performing the filings required under KRS 65.290(1), it has taken all necessary actions, received all necessary approvals, and adopted all necessary ordinances and resolutions in order to execute this Agreement and to perform all the obligations required and contemplated hereunder.

#### **ARTICLE 3 – EFFECTIVE DATE AND DURATION**

**3.1** Subject to receipt of the approvals enumerated in Section 2.1 and Section 16.1, this Agreement shall become effective on the Effective Date as first written above and shall continue as set forth in Section 3.2.

**3.2** This Agreement shall be in full force and effect until the "Closing" (as defined below) and shall continue after the Closing for a period of fifty (50) years. This Agreement shall automatically be renewed for a like term of fifty (50) years unless a Party to this Agreement gives written notice to the other Party of an intent to terminate.

**3.3** Either Party may terminate this Agreement through a written notice of intent to terminate; provided however, such notice shall be given at least two years (2) prior to the termination date and in the manner required by Section 15.8.

#### **ARTICLE 4 – PURPOSE**

**4.1** This Agreement is created for the purpose of:

(a) Establishing a mutually advantageous and cooperative arrangement between the Parties for the provision of wastewater collection and treatment services in the "Prologis Service Area," which is shown and described in **Exhibit A**, and which for recording purposes has been condensed to an 8½" x 14" map, attached hereto as **Exhibit A-1**;

(b) Enabling the development of a long-range regional wastewater solution for the residents of Hillview and throughout Bullitt County that will be cost-effective, improve water quality, add capacity, and provide mutual benefit to the Parties;

(c) Providing for the sale by Hillview and the purchase by MSD of the Prologis WWTP;

(d) Vesting in, and authorizing MSD to exercise all powers and authority of Hillview necessary and appropriate for the acquisition, ownership, management, and operation of the Prologis WWTP; and

(e) Providing for the lease by Hillview to MSD of all easements, right-of-ways (except road right-of-ways), licenses, dedications, and other interests in real property owned, leased and/or utilized by Hillview for the provision of wastewater collection and treatment services in the Prologis Service Area, except real property owned in fee, which shall be sold and conveyed to MSD.

## **ARTICLE 5 – SALE, PURCHASE, ASSIGNMENT AND ASSUMPTION**

**5.1 Terms of Sale, Purchase, Assignment and Assumption.** Subject to the terms and conditions set forth in this Agreement, Hillview hereby agrees to sell, convey, transfer, assign and deliver to MSD, and MSD hereby agrees to purchase, acquire, assume and accept from Hillview, all of the assets, properties and rights used, necessary and/or important in the operation of the Prologis WWTP, wherever located, real, personal and mixed, and which are comprised of the following (collectively, the “Assets”):

(a) The Prologis WWTP and any of its associated pumping stations, lift stations, collector, trunk, and interceptor sewers, pipes, force mains, laterals, manholes, and other facilities and appurtenances belonging thereto, as more particularly identified in **Exhibit B** (the “Wastewater Facilities”);

(b) All machinery, equipment, tools, vehicles, furniture, furnishings, goods, supplies and inventories, and other tangible property not included in and acquired by MSD as part of its acquisition of the BCSD Wastewater System, as more particularly identified in **Exhibit C**;

(c) All real property, easements, right-of-ways, licenses, dedications, and other interests in favor of Hillview or its predecessors, necessary and/or important to the functioning of the Wastewater Facilities, as more particularly identified in **Exhibit D**; and

(d) All records, files, data, and documents related to any Asset, including but not limited to all logs, plans, plats, as-built drawings, contracts, warranties, operating manuals, monitoring reports, recorded information, customer lists, and property records (collectively, the “Records and Files”).

The Assets shall not include any stormwater or drainage facilities.

**5.2 Permitted Liens.** The Assets shall be sold, conveyed, transferred, assigned, and delivered free and clear of all liens except the “Permitted Liens,” if any, as more particularly identified in **Exhibit E**, and subject to reserved capacity agreements, if any, as more particularly identified in **Exhibit F**. The revenues of the Wastewater Facilities shall be free and clear of any lien for the benefit of the holders of any outstanding indebtedness.

**5.3 Conveyance Documents.** The Assets shall be conveyed by appropriate bill of sale, deeds, leases, assignments, certificates, endorsements, and any other instruments of transfer and conveyance as described herein, or if not expressly described herein, then by such

transfer instruments or documents satisfactory in form and substance to MSD, to be executed at Closing.

#### **5.4 Real and Personal Property / Survey.**

(a) *Real Property.* Hillview agrees to convey to MSD by Special Warranty Deed any and all real property necessary and/or important to the functioning of the Wastewater Facilities in which it has fee simple title, to be executed at Closing, except that Hillview shall have the right, subject to MSD's review and approval as hereinafter set forth, which shall not be unreasonably withheld, to subdivide the property located at 285 Brooks Way, Brooks, Kentucky, (the "Brooks Way Property"/ "Property") into two parcels, the larger of which to consist of a maximum of two acres of undeveloped land reserved unto Hillview and excepted from such conveyance.

(b) *ALTA Survey.* On or before forty-five (45) days after the Effective Date of this Agreement, Hillview shall, at Hillview's sole expense, provide to MSD copies of an ALTA survey of the Brooks Way Parcel prepared by a surveyor licensed in the Commonwealth of Kentucky for the minor subdivision of the Brooks Way Property, which survey shall appropriately locate all boundary corners of the Property and shall contain the correct description of the Property by platted lot description (or metes and bound description), all property dimensions, the number of square feet contained within the Property, the location of any easements and rights of way, the location of the Prologis WWTP and any and all other improvements, including any improvements encroaching onto the Property, (ex. all buildings, sidewalks, driveways, paved parking area, roads, poles, overhead power lines and fences), access, and the proposed subdivision of the Property.

(c) No later than 10 days after MSD's receipt of the survey from Hillview, MSD shall notify Hillview in writing of its approval of the subdivision or of any boundary line or acreage disputes, or any defects in the parcel to be conveyed to MSD ("Survey Objections") as shown on the plat of the survey. Hillview shall have the right, but not the obligation to cure or remove any Survey Objections prior to Closing, and shall notify MSD of its election to cure or remove such Objections, or to decline to cure or remove such Survey Objections within five (5) days of receipt of notice from MSD. If Hillview elects not to cure the Survey Objections, fails to provide the boundary survey within the period required under Section 5.3(b), or fails to notify MSD of its election to cure or not cure the Objections, MSD may elect to terminate this Agreement or may waive the Survey Objections and proceed to Closing.

(d) *Personal Property.* Hillview agrees to transfer any of the Assets comprised of personal property by Bill of Sale substantially in the form of **Exhibit G**, to be executed at Closing.

**5.5 Easements; Right-of-Ways.** The following conditions and obligations shall apply to the easements, right-of-ways, licenses, and dedications contemplated herein:

(a) *Recorded Easements.* As of the Effective Date, Hillview agrees to provide all recorded easements granted to and/or held by Hillview or its predecessors, and any recorded plats of subdivisions in its possession containing markings of sewer easements, necessary and/or important to the functioning of the Wastewater Facilities.

(b) *Easement Investigation by MSD.* MSD may hire a title agency, surveyor, appraiser, or other professionals necessary to perform a search of the public land records pertaining to the Wastewater Facilities to identify and provide information regarding recorded

easements, right-of-ways, licenses and/or dedications granted to and/or held by Hillview, including but not limited to: a copy of the easements, right-of-ways, licenses and/or dedications and related grantor's deed(s), the location of said easements, right-of-ways, licenses and/or dedications on the current parcel maps of the Bullitt County Property Valuation Administrator, including parcel numbers when available, and a list of areas within the Prologis Service Area for which easements, right of ways and/or licenses would be needed but are missing, if any.

Hillview acknowledges and agrees that MSD's review and investigation of public land records shall be ongoing and may extend past the "Due Diligence Period" (as defined below) and the Closing. In the event MSD determines that there are missing easements, Hillview agrees to take all actions necessary to obtain such easements, including paying any expenses for condemnation, which shall be authorized by Hillview. In the event MSD and Hillview determine it is necessary to file an action to condemn real property for easements after the Wastewater Facilities have been transferred to MSD, the determination to condemn shall be in furtherance of the purposes of this Agreement and in accordance with the Eminent Domain Act of Kentucky, KRS 416.540 *et seq.* In addition, the determination by Hillview to condemn shall be made by resolution, ordinance, or other formal action and shall authorize Hillview's City Attorney, or other attorney selected by MSD, to prosecute the action, and shall authorize the condemned property to be transferred or leased to MSD.

(c) *Lease of Rights not Held in Fee.* At Closing, Hillview agrees to lease to MSD all easements, right-of-ways (except road right-of-ways), licenses, dedications, and other interests in real property owned, leased and/or utilized by Hillview in connection with the Wastewater Facilities for one dollar (\$1.00) per annum.

## **5.6 Due Diligence / Title.**

(a) *Due Diligence Period.* MSD shall have a sixty (60) day period to commence and complete a due diligence investigation, evaluation, inspection, and review of the Assets, beginning the first business day following the execution of this Agreement (the "Due Diligence Period"). If, prior to the expiration of the Due Diligence Period, MSD determines, in its sole discretion (for any reason or no reason at all) that the Assets are not suitable or acceptable or that the transaction is otherwise not feasible, MSD may terminate this Agreement, and neither Party shall be liable to the other for damages on account of such termination. MSD and its employees, contractors, and agents shall, after the execution of this Agreement and until the expiration of the Due Diligence Period, have the right and permission to enter upon any property associated with the Assets at all reasonable times for the purpose of inspecting, examining, investigating, surveying, making soil tests, including borings, and performing other necessary tests and/or evaluations for determination of the mechanical, structural, electrical, environmental, surface, sub-surface and topographic conditions, including examination of all Records and Files in the possession of Hillview, and Hillview agrees to fully cooperate with MSD in its inspections, examinations, investigations, surveys, and testing.

(b) *Title.* Within thirty (30) days of the execution of this Agreement, MSD shall, at its expense, obtain a commitment from a title company selected by MSD, committing to issue to MSD title insurance, together with all documents referenced therein ("Title Commitment") insuring the Brooks Way Property. No later than 10 days after MSD's receipt of the Title Commitment, MSD shall notify Hillview in writing of any objections to the Commitment ("Title Objections") and Hillview shall have the right, but not the obligation to cure or remove any Objections prior to Closing. Hillview shall notify MSD of its election to cure or remove such Objections, or to decline to cure or remove such Objections within five (5) days of receipt of notice from MSD. If Hillview elects not to cure the Title Objections, or fails to notify MSD of its election, MSD may elect to

terminate this Agreement, or may waive the Title Objections and proceed to Closing with the Title Objections deemed "Permitted Liens." Notwithstanding the forgoing or anything to the contrary in this Agreement, however, Hillview shall be obligated to pay or to otherwise satisfy any and all monetary obligations affecting the title to the Property prior to Closing. MSD will not assume or accept any monetary obligation of Hillview whether actual, pending or threatened against Hillview.

**5.7 Assigned Contracts.** Hillview represents and warrants that, as of the Effective Date, there are no contracts to which Hillview is a party that are necessary or beneficial to the Assets and which have not already been assigned to MSD.

**5.8 Consideration.** The aggregate consideration to be paid by MSD at Closing for the Assets and the transactions, covenants and agreements set forth in this Agreement shall be as follows:

(a) *Purchase Price.* MSD shall pay a total of TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS and ZERO CENTS (\$225,000.00) (the "Purchase Price") at Closing by wire transfer of immediately available funds to an account designated by Hillview and provided to MSD at least three (3) business days prior to the date of Closing.

(b) *Additional Consideration.* As additional consideration, from and after the date of Closing, MSD agrees to provide, and at its sole cost and expense, an interim corrective action plan and improvements or plan for the elimination of the Prologis WWTP, in accordance with the terms and conditions of that certain Amended Agreed Order between MSD and KEEC, Division of Enforcement (the "Cabinet"), Case No. DOW-21-3-0178.

MSD shall notify the Cabinet in writing that it has assumed ownership of the Prologis WWTP and shall submit a "Change in Ownership Certification" to the Cabinet within fifteen (15) days of acquiring the Wastewater Facilities.

Commencing with assuming ownership of the Prologis WWTP, MSD shall at all times attempt to provide for the proper operation and maintenance of the WWTP in accordance with KRS Chapter 224 and 401 KAR 5:065 Section 2(1).

(c) *Full and Fair Consideration.* The Parties acknowledge that the Purchase Price and Additional Consideration represent fair and reasonable consideration for the equivalent value of the Assets and the transactions, covenants and agreements set forth in this Agreement, which consideration was agreed upon as a result of an arm's length negotiation.

## **ARTICLE 6 – REPRESENTATIONS AND WARRANTIES**

**6.1 Representations and Warranties of Seller.** The Assets are being sold on an "as is" basis without warranty or covenant of fitness for particular purpose or covenant or warranty of merchantability; provided however, Hillview represents and warrants to MSD as follows:

(a) *Organization.* Hillview is a municipal corporation and city of the home rule class. Hillview has full power and authority to enter into and perform the provisions of this Agreement and all agreements and documents to be delivered by Hillview in connection herewith.

(b) *Authority.* Hillview has full right, power, and authority to convey the Assets to MSD in accordance with the terms and conditions herein. This Agreement, when executed and delivered by Hillview, will be a validly binding obligation of Hillview in accordance with its terms.

(c) *No Impediments.* Neither the execution or delivery of this Agreement nor any documents or agreements delivered or to be delivered in connection herewith by Hillview, nor

their performance by Hillview, will result in a breach of any term or provision of, or will: (i) constitute a default under any indenture, mortgage, license agreement, organizational document, or other agreement or instrument to which Hillview is a party or by which Hillview or the Assets are bound; (ii) require Hillview to make any filing with or obtain any consent from any governmental authority not complemented herein or already obtained; or (iii) conflict with, violate or result in the breach by Hillview of any law with respect to the sale of the Assets.

(d) *Title.* Hillview has, and on the Closing Date will have, good and marketable title to the Assets, free and clear of all liens, pledges, security interests or other encumbrances of any nature whatsoever, whether fixed or contingent, and whether due or to become due, except for the Permitted Liens, if any. Title and all risk of loss with respect to the Assets shall remain exclusively with Hillview until Closing.

(e) *Judgments.* Hillview is not a party to or subject to any pending lawsuits or, to Hillview's knowledge, any threatened lawsuits, nor judgment, order or decree enjoining Hillview in respect of, or the effect of which is to limit, restrict, regulate or prohibit the sale of the Assets. There are no claims, actions, suits, proceedings, or investigations pending or, to Hillview's knowledge, threatened with respect to the Assets before or by any governmental authority.

(f) *Environmental.*

- (i) Hillview has not received from any governmental authority any written notices within the past twenty-four (24) months asserting any material violation of any applicable environmental laws or regulations in connection with its ownership, and/or the use, maintenance, or operation of the Wastewater Facilities;
- (ii) There are no written claims pending or, to Hillview's knowledge, threatened against the Wastewater Facilities relating to environmental laws or regulations;
- (iii) Other than matters disclosed in the Agreed Order between MSD and KEEC, Division of Enforcement (Case No. DOW-21-3-0178), as identified in Section 5.8(b) of this Agreement, Hillview has no knowledge of any conditions or circumstances associated with the Wastewater Facilities which may prevent or interfere with material compliance with any applicable environmental laws or regulations;
- (iv) To Hillview's knowledge, Hillview has not released or otherwise disposed of any "Contaminants" (as defined below) in material violation of environmental law or regulation at, on, under or around the immediate vicinity of the Wastewater Facilities;
- (v) To Hillview's knowledge, Hillview has not transported, disposed of, or otherwise released or arranged for the transportation, disposal or release of any Contaminant from the Wastewater Facilities to any other location in material violation of any environmental law or regulation; and
- (vi) Hillview has neither placed nor, to Hillview's knowledge, permitted the placement of any aboveground storage tanks, polychlorinated biphenyl, asbestos or asbestos containing material, or groundwater monitoring wells on

or in any way related to the Wastewater Facilities. For purposes of this Agreement, the term "Contaminant" shall include without limitation: any waste, pollutant, chemical, hazardous material, hazardous substance, toxic substance, hazardous waste, solid waste, petroleum or petroleum-derived substance or waste (regardless of specific gravity), or any constituent or decomposition product of any such pollutant, material, substance, or waste regulated under any environmental law or regulation.

Hillview's representations and warranties are for the exclusive benefit of MSD and shall not be for the benefit of any other person or entity.

**6.2 Representations and Warranties of Purchaser.** MSD represents and warrants to Hillview as follows:

(a) *Organization.* MSD is a political subdivision and public body corporate duly created and existing pursuant to the provisions of KRS 76.005 *et seq.*, and MSD has full power and authority to enter into and perform the provisions of this Agreement and all agreements and documents to be delivered by MSD in connection herewith.

(b) *Authority.* MSD has full right, power, and authority to purchase the Assets from Hillview in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by MSD, will be a validly binding obligation of MSD in accordance with its terms.

(c) *No Impediments.* Neither the execution or delivery of this Agreement nor any documents or agreements delivered or to be delivered in connection herewith by MSD, nor their performance by MSD, will result in a breach of any term or provision of, or will (i) constitute a default under any indenture, mortgage, license agreement, organizational document, or other agreement or instrument to which MSD is a party; (ii) require MSD to make any filing with or obtain any consent from any governmental authority not contemplated herein or already obtained; or (iii) conflict with, violate or result in the breach by MSD of any law applicable to MSD with respect to the purchase of the Assets.

(d) *KPDES Permit.* MSD is the lawful holder/owner of the individual KPDES Permit required for operation of the Prologis WWTP (KPDES Permit No. KY0103900), issued by the KEEC, Division of Water, which Permit is in full force and effect.

## **ARTICLE 7 – EMPLOYMENT MATTERS**

**7.1** Hillview represents and warrants that it has no employees involved in the operation or maintenance of the Wastewater Facilities. MSD shall supply all employees necessary and qualified to operate and maintain the Wastewater Facilities, and such employees shall be subject to the standards of performance, discipline and control established by MSD under applicable MSD policies.

## **ARTICLE 8 – TERMS OF CLOSING**

**8.1 Closing Date.** Subject to the terms and conditions of this Agreement, the sale and purchase of the Assets shall take place at a closing (the "Closing") to be held at the offices of MSD, or such other place as the Parties mutually agree, on the 30th day of June, 2022 (the "Closing Date"), at 10:00 a.m. EST, provided that all the terms and conditions of this Agreement have been satisfied as provided for herein.

**8.2 Conditions to Closing.**



(a) *Conditions to Obligations of Purchaser.* Unless waived by MSD in its sole discretion, all obligations of MSD under this Agreement are subject to the following conditions:

- (i) All representations and warranties of Hillview contained in this Agreement and in the documents delivered pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the Closing Date and shall then be true and accurate in all material respects;
- (ii) Hillview shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Hillview prior to or on the Closing Date; and
- (iii) MSD shall have completed its due diligence investigation and found the results satisfactory.

(b) *Conditions to Obligations of Seller.* Unless waived by Hillview in its sole discretion, all obligations of Hillview under this Agreement are subject to the following conditions:

- (i) All representations and warranties of MSD contained in this Agreement and in the documents delivered pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the Closing Date and shall then be true and accurate in all material respects;
- (ii) MSD shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by MSD prior to or on the Closing Date.

**8.3 Deliveries by Seller.** At the Closing, Hillview shall have executed and delivered to MSD the following:

(a) Special Warranty Deed conveying to MSD all of right, title, and interest in and to the Brooks Way Property as set forth in Sections 5.4 (a) – (c) held by Hillview in fee simple;

(b) A Bill of Sale, substantially in the form of **Exhibit G**, conveying to MSD title to the personal property as set forth in Section 5.4(d) held by Hillview free and clear of all liens, security interests and encumbrances except the Permitted Liens, if any;

(c) A duly executed counterpart to the Lease Agreement, substantially in the form of **Exhibit H**, which shall be recorded in the Office of the Bullitt County Clerk after Closing;

(d) Any consents and approvals required to consummate the transactions contemplated herein;

(e) A current list of all customers served by the Wastewater Facilities, and any other documents or data in Hillview's possession relating to customer accounts;

(f) All professional/technical services and construction contracts related to the Assets to which Hillview is a party, if any, including any amendments to such contracts;

(g) Originals or copies thereof if no original exists, of all Records and Files, and materials in the possession of Hillview relating to the Assets, and any other documents and/or

instruments as shall, in the reasonable opinion of MSD, be necessary to transfer the Assets to MSD in accordance with this Agreement or to carry out the terms of this Agreement, duly executed and acknowledged by Hillview; and

(h) All keys, if any, and sole and exclusive possession of the Assets delivered to MSD.

**8.4 Deliveries by Purchaser.** At the Closing, MSD shall have executed and delivered to Hillview the following:

(a) A duly executed counterpart to the Special Warranty Deed;

(b) A duly executed counterpart to the Lease Agreement (**Exhibit H**);

(c) All other documents and/or instruments of conveyance as shall, in the reasonable opinion of Hillview, be necessary to carry out the terms of this Agreement, duly executed and acknowledged by MSD.

**8.5 MSD's Ownership, Operation, and Control.** Except as otherwise set forth in this Agreement, from and after the Closing:

(a) MSD shall have complete ownership, possession, use, custody, control and dominion of and over the Assets, including all power and authority maintained by Hillview in managing, maintaining, constructing, repairing, rehabilitating, acquiring, regulating, operating, inspecting, removing, improving and funding of the same. To the extent necessary and permissible by law, MSD shall be granted an exclusive franchise for the collection and treatment, and the providing of wastewater system services for the Prologis Service Area.

(b) MSD shall at all times have the authority and responsibility to control, operate, manage, maintain, modify, repair, replace, construct, install, regulate, collect and administer revenue for the Prologis Service Area, and shall operate and maintain, or cause the Wastewater Facilities to be operated and maintained to meet or achieve current KPDES permit requirements or applicable compliance schedules provided for in the Agreed Order and/or other agreements with the KEEC, Division of Water.

(c) To the extent permitted by law, MSD will cause users of the wastewater system in the Prologis Service Area to comply with MSD's Wastewater Discharge Regulations (Articles 1-4 and 7 of the MSD Wastewater/Stormwater Discharge Regulations). In the event a determination is made by a court of competent jurisdiction, the Kentucky Department of Environmental Protection, or the United States Environmental Protection Agency that MSD lacks authority to apply its regulations to users of the Wastewater Facilities, Hillview shall adopt by ordinance MSD's Sewer Use Regulations, Specifications, Pretreatment Program Standards, and other applicable rules and regulations, and authorize MSD to enforce said ordinance within the Prologis Service Area.

**8.6 Cooperation.** Subject to the terms and conditions of this Agreement, each Party will use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the transactions contemplated by this Agreement. The Parties each agree to execute and deliver such other documents, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by and to carry out the intent of this Agreement.

**8.7 Taxes.** The Parties acknowledge and agree that no state or local taxing authority

has assessed any taxes on the Assets and no taxes will be due and payable on or before the Closing Date.

## **ARTICLE 9 – SERVICE RATES, RENTALS AND CHARGES**

**9.1 Authority to Collect Rates, Rentals and Charges.** From and after the Closing, the cost and expense incurred by MSD in operating and maintaining the Assets shall be financed by MSD from any and all sources that are permitted under applicable law and the powers delegated hereunder, which shall include the authority to collect rates, rentals and charges from current and future residential, commercial and/or industrial customers in the Prologis Service Area.

**9.2 Wastewater Charges.** Beginning on January 1, 2023, and each year thereafter through January 1, 2026, MSD will increase wastewater charges in the Prologis Service Area by 12% each calendar year. Starting January 1, 2027, and years thereafter, MSD will increase wastewater charges by no more than 3% annually until charges equalize with charges of MSD's Jefferson County customers. Once charges equalize, MSD's Rates, Rentals, and Charges for all customer classes will be applied.

**9.3 Capacity Charges.** MSD will maintain current capacity charges in the Prologis Service Area until December 31, 2024, at which time MSD will evaluate those charges and fees for consistency with others in the region and the need to develop facilities to accommodate projected growth.

**9.4 Billing and Collection.** Billing and collection shall be subject to the same requirements and shall have the same accommodations as customers in Jefferson County regarding the time limit for payments, penalties, and the resolution of billing disputes, disagreements, complaints, and all other related matters.

## **ARTICLE 10 – ADMINISTRATION**

**10.1** A joint board consisting of the Mayor of Hillview and the Executive Director of MSD, and/or their designees, shall be responsible for administering the cooperative undertaking set out in this Agreement pertaining to their respective agencies, and will be created to satisfy the requirements of KRS 65.250(2)(a). The joint board will not be an interlocal agency.

## **ARTICLE 11 – LIABILITY**

**11.1** In performing the wastewater services contemplated by this Agreement, MSD does not warrant or guarantee the continuance or quality of any such services, and shall not be liable for damages, expenses, or losses occurring by reason of suspension or discontinuance of the services for any reason which is beyond the reasonable control of MSD, including without limitation: pandemics, floods, storms, tornadoes, lightning, landslides, and other acts of God, strikes, lockouts, vandalism, and serious accidental damage, or other similar circumstances.

## **ARTICLE 12 – INDEMNIFICATION**

**12.1 Indemnification by Hillview.** To the maximum extent permitted by law, Hillview covenants and agrees that, notwithstanding the payment of the Purchase Price and the delivery of instruments of conveyance, from and after the Closing Date, Hillview shall indemnify, defend and hold MSD and its officers, directors, agents, employees, successors and assigns harmless from and against any and all damages, losses, costs, claims, liabilities, causes of action and expenses arising out of or resulting from: (i) any inaccuracy in any representation or the breach

of any warranty made by Hillview hereunder; and (ii) any failure by Hillview to duly perform or observe any term, provision, covenant, agreement or condition under this Agreement or in any agreements delivered in connection with this Agreement, on the part of Hillview to be performed or observed. Hillview shall not be obligated under this Section with respect to any matter to the extent MSD is obligated to indemnify, defend, or hold harmless Hillview therefrom under this Agreement.

**12.2 Indemnification by MSD.** To the maximum extent permitted by law, MSD covenants and agrees that, from and after the Closing Date, MSD shall indemnify, defend and hold Hillview and its officers, directors, agents, employees, successors and assigns harmless from and against any and all damages, losses, costs, claims, liabilities, causes of action and expenses arising out of or resulting from: (i) any inaccuracy in any representation or the breach of any warranty made by MSD hereunder; and (ii) any failure by MSD to duly perform or observe any term, provision, covenant, agreement or condition under this Agreement or in any agreements delivered in connection with this Agreement, on the part of MSD to be performed or observed. MSD shall not be obligated under this Section with respect to any matter to the extent Hillview is obligated to indemnify, defend, or hold harmless MSD therefrom under this Agreement.

## **ARTICLE 13 – DISPUTE RESOLUTION**

**13.1** The Parties recognize that disputes may arise during the term of this Agreement and that such disputes may adversely affect the performance of services required hereunder. The Parties further recognize that a prompt and comprehensive approach to avoiding and resolving disputes is mutually beneficial. The Parties therefore agree that the following dispute resolution procedure shall be used to resolve any disputes that may arise:

(a) *Written Claim.* Within thirty (30) working days after the commencement of an event that may result in the making of a claim by a Party, or within twenty (20) working days at the end of said event, whichever is longer, the “Claiming Party” shall submit a written claim to the “Receiving Party.” The claim shall set forth the circumstances giving right to the claim, facts, documents, supporting and/or back-up data, and other information supporting the claim, the relief sought, and those persons with knowledge of the circumstances giving rise to the claim. Failure by the Claiming Party to provide written notice of the claim as provided herein shall result in waiver of the claim.

(b) *Objection to Claim.* If the Receiving Party objects, in whole or in part, to the claim, it shall submit a written notice of its objection to the Claiming Party within thirty (30) working days after receiving the claim, which shall include the basis for the objection, all documents, back-up data, and other information which would disprove the claim, and the names of any persons having knowledge that would tend to disprove the claim. If the Receiving Party fails to provide written notice of its objection, the Receiving Party shall be conclusively deemed to agree with the claim and the Claiming Party shall be entitled to the relief requested.

(c) *Meeting of Executives.* If the Receiving Party submits a notice of objection, a senior executive from each Party shall meet within thirty (30) working days after the objection is received by the Claiming Party in an attempt to resolve the dispute.

(d) *Mediation.* If the senior executives are unable to resolve the dispute, the senior executives or the Party’s attorneys shall have ten (10) working days from the meeting of senior executives to agree upon a mediator. If the Parties are unable to agree upon a mediator, either

Party may serve a written demand for mediation on the other and a mediator shall be appointed pursuant to the Commercial Mediation Rules of the American Arbitration Association. The date of the mediation shall be set within thirty (30) working days after the agreement to or appointment of a mediator, or as soon as practicable thereafter. All disputes, including disputes identified after the selection of the mediator, shall be submitted to the mediator.

(e) *Court.* If the Parties are unable to resolve all of their disputes in mediation, either Party may pursue its remedy in a court of law with competent jurisdiction. However, mediation shall be an express condition precedent to the pursuit of any remedy in civil court.

#### **ARTICLE 14 – DISPOSITION UPON TERMINATION OF SERVICE TO HILLVIEW**

**14.1** In the event this Agreement is terminated after Closing, MSD shall be entitled to retain all of the Assets acquired hereunder; provided however, any property leased to MSD by Hillview shall be returned to Hillview. The Parties agree that, in the event of termination, Hillview shall assume responsibility for the provision of wastewater services for all customers served by the Wastewater Facilities at the time of termination. Hillview shall have the option to repurchase the Assets, including any additions that have been constructed, acquired, used and/or held by MSD as part thereof. In the event Hillview chooses to exercise the repurchase option, Hillview and MSD shall mutually agree upon a method of valuing the Assets, including any additions, for the purpose of negotiating a fair and reasonable price, and terms and conditions of the sale and purchase, giving due consideration to, among other things, customer accounts, outstanding debt issued by MSD, improvements and/or replacements, and other liabilities and obligations of MSD. In the event Hillview chooses not to exercise the repurchase option, Hillview shall assume and be obligated to any annual debt service on all outstanding debt issued by MSD for the provision of wastewater services for customers served by the Wastewater Facilities until such debt is retired.

#### **ARTICLE 15 – MISCELLANEOUS**

**15.1 Risk of Loss.** The risk of loss or damage to the Assets shall be on Hillview at all times prior to the Closing. In the event of any such loss or damage, Hillview shall repair or replace the lost or damaged Assets at its sole cost and expense. Hillview shall have no risk of loss or damage to the Assets on or after the Closing.

**15.2 Assignment.** Except as expressly provided herein, neither Party may directly or indirectly transfer any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party.

**15.3 Amendments.** This Agreement may not be amended or modified, nor any terms, covenants, representations, warranties or conditions hereof waived, unless by written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance.

**15.4 Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Kentucky. In the event of any legal proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. The Parties expressly consent to the personal jurisdiction and venue in such court for the limited and sole purpose of proceedings relating to this Agreement or any claims, rights or obligations arising hereunder.

**15.5 Severability.** If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the

remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

**15.6 Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement, and in the event of any ambiguity or a question of intent or a need for interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any term or provision.

**15.7 Headings.** The headings used in this Agreement are for convenience and reference only, and shall not affect the interpretation, meaning, or construction of the terms or provisions herein.

**15.8 Notices.** All notices, communications, consents and deliveries under this Agreement shall be deemed given: (a) when delivered, if delivered personally (including by courier); (b) on the seventh day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (c) on the day of delivery if sent by a nationally recognized overnight delivery service which maintains records of the time, place and receipt of delivery; or (d) upon receipt of a confirmed transmission, if sent by facsimile transmission, in each case to a Party at the applicable address or to such other address as may be furnished in writing by such Party to the other:

To Hillview:

Mayor  
Hillview City Hall  
238 Crestwood Road  
Hillview, Kentucky 40229

To MSD:

Executive Director  
Louisville and Jefferson County  
Metropolitan Sewer District  
700 West Liberty Street  
Louisville, Kentucky 40203

**15.9 Disclaimer of Third Party Beneficiary.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue to or for the benefit of any third party that is not a formal Party hereto. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person or entity other than the Parties any right, remedy, or claim under or by reason of this Agreement or any terms or provisions of this Agreement.

**15.10 Entire Agreement.** This Agreement supersedes any previous agreements, oral or written, between the Parties, and represents the entire agreement between the Parties with respect to its subject matter.

**15.11 Successors and Assigns.** This Agreement shall be binding on each Party's respective successors and assigns.

**15.12 Survival.** Any term or provision of this Agreement, which in order to give proper effect to said term or provision's intent, should survive, shall survive indefinitely after Closing or until the latest date permissible by law.

**15.13 Execution in Counterparts.** This Agreement may be executed in counterparts, each which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

**ARTICLE 16 – INTERLOCAL AGREEMENT APPROVALS**

**16.1** The Parties acknowledge and agree that this Agreement is made pursuant to the Kentucky Interlocal Cooperation Act, KRS 65.210 *et seq.*, and as such must be approved by the Attorney General of Kentucky and the Mayor and Legislative Council of Louisville Metro Government. MSD agrees that after execution of this Agreement and authorization by its respective governing body, MSD will expeditiously seek approval by such approving authorities. However, until such time as the approving authorities have approved this Agreement in its entirety, the Parties will not have any obligation to perform the terms or conditions herein. In the event the Attorney General or Mayor and Legislative Council of Louisville Metro Government disapproves of this Agreement, this Agreement shall be null and void.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the date first set forth above.


**THE CITY OF HILLVIEW, KENTUCKY**

By: 

As: Mayor

Authorized on 5/2/2022

**LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT**

By: 

As: EXEC. DIRECTOR

Authorized on 7-12-12

Approved as to legality and form:

\_\_\_\_\_  
Board Counsel  
Louisville and Jefferson County Metropolitan Sewer District

**APPROVED BY MAYOR  
LOUISVILLE METRO GOVERNMENT**

**APPROVED BY PRESIDENT  
LEGISLATIVE COUNCIL  
LOUISVILLE METRO GOVERNMENT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO COMPLIANCE WITH  
KRS 65.210 - 65.300**

**THE ATTORNEY GENERAL  
COMMONWEALTH OF KENTUCKY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

- EXHIBIT A (Prologis Service Area)**
- EXHIBIT A-1 (Prologis Service Area, condensed)**
- EXHIBIT B (Wastewater Facilities)**
- EXHIBIT C (Tangible Property)**
- EXHIBIT D (Real Property)**
- EXHIBIT E (Permitted Liens)**
- EXHIBIT F (Reserved Capacity Agreement)**
- EXHIBIT G (Bill of Sale)**
- EXHIBIT H (Lease)**