

**MEMORANDUM OF AGREEMENT BETWEEN
THE LOUISVILLE AND JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT
AND
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
FOR THE CONSTRUCTION OF THE
SOUTHWESTERN PARKWAY
COMBINED SEWER OVERFLOW ("CSO") BASIN ("the Project")
WITHIN SHAWNEE PARK**

WITNESSETH:

THIS MEMORANDUM OF AGREEMENT, ("MOA") made and entered between the Louisville and Jefferson County Metropolitan Sewer District (hereinafter referred to as "MSD") and the Louisville/Jefferson County Metro Government (hereinafter "Louisville Metro");

WHEREAS, Louisville Metro, acting through Louisville Metro Parks and Recreation Department ("Metro Parks"), operates, manages and maintains parks, athletic fields, historic homes, golf courses, hiking trails, swimming pools and aquatic, nature, recreation, community and senior centers;

WHEREAS, Louisville Metro, acting through Metro Parks, is charged with principal stewardship of over 12,000 acres of municipally-owned park land, including one of only four completed Frederick Law Olmstead Parks and Parkways systems in the world, one of the largest municipal urban forest in the United States, and one of the nation's largest parks developments;

WHEREAS, Shawnee Park, a Frederick Law Olmstead Park designed by Frederick Law Olmstead in 1892, is a valued community asset that has been added to the National Register of Historic Places and has benefited from funds provided to the Commonwealth of Kentucky pursuant to the Land & Water Conservation Fund Act of 1965;

WHEREAS, MSD is a public body corporate and political subdivision organized pursuant to KRS Chapter 76 of the Kentucky Revised Statutes whose primary responsibility is the regulation of public and private sewers and drains and the discharge of waste and waters into the sewer and drainage system;

WHEREAS, on August 12, 2005, MSD entered into a Consent Decree with the United States Environmental Protection Agency and the Commonwealth of

Kentucky, subsequently amended and superseded by the 2009 Amended Consent Decree, ("Consent Decree") whereby MSD is mandated to rehabilitate portions of its sewer system and to construct capital improvement projects to reduce and/or eliminate combined sewer overflows and sanitary sewer overflows to comply with state and federal environmental laws;

WHEREAS, in response to the Consent Decree, and utilizing a rigorous performance evaluation process and risk management decision process, MSD developed a federally enforceable Integrated Overflow Abatement Plan ("IOAP") which includes a CSO Long Term Control Plan and a Sanitary Sewer Discharge Plan as adopted September, 2009;

WHEREAS, MSD's CSO Long Term Control Plan consists of a suite of projects including a proposed underground storage basin sited within approximately 18 acres of Shawnee Park known as the Great Lawn designed to capture excess storm water that would otherwise be discharged to and cause degradation of water quality in receiving waters;

WHEREAS, in selecting Shawnee Park for the construction of a combined sewer overflow storage basin, MSD performed an extensive evaluation of alternative sites based on numerous factors including, but not limited to, potential adverse impacts, including the displacement and/or disruption of homes and businesses in the Shawnee neighborhood, cost-effectiveness, environmental benefit, including the ability to optimize the reduction of combined sewer overflows by placing the basin near identified combined sewer overflow points within the Park (CSOs 104, 105, and 189), community input, and the potential for substantial completion by December 31, 2018, the deadline by which the basin must be completed to avoid stipulated penalties imposed under MSD's Consent Decree;

WHEREAS, MSD and Louisville Metro agree that the selection of Shawnee Park is the most feasible alternative and Louisville Metro has agreed to grant temporary and permanent easements to MSD for construction of the Southwestern Parkway Basin.

WHEREAS, MSD and Louisville Metro share the goal of preserving the Park and in furtherance of the goal of preservation, MSD has caused to be prepared a Shawnee Uplands Master Plan, and has agreed to provide certain special projects for the enhancement and betterment of the Park;

NOW THEREFORE, in consideration of these promises and mutual covenants contained herein, MSD and Louisville Metro hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are hereby incorporated in this MOA and made a part hereof.
2. **Effective Date.** This MOA shall become effective on the last date on which the MOA is signed by the duly authorized representatives of Louisville Metro and MSD.
3. **Pre-Construction Meetings.** MSD will conduct a public "Pardon Our Dust" pre-construction meeting at least thirty (30) days prior to commencement of construction activities in Shawnee Park.
4. **Stakeholder Meetings During Construction.** Beginning forty-five (45) days before construction commences, MSD shall convene quarterly meetings at either MSD's main office building or within a building located in Council District 5 with a stakeholder group consisting of the Metro Council Member for Metro Council District 5 and representatives from MSD, 2 representatives from Louisville Metro (Metro Parks), 2 representatives from Olmstead Parks Conservancy and 2 representatives from the Shawnee neighborhood, and a representative(s) of MSD's Progressive Design Build team. The quarterly meetings shall be for the purpose of discussing any concerns the representatives may have with the Project's construction. MSD shall also designate a standing point of contact for purposes of addressing concerns that may arise between such meetings.
5. **Design and construction costs.** MSD shall be responsible for all costs of the Project, including but not limited to plan development, design and construction.
6. **Compensation.** In compensation for the amount of property to be taken for the project, impact of limited access to park users for the 3-year duration of construction and the replacement value of the existing trees, MSD agrees to expend a total of up to Two and one-half Million Dollars (\$2,500,000) including and in combination with a lump sum payment to Louisville Metro for use by Metro in the improvement of Shawnee Park and in-kind projects by MSD for the enhancement and betterment of the Park in support of the Olmsted Master Plan for Shawnee Park. MSD agrees to pay Louisville Metro a lump sum payment of One Million and One Hundred and Fourteen Thousand Dollars (\$1,114,000) within thirty (30) days of execution of this agreement. This monetary figure is allocated and calculated upon the following estimated amounts:

A. Easements.

(i) For and in consideration of the amount of Five Hundred and Five Thousand Dollars (\$505,000), payable by MSD to Louisville Metro, Louisville Metro agrees to grant to MSD immediate right of entry and temporary and permanent easements for approximately 18 acres of land situated in Shawnee Park (the "Property") for the construction of the Project. The Property and approximate location of the basin is more fully depicted and described in Exhibit A, attached hereto.

(ii) In addition to the right of entry and the temporary and permanent easements to be granted by Louisville Metro for construction of the Project, Louisville Metro shall also grant to MSD permanent easements in the Property for the purpose of maintaining, repairing, reconstructing, or expanding existing sewer facilities located in Shawnee Park.

(iii) After construction of the Project, MSD shall provide 30 days prior written notice to Metro Parks before any permanent changes are made to the landscaping, flood pumping station façade or open air pavilion constructed by or on behalf of MSD pursuant to subsection 7 of this MOA that are within the permanent easement, except of or arising out of routine maintenance, inspection and/or monitoring and in the case of an emergency when written notice shall be provided within 10 days after the emergency.

B. The remaining portion of the lump sum payment, Six Hundred and Nine Thousand Dollars (\$ 609,000) is for Louisville Metro to use in its discretion to fund projects to enhance, improve and better Shawnee Park, which shall include, but is not limited to the restoration and renovation of the:

- (i) Lilly pond;
- (ii) Bath house; and
- (iii) Athletic courts.

7. **In-Kind Expenses.** In furtherance of the goal of preserving, enhancing and bettering Shawnee Park, MSD agrees to expend up to One Million, Three Hundred

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and Eighty-six thousand Dollars (\$1,386,000) for performance by MSD in amounts not to exceed the following for the below-listed special projects:

- A. Burying the electric lines needed as part of the Project (\$75,000);
 - B. Premium landscaping, including trees, and walkway and building restoration as per the design submitted to and approved in writing by Metro Parks (\$225,000);
 - C. Development and preparation of the already completed Shawnee Uplands Master Plan (\$93,000);
 - D. Enhancing the MSD Shawnee existing flood pumping station facade (\$262,000);
 - E. Construction of an open air shelter pavilion (approx. 30' X 50') with public restrooms at the location of the control building/facility for the basin resulting in a net gain in outdoor recreation benefits and enhancing the outdoor recreation use of the entire park. Thus, making the facility compatible with and significantly supportive of the outdoor recreational resources and opportunities of the Land and Water Conservation Fund Act 6(f) protected area. Approval of the changes have to be submitted for the approval of the Commonwealth of Kentucky in accordance with the Land and Water Conservation Fund Act , and MSD and Metro agree to prepare and submit a joint application (\$225,000);
 - F. Asphalt Paving of the existing gravel lot by the playground and spray ground, approximately 13,000 sq. ft. (\$20,000);
 - G. Pavement replacement of Loop Road on Southwestern Parkway side of park (\$320,000); and
 - H. Pavement restoration (milling and asphalt resurfacing) of Loop Road on the Ohio River/Levee side of the park (\$166,000).
8. **Right of Entry.** Upon the effective date of this MOA, MSD shall have the right to enter the 18 acres of Shawnee Park designated for the Project to perform any and all necessary design and pre-construction activities. The Project is expected to begin in June of 2016 and completed by June 30, 2019. MSD shall notify Metro Parks in writing of any deviation from this expected timeframe. Both temporary and permanent easements shall be filed with the Jefferson County Clerk's office as required by law. Although right of entry is granted, the temporary

and permanent easements will not be available for filing until the design is at least 30 % complete. A LOJIC map showing the general area of the temporary and permanent easements will be attached as Exhibit B to this MOA.

9. Restoration and Maintenance.

A. Following the final completion of construction of the Project, MSD shall restore all land disturbed by construction to its pre-construction condition and in a manner consistent with applicable provisions of the Shawnee Uplands Master Plan. The Project shall not be deemed to be completed for the purposes of this MOA until Louisville Metro has accepted in writing the satisfactory completion of the in-kind expenses in Subsection 7, as well as the completion of all restoration of the Park in accordance with this MOA.

B. MSD shall be responsible for maintaining any landscaping installed as part of this MOA located within the boundaries of MSD's permanent easement for the Project.

C. Upon MSD's completion of construction of said facilities referred to in Paragraph 7E-H, written notice of which will be provided to Louisville Metro by MSD, all rights, title and interests of MSD in said facilities shall be transferred and conveyed to Louisville Metro and no other document shall be necessary to complete the conveyance and transfer. Upon MSD's completion of construction of said facilities, Louisville Metro shall become the lawful owner of the facilities and MSD shall have no duty, obligation or responsibility to maintain, repair, replace, protect, reconstruct, or provide any other service for such facilities, except that, MSD agrees to and shall be obligated to correct any defective workmanship discovered by Louisville Metro during a period of one year following completion of construction.

10. Continuing Cooperation.

A. MSD and Louisville Metro shall work together to ensure the Project complies with this MOA, including any written amendments to same, and all applicable regulations and requirements of the Land & Water Conservation Fund State Assistance Program Federal Financial Assistance Manual and MSD's Consent Decree. For all intents and purposes of this MOA, it is understood and agreed that construction of the Project does not constitute a conversion in the use of the Park.

B. MSD shall be responsible for maintaining the Southwestern Parkway CSO Basin in perpetuity and shall comply with the applicable laws and regulations in operating said basin. MSD will also be liable for any leaks or smells from the Southwestern Parkway CSO Basin.

C. MSD shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, their elected and appointed officials, employees, agents and successors from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from MSD (or their contractors, if any) negligence or willful misconduct in connection with this Project, or breach of this MOA, provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom or breach of this MOA, or negligent acts, errors or omissions and (2) is not caused by the negligent act or omission or willful misconduct of the Louisville and Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. In the event said claim for damages, losses and/or expenses is related to or caused by the negligent act or omission or willful misconduct of the Louisville and Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment, then to the extent permitted by law, Metro Government shall indemnify and hold harmless MSD from said claims to the extent Metro Government has been found to be negligent or committed willful misconduct. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

D. Insurance: MSD is self-insured for all properly asserted General and Automobile Liability claims brought against it to which it does not otherwise have a legal defense. In addition, MSD agrees to keep in full force and effect Excess Self Insurance coverage for all properly asserted claims brought against it to which it does not otherwise have a legal defense covering Bodily Injury; Property Damage and Personal injury Liability under the Louisville Area Governmental Self Insurance Trust; as long as such coverage is available. The Limit of Liability provided by such Excess coverage shall be at least \$5,000,000 per Occurrence under a Combined Single Limit format.

Should MSD no longer be self-insured through the above mentioned trust, they shall be required to maintain with an insurance company licensed to do business in Kentucky with an A.M. Best rating of no less than A-VI, commercial general liability on an occurrence basis, primary, noncontributory, with a minimum limit of at least \$5,000,000 per occurrence and aggregate and shall include Louisville/Jefferson County Metro Government, it's elected and appointed officials, employees, agents and successors as additional insured for all ongoing and completed operations. The limit may be accomplished through a combination of primary and excess/umbrella coverage. Auto liability coverage in the minimum amount of \$2,000,000 for any one accident shall be required.

MSD contractors will be required to maintain insurance as per the terms of MSD's standard construction contract.

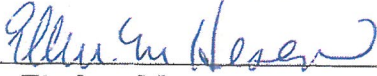
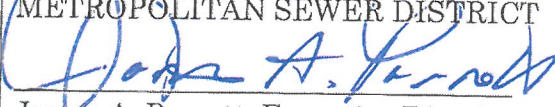
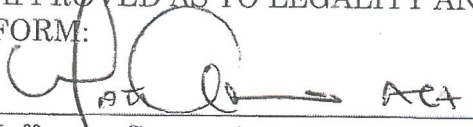
All parties shall provide evidence of Workers' Compensation insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and Employers' Liability- \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.

11. **Entire Agreement.** This MOA constitutes the full understanding and entire agreement between the parties with regard to the grant by Louisville Metro to MSD and purchase by MSD of temporary and permanent easements for construction of the Project and goal of preserving the Park and any change to the MOA shall be effective only after it is committed to writing, as an Amendment to this MOA, and signed by the duly authorized representatives of both parties.

12. **Termination.** This MOA shall be in force for as long as the Project is located in Shawnee Park. The temporary easement shall expire upon the terms stated within the easement.

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IN TESTIMONY WHEREOF, witness the signatures of the parties hereto.

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  Greg Fischer, Mayor Date signed: <u>6/3/16</u>	LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT  James A. Parrott, Executive Director Date signed: <u>6-2-16</u>
APPROVED AS TO LEGALITY AND FORM:  AEA Jefferson County Attorney	APPROVED AS TO LEGALITY AND FORM:  Louisville and Jefferson County Metropolitan Sewer District, Attorney



Legend

- Flood Pump Stations
- CSO Locations
- Combined Sewer
- Sanitary Sewer
- Overflows

Approximate Location
of the Basin

Southwestern Parkway CSO Basin Project

Exhibit A



Not to Scale



Southwestern Parkway CSO Basin Project

Exhibit B