



August 16, 2022

Louisville Metro Council
601 W. Jefferson Street
Suite 101
Louisville, KY 40202

Re: Proposed annexation of Twinbrook Annexation by the City of St. Matthews

Dear members of Metro Council:

Thank you for the opportunity to comment on the City of St. Matthew's request for Metro Council's approval to annex an area commonly known as Twinbrook subdivision. I am writing on behalf of the Louisville and Jefferson County Metropolitan Sewer District (hereinafter "MSD") to ensure that all parties to the proposed annexation are aware of MSD's drainage assets located within the subject area and to address MSD's continuing rights and responsibilities to provide drainage services to Twinbrook subdivision, regardless of annexation by St. Matthews.

History and Background of MSD Drainage Service

Pursuant to KRS Chapter 76, which allows for the establishment of metropolitan sewer districts, MSD was created in 1946 by the adoption of an enabling municipal ordinance. MSD's purpose, among other things, was to promote the public health through adequate sewer and drainage facilities. KRS 76.010. To accomplish this, MSD was granted possession, jurisdiction and control of the then-existing sewer and drainage systems of the City of Louisville and Jefferson County. KRS 76.070.

In the years following MSD's creation, the City of Louisville and Jefferson County experienced industrialization and commercialization, as well as attendant residential development. The drainage facilities and systems originally transferred to MSD were inadequate to service the needs of the developing city and county. Separately, the city of Louisville, Jefferson County, and MSD constructed additional storm and surface water drainage facilities. This required each entity to develop maintenance programs for facilities, purchase equipment and retain support personnel.

On December 23, 1986, in recognition of a "particular public need," the City of Louisville, Jefferson County, and MSD entered into an Agreement of Interlocal Cooperation (hereinafter the "Interlocal Agreement") to establish a "single authority for planning, acquisition, improvement, construction, inspection, development, installation, modification, management, operation, maintenance, repair, replacement, control, demolition, abandonment, regulation, and funding of Storm and Surface Water Drainage services, systems and Facilities in the interest of protecting, preserving and enhancing the public safety and welfare . . ." (Interlocal Agreement, p. 2). The parties deemed it "essential" that these rights and authority be vested in MSD. (*Id.*). The drainage authority established by the Interlocal Agreement was co-extensive with and placed under the control of the agency.

The effect of the Interlocal Agreement was to expand MSD's drainage service area and transfer all storm and surface water drainage and flood control responsibilities within that geographic area to MSD. The expanded "Drainage Service Area" included "unincorporated areas within the County," but excluded the larger cities within the county (including St. Matthews), who remained responsible for providing drainage services to the residents within their respective jurisdictions.¹

In accordance with KRS 76.175, in or about 1986, MSD annexed all the unincorporated areas of Jefferson County into the Drainage Service Area, which included the area known as the Twinbrook subdivision, which is the subject of the annexation request pending before Metro Council. MSD has provided drainage service to the Twinbrook subdivision since its inclusion in the Drainage Service Area and is the subdivision's current drainage services provider. MSD has worked diligently to maintain this infrastructure, employing equipment and personnel in the performance thereof, as needed.

Mechanisms for Funding MSD Drainage Services

MSD funds its operations by collecting "rates, rentals, and charges" from the real property served by its facilities. KRS 76.090(1). It is not authorized to levy ad valorem taxes upon property to fund its operations. KRS 76.140.

To fund capital projects, MSD issues bonds. "All the bonds, including interest, are payable solely from and secured only by the revenues of the district realized through the collection of rates, rentals, and other charges, imposed for use of the facilities of the district." KRS 76.150(2). For this reason, it is important to MSD's operations and its present and future ability to service bond repayment that its service base and its collection of rates, rentals, and other charges remain consistent.

The property owners of Twinbrook subdivision are currently rate payers of MSD. The rates, rentals, and charges they pay go to fund MSD's operations, including its repayment of bonds.

MSD has the Responsibility and the Right to Continue to Provide Drainage Services to Twinbrook subdivision, and Collect Corresponding Service Charges, Regardless of Annexation by St. Matthews

By virtue of KRS 76.080 and the Interlocal Agreement, MSD is charged with providing drainage services to Twinbrook subdivision in the furtherance of the public health. MSD has faithfully discharged this duty. As recognized in the Interlocal Agreement there is "public need" to establish a "single authority" for drainage services to the greatest extent possible in Jefferson County and it is "essential" that this authority be MSD. (Interlocal Agreement, p. 2). The consolidation of drainage services under MSD promotes uniform control over drainage and flood protection in Jefferson County.

¹ Initially, these areas were Anchorage, Douglass Hills, Hurstborne, Jeffersontown, Lyndon, Middletown, Newburg, Prospect, St. Matthews, St. Regis Park, and Shively. Eventually, all of these areas except Anchorage, Jeffersontown, St. Matthews, and Shively would become part of MSD's Drainage Service Area either by annexation or by agreement.

This is particularly important given Louisville's status as a "participating community" in the National Flood Insurance Program, which allows residents to purchase flood insurance at more favorable rates. MSD is the "administering agency" for the city's Floodplain Management program and is responsible for the development of the master, regional plan for storm water drainage. To achieve a comprehensive and unified drainage and flood management program, it is important that MSD retain control over the drainage facilities of as much of the county and region as possible. MSD's continued provision of drainage services to Twinbrook subdivision is not only important to effectuating the federal policy of establishing comprehensive flood management programs, but also promoting the state policy of public health through adequate drainage and the objectives of the Interlocal Agreement.

There exists no legal authority for the de-annexation of property from MSD's service area. In fact, MSD has vested statutory and common law rights to continue drainage service to Twinbrook subdivision and collect rates, rentals, and charges from the serviced properties, which cannot be impaired by St. Matthews' annexation. Kentucky law recognizes an existing utility's "dominant right to render service" within an annexed territory. *See*, KRS 96.538.²

KRS 81A.490³ expressly preserves "all rights of the utilities providing utility services in any area annexed by a city prior to annexation, existing under other statutes, laws, or regulations" Kentucky protects both physical infrastructure and the right to provide continued services and collect fees from infringement by annexation. *See*, *Pewee Valley Fire Prot. Dist. v. S. Oldham Fire Prot. Dist.*, 570 S.W.2d 290, 292 (Ky. Ct. App. 1978)(calling it "unreasonable and impractical" to allow for annexation of territory where no provision had been made for any compensation or assumption of liabilities and debts); *Louisville and Jefferson County Metropolitan Sewer District v. Sanitation District No. 1 of Jefferson County*, 353 S.W.2d 196 (Ky. App. 1961)(recognizing the right to "continued operation ... of its system within the area to the extent and for the period necessary to retire its bonds chargeable against the property in the annexed area.")

As set forth, MSD is authorized pursuant to KRS 76.080 to establish, construct, operate, and maintain the drainage system of the district and to collect rates and other charges for services rendered. MSD is similarly authorized by the Interlocal Agreement to provide drainage services within the Drainage Services Area, which was defined to include Twinbrook subdivision, and collect certain fees including storm drainage services charges, permit and inspection fees, direct charges, etc. MSD has vested and superior rights under Kentucky statutory and common law to continue to provide drainage services to Twinbrook subdivision and to collect authorized rates, rentals, and charges from the properties it services. St. Matthews cannot impair these rights by its annexation of Twinbrook subdivision.

Historically, St. Matthews has recognized that its annexation of additional territory into its city boundaries does not affect the annexed properties' inclusion in MSD's service district boundaries or MSD's rights to provide service to the affected area and continued to collect its rates, rentals, and charges therefrom. For example, the City of St. Matthews, on its public-facing website, expressly provides that "[a]reas which were annexed into the City of St. Matthews, which had previously

² Statute found unconstitutional on other grounds.

³ KRS 67C.111 provides that St. Matthews should "proceed[] under the provisions of KRS Chapter 81A" upon approval of its request for annexation by Metro Council.

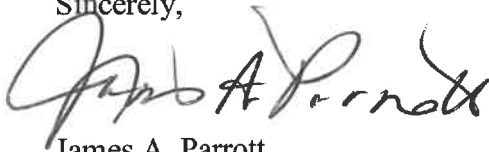
participated in the MSD program, albeit that they are now a part of the city, continue to be participants of the MSD program.” (Available at <https://www.stmatthewsky.gov/metropolitan-sewer-district-msd>, last accessed 8/12/2022).

In its Public Hearing Notice, the City of St. Matthews represented to property owners and the public that it would provide “garbage collection, police services through the City of St. Matthews Police Department and road maintenance, including snow removal,” to Twinbrook subdivision, if annexed. The City of St. Matthews does not assert that it will provide Twinbrook subdivision with any stormwater sewer or drainage services following annexation. MSD will remain responsible for drainage services to the Twinbrook subdivision following annexation, if permitted, and will retain the right to collect its rates, rentals, and charges from the properties serviced.

Recommendation

Consistent with KRS 81A.490 and Kentucky’s long-standing policy favoring the rights of existing utility providers in annexed territories, Metro Council should include in any ordinance approving St. Matthews’ request to annex Twinbrook subdivision language confirming MSD’s rights to continue providing services in the subject area, including but not limited to their right to continue to collect rates, rentals, or fees in exchange therefor.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Parrott", written over a horizontal line.

James A. Parrott
Executive Director

cc: Travis J. Fiechter
Assistant County Attorney