

McNeely Lake Park
Conditions for Granting of Sanitary Sewer and Drainage Easement Agreement
February 14th, 2014

THIS AGREEMENT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, 527 West Jefferson Street, Louisville, Kentucky 40202, by and through its **LOUISVILLE METRO PARKS DEPARTMENT** herein referred to as "**METRO GOVERNMENT**", and the **METROPOLITAN SEWER DISTRICT** with offices located at 700 West Liberty Street, Louisville, Kentucky 40202, herein referred to as "**MSD**,"

WHEREAS, MSD wishes to obtain three (3) temporary construction easements and (3) permanent easements for the construction and maintenance of sanitary sewers in McNeely Lake Park; and

WHEREAS, Metro Government wishes to grant these easements, if MSD meets the conditions described in this Agreement;

NOW, THEREFORE, Metro Government and MSD hereby agree as follows:

Metro Government will convey three (3) temporary construction easements and (3) permanent easements for the construction of sanitary sewers in McNeely Lake Park (easements are located on Parcels 4, 6 and 7 – Record No. 346086 shown in Exhibits A-D);

SECTION I. CONDITIONS

Item No.

1. MSD agrees to pay Metro Government an amount of \$225,000.00 to be spent as mitigation for the impacts of the sanitary sewer project on McNeely Lake Park. Payment will be made from MSD to Metro within 15 business days from the execution of this agreement.
2. At this time, it is anticipated that construction will begin about February 2014 and approximately 9-12 months will be needed to complete proposed work on the Metro Louisville property at McNeely Lake Park.
3. All easements, whether permanent or temporary, will be no more than 80' in total width (25' for the permanent easement and 55' for the temporary easement). The terms of the permanent easements will address restoration of any disturbance due to future maintenance of the lines, will be prepared in consultation with MSD to the satisfaction of Metro Parks and will be recorded with the easement plat prior to construction.
4. MSD's language will be used to ensure that the Temporary Construction Easement is released upon MSD's acceptance of the sanitary sewers. In the event that contractor access is needed after MSD's acceptance, such as to

complete site restoration during the appropriate season, a separate agreement with Metro Parks will be used.

5. An archeological investigation is not a requirement for the proposed construction and none have been performed; however the Kentucky Heritage Council has identified a National Register-eligible site that is close to the project. MSD will consult with appropriate Commonwealth agencies to confirm that no mapped resources are impacted. MSD will provide documentation to Metro Parks confirming that all required permits have been secured. Construction will not begin until all permits have been obtained, and concurrence with all relevant State and federal agencies related to cultural resources has been obtained.
6. Project construction will include the extension of a 6" property service connection (approximately 800 linear feet) to the riding stable area and terminate at a location set by Metro Parks and in the bid documents.
7. Finish grades will conform to pre-construction grades at project completion except on Parcel 4 which will be graded to accommodate a future 10' wide shared-use path and associated 5' wide shoulders to be built by Metro Parks. MSD will stabilize the trail corridor with seed and straw. While MSD's Contractor will grade to reasonably accommodate a trail, no additional material will be brought onto the site to accomplish this, nor shall significant movement of materials from other areas be required to achieve this goal.
8. Manhole rims will match finish grade, and will have bolt-down and water tight lids. Air release valves will be located in a vented manhole or vault structure matching finish grade. No other above ground structures will be constructed.
9. Construction methods and materials to be used are such that effluent migration out of the system has been shown, in practice, to be highly unlikely. In cases where it has occurred, it has most often occurred at an unsecured manhole and the measures outlined above are intended to provide assurance against migration as well.
10. Air release valves are required at high points along force mains. MSD will require installation of a chemical feed at the pump station to provide odor prevention for the proposed system.
11. MSD agrees to implement Best Management Practices concerning the management of erosion, storm water and site restoration.
12. MSD agrees to coordinate points of ingress and egress along the alignment and staging/landing area/ materials storage with Metro Parks.
13. Final bid documents (Construction drawings, instructions to bidders, specifications, and contract documents) will be submitted to Metro Parks in digital and bond form prior to construction.
14. Construction sequencing will be reviewed with Metro Parks before construction begins. Limits of construction shall be staked and fenced prior to site disturbing activities. Temporary construction fencing should be visible and installed in accordance with appropriate standards. "Do Not Disturb" limits should be posted for vegetation protection.
15. Trees which Metro identifies to harvest shall be clearly marked by Metro within 10 days from the execution of this agreement. The MSD contractor shall cut

- and stage these trees along the edge of the temporary easement where the tree was cut.
16. Trees to be felled for harvesting must be done in a manner as to not damage the surrounding environment. Metro Parks reserves the right to perform site inspections on an as needed basis during the construction of the sewer line.
 17. Any trees outside the limits of construction easements that are impacted beyond saving will be removed at no cost to Metro Parks. In accordance with provisions in the contract documents, restitution will be required for vegetation located outside the construction limits that is damaged due to actions of MSD's contractors.
 18. MSD agrees to minimize disturbance to horse trail routes and reduce closure of trails as much as possible. No un-manned open trenches are to occur along marked or temporary trails. Trench crossings in these locations are to be treated as street crossings and remain plated and covered during non-working hours.
 19. All excess earth, stone, excavated materials, felled trees, branches, brush, and project debris, etc., is to be removed from Metro Parks property at no cost to Metro Parks.
 20. Portions of the sewers constructed shall be in the form of an MSD administered Capital Project. For this portion of the work, prior to final payment to MSD's contractor, a post-construction walk-through shall be conducted with MSD, Metro Parks and the Contractors representatives to identify any deficiencies in restoration. Every effort shall be made to satisfy Metro Parks in the restoration of the disturbed area, and a (1) year warranty shall apply to all work. Final "As-Built" drawings will be provided by MSD and/or its assigns to Metro Parks in digital and bound form following acceptance of the sewers by MSD.
 21. Portions of the sewers constructed shall be in the form of a privately funded Lateral Extension. The contractor shall execute payment and performance bonds for the full value of the work, and shall also provide Certificates of Insurance to MSD. A (1) year warranty will be applicable to these activities as well. Final "Record Contract Documents" will be provided by MSD and/or its assigns to Metro Parks in digital and bound form following acceptance of the sewers by MSD.
 22. Metro Parks representatives shall be invited to all progress meetings, and will be given all contact information for MSD and Contractor personnel. MSD's standard specifications and contract apply to all work performed.

SECTION II – GENERAL TERMS

1. This Agreement may be terminated by any party, with thirty (30) days written notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. The terminated party will have the right for 30 days from notification to cure the issue. If at the end of the thirty-day period the issue is not cured the Agreement may be terminated by the terminating party, with written notice. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

2. Should the Agreement be terminated by either party, MSD and/or its successors and or assigns shall immediately proceed to restore property MSD has disturbed to the condition that reasonably reflects the condition the property was in prior to MSD having begun work on it. Restoration should be considered appropriate grading, appropriate planting of grass seed, and or other plants determined appropriate to replace the plant material that has been removed. It is understood that mature plant material cannot be expected to be replaced.
3. Indemnification and Insurance coverage shall be required of MSD and their contractors in accordance with Attachment A attached hereto.
4. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any 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. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
5. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.
6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
7. If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

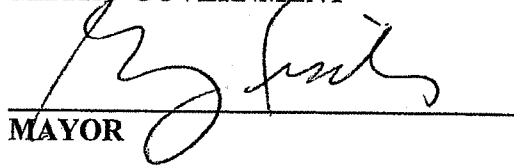
WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT



MICHAEL O'CONNELL
JEFFERSON COUNTY ATTORNEY


MAYOR

Date: 2/7/2014

Date: 2-14-14

METROPOLITAN SEWER DISTRICT

By: Steve W. Embrey

Title: Chief Engineer

Date: 2-6-14

Taxpayer Identification No.

(TIN): TAX-EXEMPT 5D56-043

Attachment A

INDEMNIFICATION AND INSURANCE REQUIREMENTS

Hold Harmless and Indemnification:

To the extent permissible under Kentucky Law, MSD shall indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the MSD's (or MSD's Subcontractors, if any) performance or breach of the contract 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 contract, and (2) not caused by the negligent act or omission of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. 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.

Insurance Requirements:

In regards to MSD: **Louisville** and Jefferson County **Metropolitan Sewer District** is self-insured for all properly asserted General Liability claims brought against it to which it does not otherwise have a legal defense. In addition, **Louisville** and Jefferson County **Metropolitan Sewer District** 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.

In regards to subcontractors for MSD:

Without limiting the indemnification requirements, Subcontractors shall obtain and maintain at their own cost and expense the following types of insurance

through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. MSD shall not allow any subcontractor to commence work until proof of the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance have been obtained by MSD and provided to Louisville Metro Government's Risk Management for review and approval.

A. The following clause shall be added to the subcontractors Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract for **Sanitary Sewer and Drainage Easement Agreement through MSD .**"

B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY**, via the **Occurrence Form**, primary, noncontributory ,with a **\$3,000,000** Combined Single Limit for any one Occurrence and **\$3,000,000** aggregate for Bodily Injury, Personal Injury, Property Damage, and Products/Completed Operations including :

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

These minimum limits may be accomplished by a combination of primary and excess or Umbrella limits.

2. **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.
3. **PERFORMANCE AND PAYMENT BOND.** The Contractor shall furnish the Louisville/Jefferson County Metro Government a Performance and Payment Bond as guaranty covering the faithful performance of the Contract according to the Contract specifications

and payment of all obligations arising thereunder in the Form provided as part of the Contract Documents in the full amount of the Contract price and with such sureties as may be agreeable to the Louisville/Jefferson County Metro Government. The Contractor shall deliver the required bonds to Metro not later than the date of execution of the Contract, or if the work is commenced prior thereto in response to the notice to proceed, the Contractor shall prior to commencement of the work, submit evidence satisfactory to the Owner, that such bonds shall be a condition precedent to effectuation of Contract between the Metro and the Contractor.

4. **AUTOMOBILE LIABILITY**, insuring all Owned, Non-Owned and Hired Motor Vehicles. The minimum coverage Liability Limit is **\$1,000,000** Combined Single Limit for any one accident. The Limit of Liability may be subject to increase according to any applicable State or Federal Transportation Regulations.
5. Other coverages as required by MSD according to the terms of their agreement with subcontractor.

II. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

MISCELLANEOUS

- A. MSD shall monitor subcontractors to verify insurance is in place and in accord with these requirements. Upon Expiration, Cancellation or material change in subcontractor's coverage, MSD shall notify Louisville Metro Government's Risk Management Division within two (2) business days so appropriate action may be taken.
- B. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of MSD or any subcontractor hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of MSD or the subcontractor.