

**MEMORANDUM OF AGREEMENT BETWEEN  
THE LOUISVILLE AND JEFFERSON COUNTY  
METROPOLITAN SEWER DISTRICT  
AND  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
FOR THE CONSTRUCTION OF THE  
PORTLAND  
COMBINED SEWER OVERFLOW ("CSO") BASIN ("the Project")  
WITHIN LANNAN 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**, 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with the United States Environmental Protection Agency and the Commonwealth of Kentucky, subsequently amended and superseded by the 2009 Amended Consent Decree, ("Consent Decree") whereby MSD is mandated to rehabilitate portions of its sewer system and to construct capital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 5 acres of Lannan Park, located at 901 North 26<sup>th</sup> Street, designed to capture excess storm water that would otherwise be discharged to and cause degradation of water quality in receiving waters;

**WHEREAS**, in selecting Lannan 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 Portland 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 (CSO 019), community input, and the potential for substantial completion by December 31, 2019, 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 Lannan Park is the most feasible alternative and Louisville Metro has agreed to grant temporary and permanent easements to MSD for construction of the Portland CSO Basin.

**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 fifteen (15) days prior to commencement of construction activities in Lannan 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), and 2 representatives from the Portland 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 duration of construction, MSD agrees to expend the following in Lannan Park:

A. **Easements.**

(i) For and in consideration of the amount of Three Hundred and Fifty Thousand Dollars (\$350,000), payable by MSD to Louisville Metro, Louisville Metro agrees to grant to MSD immediate right of entry and temporary and permanent easements for approximately 5 acres of land situated in Lannan Park (the "Property") for the construction of the Project and for the work outlined in Section 6B below. 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 Lannan Park.

B. The \$350,000 payment for the easements as outlined in Paragraph 6A above, shall be for Louisville Metro to use in its discretion to fund projects to enhance, improve and better Lannan

Park, which shall include, but not be limited to, use for a spray ground, playground, and flag plaza.

7. **In-Kind Expenses.** In furtherance of the goal of preserving, enhancing and bettering Lannan Park, MSD agrees to perform the following below listed special projects:

- A. Relocate the existing park entrance road southward to an alignment parallel to and adjacent with the Interstate 64 Control of Access. Relocated portion of roadway will be approximately from existing intersection to parking area near tennis courts.
- B. Install a pedestrian sidewalk along N. 27th Street and park entrance road from Northwestern Parkway to parking area near the tennis courts. Construction of sidewalk will include appropriate handicap accessible ramps.

8. **Right of Entry.** Upon the effective date of this MOA, MSD shall have the right to enter the 5 acres of Lannan Park designated for the Project to perform any and all necessary design and pre-construction activities. The Project is expected to begin in September 2016 and completed by December 31, 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 60 % complete. A Preliminary Easement Plat 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 with seed and straw to return the area to usable park space. to its pre-construction condition. 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. Metro shall be responsible for maintaining within the easement area, except for the green infrastructure. MSD will maintain the green infrastructure (Rain Garden) installed as part of the project.

C. Upon MSD's completion of construction of said facilities referred to in Paragraph 7A-B, 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, 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 Portland 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 Portland 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.

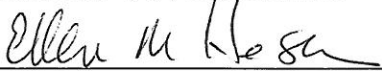
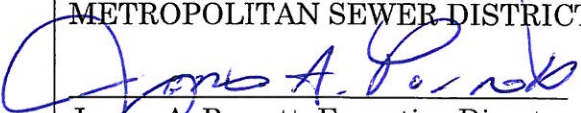

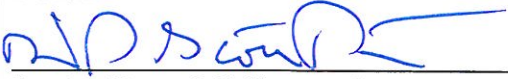
All parties shall provide evidence of Workers' Compensation insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at

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 Lannan Park. The temporary easement shall expire upon the terms stated within the easement.

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

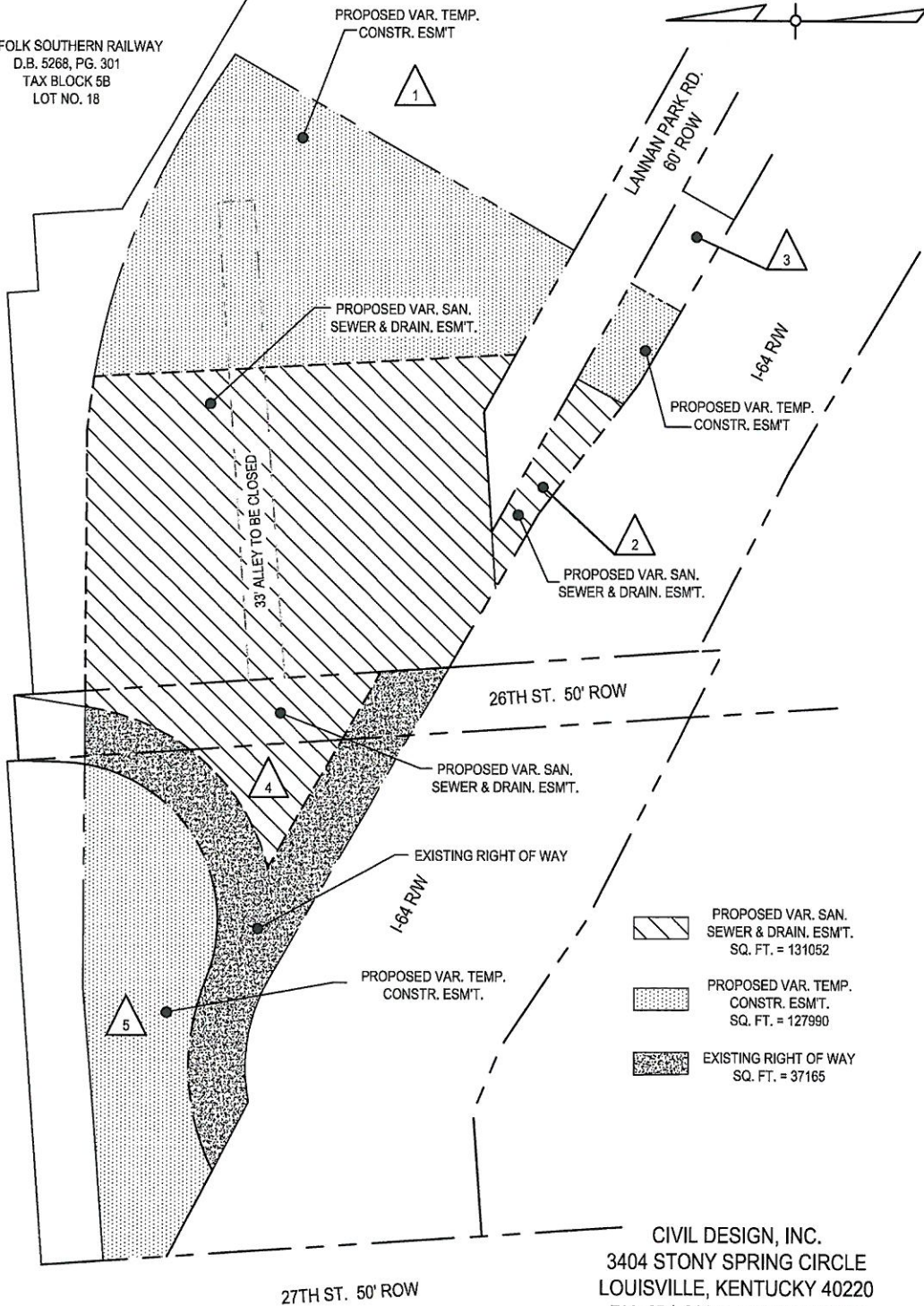
<p>LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT</p> <p> _____ Greg Fischer, Mayor</p> <p>Date signed: <u>10/10/16</u></p>	<p>LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT</p> <p> _____ James A. Parrott, Executive Director</p> <p>Date signed: <u>10-4-16</u></p>
<p>APPROVED AS TO LEGALITY AND FORM:</p> <p> _____ Jefferson County Attorney</p>	<p>APPROVED AS TO LEGALITY AND FORM:</p> <p> _____ Louisville and Jefferson County Metropolitan Sewer District, Attorney</p>






A



NORFOLK SOUTHERN RAILWAY  
 D.B. 5268, PG. 301  
 TAX BLOCK 6B  
 LOT NO. 18



-  PROPOSED VAR. SAN. SEWER & DRAIN. ESMT. SQ. FT. = 131052
-  PROPOSED VAR. TEMP. CONSTR. ESMT. SQ. FT. = 127990
-  EXISTING RIGHT OF WAY SQ. FT. = 37165

CIVIL DESIGN, INC.  
 3404 STONY SPRING CIRCLE  
 LOUISVILLE, KENTUCKY 40220  
 PH: 671-0060 FAX: 671-0311



I HEREBY CERTIFY THAT THIS PLAT WAS MADE UNDER MY SUPERVISION AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THE PROPERTY LINES SHOWN ARE BEST FIT TO THE PROPERTY CORNER MONUMENTS FOUND IN THE PROJECT AREA. THE DISTANCES SHOWN ARE FOR RELATING THE SUBJECT PROPERTY TO THE DESCRIBED EASEMENT AND THEREFORE SHOULD NOT BE USED FOR ESTABLISHING PROPERTY CORNERS. THIS PLAT MEETS OR EXCEEDS THE MINIMUM STANDARDS OF GOVERNING AUTHORITIES.

STATE OF KENTUCKY  
 ROBERT W. DUNAWAY  
 2662  
 LICENSED PROFESSIONAL LAND SURVEYOR

THIS PLAT DOES NOT REPRESENT A BOUNDARY SURVEY AND IS NOT INTENDED FOR LAND TRANSFER

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT  
 700 WEST LIBERTY STREET  
 LOUISVILLE, KENTUCKY 40203

EASEMENT AND RIGHT OF WAY EXHIBIT  
 PROPERTY OF

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
 &  
 COMMONWEALTH OF KENTUCKY

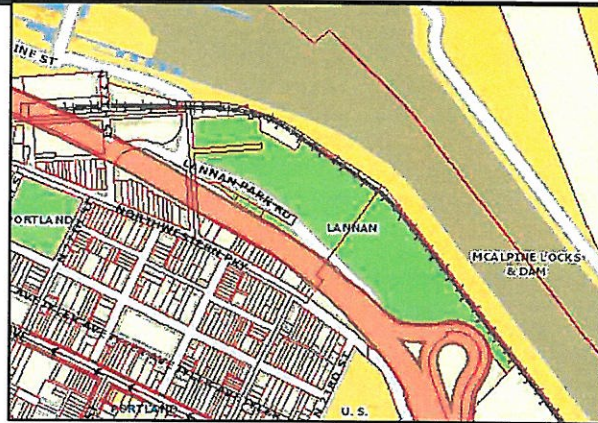
DATE FEB. 23, 2016 SHEET 1 OF 2

B

PROPERTY OWNERS



PROPERTY OF  
LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT  
D.B. 2089, PG. 214  
D.B. 2221, PG. 358  
D.B. 2246, PG. 162  
D.B. 2193, PG. 403  
D.B. 4728, PG. 815  
D.B. 2223, PG. 149  
D.B. 2252, PG. 492  
TAX BLOCK 5B  
LOT NO. 25



KEY MAP

NO SCALE



PROPERTY OF  
LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT  
D.B. 4728, PG. 810  
TAX BLOCK 5B  
LOT NO. 16



PROPERTY OF  
LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT  
D.B. 4728, PG. 813  
TAX BLOCK 5B  
LOT NO. 15



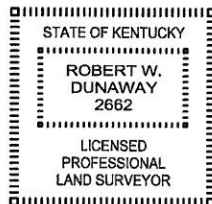
PROPERTY OF  
COMMONWEALTH OF KENTUCKY  
PART OF PARCELS 42, 43, 59, 60, 61 & 71  
(PROPOSED PURCHASE AREA TO  
LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT)



PROPERTY OF  
LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT  
D.B. 1953, PG. 319  
D.B. 2261, PG. 5  
TAX BLOCK 5A  
LOT 69

THE REFERENCE MERIDIAN USED ON THIS PLAT TO DETERMINE THE DIRECTIONS OF SURVEY LINES WAS BASED ON KENTUCKY STATE PLANE COORDINATES, NORTH ZONE, 1983 N.A.D.

I HEREBY CERTIFY THAT THIS PLAT WAS MADE UNDER MY SUPERVISION AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THE PROPERTY LINES SHOWN ARE BEST FIT TO THE PROPERTY CORNER MONUMENTS FOUND IN THE PROJECT AREA. THE DISTANCES SHOWN ARE FOR RELATING THE SUBJECT PROPERTY TO THE DESCRIBED EASEMENT AND THEREFORE SHOULD NOT BE USED FOR ESTABLISHING PROPERTY CORNERS. THIS PLAT MEETS OR EXCEEDS THE MINIMUM STANDARDS OF GOVERNING AUTHORITIES.



SURVEYOR: \_\_\_\_\_ DATE: \_\_\_\_\_

JOB: R1897.01 DWG: PLOT PORTLAND ESMT PLAT OPTION 2

CIVIL DESIGN, INC.  
3404 STONY SPRING CIRCLE  
LOUISVILLE, KENTUCKY 40220  
PH: 671-0060 FAX: 671-0311

THIS PLAT DOES NOT REPRESENT A BOUNDARY SURVEY AND IS NOT INTENDED FOR LAND TRANSFER
LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT 700 WEST LIBERTY STREET LOUISVILLE, KENTUCKY 40203
EASEMENT AND RIGHT OF WAY EXHIBIT PROPERTY OF  LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT & COMMONWEALTH OF KENTUCKY
DATE FEB. 23, 2016 SHEET 2 OF 2