

**ATTACHMENT B
TO FY2014 GRANT AWARD AGREEMENTS**

DO NOT WRITE ABOVE THIS LINE

**Agreement to Maintain Stormwater Control Facilities
Funded by an LFUCG Stormwater Quality Projects Class B Incentive Grant**

The upkeep and maintenance of stormwater control facilities is essential to the protection of aquatic resources. All property owners receiving grant funds from the Lexington-Fayette Urban County Government through the Stormwater Quality Projects Incentive Grant Program for construction of any stormwater control facility are expected to conduct business in a manner that promotes resource protection. For purposes of this document, a "stormwater control facility" is an equivalent term for "stormwater control device" or "stormwater management system or facility," and is any detention basin, detention pond, drainage way, extended detention basin, retention basin, catch basin, outlet, or any other structure or equipment or feature thereof, in whole or in part, designed to control stormwater quantity or improve stormwater quality. This Agreement contains specific provisions with respect to maintenance of the stormwater control facilities described below.

PROPERTY SITE ADDRESS: 740 W. New Circle Rd. Lexington, KY 40550

PROPERTY OWNER NAME: Lexmark International, Inc.

PROPERTY LEGAL DESCRIPTION:

Property located at 740 W. New Circle Road, Lexington, KY Parcel #13219300
listed with the Fayette County PVA. Being the same property conveyed to
Lexmark International Inc., in Deed Book 168, Page 681, in the office of the
Fayette County Clerk.

STORMWATER CONTROL FACILITIES DESCRIPTION:

Funded by Stormwater Quality Projects Incentive Grant: Fiscal Year 2014, Class B

1. <Lexmark Stormwater Improvement and Education - Bioretention Basin Project, \$350,000, May 2018, 15-year depreciation schedule³>

<Facility Description, Facility Grant Value¹, Placement in Service Month², -year depreciation schedule³>

¹ Facility Grant Value is the amount of LFUCG incentive grant funds expended on feasibility, design and construction costs for each given facility.

² Placement in Service Month is the month the facility goes into service.

³ Use 20-year depreciation schedule for green/vegetated roofs. Use 15-year depreciation schedule for all other BMPs.

Whereas, Lexmark International, Inc., has proposed to construct stormwater control facilities on the property described above and whereas the goals of the Lexington-Fayette Urban County Government are to ensure the protection and enhancement of Fayette County's aquatic resources, the **Lexington-Fayette Urban County Government (LFUCG)** and **Lexmark International, Inc.** hereby enter into this Agreement. The responsibilities of each party to this Agreement are identified below.

Hold for Frank Mabson

THE Lexmark International, Inc. HEREBY:

1. Agrees to implement the stormwater control facility Inspection, Operations, and Maintenance Plan developed for each facility and incorporated by reference herein.
2. Agrees to maintain the stormwater control facilities in good working condition, acceptable to the LFUCG, so that they are performing their design functions.
3. Grants permission to the LFUCG, its authorized agents and employees, to enter upon the property with reasonable advance notice of at least 24 hours and proper identification, except in such circumstances where advance notice is inappropriate for the purpose of entry, and to inspect the stormwater control facilities whenever the LFUCG deems necessary. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structures, pond areas, access roads, etc. When deficiencies are noted, the LFUCG shall give Lexmark International, Inc., its successors and assigns, copies of the inspection report with findings and evaluations.
4. Agrees that in the event Lexmark International, Inc., its successors and assigns, fails to maintain the stormwater control facilities in good working condition acceptable to the LFUCG, the LFUCG may enter upon the property and take whatever steps it deems necessary to maintain said stormwater control facilities and to charge the costs of the repairs to Lexmark International, Inc., its successors and assigns. This provision shall not be construed to allow the LFUCG to erect any structure of a permanent nature on the land of Lexmark International, Inc., outside of an easement belonging to the LFUCG. It is expressly understood and agreed that the LFUCG is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any obligation on the LFUCG.
5. Agrees that in the event the LFUCG, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like on account of Lexmark International, Inc. or its successors and assigns, Lexmark International, Inc. shall reimburse the LFUCG upon demand, within 30 days of receipt thereof for all costs incurred by the LFUCG hereunder. If not paid within such 30 day period, the LFUCG shall have a lien against the property in the amount of such costs, plus interest at the Judgment Rate, and may enforce same in the same manner as a lien for real property taxes may be enforced.
6. Agrees to indemnify and hold harmless the LFUCG and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the LFUCG related to the construction or maintenance of the stormwater facilities by Lexmark International, Inc. or its agents, provided that LFUCG promptly notifies Lexmark International, Inc. in writing of any such claims (and the like), cooperates with Lexmark International, Inc. in the defense of any such claims (or the like) and authorizes Lexmark International, Inc. in writing to settle or defend any such claims (or the like) in Lexmark International, Inc. sole and absolute discretion.

In the event a claim is asserted against the LFUCG, its agents or employees for such matters, the LFUCG shall promptly notify Lexmark International, Inc., their successors and assigns, and they shall defend, at their own expense, any suit based on such claim. If any judgment or claims against the LFUCG, its agents or employees shall be

allowed, Lexmark International, Inc., its successors, and assigns shall pay all costs and expenses in connection herewith.

7. Grants permission to the LFUCG, its authorized agents and employees, to enter upon the property with reasonable advance notice to Lexmark International, Inc. and proper identification, and, at LFUCG expense, to install, operate, and maintain equipment to monitor the flow rate and pollutant content of the input flow, the effluent, and at intermediate points in the facility, all in such a manner that does not unreasonably interfere with the use of the property by Lexmark International, Inc. Lexmark International, Inc. further agrees to design and construct the facility to provide reasonable access for such monitoring.
8. Agrees to maintain a record (in the form of a logbook) of steps taken to implement the programs referenced in (1) and (2) above. The logbook shall be available for inspection by the LFUCG staff at <740 W. New Circle Rd. Lexington, KY. 40550 Sustainability / EHS Department Building 1> during normal business hours. The logbook shall catalog the action taken, who took it, when the action was done, how it was done, and any problems encountered or follow-up actions recommended.

On property where a stormwater control device is located fully or partially underground, Lexmark International, Inc. further understands that an annual inspection of the underground facility is required by LFUCG Code of Ordinances 16-88(c), and an annual inspection report, prepared by a Professional Engineer licensed to practice in Kentucky, must be submitted to the LFUCG compliance representative listed in this document. This report shall address the condition of the device for meeting its intended purpose, and shall be included with the annual report described in Section (9) below.

9. Agrees to provide an **annual report** to the LFUCG regarding implementation of the programs referenced in (1) and (2) above upon request from the Grant Administrator or MS4 Permit Coordinator. The report shall contain, at a minimum, the following items:
 - A. Name, address, and telephone number of the business, the person, or the firm responsible for plan implementation, and the person completing the report.
 - B. Time period covered by the report.
 - C. Copy of all inspection reports performed as part of the operations and maintenance program referenced in (1) above, including if applicable, the annual inspection for underground devices described in (8) above.
 - D. A chronological summary of activities conducted to implement the program referenced in (1) and (2) above. A photocopy of the applicable sections of the logbook, with any additional explanation needed, shall normally suffice. For any activities conducted by paid parties not affiliated with <Lexmark International, Inc.>, include a copy of the invoice for services.
 - E. An outline of planned activities for the next year.
10. Agrees that in the event the Lexmark International, Inc., its successors and assigns, removes or takes out of service one or more of the stormwater control facilities funded in whole or in part by the LFUCG grant, Lexmark International, Inc.

_____, its successors and assigns, shall reimburse the LFUCG within 90 days of removal of the facility from service, 100% of the Remaining Value of the facility removed based upon the following depreciation schedule:

In:	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
15-year Depreciation	3.33%	6.67%	6.67%	6.67%	6.67%	6.67%	6.67%	6.66%	6.67%	6.66%	6.67%	6.66%	6.67%	6.66%	3.33%	-	-	-	-	-
15-year Remaining Value	96.67%	90.00%	83.33%	76.66%	69.99%	63.32%	56.65%	49.99%	43.32%	36.66%	29.99%	23.33%	16.66%	10.00%	3.33%	-	-	-	-	-
20-year Depreciation	2.5%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	2.5%
20-year Remaining Value	97.5%	92.5%	87.5%	82.5%	77.5%	72.5%	67.5%	62.5%	57.5%	52.5%	47.5%	42.5%	37.5%	32.5%	27.5%	22.5%	17.5%	12.5%	7.5%	2.5%

The % of depreciation shall be applied to the Facility Grant Value for the year the facility was removed from service, with month 1 of Year 1 being the Placement in Service Month listed at the beginning of this document. If not paid within such 90 day period, the LFUCG shall have a lien against the property in the amount of the remaining value of the facility removed, and may enforce same in the same manner as a lien for real property taxes may be enforced.

LEXMARK INTERNATIONAL

740 NEW CIRCLE RD.

LEXINGTON, KY 40550

BY: Thomas C Wade
 NAME: Tom Wade
 TITLE: Senior Manager
 DATE: 2/22/2019

The foregoing Agreement was subscribed, sworn to and acknowledged before me by THOMAS C WADE, as the duly authorized representative for and on behalf of Lexmark Intl on this the 22nd day of February, 2019.

My commission expires: 1-25-2024

John E Hill
 NOTARY PUBLIC
 614624



Linda Gorton
Linda Gorton, Mayor

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Linda Gorton, as the duly authorized representative for and on behalf of LFUCG, on this the 14th day of March, 2019.

My commission expires: 2/26/21. ID# 573812
Cynthia A. Carson-Jensen
NOTARY PUBLIC

Maintenance Agreement Contact Information for Compliance

Owner Representative Name: Tom Wade

Business Address: 740 W. New Circle Rd.
Lexington, KY. 40550

Representative's Phone Number: 859.232.3293

Representative's E-Mail: tom.wade@lexmark.com

Urban County Government Information for compliance issues:

Contact: LFUCG's MS4 Permit Coordinator

Address: LFUCG Division of Water Quality

125 Lisle Industrial Avenue, Suite 180

Lexington, KY 40511

Phone: (859) 425-2400

Email: ms4@lexingtonky.gov

Prepared By:
Michael S. Cravens
Michael S. Cravens, Attorney Senior
LFUCG – Department of Law
200 East Main Street
Lexington, KY 40507
(859) 258-3500

I, Donald W Blevins Jr, County Court Clerk
of Fayette County, Kentucky, hereby
certify that the foregoing instrument
has been duly recorded in my office.



By: PATTY DAVIS ,dc

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March 26, 2019 12:52:20 PM

Fees	\$19.00	Tax	\$0.00
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Total Paid	\$19.00
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