

SUMMARY OF PRINCIPAL TERMS

*Master Maintenance Agreement for the
Urban Stormwater Retrofit Program Public-Private Partnership
between Prince George's County and
Corvias Prince George's County Stormwater Partners, LLC*

DISCLAIMER: *This document is intended to assist readers in their review of the proposed Master Maintenance Agreement (MMA) dated October 17, 2014 for consideration by the Prince George's County Council. This document is non-comprehensive, does not (and is not intended to) describe every aspect of the MMA, and should be read in conjunction with the MMA.*

I. GENERAL OVERVIEW

This document provides a general summary of the material terms and conditions of the maintenance phase of the stormwater public-private partnership established by the Master Maintenance Agreement (the “**MMA**”) between Prince George’s County, Maryland (the “**County**”) and Corvias Prince George’s County Stormwater Partners, LLC (“**Corvias**” or the “**Manager**”), an affiliate of Corvias Group, LLC. The MMA specifies the general terms and conditions by which individual stormwater retrofit projects constructed under the Master Program Agreement (“**MPA**”) will be managed, maintained, operated, repaired and replaced throughout a 30-year term (each, an “**O&M Project**”).

Similar to the MPA, the general purpose of the MMA is to maintain compliance with (i) the County’s National Pollutant Discharge Elimination System MS4 Permit, which was issued to the County on January 2, 2014 by the Maryland Department of Environment (the “**MS4 Permit**”), and (ii) the Chesapeake Bay Watershed Implementation Plan, through use of a public-partnership approach (the “**Program**”).

In the MMA, Corvias serves as the Manager and is responsible for the following general activities:

- In connection with the preparation of Budget Books for the development of Projects under the MPA, preparation of a **Project Maintenance Plan** for the long term maintenance and sustainability of such Project;
- Preparation of the **Annual O&M Plan** and **Annual O&M Budget** for County approval;

- Selection, management and oversight of the **Prime Maintenance Contractor** who will have the responsibility for the maintenance, operation, repair and replacement of the O&M Projects, consistent with the County-approved Annual O&M Plan and Annual O&M Budget;
- Development, construction and Acceptance of **Capital Repair and Replacement Projects** in accordance with the terms and conditions of the MPA; and
- Implementation of the social and economic development programs to be carried out during the MMA term.

II. TERM AND SCOPE OF THE MMA

The term of the MMA is **30 years** and includes each O&M Project (i.e., each stormwater project constructed and “Accepted” in accordance with the MPA) and such other stormwater projects as the County may designate to Corvias. As described below in Section XIII, the County may, in its discretion, terminate specific O&M Projects.

III. PROGRAM PARTICIPANTS UNDER THE MMA

Corvias serves as the “Manager” and is responsible for managing and overseeing the maintenance work being performed on the O&M Projects. The MMA is structured similar to a property management arrangement, such that Corvias is responsible for its own “Services” described below, but is not directly responsible for the actions of the Subcontractors performing the O&M Work.

The initial Prime Maintenance Contractor who will perform and subcontract the O&M Work is **Stormwater Maintenance, LLC**. The Maintenance Monitor, who will inspect each O&M Project is **Maryland Environmental Service** (who is also the “Completion Certifier” under the MPA), an independent Maryland agency.

IV. SERVICES PROVIDED BY THE MANAGER, PRIME MAINTENANCE CONTRACTOR AND MAINTENANCE MONITOR; COUNTY RESPONSIBILITIES

- Manager Responsibilities

The Manager is responsible to manage and supervise a long term maintenance and sustainability program to ensure that the O&M Projects are maintained in proper working condition. In particular, the Manager is responsible to perform the following Services:

- Develop and propose the **Project Maintenance Plan**, the **Annual O&M Plan** and the **Annual O&M Budget**
 - Coordinate, manage, supervise and monitor the **Prime Maintenance Contractor**, the **Maintenance Monitor** and each Subcontractor who will perform the O&M Work
 - Provide monthly inspection logs and status and progress reports regarding the O&M Work
 - Coordinate, manage and implement the **Social and Economic Development Programs**
 - Maintain and regularly update a **GIS-based asset management tracking and inspections services program**
 - Maintain and manage the Project Dataroom (which will contains documentation pertaining to the Program)
 - Provide other technical, legal and other assistance to the County to resolve disputes with Subcontractors
- Prime Maintenance Contractor and other Subcontractors Responsibilities

The Prime Maintenance Contractor will be responsible for performing the operation, maintenance, repair and replacement work on each O&M Project, as more specifically described in each Project Maintenance Plan and the comprehensive Annual O&M Plan.

Corvias will negotiate a contract with the Prime Maintenance Contractor, in form and substance mutually satisfactory to Corvias and the County. The “Prime Maintenance Contract” will provide, among other things, that:

- Corvias will have the authority to manage, coordinate and direct the Prime Maintenance Contractor’s work
- County will pay directly to the Prime Maintenance Contractor its fees and expenses
- The Prime Maintenance Contractor will (i) indemnify the “County Indemnified Parties” and (ii) provide sufficient security satisfactory to the County

- Maintenance Monitor.

The Maintenance Monitor, Maryland Environmental Service, will inspect each O&M Project at least once each year (or more frequently as requested by the County) in order to ascertain whether:

- the O&M Projects are being maintained, operated, repaired or replaced in accordance with the applicable Maintenance Plan;
- the Services performed by Corivas and the O&M Work have been properly performed; and
- each O&M Project continues to (i) meet the standards and other requirements set forth in its original design documentation and (ii) qualify for the applicable quantity of Impervious Area Credits.

The County will pay directly the Maintenance Monitor its fees and costs (not subject to Corvias' Base Fee or Incentive Fee).

- County Responsibilities.

In addition to the payment of costs and fees under the MMA (as described below), the County is obligated to grant the Manager and each applicable Subcontractor access and a right of entry onto each Project Site for the performance of the Services and the O&M Work (subject to reasonable restrictions or limitations). To the extent the County cannot provide sufficient access to such Project Site, such O&M Project shall cease to be an O&M Project for purposes of the MMA.

Further, the County is to exercise all reasonable efforts to assist the Manager or the Prime Maintenance Contractor in obtaining the O&M Permits.

V. PROJECT MAINTENANCE PLAN; ANNUAL O&M PLAN

As part of the Budget Book development and approval process under the MPA, the Manager is responsible for preparing a **Project Maintenance Plan** for each proposed O&M Project. The Project Maintenance Plan will describe the long term maintenance plan based on the particular BMPs incorporated in such Project. The concurrent preparation of the Project Maintenance Plan and Budget Book will allow the County to consider the long term maintenance obligations of such Project as part of its consideration of the construction design, cost and schedule of such Project under the MPA.

On an annual basis, the Manager will prepare an **Annual O&M Plan** for County approval. The Annual O&M Plan will:

- identify all current O&M Projects and those Projects under development which are anticipated to be “Accepted” under the MPA;
- incorporate all activities set forth in each Project Maintenance Plan;
- provide a routine inspection schedule for each O&M Project;
- identify anticipated Capital Repair and Replacement Projects (as described in Section XI below); and
- specify the Social and Economic Development Program Requirements and implementation plans during the relevant Billing Year.

The Final Annual O&M Plan approved by the County can only be amended by prior approval of the Parties.

VI. ANNUAL O&M BUDGET

Prior to the County’s fiscal year, the Manager will prepare for the County’s consideration a proposed **Annual O&M Budget**. The Annual O&M Budget will set forth, for the pertinent Billing Year:

- The estimated O&M Cost for all O&M Work contemplated in the Annual O&M Plan;
- The estimated O&M Program Expenses for the Billing Year;
- The estimated Base O&M Fee and the Incentive O&M Fee; and
- A contingency reserve of 5% for unexpected or extraordinary costs (the “**Budgeted Contingency Reserve**”).

The County is not obligated to pay or reimburse Corvias for any costs which are not budgeted and set forth in the Approved Annual O&M Budget (except for Emergency situations). Corvias is obligated to provide the County with notice any time Corvias projects that there is (i) an unfavorable expense variance of \$25,000 or more with respect to any line item in the Approved Annual O&M Budget or (ii) aggregate unfavorable expense variances in any Billing Year of equal to or more than 50% of the Budgeted Contingency Reserve.

The Final Annual O&M Budget approved by the County can only be amended by prior approval of the Parties.

VII. SOCIAL AND ECONOMIC DEVELOPMENT PROGRAMS

- Social and Economic Development Programs during MMA Term

Similar to the MPA, Corvias is required to develop a plan setting forth the Social and Economic Development Programs for the upcoming year. Corvias is required to integrate the Social and Economic Development Programs under the MPA, together with the plan developed under the MMA.

- Evaluation of Social and Economic Development Programs and Incentives

Corvias' performance under the social-economic development program and its achievement of incentive fees will be evaluated and measured separately under the MPA and the MMA, except to the extent that the same persons are engaged to perform work under both agreements.

VIII. COMPENSATION AND REIMBURSEMENTS OF MANAGER

- O&M Program Expenses

The County is obligated to pay all O&M Program Expenses, which include all costs relating to:

- Implementation of the Social and Economic Development Programs pursuant to the Approved Annual O&M Plan;
- Preparation of amendments to the Project Maintenance Plan (to the extent not reimbursable under the MPA);
- Hosting and maintenance of the Project Dataroom;
- Manager Insurance; and
- Manager Bond

- Base Fee

Corvias is entitled to receive a "Base Fee" equal to **5% of the O&M Costs and the O&M Program Expenses** (excluding costs of the Manager Bond and Manager Insurance) incurred during such period.

- Incentive Fee

Corvias is eligible to earn “Incentive Fees” up to **5% of the O&M Costs and the O&M Program Expenses** (excluding costs of the Manager Bond and Manager Insurance) based on the achievement of certain incentive fee criteria. The incentive fee criteria are substantially the same as those under the MPA, and include:

- County-based business participation goals;
- Minority/Protected Class business participation goals;
- County-resident man hours/job participation goals;
- Schedule/timeline; and
- Budget cost

IX. PAYMENT PROCEDURES

- Applications for Payment

- In order to receive payment, Corvias must submit to the County by the 8th day of the month, an application for payment for Services and O&M Work performed in the immediately preceding month setting forth:
 - the O&M Costs incurred
 - the O&M Program Expenses incurred
 - the Base Fee due Corvias
 - the Incentive Fees earned and payable to Corvias
- The application for payment must include the following:
 - A certification by the Manager that the Services and O&M Work performed to date are in accordance with the Approved Annual O&M Plan and Approved Annual O&M Budget
 - A certification by the Prime Maintenance Contractor that the O&M Work performed to date is in accordance with the Approved Annual O&M Plan and the Approved Annual O&M Budget (or, if there is a variance within the Approved Annual O&M Budget, a description of the reasons for the departure)
 - Copies of all invoices from the Manager, the Prime Maintenance Contractor and all Subcontractors
 - Lien waiver from the Prime Maintenance Contractor and each Subcontractor

- The Application for Payment prepared and delivered in (i) March, June and December will include a calculation of the MBE Participation Incentive and the County Resident Participation Incentive, and (ii) September will include the MBE Participation Incentive, the County Resident Participation Incentive, the Incubator/Mentor-Protégé Incentive, the O&M Schedule Incentive and the O&M Budget Incentive.
- The County is required to make direct payment to:
 - The Manager for its Base Fees, earned Incentive Fees and reimbursable O&M Program Expenses
 - The Prime Maintenance and each Subcontractor for their O&M Costs to perform the O&M Work
 - The Maintenance Monitor for its fees and costs to perform the monitoring and inspection services.
- The County is entitled to withhold payment of amounts in a number of circumstances where necessary to protect the County based on the written opinion of the Maintenance Monitor.
- The County has the right to audit all payments made pursuant to the MMA and the Program.

X. AVAILABLE FUNDING FOR PROGRAM COSTS UNDER THE MMA

Similar to the MPA, the County will fund the Program and pay for all costs under the MMA from the “Stormwater Program Funding Sources”, which include:

- **Bond proceeds** received from the sale of County Stormwater Revenue Bonds;
- Funds existing in the **County’s Local Watershed Protection and Restoration Fund**;
- **Private financing sources** generated through Corvias’ resources, efforts and capabilities; and
- **Grant proceeds** that may become available to the County

XI. CAPITAL REPAIR AND REPLACEMENT PROJECTS

The MMA contemplates that during the 30-year maintenance phase, there may be certain larger scale “**Capital Repair and Replacement Projects.**” The MMA defines Capital

Repair and Replacement Projects are those repairs or replacements which are estimated to cost more than **\$50,000** in the aggregate.

Once designated as a “Capital Repair and Replacement Project”, such project is deemed to be a “Project” for all purposes of the MPA, including all planning, design and budgeting activities. A Budget Book will be developed for each Capital Repair and Replacement Project for approval by the County prior to the start of construction.

During the planning and construction of a Capital Repair and Replacement Project, Corvias is required to continue to cause the O&M Work to be performed.

The MMA requires that, prior to the commencement of any Work on a Capital Repair and Replacement Project, the Manager is required to cause the Guarantor (Corvias Group, LLC, the ultimate parent company of the Manager) to execute and deliver to the County’s Authorized Representative a parent guaranty, which is substantially the same as the one delivered to the County under the MPA. The failure of the Manager to deliver the “**CRRP Guaranty**” to the County will constitute a Manager Event of Default under the MMA.

XII. EVENTS OF DEFAULT UNDER THE MMA

- Manager (Corvias) Events of Default

Each of the following is considered a “Manager (or Corvias) Event of Default” under the MMA:

- Any intentional misconduct or negligence by Corvias in the discharge of the Services (which continues for 30 days after notice to the Manager)
- Persistent or repeated failure or refusal by the Manager or the Prime Maintenance Contractor to perform timely any material obligation under the MMA or the Prime Maintenance Contract (unless the failure is excused or justified by an “Uncontrollable Circumstance” or “County Fault”, as further described in the MPA Summary of Principal Terms)
- Failure or refusal to make payment
- Failure to maintain security obligations (e.g., Required Insurance, Manager Bond, Prime Maintenance Contractor Bond, and Subcontractor Bonds)
- Bankruptcy, insolvency, etc.
- Default under the Master Program Agreement
- Default under the MMA Guaranty or the CRRP Guaranty
- Failure of Corvias to deliver the CRRP Guaranty

- “Change of Control” of Manager or the Guarantor (e.g., sale of substantially all assets or transfer of majority voting power or control)
- Failure of Corvias to comply with the County’s Minority Business Opportunities Program
- County Events of Default
 - Failure or refusal by the County to make payment without justification
 - Filing by the County seeking relief under federal or state bankruptcy or receivership law

XIII. TERMINATION RIGHTS UNDER THE MMA

- County Termination

The County may terminate a particular O&M Project or the MMA under the following circumstances (the required termination notice periods are in brackets following each termination event):

- **Manager Event of Default** (based on a default specified in Section XII above) [*30 days prior notice*]
- **Uncontrollable Circumstance** which prevents or is reasonably anticipated to prevent performance for 180 days or more [*15 business days prior notice*]
- **County Termination for Convenience** (i.e., for any reason whatsoever) [*90 days prior notice*]
- **Termination for Fiscal Non-Funding** (i.e., failure of the County to appropriate funds) [*immediate*]
- **Termination of the Master Program Agreement** [*immediate*]
- **Change in Law** which eliminates the requirement to maintain the O&M Projects or the Program [*immediate*]
- Manager Termination
 - **County Event of Default** -- Corvias may terminate a particular O&M Project or the MMA upon 30 days written notice if a County Event of Default has occurred or as a result of County fiscal non-funding (i.e., failure of the County Council to appropriate funds for the Program).

XIV. MISCELLANEOUS PROVISIONS

- Indemnification

The Manager is required to indemnify, hold harmless and defend the County, members of the County Council, and the County's agents, officers, consultants and employees from and against any losses on the account of the negligence, recklessness or intentional wrongful misconduct (including any act or fraud) of the Manager and its employees and agents with respect to performance under the MMA. (Note that the Parent Guaranty's does not include Manager's agents).

- Manager Bond; Prime Maintenance Contractor Bond

The County can request that Corvias obtain and deliver a payment and performance bond with coverage limits reasonably determined by the County based on the Services being performed by Corvias.

In addition, the Manager is required to cause the Prime Maintenance Contractor to obtain and deliver a Payment and Performance Bond in amounts to be specified in the Prime Maintenance Contract (which must be approved by the County).

- Assignment; Control

Corvias is not permitted to assign the MMA to a third party without the prior written consent of the County (other than to a Corvias affiliate). In addition, neither the Manager nor the Guarantor is permitted to transfer, sell, relinquish or otherwise convey "Control" to any person without the prior written consent of the County.

- Uncontrollable Circumstance

Other than payment obligations, the County and Corvias are excused for failure or delay in their performance under the MPA by reason of an "Uncontrollable Circumstance." (A general description of the definition of "Uncontrollable Circumstance" is included as footnote 1 on the MPA summary).

- Disputes

All claims and disputes arising under the MMA will be administered by the County's "Contract Administrator" (i.e., an individual not involved in the sourcing or administration of the MPA selected by the Purchasing Agent) and handled in accordance with Sections 10A-104 and 10A-107 of the County Code and Chapter XXV.1 of the County's Procurement Regulations.