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Register of Deeds		T20190061046

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Map No. 37 Menorah Park 4th Plat STF2019-00018 \$208

Stormwater Treatment Facility Maintenance Agreement

This Agreement is made and entered into this 15th day of October, 2019, by CENTRAL TENNESSEE HOSPITAL CORPORATION, a Tennessee corporation (as to Lot 1) and LAS ENCINAS HOSPITAL, a California corporation (as to Lot 2), (collectively, currently the "Property Owner," as defined below).

RECITALS:

WHEREAS, the Property Owner is the owner of the following described real property (hereinafter, the "Property") located in the City of Overland Park, Johnson County, Kansas, to wit:

Lot 1 and Lot 2 of Menorah Park, Fourth Plat, Overland Park, KS,
recorded in Book 20804, Page 007674 of the Johnson County
Records ("Plat")

WHEREAS, the Property Owner desires to develop the Property; and

WHEREAS, The Chapter 16.210 of the Overland Park Municipal Code requires that on-site stormwater treatment facilities be constructed and adequately maintained by the Property Owner.

WHEREAS, the term "Property Owner" as used in this document shall refer to the current owner of the Property, as well as all subsequent owners of any portion of the property contained within said Plat. Where the context requires, this shall include, without being limited to, any or all of the following: subsequent owners of individual lots developed for single family ownership, a Homes or Business Association that may own any property held in common, or any other owners of land within the Property described in said Plat.

WHEREAS, Chapter 16.210 of the Overland Park Municipal Code requires the Property Owner to place certain restrictions and responsibilities on the use and maintenance of stormwater treatment facilities; and

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WHEREAS, the stormwater treatment facilities are located on the property in the locations as shown on **Attachment A (The Plan)** (the "Stormwater Treatment Facilities").

WHEREAS, if the Property Owner desires to subdivide the Property at any time, the Property Owner shall cause a Homes or Business Association to be duly formed in order to insure the proper and adequate maintenance of the Stormwater Treatment Facilities in compliance with legal requirements as provided in Section 1 below. Property Owner will then cause to establish binding covenants, conditions, and restrictions applicable to the Property to be recorded with the Johnson County, Kansas, Records and Tax Administration Association covering all of the platted lots within the Property (the "Subdivision") and containing in addition to other matters normally found therein, the following regulations, stipulations, easements, covenants, conditions and restrictions pursuant to Chapter 16.210 of the Overland Park Municipal Code, on the Property:

- 1.0 **Homes or Business Association Requirements:** The Property Owner hereby states that Property Owner will fulfill the following conditions which are requirements of OPMC Section 16.210.100 related to formation of a Homes or Business Association:
 - 1.1 Prior to consummation of the initial sale of any lot in the Subdivision, the Property Owner shall cause the Subdivision's Homes or Business Association (the "Association") to be duly formed as a Kansas corporation.
 - 1.2 Prior to the initial sale of any lot in the Subdivision, the Property Owner shall cause to be recorded with the Johnson County Records and Tax Administration, Johnson County, Kansas, a Homes or Business Association Declaration covering all of the platted lots within the Subdivision that includes this Agreement by reference.
 - 1.3 The Homes or Business Association Declaration shall require that the Association levy assessments against the lots within the Subdivision sufficient to pay for maintenance and future replacement of the Stormwater Treatment Facilities and for any costs incurred by reason of this Agreement. The Association will have an enforceable lien on any lot in the Subdivision in the event that any individual Property Owner fails to pay an assessment. All purchasers of lots will be given an outline summary of the maintenance obligations of the Association as per this Agreement.
 - 1.4 The Homes or Business Association Declaration shall contain a provision requiring the written consent of the City to the termination of the Homes or Business Association Declaration in its entirety or to any amendment, modification or termination of any provision thereto regarding the Stormwater Treatment Facilities.
 - 1.5 The Homes or Business Association Declaration shall name the City as a third-party beneficiary of all provisions therein relating to the Stormwater Treatment Facilities and will give the City the right to enforce all restrictions, obligations and other provisions regarding the Stormwater Treatment Facilities.
 - 1.6 Prior to the sale of any future lots created by any future subdivision of a lot created by the Subdivision, the Property Owner will cause to be recorded with the Register of Deeds of Johnson County, Kansas, a Homes or Business Association Declaration

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covering all of the platted lots within such future subdivision and containing the provisions regarding the Stormwater Treatment Facilities set forth herein.

2.0 Disclosure of Maintenance Requirements:

- 2.1 Minimum maintenance frequency and maintenance measures required for the Stormwater Treatment Facilities are shown on **Attachment B (Maintenance Requirements)**.
- 2.2 It is understood by the Property Owner and City that actual maintenance costs and future replacement costs are variable, however for budgetary purposes, the project designer is required to estimate future maintenance and replacement costs so that the Property Owner may better plan future required expenditures. Based on the project designer's estimates, the following section tabulates anticipated maintenance and replacement costs:

The Hydrodynamic Separator being installed for this project (HDS-1) has an installed cost of approximately \$76,875.00 which represents the HDS Unit cost and the installation. Units of this configuration should be inspected 1 to 2 times per year at a cost of \$300 to \$400. Inspection can indicate maintenances needs that can be anticipated every 1 to 2 years at a cost in the \$2,000 to \$3,000 range. (See Attachment B for "CDS Inspection and Maintenance Guide"). The unit is very similar to a standard manhole from a structural perspective and so there are no expected periodic or future replacement costs associated with the longevity of the unit.

3.0 Property Owner Responsibilities

- 3.1 The Property Owner shall provide and is responsible for all maintenance of the designated Stormwater Treatment Facilities as shown on the Property, including, but not limited to, sediment removal and disposal, maintenance of inlet and outlet works, trash and debris removal, vector control, and management of vegetation in accordance with the plan requirements in order to insure that all such facilities remain in proper working condition in accordance with approved design standards and all applicable legal requirements. In accordance with Section 16.210.100.G of the Overland Park Municipal Code, the Property Owner shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five years. These records shall be made available to the City during inspection of the facility and at other reasonable times upon request.
- 3.2 The Property Owner agrees to actively pursue measures to prevent unauthorized activities on its Property pursuant to Chapter 16.210 of the Overland Park Municipal Code which interfere with the function of the Stormwater Treatment Facility.
- 3.3 In Accordance with Section 16.210.100 of the Overland Park Municipal Code, the Property Owner agrees to submit an inspection report to the City at a minimum interval of one (1) year following initial certification and subsequently every two (2) years thereafter. The inspection report shall be completed and sealed by a registered professional engineer in the State of Kansas, unless the Director of Planning and

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Development Services approves other qualified professionals to perform these duties. Such inspection report shall document each item, including, but not limited to, the need for removal of sediment, litter, and other debris, grass cutting, removal of undesirable vegetation and replacement of vegetation that is part of the Stormwater Treatment Facility. Any maintenance needs found must be addressed in a timely manner and documentation submitted showing that required maintenance has been performed. Maintenance certifications shall be submitted on a form approved by the City and shall include photographs documenting the condition of the facility at the time of the inspection.

4.0 Maintenance Access Easements:

In consideration of the sum of one dollar (\$1.00), receipt and sufficiency of which is hereby acknowledged, the Property Owner does convey to the Association, forever a perpetual non-exclusive access easement over and through that portion of the Property described on **Attachment C**, attached hereto, for the purpose of obtaining access for inspecting, maintaining, and repairing the Stormwater Treatment Facilities; further the City of Overland Park may utilize such access easements for purposes of enforcing maintenance requirements as set forth in Section 5.0 of this Agreement.

This access easement is executed and delivered and said easement is granted upon the following conditions:

- A. It is understood by the Property Owner that the City of Overland Park shall have the right at all times to use the herein described access easement for the purpose of inspecting, maintaining, and repairing the Stormwater Treatment Facility as provided for under Section 5.0 of this Agreement.
- B. That the Property Owner shall be fully responsible for providing and maintaining the access easement and the Stormwater Treatment Facilities and shall not construct fences, walls, landscaping, structures, or other items which would prevent reasonably convenient maintenance and repair access to the Stormwater Treatment Facilities.
- C. The rights granted herein shall not be construed to interfere with or restrict the Property Owner, his/her/its heirs, executors, administrators, successors and assigns from the use of the premises with respect to the construction and maintenance of property improvements along and over the premises herein described so long as the same are so constructed as not to impair the rights of access to the Stormwater Treatment Facilities.

This easement shall run with the land and apply to all interests now owned or hereinafter acquired to the above-described property.

5.0 Maintenance Enforcement by City

- 5.1 If, after reasonable notice to the Property Owner, the Property Owner shall fail to maintain the Stormwater Treatment Facility as set forth herein and other applicable legal requirements, the City may perform all necessary repair or maintenance work,

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and the City may assess the Property Owner and the Property, for the cost of the work and any applicable penalties. For the purposes of this document, "reasonable notice" shall consist of 30 days prior written notice sent to the Property Owner, unless there are exigent circumstances requiring either immediate or shorter response than said 30 days would provide, in which case the notice provided shall be whatever is reasonable under those circumstances. The Property Owner does herein grant the City, its agents and contractors, a right of entry on said property for the purpose of inspecting, maintaining or repairing the Stormwater Treatment Facilities.

- 5.2 If it is determined by the parties that the Property Owner has failed to maintain the Stormwater Treatment Facilities located on its property as required by this Agreement and the City has performed all necessary repair work to repair the Stormwater Treatment Facilities due to such failure, then the Property Owner will reimburse the City for the costs of such repair work within 30 days of Property Owner's receipt of an invoice for such work together with reasonable supporting documentation. If the Property Owner does not reimburse the City within such 30 days, the City may record an Affidavit of Nonpayment of Maintenance Charges in the Office of the Johnson County Records and Tax Administration, of Johnson County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Property Owner(s) of said property as last known to the City, and (c) the amount of the maintenance charge which is unpaid. The Lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the subject property, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.
- 5.3 It is understood by Property Owner that the City of Overland Park is under no past, present, or future obligation to expend public funds or take any other action whatsoever to maintain or improve the Stormwater Treatment Facility. The City or Property Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Agreement. The City or the Property Owner shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the City or by the Property Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the City to enforce the provisions hereof be deemed a waiver of any provision hereof as to any other Owner.
- 6.0 **Indemnification:** Except to the extent caused by the negligence or willful misconduct of the City, its agents, employees or contractors, the Property Owner shall indemnify and hold the City harmless from any and all damage, loss, claims or liability of any kind whatsoever arising from the installation, maintenance, repair, operation or use of the Stormwater Treatment Facilities including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur, and the Property Owner shall pay all costs and expenses involved in defending all actions arising there from.

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These covenants and agreements as set forth herein, fully executed, shall be filed with the Johnson County Records and Tax Administration Office, Johnson County, Kansas, and the filing of the same shall constitute constructive notice to all heirs, successors, transferees, and assigns of the Property Owner of these covenants and agreements running with the land and notice of all stipulations made thereto. This document may not be amended or modified in any way without the prior written approval of each Property Owner and the authorized officials of the City of Overland Park, Kansas, and that approval must be indicated on the face of any subsequently recorded document amending or modifying this document.

Notwithstanding other provisions of this document placing rights, duties, obligations and responsibilities on the Property Owner, as that term is defined herein, those rights, duties, obligations and responsibilities shall only be exercised or enforced in the following manner: when the property is owned by the current owner, or by a succeeding developer, those requirements shall only be exercised or enforced by or against those legal entities. When an approved Association takes over ownership of the Property, those rights, duties, obligations and responsibilities shall succeed to that Association as provided in the legal documents creating the same. It is not the intent of this document to create or impose any rights, duties, obligations and responsibilities directly on subsequent owners of individual lots within the Subdivision, unless or until the Association is unwilling or unable to exercise or comply with and enforce the terms of this document and fully meet all the duties, obligations and responsibilities set forth herein, including, without being limited to, payment of any costs imposed by this document by all means specified in the documents creating the Association, including assessment of individual lot owners when necessary. If that Association shall cease to exist or be in default of its duties, obligations or responsibilities as set forth herein, the City shall have the option of directly enforcing them against individual owners of lots within the Subdivision.

The City, at Property Owner's cost, shall cause this Agreement to be filed with the Johnson County Records and Tax Administration Office, Johnson County, Kansas. Each party hereto shall receive a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the undersigned have caused this maintenance agreement to be duly executed the day and year first written above.

PROPERTY OWNER:

CENTRAL TENNESSEE HOSPITAL CORPORATION, a Tennessee corporation

By: Nicholas L. Paul
Nicholas L. Paul, Vice President

LAS ENCINAS HOSPITAL, a California corporation

By: Nicholas L. Paul
Nicholas L. Paul, Vice President

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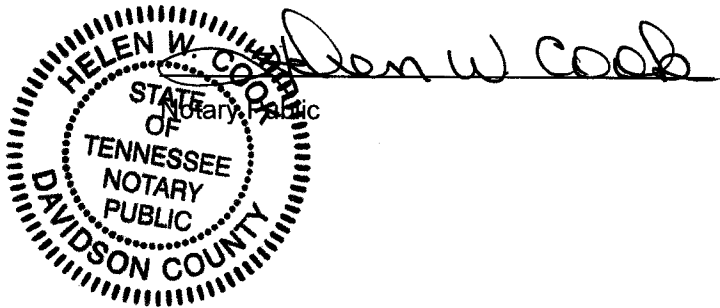
ACKNOWLEDGMENT

STATE OF TENNESSEE)
) ss.
COUNTY OF DAVIDSON)

BE IT REMEMBERED, that on this 15 day of October, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Nicholas L. Paul, Vice President of CENTRAL TENNESSEE HOSPITAL CORPORATION, who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of the corporation, and said person duly acknowledged the execution of the same to be the act and deed of the corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires:
January 3, 2022

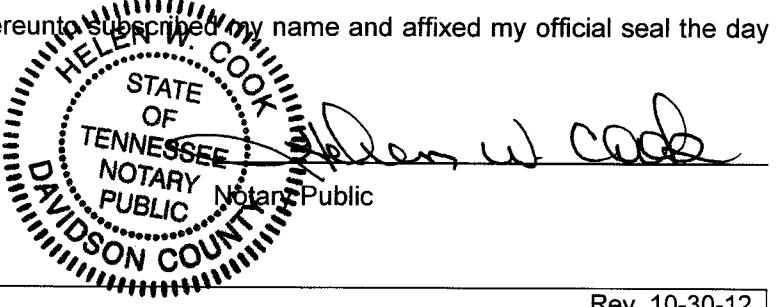


STATE OF TENNESSEE)
) ss.
COUNTY OF DAVIDSON)

BE IT REMEMBERED, that on this 15 day of October, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Nicholas L. Paul, Vice President of LAS ENCINAS HOSPITAL, who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of the corporation, and said person duly acknowledged the execution of the same to be the act and deed of the corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires:
January 3, 2022



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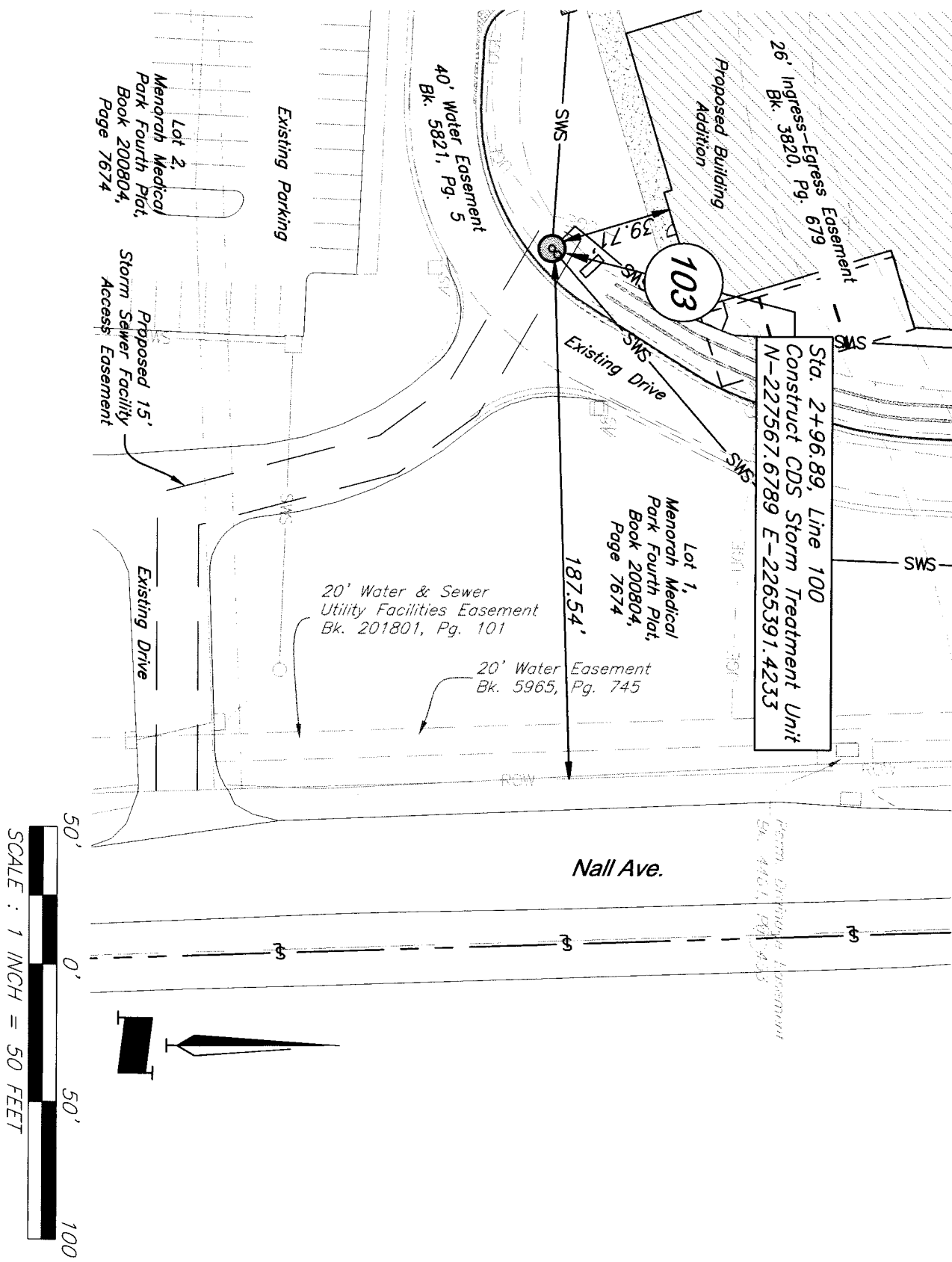
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ATTACHMENT A

STF Maintenance Plan Showing the STF
(Hydrodynamic Separator) with HDS-1 Label

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ATTACHMENT B

Maintenance -
Detailed Listing of Periodic (monthly, seasonal, annual, long term)
Maintenance Requirements

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CDS® Inspection and Maintenance Guide



Maintenance

The CDS system should be inspected at regular intervals and maintained when necessary to ensure optimum performance. The rate at which the system collects pollutants will depend more heavily on site activities than the size of the unit. For example, unstable soils or heavy winter sanding will cause the grit chamber to fill more quickly but regular sweeping of paved surfaces will slow accumulation.

Inspection

Inspection is the key to effective maintenance and is easily performed. Pollutant transport and deposition may vary from year to year and regular inspections will help ensure that the system is cleaned out at the appropriate time. At a minimum, inspections should be performed twice per year (e.g. spring and fall) however more frequent inspections may be necessary in climates where winter sanding operations may lead to rapid accumulations, or in equipment washdown areas. Installations should also be inspected more frequently where excessive amounts of trash are expected.

The visual inspection should ascertain that the system components are in working order and that there are no blockages or obstructions in the inlet and separation screen. The inspection should also quantify the accumulation of hydrocarbons, trash, and sediment in the system. Measuring pollutant accumulation can be done with a calibrated dipstick, tape measure or other measuring instrument. If absorbent material is used for enhanced removal of hydrocarbons, the level of discoloration of the sorbent material should also be identified during inspection. It is useful and often required as part of an operating permit to keep a record of each inspection. A simple form for doing so is provided.

Access to the CDS unit is typically achieved through two manhole access covers. One opening allows for inspection and cleanout of the separation chamber (cylinder and screen) and isolated sump. The other allows for inspection and cleanout of sediment captured and retained outside the screen. For deep units, a single manhole access point would allow both sump cleanout and access outside the screen.

The CDS system should be cleaned when the level of sediment has reached 75% of capacity in the isolated sump or when an appreciable level of hydrocarbons and trash has accumulated. If absorbent material is used, it should be replaced when significant discoloration has occurred. Performance will not be impacted until 100% of the sump capacity is exceeded however it is recommended that the system be cleaned prior to that for easier removal of sediment. The level of sediment is easily determined by measuring from finished grade down to the top of the sediment pile. To avoid underestimating the level of sediment in the chamber, the measuring device must be lowered to the top of the sediment pile carefully. Particles at the top of the pile typically offer less resistance to the end of the rod than consolidated particles toward the bottom of the pile. Once this measurement is recorded, it should be compared to the as-built drawing for the unit to determine whether the height of the sediment pile off the bottom of the sump floor exceeds 75% of the total height of isolated sump.

Cleaning

Cleaning of a CDS system should be done during dry weather conditions when no flow is entering the system. The use of a vacuum truck is generally the most effective and convenient method of removing pollutants from the system. Simply remove the manhole covers and insert the vacuum hose into the sump. The system should be completely drained down and the sump fully evacuated of sediment. The area outside the screen should also be cleaned out if pollutant build-up exists in this area.

In installations where the risk of petroleum spills is small, liquid contaminants may not accumulate as quickly as sediment. However, the system should be cleaned out immediately in the event of an oil or gasoline spill should be cleaned out immediately. Motor oil and other hydrocarbons that accumulate on a more routine basis should be removed when an appreciable layer has been captured. To remove these pollutants, it may be preferable to use absorbent pads since they are usually less expensive to dispose than the oil/water emulsion that may be created by vacuuming the oily layer. Trash and debris can be netted out to separate it from the other pollutants. The screen should be power washed to ensure it is free of trash and debris.

Manhole covers should be securely seated following cleaning activities to prevent leakage of runoff into the system from above and also to ensure that proper safety precautions have been followed. Confined space entry procedures need to be followed if physical access is required. Disposal of all material removed from the CDS system should be done in accordance with local regulations. In many jurisdictions, disposal of the sediments may be handled in the same manner as the disposal of sediments removed from catch basins or deep sump manholes.

