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# Issue Paper

**DATE:**

03/19/2024

**AGENDA ITEM (ACTION ITEM):**

**Consider / Approve the Sanitation District No. 1 (SD1) Post-Construction Storm Water Facility Maintenance Agreement for the new Support Operations Center building at 11800 Taylor Mill Road, Independence.**

**APPLICABLE BOARD POLICY:**

**01.1 Legal Status of the Board**

**HISTORY/BACKGROUND:**

**SD1's post-construction storm water facility maintenance agreement details the terms and conditions between SD1 and the KCS D for the construction and maintenance of an on-site storm water management system at the new Support Operations Center. This is a standard agreement between SD1 and landowners of new construction projects within SD1's jurisdiction.**

**FISCAL/BUDGETARY IMPACT:**

**\$0**

**RECOMMENDATION:**

**Approve the SD1 Post-Construction Storm Water Facility Maintenance Agreement for the new Support Operations Center building at 11800 Taylor Mill Road, Independence.**

**CONTACT PERSON:**

**Matt Rigg, Chief Operations Officer**

\_\_\_\_\_  
*Principal/Administrator*

\_\_\_\_\_  
*Matt Rigg*  
*District Administrator*

\_\_\_\_\_  
*Superintendent*

AFTER RECORDING  
PLEASE RETURN TO:  
SD1  
ATTN: PLAN REVIEW ADMINISTRATOR  
ENGINEERING SERVICES DEPARTMENT  
1045 EATON DRIVE  
FT. WRIGHT, KY 41017  
(859) 578-6892

### **SD1 Post-Construction Storm Water Facility Maintenance Agreement**

This SD1 Post-Construction Storm Water Facility Maintenance Agreement ("Agreement"), is made and entered into by and between *(Print or Type Full Name of Owner(s))*

Kenton County School District Finance Corporation

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(the "Landowner"), an

agency and instrumentality of the Kenton County School District, a political subdivision of the Commonwealth of Kentucky

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*(Print or Type State and Type of Corporation, LLC, LLP, etc.)*, whose mailing address is

1055 Eaton Drive, Ft Wright, KY 41017-9655

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and Sanitation District No. 1, a sanitation district formed under KRS Chapter 220, ("SD1"), whose mailing address is 1045 Eaton Drive, Ft. Wright, Kentucky 41017. (Landowner and SD1 are sometimes collectively referred to herein as the "Parties".)

### **WITNESSETH**

WHEREAS, the Landowner is the owner of certain real property (the "Property"), described as:

**Group No.:** \_\_\_\_\_

**Deed Book/Page No.:** 0125/0261 \_\_\_\_\_

**PIDN:** 048-00-00-138.00 \_\_\_\_\_

**Address:** 11800 Taylor Mill Road, Independence, KY 41051-9717

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**Recorded in** \_ Kenton County \_\_\_\_\_ *(Print or Type County Name)* County Clerk's records in Kentucky; and

The legal description for the above-referenced property is incorporated herein by reference and attached hereto as Exhibit

WHEREAS, the Landowner is proceeding to build on and develop the Property; and

WHEREAS, the Site Plan or Subdivision Plan known as Unincorporated Kenton County (*Print or Type Name of Plan/Development*), which is incorporated herein by reference, and attached hereto as Exhibit B, as submitted to SD1 (the "Plan"). Said Plan provides for detention and water quality improvements of storm water within the vicinity of the Property; and

WHEREAS, SD1 and the Landowner, its successors, and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of the County in Kentucky where the Property is located require that on-site storm water management facilities (the "Facilities") be constructed and maintained on the Property; and

WHEREAS, SD1 requires that the Facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors, and assigns, including any homeowners association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the Parties hereto agree as follows:

1. The Facilities shall be constructed by the Landowner, its successors, and assigns, in accordance with the plans and specifications identified in the Plan. This Agreement, completed by the Landowner, shall be submitted within thirty (30) calendar days of the filing of the site/subdivision plat. For all other projects this agreement must be submitted prior to the approval of the Storm Water Permit associated with this agreement. The execution of this Agreement by SD1 shall not constitute an approval or acceptance of the completed Facilities by the Landowner, which approval, if given, shall be by a separate written document executed by SD1. SD1 shall grant final approval and acceptance of the Facilities if the Facilities are constructed in accordance with the Plan.
2. The Landowner, its successors, and assigns, including any homeowners association, shall adequately maintain the Facilities. This includes all private pipes, channels or other conveyances built as part of the Facility, as well as all structures, improvements, and vegetation included to control the quantity and quality of the storm water. In the event a maintenance schedule for the Facilities (including sediment removal) is outlined on the approved Plan, the schedule will be followed. Adequate maintenance is herein defined as maintaining good working condition such that the Facilities are performing as designed. The BMP Inspection and Maintenance Checklists (found in the Storm Water Best Management Practices Manual, Sanitation District No. 1 of Northern Kentucky and as may be amended from time to time, which Manual is made a part hereof and incorporated herein by reference) are to be used to establish what good working condition is acceptable to SD1.
3. The Parties acknowledge that this Agreement shall not be applicable to any public storm water management facilities, if any, situated on the Plan.
4. The Landowner, its successors, and assigns, shall inspect the Facilities and complete an inspection report annually. The purpose of the inspection is to assure safe and proper functioning of the Facilities. The inspection shall cover the entire Facilities, berms, outlet structure, pond areas, access roads, and any other component of the Facilities. Proposed corrective actions and a schedule for such actions shall be identified in the inspection report for any deficiencies identified. Inspection reports shall be maintained for a period of five (5) years from the date of the inspection and shall be made available to SD1 during Landowner's normal business hours upon five (5) business days advance notice of SD1's request for review.
5. The Landowner, its successors, and assigns hereby grant permission to SD1, its authorized agents, and employees to enter upon the Property to inspect the Facilities whenever SD1 deems necessary. SD1 shall provide the Landowner, its successors, and assigns, with copies of its inspection findings and a written directive to commence repairs, if necessary, within a reasonable time period.

6. In the event the Landowner, its successors, and assigns fail to maintain the Facilities in good working condition acceptable to SD1 after the notice and right to cure under paragraph five (5) above, SD1 may enter upon the Property and make such repairs, replacements or maintenance to the Facilities as may be necessary in SD1's sole judgment, and to charge the costs of such repairs, replacements or maintenance to the Landowner, its successors, and assigns. This provision shall not be construed to allow SD1 to erect any structure of a permanent nature on the land of the Landowner outside of the easement for the Facilities, nor to materially alter any specifications set forth in the Plan. It is expressly understood and agreed that, until such time, if any, that SD1 expressly assumes the maintenance responsibility for the Facilities, SD1 is under no obligation to routinely maintain or repair said Facilities, and in no event shall this Agreement be construed to impose any such obligation on SD1.
7. In the event SD1, pursuant to paragraph six (6) of 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, the Landowner, its successors, and assigns, shall reimburse SD1 upon demand, within thirty (30) days of receipt thereof of an invoice for all actual costs incurred by SD1 hereunder. In connection with all work performed pursuant to paragraph five (5) of this Agreement, SD1 shall provide Landowner, upon Landowner's written request, a copy of all drawings and specifications for the work performed.
8. This Agreement imposes no liability of any kind whatsoever on SD1 to maintain the Facilities and the Landowner agrees to release SD1 from any liability in the event the Facilities fail to operate properly.
9. Notwithstanding the above, in the event SD1 expressly assumes maintenance responsibility for the Facilities, the Landowner, its successors, and assigns, shall be released from any obligations under this Agreement that arise after the date of SD1 assumes such maintenance responsibility by way of an Assignment of the SD1 Post-Construction Storm Water Facility Maintenance Agreement to SD1 and Release of Landowner.
10. This Agreement shall be recorded among the land records of the County in Kentucky where the Property is located and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs, and any other successors in interests, including any homeowners association.

11. **Notices:** Any notice, communication or request under this Agreement to either of the Parties shall be in writing and shall be effectively delivered if delivered personally, sent via electronic mail, or sent by certified mail service with all fees prepaid to the following:

**SD1:**

Sanitation District No. 1  
1045 Eaton Drive  
Ft. Wright, KY 41017  
859-578-7450  
info@SD1.org

**Landowner:**

Company Name: Kenton County School District Finance Corporation \_\_\_\_\_

Attention: Matt Rigg \_\_\_\_\_

Address: 1055 Eaton Drive

Ft Wright, KY 41017-9655

Email Address: matthew.rigg@kenton.kyschools.us\_\_

Phone Number: 859-344-8888 \_\_\_\_\_

**Local Contact:**

Company Name: \_\_\_\_\_

Attention: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

It is the responsibility of the Landowner to notify SD1, in writing, of the new Notice contact information for Landowner upon any transfer of the Property.

*Signature Pages to Follow*

*Signature Page 1 To  
SD1 Post-Construction Storm Water Facility Maintenance Agreement*

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date all Parties sign this Agreement.

Kenton County School District Finance Corporation

\_\_\_\_\_  
Company/Corporation/Partnership Name

By: \_\_\_\_\_  
(Signature of representative authorized to sign on behalf of the above-referenced company/corporation/partnership)

Dr. Henry Webb \_\_\_\_\_ Superintendent \_\_\_\_\_  
(Print or Type Name) (Print or Type Title)

STATE (COMMONWEALTH) OF \_\_\_\_\_ : SS

COUNTY OF \_\_\_\_\_

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_\_, by \_\_\_\_\_ (Name), \_\_\_\_\_

(Title), who is authorized to sign on behalf of \_\_\_\_\_

(Print or Type Name of Company/Corporation/Partnership).

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Notary ID No.: \_\_\_\_\_

*Signature Page 2 to Follow*

*Signature Page 2 To  
SD1 Post-Construction Storm Water Facility Maintenance Agreement*

**SANITATION DISTRICT NO. 1:**

By: \_\_\_\_\_  
Printed Name: Brian M. Ellerman  
Title: General Counsel

COMMONWEALTH OF KENTUCKY: SS  
COUNTY OF KENTON

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by Brian M. Ellerman, General Counsel, on behalf of SD1.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Notary ID No.: \_\_\_\_\_

This Instrument Prepared By:

\_\_\_\_\_  
Brian M. Ellerman  
General Counsel - Sanitation District No. 1  
1045 Eaton Drive  
Ft. Wright, KY 41017