

RESOLUTION NO. 7, 2017

**A RESOLUTION OF THE CITY OF PARK HILLS, KENTON COUNTY,
KENTUCKY AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
WITH THE SANITATION DISTRICT NO. 1 "SD1" FOR FINANCIAL
ASSISTANCE FOR THE JACKSON ROAD STORM
SEWER PROJECT (the "PROJECT")**

WHEREAS, Park Hills and SD1 desire to enter into an agreement for financial assistance from SD1 for the Project pursuant to the Master Interlocal Agreement entered into by both parties;

WHEREAS, SD1 wants to improve the areas' storm water system by partially funding the Project; and

WHEREAS, Park Hills wishes to undertake the Project.

NOW, therefore, be it resolved, that:

SECTION 1

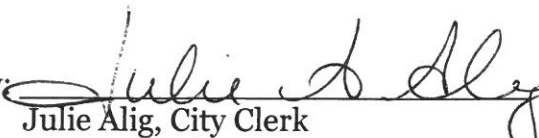
The City Council for the City of Park Hills authorizes the Mayor to enter into the agreement with SD1, a copy of which is attached as Exhibit A.

SECTION 2

The Mayor is authorized to execute any and all documents and take any and all actions necessary to carry out the purposes and intentions of this Resolution.

Approved this 13 day of November, 2017.

Certified by: 
Matthew Mattone, Mayor

Attested by: 
Julie Alig, City Clerk

AGREEMENT

WHEREAS, City of Park Hills (the "City") and **Sanitation District No. 1**, a Sanitation District organized pursuant to Kentucky Revised Statute, Chapter 220 ("SD1"), have entered into a Master Interlocal Agreement for Infrastructure Projects, Programs or Policies dated August 8, 2016, ("Interlocal Agreement") pursuant to the Interlocal Cooperation Act KRS 65.210 to KRS 65.300 (the "Act"); and

WHEREAS, SD1 is authorized to provide periodic financial assistance for storm water capital improvements to allow the City to maintain its storm water system in proper operating condition; and

WHEREAS, the City has requested financial assistance from SD1 for the following project (the "Project"):

Jackson Road Storm Sewer Project – As part of the road reconstruction on Jackson Road, the City is planning to install a new storm sewer system designed by Bayer Becker to address flooding and drainage issues and separate the storm water flow from the combined sewer system. This project encompasses approximately 960 feet of pipe and 11 structures.

WHEREAS, the Project is estimated to cost Four Hundred Twenty-Five Thousand, Two Hundred, and 00/100 Dollars (\$425,200.00), of which the City intends to fund Two Hundred Twelve Thousand, Six Hundred, and 00/100 Dollars (\$212,600.00) and SD1 intends to provide financial assistance to the City in the amount of Two Hundred Twelve Thousand, Six Hundred, and 00/100 Dollars (\$212,600.00); and

WHEREAS, the Project has been approved by SD1 for financial assistance in the amount of fifty percent (50%) of the actual project cost not to exceed Two Hundred Twelve Thousand, Six Hundred, and 00/100 Dollars (\$212,600.00); and

WHEREAS, SD1's Board of Directors ("SD1 Board") approved this project at its regular monthly meeting held, **September 19, 2017**.

NOW THEREFORE, District and City agree as follows:

1. **Agreement Execution Requirements:** The City must sign the cost share agreement within **seventy-five (75)** calendar days from the **September 19, 2017** approval date of the project by SD1's Board of Directors. If this requirement is not met, the project approval is rescinded and the City must then re-apply.

2. **Project Commencement:** The project must commence construction within three hundred sixty-five (365) calendar days from the execution date of the Agreement and report the achievement of continuous and reasonable progress until completion. If this requirement is not met, the project approval is rescinded and the City must then re-apply.

3. **Project:** The Project is as described above.

4. **Commencement and Completion Dates:** The City will commence construction of the Project on or before _____ (the "Commencement Date") and complete the Project on or before _____ (the "Completion Date").

5. **Payment to City:** SD1 shall pay to the City the Financial Assistance Amount in draws, as follows:

5.1 City shall submit draw requests to SD1 in form and with supporting information as determined by SD1. City shall make draw requests no more frequently than monthly.

5.2 Draw requests shall not exceed the value of the work completed to the date of the draw request times the percentage of the Project to be funded by District.

5.3 SD1 shall retain ten percent (10%) of each draw request as retention to assure restoration of the site upon completion of the Project.

5.4 Retention shall be paid to the City within thirty (30) days following the written approval of SD1 of the site restoration following the completion of the Project.

5.5 If SD1 determines that the City failed to properly restore the site to a condition that is equal to or better than which existed prior to construction within thirty (30) days following the Completion Date, SD1 may, in its sole discretion, but is not obligated to do so, restore the site in such manner as SD1 determines and using the retention to do so.

6. **Submittals by the City prior to the Commencement Date:** Prior to the Commencement Date, the City shall submit to SD1 the following:

6.1 Notification of start of design and kick-off meeting date. District will attend design review meetings with City and Design Engineer, as necessary.

6.2 Sixty percent (60%) complete design contract documents and sizing calculations.

6.3 Ninety percent (90%) complete design contract documents.

6.4 The one hundred percent (100%) design drawings, plans and specifications for the Project, scheduled bid date, and construction start date.

6.5 All contracts to be entered into by the City for the Project.

6.6 Bid tabulations or Proposal, selected Contractor and accepted Bid or Proposal, along with the budget for the Project.

6.7 Notification of pre-construction meeting at least seventy-two (72) hours in advance.

6.8 Such other documents and information as SD1 may reasonably request.

6.9 SD1 reserves the right to waive any of the above submittal requirements upon written request by the City.

7. **Submittals by the City after the Commencement Date:** After the Commencement Date, the City shall submit to SD1:

7.1 Contractor's or City's schedule for start and completion of construction, and changes thereto.

7.2 All change orders or contract modifications as relate to the Project.

7.3 Any changes to the Project budget.

7.4 "As-built" drawings showing the Project as completed, per SD1's Storm Water Rules and Regulations.

7.5 Such other documents and information as SD1 may reasonably request.

8. **Rights of SD1:** SD1 shall have the right, but not the duty, to:

8.1 Review and approve the design, plans, and specifications for the Project, prior to bidding or negotiation of construction cost.

8.2 Review and approve all contracts, change orders, or contract modifications to be entered into by the City for the Project.

8.3 Review and approve the budget for the Project and any modifications thereof.

8.4 Make inspections, from time to time, of the Project.

8.5 Perform such site testing as may, in the sole discretion of SD1, be required from time to time.

8.6 Audit the books and records of the Project.

8.7 Receive any information concerning the Project that SD1 may reasonably request of the City.

9. **Cost Increases:** SD1 shall not be responsible for any increase in the cost of the Project regardless of the reason for the increase unless SD1 agrees, in writing, to change the Financial Assistance Amount.

10. **Remaining Funds:** Any part of the Financial Assistance Amount not required to be disbursed shall be retained by SD1 following the completion of the Project.

11. **Default:** City shall be in default of the Agreement ("Event of Default ") if:

11.1 Any information submitted to SD1 by or on behalf of the City for the Project is determined by SD1 to be materially incorrect.

- 11.2 The Project is not prosecuted and completed in a timely manner.
- 11.3 The Project is not constructed in accordance with the plans and specifications.
- 11.4 The City fails to perform any other term or condition required of it under the Agreement.

10. **Right to Cure:** If SD1 determines that an Event of Default has occurred, then SD1 shall give the City written notice of the default and a period not to exceed ten (10) days in which to cure such default, except that if the period needed to cure the default exceeds ten (10) days, then such longer period as needed to cure such default so long as City begins the cure of the default in a timely manner and continuously prosecutes such work to completion.

11. **Remedies:** If an Event of Default exists which has not been cured within any applicable cure period then, in addition to any and all remedies available to SD1 in equity or at law, SD1 may terminate, by written notice to the City, payment of the Financial Assistance Amount.

12. **Relationship of the Parties:** The payment of all or a part of the Financial Assistance Amount by SD1 is in the form of a grant and does not constitute a joint venture, partnership or other relationship with the City.

13. **Obligation of District:** SD1 has no obligation to review, inspect or audit the Project and any review, inspection or audit by SD1 is for its own benefit and not for the benefit of the City. City releases District from any claims, causes of action or liability for any review, inspection or audit performed by SD1 with respect to the Project.

14. **Interpretation:** This Agreement is pursuant to the Interlocal Agreement and the Act and shall be interpreted within that context.

15. **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 or sent by overnight courier service with all fees prepaid.

If to City: City of Park Hills
 1106 Amsterdam Road
 Park Hills, Kentucky 41011-2097
 ATTN: Matt Mattone, Mayor

If to District: Sanitation District No. 1
 1045 Eaton Drive
 Ft. Wright, Kentucky 41017
 ATTN: Adam Chaney, Executive Director

The said notice, request, demand, or other communication shall be deemed received if delivered in person, on the date delivered, or sent by overnight courier service, on the first business day after the date sent. A party may change its address for notice purposes by delivering written notice to the other party setting forth the new address.

16. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties relating to the project and shall be deemed to be a full, final, and complete integration of all prior or contemporaneous understandings or agreement between the parties relating thereto. The parties have not relied upon any promises, representations, warranties, agreements, covenants or undertakings other than those expressly set forth in this Agreement. This Agreement supersedes all prior Agreements relating to the project. This Agreement may be amended or supplemented only by a written instrument signed by both parties hereto.

17. **Governing Law:** This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

18. **Successors:** This Agreement shall be binding upon the parties hereto and their respective successors. This Agreement shall not be assigned by either party.

19. **No Third Party Beneficiary:** The provisions of this Agreement are and will be for the benefit of the City and SD1 only and are not for the benefit of any third party except as otherwise specifically provided in this Agreement and accordingly, no third party shall have the right to enforce the provisions of this Agreement.

20. **Severability:** If any clause, phrase, provision or portion to this Agreement or the application thereof to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement or any other clause, phrase, provision or portion hereof; nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances.

21. **Time is of the Essence:** Time is of the essence with respect to this Agreement.

22. **No Waiver of Rights:** No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

23. **Survival:** This Agreement shall survive any Closing with respect to the project or completion of the project.

24. **Captions:** Captions contained in this Agreement are inserted only as a matter of convenience, and in no way define or describe the scope of this Agreement not the intent of any provision hereof.

25. **Effective Date:** The effective date of this Agreement will be the date the last party signs this document.

Signature Page Follows

Signature Page to Agreement


IN WITNESS WHEREOF, the parties have executed the within Agreement by and through their respective authorized representatives.

SANITATION DISTRICT NO. 1,
a Sanitation District organized pursuant to
Kentucky Revised Statute, Chapter 220

APPROVED:

By: _____
Printed Name: Adam Chaney
Its: Executive Director
Date: _____
Witness: _____

CITY OF PARK HILLS

By: 
Printed Name: MATT NATTON
Its: MAYOR
Date: 12/14/2017
Witness: 