

OPERATION AND MAINTENANCE AGREEMENT  
FOR  
STRUCTURAL MEASURES

THIS AGREEMENT made on February 11, 1976 is between the  
Soil Conservation Service, United States Department of Agriculture,  
hereinafter referred to as the Service, and the following organization(s),  
hereinafter referred to as the Sponsor:

The Kenton County Fiscal Court

The Sponsor and the Service agree to carry out the plan on the attached  
4 pages for the operation and maintenance of structural measures in  
the

Banklick Creek Watershed

Watershed Project, State of Kentucky. The measures covered by  
this agreement are identified as:

Floodwater Retrading Structure No. 3; Multiple Purpose Structure No. 8,  
Multiple Purpose Structure No. 9.

Name of Sponsor Kenton County Fiscal Court

By James W. Brumman Title Kenton Co Judge

This action was authorized at an official meeting of the Sponsor named  
immediately above on Feb 5, 1976 at Courthouse

Attest Carl Callis Title Fiscal Court Clerk

Name of Sponsor \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_

This action was authorized at an official meeting of the Sponsor named  
immediately above on \_\_\_\_\_ at \_\_\_\_\_

Attest \_\_\_\_\_ Title \_\_\_\_\_

Soil Conservation Service, United States Department of Agriculture..

By Glen M. Murray Title State Conservationist

## OPERATION AND MAINTENANCE PLAN

### I OPERATIONS

- A. The sponsor will be responsible for and will operate or have operated without cost to the Service the structural measures in compliance with any applicable Federal, State and local laws, and in a manner that will assure that the structural measures will serve the purpose for which installed as set forth in the Work Plan.
- B. The Service will, upon request of the Sponsor and to the extent that its resources permit, provide consultative assistance in the operation of the structural measure.

### II MAINTENANCE

- A. The Sponsor will:
  - 1. Be responsible for and promptly perform or have performed without cost to the Service except as provided in Paragraph III, Establishment Period, all maintenance of the structural measures determined by either the Sponsor or the Service to be needed.
  - 2. Obtain prior Service approval of all plans, designs and specifications for maintenance work involving major repair.
- B. The Service will, upon request of the Sponsor and to the extent that its resources will permit, provide consultative assistance in the preparation of plans, designs and specifications for needed repair of the structural measures.
- C. The Sponsor and the Service will, upon completion and acceptance of each structural measure, collaborate in the preparation of a detailed maintenance plan. This plan will provide guidelines for the Sponsor's use in performing the necessary maintenance of the structural measure.

### III ESTABLISHMENT PERIOD

- A. During an Establishment Period, as herein defined, the Service will bear such part of the cost of any needed major repairs to the structural measures, including associated vegetative work, as is proportionate to the original construction costs borne by the Service in the construction of the structural measures except that the Service will not bear any of the cost for:
  - 1. Repairs to channels or portions thereof which do not have permanent linings such as concrete, riprap, or grouted rock.
  - 2. Repairs determined by the Service to have been occasioned by improper operation or maintenance, or both.

### III ESTABLISHMENT PERIOD (continued)

3. Repairs applicable to municipal or industrial water supply or to any other purpose for which construction costs are not authorized to be paid for in whole or in part with funds appropriated to the Service.
  4. Repairs that are mutually determined by the Sponsor and the Service as being items of normal maintenance rather than major repair and are not therefore in keeping with the spirit and intent of the Establishment Period provisions.
- B. The Establishment Period for structural measures (exclusive of any associated vegetative work) is a period of three years ending at midnight on the third anniversary of the date on which the structural measure is accepted.
- C. The Establishment Period for vegetative work associated with a structural measure is a period from date of acceptance of the initial vegetative work to midnight of the date on which the Service writes the Sponsor advising that an adequate vegetative cover has been obtained. However, this period shall not exceed two growing seasons or the end of the Establishment Period for the associated structural measure whichever is greater in time.
- D. As used in the two preceding paragraphs, and elsewhere in this Plan, the following words have the meanings described below:
- ACCEPTED, ACCEPTANCE: The date structural or vegetative measures are accepted from the contractor when a contract is involved, or the date structural or vegetative measures are completed to the satisfaction of the Service when force account operations are involved.
- ADEQUATE VEGETATIVE COVER: A minimum of seventy percent (70%) cover of the desirable species, with no active rilling that cannot be controlled by the vegetation.
- E. Major repair may involve such things as (1) repairing separated joints, cracks or breaks in the principal spillway, (2) correcting seepage, (3) replacing significant backfill around structures resulting from major erosion damage, (4) major revegetation due to failure to obtain an adequate vegetative cover, and (5) restoring areas with significant erosion caused by unusual flow (volume, recurrence or extended period of time) in emergency spillways.
- F. No action with respect to needed repairs during the Establishment Period will be taken by the Sponsor or the Service which would lessen or adversely affect any legal liability of any contractor or his surety for payment of the cost of the repairs.

#### IV INSPECTIONS AND REPORTS

- A. During the Establishment Period the Sponsor and the Service will jointly inspect the structural measures at least annually and after unusually severe floods or the occurrence of any other unusual condition that might adversely affect the structural measures. The annual inspections will be performed by the date shown below. Any supplemental inspections then determined necessary will be scheduled and agreed to at that time.

MARCH 15

-  B. After the Establishment Period the structural measures will be inspected annually by the Sponsor by the date shown below, and after unusually severe floods or the occurrence of any other unusual condition that might adversely affect the structural measures.

MARCH 15

- C. After the Establishment Period the Service may inspect the structural measures at any reasonable time.
- D. A written report will be made of each inspection. The report of joint inspections will be prepared by the Sponsor with the assistance of the Service. A copy of each report will be provided by the party preparing the report to the other party within ten days of the date on which the inspection was made.

#### V RECORDS

The Sponsor will maintain in a centralized location a record of all inspections performed both individually and jointly by the Sponsor and the Service, and of all significant actions taken by the Sponsor with respect to operation and maintenance. The Service may inspect these records at any reasonable time.

#### VI GENERAL

- A. The Sponsor will:
1. Prohibit the installation of any structures or facilities that will interfere with the operation or maintenance of the structural measures.
  2. Obtain prior Service approval of the plans and specifications for any alteration or improvement to the structural measures.

VI GENERAL (continued)

3. Obtain prior Service approval of any agreement to be entered into with other parties for the operation or maintenance of all or any part of the structural measures, and provide the Service with a copy of the agreement after it has been signed by the Sponsor and the other party.
- B. Service personnel will be provided the right of free access to the structural measures at any reasonable time for the purpose of carrying out the terms of this Plan.
- C. The responsibilities of the Sponsor under this Plan are effective simultaneously with the acceptance of the works of improvement in whole or in part.

VII SPECIAL PROVISIONS

None

VIII PROPERTY MANAGEMENT STANDARDS

Exhibit 2910 is attached and made a part of this agreement. It contains prescribed standards governing the utilization and disposition of property furnished by the Service or acquired in whole or in part with Service-furnished funds.

PROPERTY MANAGEMENT STANDARDS  
(Attachment to Operation and Maintenance Agreement)

The standards prescribed herein govern the utilization and disposition of property furnished by SCS or acquired in whole or in part with SCS-furnished funds by the sponsors. Sponsors are responsible for observing the standards set forth herein. Sponsors are authorized to use their own property management standards and procedures as long as the provisions set forth herein are included.

1. Definitions

- (a) Real property. Real property means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- (b) Personal property. Personal property means property of any kind except real property. It may be tangible --having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.
- (c) Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A sponsor may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.
- (d) Expendable personal property. Expendable personal property refers to all tangible personal property other than non-expendable property.
- (e) Excess property. Excess property means property under the control of any federal agency which, as determined by the head thereof, is no longer required for its needs.

2. Use of Real Property

Sponsors shall use any real property acquired partly or wholly with SCS financial assistance, as long as needed for the purpose for which it was acquired and in accordance with the O&M agreement. When the real property is no longer needed for the purpose of the SCS financial assistance, the sponsor shall obtain SCS approval of its plans for future use or disposition.

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3. Use of Nonexpendable Personal Property

- (a) Nonexpendable personal property acquired with federal funds. When nonexpendable personal property is acquired by a sponsor wholly or in part with federal funds, title will not be taken by the federal government, but shall be vested in the sponsor subject to the following restrictions on use and disposition of the property:
- (1) The sponsor shall retain the property acquired with federal funds in the federally financially assisted program as long as there is a need for the property to accomplish the purpose of the program whether or not the program continues to be supported by federal funds. When there is no longer a need for the property to accomplish the purpose of the federally financially assisted program, the sponsor shall use the property in connection with other federal grants it has received in the following order of priority:
    - (i) Other grants of the SCS needing the property.
    - (ii) Grants of other federal agencies needing the property.
  - (2) When the sponsor no longer has need for the property in any of its federal grant programs, the property may be used for its own official activities in accordance with the following standards:
    - (i) Nonexpendable property with an acquisition cost of less than \$500 and used four years or more. The sponsor may use the property for its own official activities without reimbursement to SCS or sell the property and retain the proceeds.
    - (ii) All other nonexpendable property. The sponsor may retain the property for its own use provided that a fair compensation is made to the SCS for the SCS share of the cost of the property. The amount of compensation shall be computed by applying the percentage of SCS participation in the SCS financially assisted undertaking to the current fair market value of the property.
  - (3) If the sponsor has no need for the property, disposition of the property shall be made as follows:

- (i) Nonexpendable property with an acquisition cost of \$1,000 or less. Except for that property which meets the criteria of (2) (i) above, the sponsor shall sell the property and reimburse the SCS an amount which is computed in accordance with the last paragraph in (ii) below.
- (ii) Nonexpendable property with an acquisition cost of over \$1,000. The sponsor shall request disposition instructions from SCS. The SCS shall determine whether the property can be used to meet a SCS requirement. If no requirement exists within SCS, the availability of the property shall be reported to the General Services Administration (GSA) by the SCS to determine whether a requirement for the property exists in other federal agencies. The SCS shall issue instructions to the sponsor within 120 days and the following procedures shall govern:

If the sponsor is instructed to ship the property elsewhere, the sponsor shall be reimbursed by the benefiting federal agency with an amount which is computed by applying the percentage of the sponsor participation in the SCS financially assisted undertaking to the current fair market value of the property, plus any shipping or interim storage costs incurred.

If the sponsor is instructed to otherwise dispose of the property, he shall be reimbursed by the SCS for such costs incurred in its disposition.

If disposition instructions are not issued within 120 days after reporting, the sponsor shall sell the property and reimburse the SCS an amount which is computed by applying the percentage of SCS participation in the undertaking to the sales proceeds. Further, the sponsor shall be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater for the sponsor's selling and handling expenses.

4. Other Requirements for Nonexpendable Personal Property

The sponsor's property management standards for nonexpendable personal property shall also include the following procedural requirements:

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- (a) Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the sponsor reimburses SCS for its share.
- (b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.
- (c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.
- (d) Adequate maintenance procedures shall be implemented to keep the property in good condition.
- (e) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

5. Expendable Personal Property

When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any federal grant purposes, the sponsor may retain the property or sell the property as long as it compensates SCS for its share in the cost. The amount of compensation shall be computed in accordance with 3(a)(2)(ii) above.

6. Intangible Personal Property

- (a) If any program produces patents, patent rights, processes, or inventions, in the course of work aided by a SCS financial assistance, such fact shall be promptly and fully reported to SCS. The SCS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery--including rights under any patent issued thereon--shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy"

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(President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and State of Government Patent Policy as printed in 36 F.R.16889).

- (b) Where the SCS financial assistance results in a book or other copyrightable material, the sponsor is free to copyright the work, but SCS reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.