

**Agreement between
Johnson County and the City of Olathe
For a Stormwater System Inspection Project
known as Olathe WO2 Pipe Inspections
2-OL-2024-I-596**

This agreement is entered into by and between the Board of County Commissioners of Johnson County, Kansas (the "County") and the City of Olathe (the "City") pursuant to K.S.A. 12-2908.

Recitals

1. Pursuant to K.S.A. 19-3311, by Resolution No. 38-90, the County has established a county-wide retailer's sales tax for the purpose of providing funds for stormwater management projects, and by Resolution No 76-90, created a Stormwater Management Advisory Council to identify and recommend projects for inclusion in the Stormwater Management Program.
2. The County has established a Stormwater Management and Flood Control Fund for the purpose of funding Stormwater Management Program projects.
3. The County, by Resolution No. 66-92, as modified by Resolution No 034-94, adopted the Johnson County Stormwater Management Policy and the Administrative Procedures for the Johnson County Stormwater Management Program ("Policy and Procedures") to promote interlocal cooperation between the County and the participating municipalities in stormwater management activities.
4. In accordance with the Policy and Procedures, the City has requested that the County participate in the funding for the stormwater system inspection project ("Inspection Project") for the stormwater management project identified as Olathe WO2 Pipe Inspections (the "Project"), which meets the minimum requirements, and the County is willing to provide such funding upon the terms and conditions set forth in this agreement.

Agreement

In and for the consideration of the mutual covenants contained in this agreement and the mutual benefits to be derived from the Project, the City and the County agree as follows:

1. **Policy and Procedures.** The City acknowledges receipt of the Policy and Procedures. The City and County agree that the Inspection Project shall be undertaken in accordance with the terms and provisions of the Policy and Procedures provided, however, in the event a conflict exists between any provision of the Policy and Procedures and any provision of this agreement, the terms and conditions of this agreement shall control.
2. **Stormwater System Inspection Requirements.** The City shall conduct field investigations of qualifying stormwater system assets and make available to the Stormwater Management Program Manager, or his/her designee ("Manager"), the resulting data collected as part of the field investigations. Field investigations shall be performed by inspection service providers as mutually agreed to by the City and the Manager, or by qualified City personnel, or both, subject to the provisions of this agreement and the Policy and Procedures. The costs and expenses incurred by the City in connection with the Inspection Project shall be reimbursable, subject to the limitations on reimbursement contained in the Policy and Procedures and in this agreement. Reimbursement will only be made for eligible stormwater assets which have been assigned an estimated risk score of 3.2 or higher by the Stormwater Management Program. Inspections of stormwater system assets shall assess at least the structural integrity of the asset and assign it a condition rating. If the City has an established rating system listed in table 2-6 of the 2018 Stormwater Strategic Asset Management Plan (SAMP), that city shall continue using that system or use the system outlined in table 2-5 of the SAMP. The system shown in Table 2-5 of the SAMP shall be used for cities not listed in table 2-6. Additionally, information required for a renewal project as documented in Table 2-2 of the SAMP shall be collected and made available to the Stormwater Management Program Manager.
The SAMP can be found at https://jocogov.org/sites/default/files/documents/PWK/SMP/FINAL%20Submittal_JOCO%20SMP%20SAMP%20Report.pdf or will be provided upon request.
3. **Estimated Cost of Inspection Project.** The parties acknowledge and agree that the City has established an estimated total cost for the inspection of eligible assets included in the Inspection Project of One Hundred Ninety Eight Thousand Three Hundred Forty Eight Dollars (\$198,348) based upon assumed inspection unit costs provided by the Stormwater Management program or City staff's estimates and assumptions.

4. **Affected Municipalities.** The City agrees that it shall share the results of the inspections with adjacent municipalities if ownership of an asset is shared between multiple municipalities prior to submitting the results of the Inspection Project to the County.
5. **Administration.** It is acknowledged and agreed that the City shall enter into all contracts relating to the Inspection Project in its own name and not as the agent of the County. The City agrees to be solely responsible for the administration of all contracts for the Inspection Project. Any contract disputes shall be resolved by the City at the City's sole cost and expense.

The City shall require adequate indemnity covenants and evidence of insurance from inspection service providers for loss or damage to life or property arising out of the engineering inspection provider's negligent acts or omissions. The required insurance coverage and limits shall be established by the City but shall not, in any event, be less than \$1,000,000 professional liability coverage for inspection service providers. The City may, in the exercise of its reasonable judgment, permit any insurance policy required by this agreement to contain a reasonable and customary deductible or co-insurance provision.

6. **County Contribution Toward Costs.** The County shall reimburse the City from the Stormwater Management and Flood Control Fund for expenditures made by the City for the Inspection Project as follows:

Not more than once each calendar month, the City may submit to the County a request for payment, invoice, or statement satisfactory in form and content to the County detailing total Inspection Project costs and expenses, in line-item detail, for the preceding calendar month ("Payment Request") and for year-to-date.

The City's Payment Request shall list, by category, those particular expenditures that are reimbursable according to the Policy and Procedures. The City represents and warrants that each Payment Request shall seek reimbursement for only those expenditures that the City determines, in good faith, to be reimbursable by the County. The County may require the City to supplement the Payment Request as needed to satisfy the County, that the Payment Request accurately reflects properly reimbursable costs and expenses. Additionally, the Project Reimbursement Form shall be submitted with each invoice. The project reimbursement form can be found at <https://www.jocogov.org/dept/public-works/stormwater-management/about-smp/strategic-plan>, or will be provided upon request.

The County agrees to make payment to the City within thirty days following the Manager's approval and acceptance of a properly documented Payment Request in an amount equal to fifty percent (50%) of the inspection costs incurred for eligible assets.

7. **Limitation of Liability.** To the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act, including but not limited to maximum liability and immunity provisions, the City agrees to indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City or its employees or which result from the City's compliance with the Policy and Procedures.

This agreement to indemnify shall not run in favor of or benefit any liability insurer or third party.

8. **Notice Addresses.** Any notice required or permitted by this agreement shall be deemed properly given upon deposit in the U.S. mail, postage prepaid and addressed as follows:

If to the County:

Mr. Lee Kellenberger
Urban Services Division Director
Johnson County Public Works
1800 W. Old Highway 56
Olathe, KS 66061

If to the City:

Rob Beilfuss
Stormwater Manager
City of Olathe
1385 S. Robinson
Olathe, KS 66061

9. **Effective Date.** Regardless of the dates(s) the parties execute the agreement, the effective date of this agreement shall be _____ provided the agreement has been fully executed by both parties.

**Board of County Commissioners of
Johnson County, Kansas**

City of Olathe

Mike Kelly, Chairman

John Bacon, Mayor

Attest:

Attest:

Lynda Sader
Deputy County Clerk

City Clerk

Approved as to Form:

Approved as to Form:

Scott Abbott
Assistant County Counselor

City Attorney