

**Agreement between  
Johnson County and the City of Olathe  
For Maintenance of a Small Water Quality Improvement Project  
known as Stream Rehabilitation Near 125<sup>th</sup> Terrace  
MC-09-601**

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 countywide 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 which include projects to address water quality improvement.
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 maintenance of a Small Water Quality Improvement Project identified as Stream Rehabilitation Near 125<sup>th</sup> Terrace (the "Project"). This project meets the minimum requirements for a Small Water Quality Improvement Project, 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 Project shall be undertaken in accordance with the terms and provisions of the Policy and Procedures. 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. **Small Water Quality Improvement Project.** The City acknowledges conformance with the project application submitted by the City and all directive provided by the County. The City and County agree that the Project shall be undertaken in accordance with the information submitted in the project application pursuant to guidance or instruction provided by the Stormwater Program Manager (the "Manager"), or their designee.
3. **Estimated Project Cost.** The parties acknowledge and agree that the City has established an estimated total cost for the Project of Sixteen Thousand Five Hundred Dollars (\$16,500), based upon City staff's estimates and assumptions submitted in the project application. Pursuant to the Policies and Procedures, the total project cost of a Small Water Improvement Project may not exceed \$300,000, 50% of which is reimbursable by the County.
4. **Project Installation.** The City agrees to either complete the Project installation using City staff and/or select a responsible and qualified contractor or contractors to undertake and complete the installation of the Project according to the Project application ("Project Contractor"). The parties agree that it shall be the City's obligation to comply with, and to extent reasonably practical or applicable, to require the Project Contractor comply with, all applicable laws and regulations governing public contracts, including all applicable non-discrimination laws and regulations.
5. **Maintenance.** The City acknowledges that the County's Administrative Procedures for the Stormwater Management Program (Section 5) details that Small Water Quality Improvement Projects must include the cost for three years of project maintenance post-installation and that such maintenance will be cost-shared as part of the overall agreement.
6. **Administration.** It is acknowledged and agreed that the City shall enter into all contracts relating to the 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 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 engineering service providers for loss or damage to life or property arising out of the engineering service 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 engineering 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.

7. **County Contribution Toward Project Costs.** The County shall reimburse the City from the Stormwater Management and Flood Control Fund for expenditures made by the City for the Small Water Quality 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 Manager detailing total 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 Manager may require the City to supplement the Payment Request as needed to satisfy the Manager, at his/her discretion, that the Payment Request accurately reflects properly reimbursable costs and expenses.

The County agrees to make payment to the City within 30 days following the Manager's approval and acceptance of a properly documented Payment Request in an amount equal to 50% of the Payment Request.

Within 60 days from the date of the completion of the Project, the City shall provide the County with a final accounting of Project costs and the County's share of such costs, whereupon the County shall make a final reimbursement to the City as provided in this agreement. For purposes of this agreement, the Project shall be deemed complete on the earliest date upon which the City notifies the County that the Project is complete.

8. **Limitation of Liability.** The City shall, and hereby agrees to, insert as a special provision of its contract with the Project Contractor chosen to undertake the Project construction as contemplated by this Agreement the following paragraphs:

The Project Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the negligence or other actionable fault of the Project Contractor, his or her subcontractors, agents or employees in the performance of this contract.

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Project Contractor and required by the terms of his/her agreement with the City.

The City also agrees that notwithstanding any assistance, advice, technical consulting, or engineering services provided by SMAC or the Board of County Commissioners, or the failure to provide any such assistance, advice, technical consulting, or engineering services, the City shall bear the sole and absolute responsibility for the Project's design, construction, maintenance, and repair.

9. **Notice Addresses.** Any notice required of 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:**

Heather Schmidt  
Stormwater Program Manager  
Johnson County Public Works  
1800 W. Old Highway 56  
Olathe, KS 66061

**If to the City:**

Matt Kapfer  
Civil Engineer III  
City of Olathe  
1385 S. Robinson  
Olathe, KS 66061

10. **Effective Date.** Regardless of the date(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:

\_\_\_\_\_  
Megan Johnson  
Deputy County Clerk

\_\_\_\_\_  
City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Scott Abbott  
Assistant County Counselor

*Robert S. Gallimore*  
\_\_\_\_\_  
Assistant City Attorney