

**Agreement between
Johnson County and the City of Olathe
For a Preliminary Project Study of a Stormwater Management Project
known as Water Quality Improvements Study at Cedar Lake
CC-09-600**

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.
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 preliminary project study ("Preliminary Study") for the stormwater management project identified as Water Quality Improvements Study at Cedar Lake (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 Preliminary Study 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. **Preliminary Project Study.** The City shall provide the Stormwater Management Program Manager, or his/her designee ("Manager") with a Preliminary Study that satisfies the requirements set forth in the Policy and Procedures. The Preliminary Study shall be performed by qualified engineering or science professionals or by qualified City personnel, or both, subject to the provisions of this agreement and the Policy and Procedures. In general, the Preliminary Study shall define the proposed scope of the Project, analyze the impact of the Project on upstream and downstream property, suggest alternative solutions or approaches to stormwater control, and must establish a preliminary estimate for design and construction costs. The costs and expenses incurred by the City in connection with the Preliminary Study shall be reimbursable, subject to the limitations on reimbursement contained in the Policy and Procedures and in this agreement.
3. **Estimated Cost of Preliminary Study.** The parties acknowledge and agree that the City has established an estimated total cost for the Preliminary Study of Seventy Six Thousand Three Hundred Fifty Dollars (\$76,350) based upon City staff's estimates and assumptions.
4. **Notice to Affected Municipalities.** The City shall convene a Watershed Organization meeting as defined in the Policy and Procedures and shall inform members of the nature and scope of the Project. The City shall notify the County of any objection to the Project that is received by the City from a member of the watershed organization. The City agrees that it shall provide the completed Preliminary Study to the Watershed Organization for review and approval prior to submitting the Preliminary Study to the County.
5. **Administration.** It is acknowledged and agreed that the City shall enter into all contracts relating to the Preliminary Study 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 Preliminary Study. 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.

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 Preliminary Study 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 Preliminary Study 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 thirty days following the Manager's approval and acceptance of a properly documented Payment Request in an amount equal to seventy five percent (75%) of the Payment Request.

7. **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:

Heather Schmidt
Stormwater Program Manager
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

8. **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:

Lynda Sader
Deputy County Clerk

City Clerk

Approved as to Form:

Approved as to Form:

Scott Abbott
Assistant County Counselor

City Attorney