

**Agreement between
Johnson County and the City of Olathe
For a Stormwater System Renewal Project
known as 125th Street & Petzold Drive Storm Sewer Replacements
6-OL-2020-R-1**

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 renewal project ("Renewal Project") for the stormwater management project identified as 125th Street & Petzold Drive Storm Sewer Replacements (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 Renewal 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 Renewal Requirements.** The City agrees to select a responsible and qualified contractor or contractors to undertake and complete the construction of the Project ("Project Contractor"). The parties agree that it shall be the City's obligation to comply with and, to extent reasonably practical, to require the Project Contractor comply with, all applicable laws and regulations governing public contracts, including all applicable non-discrimination laws and regulations. The costs and expenses incurred by the City in connection with the 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 observed risk score of 3.2 or higher by the Stormwater Management Program under the 2018 Strategic Asset Management Plan (SAMP). 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 Renewal Project.** The City represents it has established, a good faith estimate of the total cost for the renewal of eligible stormwater assets included in the Renewal Project of One Hundred Sixty Eight Thousand Fifty Dollars (\$168,050). Cost estimates shall be prepared by qualified city staff or qualified independent contractor retained by the city.

4. **Administration.** It is acknowledged and agreed that the City shall enter into all contracts relating to the Renewal 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 Renewal 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 contractors and engineering service providers for loss or damage to life or property arising out of the contractor's or 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

\$2,000,000 on a per occurrence basis for general liability coverage for the general contractor and \$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.

5. **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 Renewal 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 Renewal 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 Stormwater Program Manager's approval and acceptance of a properly documented Payment Request in an amount equal to fifty percent (50%) of the renewal costs incurred for eligible stormwater assets.

6. **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.

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 or if sent by electronic mail and received by the addressee:

If to the County:

Mr. Lee Kellenberger
Program Manager
Johnson County Public Works
1800 W. Old 56 Highway
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 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

Ed Eilert, Chairman

John Bacon, Mayor

Attest:

Attest:

Lynda Sader
Deputy County Clerk

City Clerk

Approved as to Form:

Approved as to Form:

Robert A. Ford
Assistant County Counselor

City Attorney

