

WAIVER OF CITY OPERATING PROCEDURE 202, SECTION 9, SUBPART D., "INDEMNIFICATION"

DATE: 11-17-2023

TO: Lori Curtis Luther, City Manager

FM: Steve Horner, Senior Assistant City Attorney *JH*

CC: Lorraine Basalo, Director of Public Works/City Engineer
Kyle Dieckmann, Deputy City Engineer
Wayne Gudenkauf, Supervisory Civil Engineer
Brent Gerard, Supervisory Civil Engineer
Sally Wachtel, Contract Specialist
Alisha Holcomb, Contract Specialist

Agreement(s): Funding Agreements with Johnson County for the receipt of funds through the County Assistance Road System ("CARS") program.

Vendor/Contractor/Contracting Party: Board of County Commissioners of Johnson County

Description of goods or services being contracted for: Funding for various City street projects from the CARS program. *(See below for description of types of projects.)*

Policy Issue: COP 202, Section 9, Subpart D, entitled "Indemnification" states, *"Agreements shall not contain any provision that requires the City to indemnify another party for costs or damages arising from the performance of the agreement"* (hereinafter the "Indemnification Prohibition").

Request for waiver: City Staff is requesting waiver of the Indemnification Prohibition for all future CARS Funding Agreements for the following reasons:

The Johnson County CARS program provides funds to Johnson County cities to construct and maintain certain major arterials and minor collector streets. Each year cities submit a five-year road improvement plan to the County, which then selects projects and allocates funds. Eligible projects include: capacity improvements (*additional lanes*), major maintenance (*overlays, patching*), system management (*intersection improvements, traffic signals, turn lanes*), bridges (*replacement or rehabilitation*) and rout enhancements (*sidewalks, bike paths, lights*.) Under the CARS program, the County pays 50% of the selected project's construction and construction inspection costs. Cities are responsible for design, right-of-way, and utility relocation costs.

The County has a longstanding history of requiring all CARS Funding Agreements to contain language providing for indemnification of the County by the recipients of CARS funding. Historically the Law Department has attempted to remove this provision but the County has always been unwilling to do so, and has taken the stance that "if you want the money, we are requiring you to agree to this." Please note that the indemnification language is prefaced with "to the extent permitted by law." City Staff feels agreeing to this provision in the CARS Funding Agreements is necessary in order for the City to receive CARS funding from the County. Therefore this waiver is being requested.

I, Lori Curtis Luther, City Manager for the City of Overland Park, Kansas, hereby waive the Indemnification Prohibition for all future CARS Funding Agreements for the reasons set forth hereinabove.



Lori Curtis Luther
City Manager

11-20-23

Date