

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 *SH*

**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 the Kansas Department of Transportation (KDOT)

Vendor/Contractor/Contracting Party: Secretary of Transportation, Kansas Department of Transportation

Description of goods or services being contracted for: Funding for various City street projects from KDOT.

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 City-State Funding Agreements for the following reasons:

From time to time KDOT provides funds to the City for various roadway construction, reconstruction and maintenance projects. Sometimes this funding is from federal programs that are administered by and through KDOT. Typically the funding is conditioned upon the City paying a local match. *(For example, in a recent project for 167th Street Improvements KDOT agreed to fund 80% of participating costs of construction up to \$4.3M, and the City agreed to pay the remaining 20%, anything above the \$8.314M limit, the cost of preliminary engineering, ROW/UE acquisition costs, and utility adjustments.)*

KDOT has a longstanding history of requiring all City-State Funding Agreements to contain language providing for indemnification of KDOT. Historically the Law Department has attempted to remove this provision but KDOT 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 and subject to the Kansas Tort Claims Act." City Staff feels agreeing to this provision in the City-State Funding Agreements is necessary in order for the City to receive funding from KDOT. Therefore this waiver is being requested.

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



Lori Curtis Luther  
City Manager



Date