

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

DATE:10.12.2023

TO: Lori Curtis Luther, City Manager

FROM: Trevor Stiles, Senior Assistant City Attorney



CC: Lorraine Basalo, Director of Public Works/City Engineer
Kyle Dieckmann, Deputy City Engineer
Lauren Garwood, Supervisory Civil Engineer
Sally Wachtel, Contract Specialist
Alisha Holcomb, Contract Specialist
Steve Horner, Senior Assistant City Attorney

Agreement(s): Funding Agreements with Johnson County for the receipt of funding through the Stormwater Advisory Council ("SMAC") for funding of City projects.

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

Description of goods or services being contracted for: Funding of City projects from SMAC.

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 the above noted Agreement for the following reasons: The County has a longstanding history of requiring the funding agreements to contain language providing for indemnification to the County from the recipients of SMAC funding. Previous attorneys in the City Attorney's office have attempted to get this provision removed but the County has historically been unwilling, and taken the stance that "if you want the money, we are requiring you to agree to this". I would note that the indemnification language is prefaced with "to the extent permitted by law". City Staff feels agreeing to this provision in SMAC agreements is necessary in order for the City to receive SMAC funding from the County.

I, Lori Curtis Luther, City Manager for the City of Overland Park, Kansas, hereby waive the Indemnification Prohibition for funding agreements between the City and the County for receipt

of SMAC funding for City projects. I am waiving the Indemnification Prohibition for the above noted Agreement(s) for the reasons set forth by City Staff and stated herein.

Lori Curtis Luther
Lori Curtis Luther
City Manager

10-16-2023
Date