

Memo

To: City Commission
From: Toby Dougherty, City Manager
Date: 10-30-14
Re: November 6, 2014 Work Session

Please find the attached agenda and supporting documentation for the November 6, 2014 Work Session.

Item 2 – Airport Runway 4-22 Rehabilitation – Hays Regional Airport

Please refer to the attached memorandum from John Braun, Assistant Director of Public Works, regarding the rehabilitation of the Crosswind Runway. At this time, the rehabilitation of the Crosswind Runway is the highest priority project in the Airport Improvement Plan. City staff is requesting to move forward with the design/engineering contract with Burns and McDonnell for the project.

Item 3 – Hays Mall CID Request – Development Agreement and Adopting Ordinance

Please refer to the attached memorandum regarding the Hays Mall CID request. The first thing the City Commission needs to determine is whether or not to move forward with the CID request. If the Commission determines that it is not necessary to move forward with the CID request, the development agreement and adopting ordinance are unnecessary. If the City Commission does choose to move forward with the process, the first step is crafting a development agreement. City staff has worked with Gilmore and Bell to come up with a draft Development Agreement and would like more input on the subject from the City Commission.

Item 4 – Continuation of the 1% Transient Guest Tax

Please refer to the attached memorandum regarding the continuation of the Transient Guest Tax. The Transient Guest Tax was increased by one percent (1%) to pay for the Welcome Center. The Welcome Center was paid off this month, and by resolution, the Transient Guest Tax rate is slated to go back to four percent (4%). City staff is suggesting keeping the Transient Guest Tax at five percent (5%) to continue much-needed promotion, marketing and Wayfinding programs as well as funding Quality of Life agency expenditures. We will have more information on the subject at the work session.

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**CITY OF HAYS
CITY COMMISSION WORK SESSION
THURSDAY, NOVEMBER 6, 2014 – 6:30 P.M.
AGENDA**

1. **ITEM FOR REVIEW: [October 16, 2014 Work Session Notes \(PAGE 1\)](#)**
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
2. **ITEM FOR REVIEW: [Airport Runway 4-22 Rehabilitation – Hays Regional Airport \(PAGE 5\)](#)**
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
3. **ITEM FOR REVIEW: [Hays Mall CID Request – Development Agreement and Adopting Ordinance \(PAGE 45\)](#)**
PERSON RESPONSIBLE: Toby Dougherty, City Manager
4. **ITEM FOR REVIEW: [Continuation of the 1% Transient Guest Tax \(PAGE 115\)](#)**
PERSONS RESPONSIBLE: Toby Dougherty, City Manager
Paul Briseno, Assistant City Manager
5. **OTHER ITEMS FOR DISCUSSION**
6. **EXECUTIVE SESSION (IF REQUIRED)**
7. **ADJOURNMENT**

ANY PERSON WITH A DISABILITY NEEDING SPECIAL ACCOMMODATIONS TO ATTEND THIS MEETING SHOULD CONTACT THE CITY MANAGER'S OFFICE 48 HOURS PRIOR TO THE SCHEDULED MEETING TIME. EVERY ATTEMPT WILL BE MADE TO ACCOMMODATE ANY REQUESTS FOR ASSISTANCE.

City of Hays
City Commission
Work Session Notes
October 16, 2014 – 6:30 p.m.

Present: Henry Schwaller IV, Eber Phelps, Shaun Musil, Ron Mellick, Kent Steward, John Bird, Toby Dougherty

October 2, 2014 Work Session Notes

There were no corrections or additions to the minutes of the work session held on October 2, 2014; the minutes stand approved as presented.

Rehabilitation of Manholes – Award of Bid

Bernie Kitten, Director of Utilities explained the need for manhole rehabilitation, stating manholes are a critical part of the wastewater collection system. They are required by law and allow for access to sewer pipes for maintenance and repair. Hundreds of manholes in Hays need rehabilitation due to various reasons of acidic environments, erosion, age, and stormwater infiltration. This project will significantly lengthen the lifespan of these manholes through the application of 100% calcium aluminate cement material.

Utility Solutions, LLC from Basehor Kansas provided the low bid and is experienced in manhole rehabilitation.

At the October 23, 2014 Commission meeting, Commissioners will be requested to award a contract for \$30,000 to Utility Solutions, LLC, for the rehabilitation of deteriorated sewer manholes.

Vehicle Abatement at 418 West 11th Street

The abandoned vehicle located on the rear property at 418 West 11th Street has expired tags and missing parts therefore deeming it inoperable. Up to this point, all proper notification has been given to the owner of the property. To date, no action has been taken by the owner of the property. If the vehicle is

removed by the city, all costs of abatement will be charged to the owner of the property.

At the October 23, 2014 Commission meeting the Commissioners will be requested to approve a resolution to abate the abandoned vehicle located at 418 West 11th Street.

Creation of Commission Capital Reserve

The City of Hays Comprehensive Financial Management Policy provides that the City shall achieve and maintain a minimum Unreserved Fund Balance of 10% of the General Fund's annual operating expenditures. This practice continues to be accomplished each year with any excess total available funds going back into the budget shown as an expenditure called City Commission Financial Policy Projects (CCFPP). This CCFPP served as a vehicle each year with which the Commission could dedicate excess revenues to prioritized endeavors they felt necessary. While this process has proven effective over the years it has led to some confusion as to the balance available in CCFPP. True available funds are not realized until the close of the year. It is therefore difficult to advise the Commission of available funds for prioritized projects. The CCFPP also over-inflates the City's general fund budget.

Staff recommends the creation of a Commission Capital Reserve for a more efficient accounting of available funds.

Commissioners will be requested to create a Commission Capital Reserve at the October 23, 2014 Commission meeting.

Other Items for Discussion

Chairperson Schwaller commented that next week he will be graduating from Leadership Kansas and will not attend the Commission meeting on October 23, 2014 at which the public hearing will be held for the proposed sales tax increase at The Mall.

The Commissioners agreed that all five Commissioners should be present to vote on the proposed Community Improvement District.

The work session was adjourned at 7:09 p.m.

Submitted by: _____

Brenda Kitchen – City Clerk

Commission Work Session Agenda

Memo

From: John Braun, Assistant Director of Public Works

Work Session: November 6, 2014

Subject: Airport RNWY 4-22 Rehabilitation – Design Contract

Person(s) Responsible: Toby Dougherty, City Manager
ID Creech, Director, Public Works

Summary

The Airport Capital Improvement Program lists the Rehabilitation of the Crosswind Runway 4-22 as the highest priority project after completion of the Airport Terminal Building Expansion and Remodel. FAA has issued notice of their intent to fund the Crosswind Runway Rehab Project, and is asking for an Engineering Service Agreement to be submitted by December 1, 2014. The City's Airport Engineer, Burns and McDonnell, has prepared an amendment to the Master Service Agreement and Work Authorization for engineering services related to the design of the project.

City Staff recommends proceeding with the project by approving the amendment and work authorization in the amount of \$95,349 to be funded out of the Airport Improvement Fund. Ninety percent of the cost to be reimbursed by the FAA.

Background

The crosswind runway (4-22) was constructed of concrete in 2003 by Castle Rock Construction Co, of Topeka, KS. Since that time, there has been some material failure and rehabilitation of the pavement is necessary. Recent inspections and correspondence with FAA has ranked this project as a priority, and FAA has issued a letter providing notice of their intent to fund the project. **See Attached Letter from FAA**

Rehabilitation would include:

- Panel replacements exhibiting ASR/D-Cracking
- Replace settled panels abutting Taxiway M
- Remove and replace existing joint sealant
- Remediation of spalled joints
- Subsurface investigation to include petrographic analysis
- Miscellaneous improvements based on field investigation

The Capital Improvement Plan (CIP) since 2013 has included a project to rehabilitate the Crosswind Runway (4-22) at the Hays Regional Airport. While projected funding during the 2014 budget preparation did not support funding in 2014, the project was at the top of the list for airport projects in the queue. And, the 2015 budget does include this project in the CIP for funding in 2015, and included in the list of projects under the Passenger Facility Charge (PFC) currently being processed through the FAA and United Airlines.

A requirement of the FAA is the use of an approved engineer for plan and application development. Burns and McDonnell Engineers (BMcD) is the City's Airport Engineering Consultant under a Master Service Agreement approved by the City Commission and dated March 10, 2011. Amendment No. 1 to that agreement was dated October 25, 2012 regarding the remodel of the Terminal Building, and now Amendment No. 2 will be required to deal with the Crosswind Runway Rehabilitation. A Work Authorization will be required as well defining the scope and fee of the design engineering services.

Discussion

BMcD has submitted Amendment #2 to the Master Service Agreement. **See Attached Amendment #2**

Amendment #2 not only covers the Crosswind Runway Projects, but also includes potential future projects such as new fuel system, snow removal equipment, parking lot, and taxiway rehabilitation. Note that none of the listed projects could proceed without a Work Authorization.

BMcD has also submitted Work Authorization #7 for professional engineering design services for the rehabilitation of Runway 4-22 (Crosswind Runway). **See Attached Work Authorization #7**

The fixed lump sum cost for design services is \$95,349.

Per FAA requirements, staff has accomplished a fee evaluation based on:

- a review by a knowledgeable person,
- comparison with sponsor prepared fee estimate,
- and comparison with previous contracts of similar nature.

Following negotiation with the engineer, staff feels the fee is commensurate with the services to be provided. **See Attached Fee Evaluation**

The time schedule is as follows:

Engineering Design Agreement to FAA	December 1, 2014
Preliminary Design Report	January 12, 2015
Final Plans and Specification	February 18, 2015
Open Bids	March 25, 2015
Submit Grant Application to FAA	May 1, 2015
Construction	Summer 2015

Legal Consideration

There are no known legal obstacles to proceeding as recommended by City Staff

Financial Consideration

The funding for this project would be shared between the FAA and the City under a 90%-10% contractual basis for all eligible portions of the project through the Airport Improvement Program (AIP). At this point, all work is anticipated to be eligible; therefore, FAA would reimburse the City 90% of the project cost.

Estimated Project Costs follow:

	City Share	FAA Share	Total Cost
Design Engineering	\$ 9,534.90	\$ 85,814.10	\$ 95,349.00
Construction	\$66,805.10	\$601,245.90	\$668,051.00
Total	\$76,340.00	\$687,060.00	\$763,400.00

The City Share of this project will be funded out of the Airport Improvement Fund. Adequate funds are available to cover the local cost.

Note that the design engineering cost is higher than originally estimated due to FAA requiring some additional pavement and subgrade testing due to the premature failure of this concrete. **See Attached E-mail from BMcD and FAA**

Options

The City Commission has the following options:

1. Approve Amendment #2 to the Master Service Agreement and Work Authorization No. 7 from Burns & McDonnell Engineering Company for engineering services;
2. Reject the project;
3. Direct Staff to another option;
4. Do nothing.

Recommendation

City Staff recommends motion to approve the amendment to the Master Services Agreement and Work Authorization No. 7 from Burns & McDonnell Engineering Company for engineering services as presented.

Action Requested

Authorize the City Manager to execute Amendment #2 and Work Authorization No. 7 with Burns and McDonnell in the amount of \$95,349.00 with the City share to be funded out of the Airport Improvement Fund.

Supporting Documentation

Letter from FAA

Amendment #2

Work Authorization #7

Fee Evaluation

E-mail from BMcD and FAA

October 16, 2014

Mr. I.D. Creech
Public Works Director
City of Hays
1002 Vine Street
Hays, Kansas 67601

Dear Mr. Creech:

Hays Regional Airport
Potential AIP No. 3-20-0028-~~033~~ 032
Initiation of Work for Proposed FY 2015 AIP Project

Proposed FY 2015 AIP Project

The FAA is considering funding the following project(s) as part of the FY15 Airport Improvement Program:

Design and Construct the rehabilitation of Runway 4-22 and Taxiway M (Joint sealing, spall repair and isolate concrete panel replacement)	\$686,930	Federal Share
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This project scope and estimate is based on the FAA Airport Capital Improvement Program (ACIP).

Purpose of Letter

The general purpose of this letter is to provide you advance notice of our intent to fund your project subject to the establishment of a FY-2015 funding appropriation for the Airport Improvement Program. We request your prompt action at this time so that you will be ready to proceed once funding does become available.

We trust you remain committed to proceeding with this work in the upcoming 2015 fiscal year. Please contact me **immediately** if you no longer desire to accomplish this work or circumstances arise that causes you to postpone this work to a later fiscal year.

Limitations of this Notice

This is not a not a guarantee of funding, nor is the value of the project considered a final determination by the FAA. The Congressional notification of funding, if issued, will serve as



AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
Between
The City of Hays, Kansas
And
Burns & McDonnell Engineering Company, Inc.

AMENDMENT No. 2

Date: _____

THIS AMENDMENT modifies the Agreement dated March 10, 2011 and AMENDMENT No.1 dated October 25, 2012 made by and between **Burns & McDonnell Engineering Company, Inc.**, (hereinafter called ENGINEER), and City of Hays, Kansas (hereinafter called OWNER) for the following:

1. The parties agree that the ENGINEER's Scope of Services is amended as follows:

SECTION 1 – AUTHORIZATION OF SERVICES

- 1.2.1 The following additional specific assignments as identified by the OWNER may include:
 - a. Runway 4-22 Rehabilitation
 - b. New Fueling System
 - c. Acquire Snow Removal Equipment
 - d. Rehabilitate Parking Lot
 - e. Rehabilitate Taxiway

SECTION 5 – PERIOD OF SERVICES

- 5.1 This AMENDMENT No. 2 will become effective upon the first written notice by OWNER authorizing services hereunder.
- 5.2 This AMENDMENT No. 2 shall be applicable to all assignments authorized in SECTION 1 – AUTHORIZATION OF SERVICES by OWNER and accepted by ENGINEER subsequent to the date of its execution. All assignments authorized prior to the execution of this document, even if performed in whole or in part before the execution date, shall be governed by the terms and conditions of this AGREEMENT.
- 5.3 The provisions of this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of each task order through completion of the services stated in the AGREEMENT. ENGINEER'S obligation to render services hereunder will extend for an initial period of twelve months (hereinafter the "primary term") and subject to renewal for four (4) additional and separate twelve (12) month terms (hereinafter the "renewal term"). It is understood and agreed by the parties hereto that renewal of this Agreement at the conclusion of the primary term shall be automatic unless this AGREEMENT is otherwise terminated as herein provided.

SECTION 7 – GENERAL CONSIDERATIONS

7.20 Federal Contract Provisions per the Federal Aviation Administration, (FAA) Airport Improvement Program: Exhibit 1 (Attached herein) supersedes the original Federal Contract Provisions.

2. The terms of this AMENDMENT supersede any contrary terms of the Agreement. This AMENDMENT will be deemed a part of, and be subject to, all other terms and conditions of the Agreement. Except as modified above, the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT the day and year first written above.

OWNER: City of Hays, Kansas

ENGINEER: Burns & McDonnell Engineering Company, Inc.

By: _____

By:  10-23-14

Name: Toby Dougherty

Name: David G. Hadel, P.E.

Title: City Manager

Title: Director of Aviation Services

AMENDMENT NO. 2

EXHIBIT 1

FEDERAL PROVISIONS

UPDATED BY FAA MAY 6, 2014

1. ACCESS TO RECORDS AND REPORTS.

(Reference: 2 CFR § 200.326, 2 CFR § 200.333)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

2. BREACH OF CONTRACT TERMS.

(Reference 2 CFR § 200 Appendix II(A))

The regulation does not prescribe mandatory language, however the following clause represents sample language that meets the intent of 2 CFR § 200 Appendix II(A). This provision requires grantees to incorporate administrative, contractual or legal remedies in instances where contractors violate or breach contract terms.

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

3. BUY AMERICAN PREFERENCE.

(Reference: 49 USC § 50101)

BUY AMERICAN CERTIFICATION

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

Certificate of Buy American Compliance for Total Facility

(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter "X".

- Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic products
3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.

4. To furnish US domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

* * * * *

Certificate of Buy American Compliance for Manufactured Products

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States, or;
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic product
3. To furnish US domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more that 60% of the cost of all components and subcomponents of the “item”. The required documentation for a type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart

25.108; products of unknown origin must be considered as non-domestic products in their entirety)

- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

4. CIVIL RIGHTS - GENERAL.

(Reference: 49 USC § 47123)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

(a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

5. CIVIL RIGHTS – TITLE VI ASSURANCES.

Appropriate clauses from the Standard DOT Title VI Assurances must be included in all contracts and solicitations. The clauses are as follows:

- 1) Title VI Solicitation Notice
- 2) Title VI Clauses for Compliance with Nondiscrimination Requirements.
- 3) Title VI Required Clause for Land Interests Transferred from the United States
- 4) Title VI Required Clause for Real Property Acquired Or Improved by the sponsor subject to the nondiscrimination Acts and Regulations.
- 5) Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program
- 6) Title VI List Of Pertinent Nondiscrimination Statutes And Authorities

5.1. APPLICABILITY.

5.1.1. Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Title VI Solicitation Notice:

The **Sponsor**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

5.1.2. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the

sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

5.1.3. Title VI Clauses for Deeds Transferring United States Property

(Source: Appendix B of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the **Sponsor** will accept title to the lands and maintain the project constructed thereon in accordance with **Sponsor's Legislative Authority**, for the **(Airport Improvement Program or other program for which land is transferred)**, and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the

Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **Sponsor** all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (**Exhibit A or other exhibit describing the transferred property**) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **Sponsor** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **Sponsor**, its successors and assigns.

The **Sponsor**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the **Sponsor** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

5.1.4. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

(Source: Appendix C of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **Sponsor** pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, **Sponsor** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the **Sponsor** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the **Sponsor** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

5.1.5. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

(Source: Appendix D of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **Sponsor** pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the

land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, **Sponsor** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, **Sponsor** will there upon revert to and vest in and become the absolute property of **Sponsor** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

5.1.6. Title VI List of Pertinent Nondiscrimination Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

6. CLEAN AIR AND WATER POLLUTION CONTROL.

(Reference: 49 CFR § 18.36(i)(12)) Note, when the DOT adopts 2 CFR 200, this reference will change to 2 CFR § 200 Appendix II(G))

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

**7. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.
(Reference: 2 CFR § 200 Appendix II (E))**

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted

contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

8. DEBARMENT AND SUSPENSION (NON-PROCUREMENT).

(Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility)

CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

9. DISADVANTAGED BUSINESS ENTERPRISE.

(Reference: 49 CFR part 26)

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29)- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than **30** days from the receipt of each payment the prime contractor receives from **SPONSOR**. The prime contractor agrees further to return retainage payments to each subcontractor within **30** days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the **SPONSOR**. This clause applies to both DBE and non-DBE subcontractors.

10. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

(Reference: 29 USC § 201, et seq.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

11. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.

(Reference: 49 CFR part 20, Appendix A)

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

12. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

(Reference 20 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

13. RIGHT TO INVENTIONS.

(Reference 2 CFR § 200 Appendix II(F))

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

14. TERMINATION OF CONTRACT.

(Reference 2 CFR § 200 Appendix II(B))

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

15. TRADE RESTRICTION

(Reference: 49 CFR part 30)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by

reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

16. TEXTING WHEN DRIVING

(References: Executive Order 13513, and DOT Order 3902.10)

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

your official announcement that funding is available for your location. We ask that you portray all work activities performed prior to Congressional release of funds as a sponsor initiative as opposed to a confirmation of Federal funding.

Required Actions

To compete for funding this fiscal year, you should complete the following actions:

- Review your estimate of probable costs and immediately contact our office if there is a significant increase or decrease in the required Federal share
- Evaluate your progress in meeting your overall DBE goal
- Initiate actions that require long lead times (e.g. Selection of a consultant, review of DBE program status, etc.)
- Review attachment A to this letter for additional information, limitations, and requirements.

Proposed Schedule

- Submit the engineering services agreement NLT 12/01/14
- Submit preliminary design report & CSPP NLT 01/03/15
- Submit final plans & specifications NLT 02/18/15
- Open Bids NLT 03/25/15
- Submit grant application NLT 05/01/15

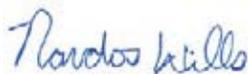
We request that you proceed as necessary to meet the noted project milestones. Failure to meet these dates could jeopardize the inclusion of your project in the upcoming FY 2015 AIP program.

Detailed Guidance

Detailed guidance regarding each of the above steps can be found in the AIP Sponsor Guide located at http://www.faa.gov/airports/central/aip/sponsor_guide/.

If you have any questions, please contact me at (816) 329-2636 or via email at nardos.wills@faa.gov

Sincerely,



Nardos Wills

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**AUTHORIZATION NO. 7
FOR PROFESSIONAL ENGINEERING SERVICES
FOR
THE DESIGN FOR THE REHABILITATION OF RUNWAY 4-22
AT HAYS REGIONAL AIRPORT
AIP Project No. 3-20-0028-32**

In accordance with SECTION 1 – AUTHORIZATION OF SERVICES of the Agreement for Professional Engineering Services (the “AGREEMENT”) dated March 10, 2011, AMENDMENT No. 1 dated October 25, 2012 and AMENDMENT No. 2 dated _____ by and between THE CITY OF HAYS (SPONSOR) and BURNS & McDONNELL (CONSULTANT), the following Airport Improvement Project (“AIP”) authorization is hereby given and mutually agreed upon:

A. PROJECT NAME AND DESCRIPTION OF IMPROVEMENTS:

1. **Project Name:** Rehabilitate Runway 4-22.

2. **Description of Improvements:** Provide professional engineering design services for the rehabilitation of Runway 4-22. The design will provide for the removal and replacement of existing joint sealant(s), isolated joint spalling and panel replacements, miscellaneous items as identified during the preliminary design phase of the project and new runway pavement markings.

B. DESCRIPTION OF SERVICES TO BE PERFORMED:

CONSULTANT has developed the following scope of engineering services for the aforementioned project. The Scope of Services is defined as follows:

1. **Preliminary Design Phase:** This phase includes activities for defining the scope of the aforementioned project and establishing preliminary requirements. The elements of work for this task include:
 - a. Attend (on site at Hays Regional Airport with two representatives of CONSULTANT’S team) a meeting with the SPONSOR to discuss the overall program requirements.
 - b. Perform an onsite investigation for visual observations and to gather previously recorded information.
 - c. Procure a geotechnical subconsultant and obtain subsurface investigation. The investigation will include the following:
 - i. Obtain cores to confirm the thickness of the existing pavement section.
 - ii. Obtain borings to confirm the thickness of the existing pavement section and to analyze the condition of the existing subgrade
 - iii. A petrographic analysis will be performed on the cores located within the borings obtained for this project.
 - iv. Prepare a subsurface investigation report of findings.

- v. It is assumed the field investigation activities will be performed while Runway 4-22 is NOTAMed closed.
 - d. Review existing information & ACIP cost estimates.
 - e. Prepare preliminary site plans for development of construction phasing and coordination with the FAA Technical Operations Group.
 - f. Develop a preliminary cost estimate.
 - g. Develop a preliminary construction schedule.
 - h. Develop a Construction Safety Phasing Plan, (CSPP) and submit to the FAA for review and approval.
 - i. Prepare a preliminary engineering design report. The report will identify how the project will be developed, rationale for the design selected, and specific elements that are unusual to this project or are nonstandard. The report will include a preliminary cost estimate and construction schedule for the completion of the project through construction. The report will not include a life cycle cost analysis for alternate pavement designs.
 - j. Perform an internal Quality Review of the preliminary engineering design report with an Independent Senior Review Team.
 - k. Incorporate Quality Review Team's comments.
 - l. Submit for review, the preliminary engineering design report to the SPONSOR and the FAA.
 - m. Attend and conduct a preliminary design meeting with SPONSOR & FAA. The purpose of this meeting will be to review and discuss the preliminary engineering design report. The meeting will take place in the office of the FAA.
2. **Design Phase:** This phase will include the activities required to develop the project design documents showing the character and scope of work to be performed by contractors on the project. The specific tasks that will be performed in this phase are:
- a. Prepare construction Bid Documents. The drawing list may include the following construction plans as follows:
 - 1. Cover Sheet
 - 2. Index, Legend, Abbreviation & Summary of Quantities
 - 3. Access & Safety Plans
 - 4. Construction Phasing Plans
 - 5. Site Remediation Plans
 - 6. Pavement Marking Plans
 - 7. Typical Sections & Jointing Detail Sheet(s)
 - 8. Striping Details

- b. Because these improvements will be on existing pavement only, this scope of work assumes a Storm Water Pollution Prevention Plan, (SWPPP) will not be required.
 - c. Prepare project specifications.
 - d. Prepare Standard FAA and SPONSOR front-end documents.
 - e. Revise the preliminary cost estimate for final engineer's estimate of probable cost.
 - f. Revise the preliminary construction schedule.
 - g. Prepare the final engineering design report. The report will include the final cost estimate and final schedule for the completion of the project through construction.
 - h. Perform an internal Quality Review of the project manual, specifications, construction drawings and design report with an Independent Senior Review Team.
 - i. Incorporate Quality Review Team's comments.
 - j. Submit project manual, specifications, construction drawings, specifications and final engineering design report to the SPONSOR and the FAA for 100% review.
 - k. Revise contract documents and resubmit two copies to the SPONSOR and one copy to the FAA for final submittal and bidding.
 - l. Provide electronic (pdf) files of the contract documents for the purposes of bidding the project.
3. **Bidding & Construction Award Phase:** This phase will include basic services to assist the SPONSOR with bidding of the contract documents and reviewing and award of the bid, including the following activities:
- a. Assist the SPONSOR with advertising the project.
 - b. Attend and conduct a prebid meeting with the SPONSOR.
 - c. Prepare any addenda for the project.
 - d. Respond to questions during the bidding phase.
 - e. Tabulate the bids as received from the SPONSOR, analyze and provide a recommendation to the SPONSOR.
 - f. Assist the SPONSOR with preparing contract documents.
4. **Construction Phase Services:** This phase includes activities for developing a construction observation program and providing construction services throughout the project. This Scope of Services will be developed as a separate work order and is not a part of this Authorization.

C. METHOD OF COMPENSATION:

- 1. Compensation of the Scope of Work for items shall be made by Method A – Fixed Lump Sum Payment according to SECTION 6- COMPENSATION, paragraph 6.1.1, which outlines compensation on a fixed lump sum basis.

D. AMOUNT OF COMPENSATION:

- 1. CONSULTANT will perform the Scope of Services for items identified in B.1-3 of this Authorization No. 7, per the terms and conditions set forth in the Agreement, for a Lump Sum Amount of Ninety Five Thousand Three Hundred Forty Nine Dollars (**\$95,349**).

E. ESTIMATED TIME OF COMPLETION:

- 1. The estimated time to complete the Scope of Services B.1-2 of this Authorization No. 7 is estimated at (110) calendar days from the Notice to Proceed.

F. CONSULTANT’S NOTICE TO PROCEED DATE:

- 1. CONSULTANT is prepared to commence work on this project immediately upon receiving a Notice to Proceed. The Notice to Proceed date for this project is _____.

It is further understood and agreed by the parties hereto that all of the terms and conditions of the AGREEMENT are hereby incorporated by reference as if set forth fully herein and are made a part of this Authorization.

IN WITNESS WHEREOF, the parties hereto have caused this Authorization to be executed in three (3) counterparts by their duly authorized representatives and made effective the day and year first written above.

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City of Hays, Kansas

Burns & McDonnell Engineering Company, Inc.

By _____
Toby Dougherty
City Manager

By _____
David G. Hadel, P.E.
Director of Aviation Services

ATTEST:

By _____
City Clerk

END OF AUTHORIZATION NO. 7
FOR PROFESSIONAL ENGINEERING SERVICES

**DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
RUNWAY 4-22 REHABILITATION PROJECT
HAYS REGIONAL AIRPORT
PLANNING, DESIGN & BIDDING PACKAGE
BASIC AND SPECIAL SERVICES
October 23, 2014**

1 DIRECT SALARY COSTS:

TITLE	HOURS	RATE/HOUR	COST (\$)		
			Office	Field	Contract
Principal	5.50	\$62.50	\$343.75	\$0.00	\$0.00
Project Manager	79.00	\$50.00	\$3,950.00	\$0.00	\$0.00
Sr. Civil Engineer	97.00	\$39.00	\$3,783.00	\$0.00	\$0.00
Staff Civil Engineer	114.00	\$36.00	\$4,104.00	\$0.00	\$0.00
Assist. Civil Engineer	112.00	\$28.00	\$3,136.00	\$0.00	\$0.00
Staff Electrical Engineer	0.00	\$45.00	\$0.00	\$0.00	\$0.00
Assist. Electrical Engineer	0.00	\$33.50	\$0.00	\$0.00	\$0.00
Sr. Technician	32.00	\$29.00	\$928.00	\$0.00	\$0.00
Staff Technician	211.00	\$25.00	\$5,275.00	\$0.00	\$0.00
Aviation Planner	0.00	\$39.00	\$0.00	\$0.00	\$0.00
Geotechnical Engineer	8.00	\$49.00	\$392.00	\$0.00	\$0.00
Clerical	37.50	\$20.00	\$750.00	\$0.00	\$0.00
	696.00				
Total Direct Salary Costs			\$22,661.75	\$0.00	\$0.00

2 LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:

Percentage of Direct Salary Costs @	203.64%	Office	\$46,148.39		
Percentage of Direct Salary Costs @	143.29%	Field		\$0.00	
Percentage of Direct Salary Costs @	84.81%	Contract			\$0.00

3 SUBTOTAL:

Items 1 and 2			\$68,810.14	\$0.00	\$0.00
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4 PROFIT:

10.00%	% of Item 3 Subtotal		\$6,881.01	\$0.00	\$0.00
		Subtotal	\$75,691.15	\$0.00	\$0.00

5 OUT-OF-POCKET EXPENSES:

a. Transportation (Office Staff)	1.80 Trip @	\$354.000 / Trip =	\$637.20		
b. Transportation (Field Staff)	0.00 Trip @	\$354.000 / Trip =		\$0.00	
c. Expense (meals) office (per day)	5.00 days @	\$35.00 / day=	\$175.00		
d. Expense (lodging) office (per day)	2.00 days @	\$125.00 / day=	\$250.00		
e. Expense field (meals) : per day	0.00 days @	\$35.00 / day =		\$0.00	
f. Expense field (Lodging) : per day	0.00 days @	\$125.00 / day =		\$0.00	
g. Comp. hrs: (N/A)	243.00 Hours @	\$0.00 / Hour =	\$0.00		
h. Comp. hrs: (N/A)	453.00 Hours @	\$0.00 / Hour =	\$0.00		
i. Materials and Supplies		=	\$3,095.65	\$0.00	\$0.00
Total Out-of-Pocket Expenses			\$4,157.85	\$0.00	\$0.00

6 SUBCONTRACT COSTS:

a. Surveyor: N/A	=	\$0.00	\$0.00	\$0.00
b. Geotechnical: Alfred Benesch	=	\$0.00	\$0.00	\$15,500.00
c. Other: N/A	=	\$0.00	\$0.00	\$0.00
d. Other: N/A	=	\$0.00	\$0.00	\$0.00
	Subtotal		\$0.00	\$0.00
			\$0.00	\$15,500.00

7 MAXIMUM TOTAL FEE:

Items 1, 2, 3, 4, 5 and 6			\$79,849.00	\$0.00	\$15,500.00
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TOTAL:	SUMMARY		\$95,349.00		
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SUMMARY

**DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
RUNWAY 4-22 REHABILITATION PROJECT
HAYS REGIONAL AIRPORT
PLANNING, DESIGN & BIDDING PACKAGE
BASIC AND SPECIAL SERVICES
October 23, 2014**

Classification:	Principal	Project Manager	Sr. Civil Engineer	Staff Civil Engineer	Assist. Civil Engineer	Staff Electrical Engineer	Assist. Electrical Engineer	Sr. Technician	Staff Technician	Aviation Planner	Geotechnical Engineer	Clerical	Other Costs
Gross Hourly Rate:	\$208.75	\$167.00	\$130.26	\$120.24	\$93.52	\$150.30	\$111.89	\$96.86	\$83.50	\$130.26	\$163.66	\$66.80	
A. BASIC SERVICES													
1 PRELIMINARY DESIGN	5.00	45.00	18.00	56.00	16.00			4.00	18.00		8.00	13.00	(1, 2, 3, 4, 5)
Total =	\$24,892.00	\$1,043.76	\$7,515.09	\$2,344.71	\$6,733.52	\$1,496.34		\$387.44	\$1,503.02		\$1,309.30	\$868.41	\$1,690.41
2 DESIGN	0.50	10.00	79.00	54.00	66.00			28.00	185.00			16.50	(1, 2, 3, 4, 5)
Total =	\$45,747.00	\$104.38	\$1,670.02	\$10,290.66	\$6,493.04	\$6,172.39		\$2,712.11	\$15,447.69			\$1,102.21	\$1,754.50
3 BIDDING & CONST. AWARD PHASE		24.00		4.00	30.00				8.00			8.00	(1, 2, 3, 4, 5)
Total =	\$9,210.00	\$4,008.05		\$480.97	\$2,805.63				\$668.01			\$534.41	\$712.94
4 CONSTRUCTION SERVICES-N/A													(1, 2, 3, 4, 5)
Total =													
5 N/A													(1, 2, 3, 4, 5)
Total =													
PART A SUBTOTAL =	\$79,849.00												
B. SPECIAL SERVICES													
1 SUBSURFACE INVESTIGATION													(1, 2, 3, 4, 5)
Total =	\$15,500.00												\$15,500.00
2 SURVEY-N/A													(1, 2, 3, 4, 5)
Total =													
3 N/A													(1, 2, 3, 4, 5)
Total =													
4 N/A													(1, 2, 3, 4, 5)
Total =													
5 N/A													(1, 2, 3, 4, 5)
Total =													
PART B SUBTOTAL =	\$15,500.00												
GRAND TOTAL =	\$95,349.00												

(1) Mileage, Motel and Meals (3) Computer Services (5) Other (identify)
(2) Equipment, Materials and Supplies (4) Vendor Services

EXHIBIT V SUMMARY

AIRPORT DIVISION
VACANT, MANAGER
3950 E 8TH ST., HAYS, KS 67601

TEL 785-628-7370
FAX 785-628-7373

PLANNING, INSPECTION, & ENFORCEMENT DIVISION
JESSE ROHR, SUPT.
1002 VINE ST., HAYS, KS 67601

TEL 785-628-7310
FAX 785-628-7352



GLENN SCHMIDTBERGER, SUPT.
1002 VINE ST., HAYS, KS 67601

SERVICE DIVISION
TEL 785-628-7353
FAX 785-628-7352

MARVIN HONAS, SUPT.
1780 W. 55TH ST., HAYS, KS 67601

SOLID WASTE DIVISION
TEL 785-628-7357
FAX 785-628-7352

I.D. CREECH, DIRECTOR
JOHN BRAUN, ASSISTANT DIRECTOR
1002 VINE STREET, HAYS, KS 67601
TEL 785-628-7350, FAX 785-628-7352

PUBLIC WORKS DEPARTMENT

www.haysusa.com

October 24, 2014

Ms. Nardos Wills
FAA Airport Engineer
Airports Division ACE-600
901 Locust
Kansas City, Missouri 64106

Summary of Negotiations for Design Phase Services for the Rehabilitation of Runway 4-22 Project at Hays Regional Airport, AIP No. 3-20-0028-32

Dear Ms. Wills:

The City of Hays has received from the Consultant, Burns & McDonnell a design proposal for the aforementioned project. Their proposed fee is \$95,349. In complying with FAA procedures, The City has performed an in-house cost fee evaluation for this proposed scope of work. This cost analysis was performed by Mr. John Braun, Assistant Director of Public Works. Mr. Braun's analysis estimated the cost for design as based on Burns & McDonnell's scope of work at \$92,624.

The difference between the proposal and estimate is \$2,725. The estimated value of services is approximately 2.8% less than the proposed fee.

On October 21, 2014, a face-to-face meeting was held between the City and Burns & McDonnell for the purpose of reviewing the proposal. Upon deliberation with Burns & McDonnell regarding the scope of work and the understanding of said work it was mutually agreed not to make any adjustments to the proposed fee and accept their proposal in the amount of \$95,349. It should be noted that the design fee was considerably higher than originally estimated due to FAA requiring subsurface investigation and petrographic analysis. That \$15,500 cost is included in the design fee as a pass-through cost.

If you have any questions regarding the summary of negotiations, please contact my office at 785-628-7350.

A handwritten signature in blue ink, appearing to read "I.D. Creech", is written over a faint, larger version of the same signature.

I.D. Creech
Director of Public Works

cc John Braun, Assistant Director of Public Works
Dave Hadel, Burns & McDonnell

Design Scope of Services/Fee Estimate

Project: Runway 4-22 Rehabilitation AIP 3-20-0028-32 Date: 20OCT2014
 Location: Hays Regional Airport By: JRB
 Consultant: Page: ___ of 3

Task	Labor Required							Total Labor Cost	Expenses Required									Total Expense Cost	Total Task Cost	
	PIC	PM	Sr. AE	Tech.	Jr. AE	QC	Clerical		Mile	Meals	Hotel	8.5x11	11x17	Plots	Prints	Reports	Ship			
	\$55.00	\$45.00	\$37.00	\$26.00	\$28.00	\$45.00	\$19.00		Rate:	\$0.510	\$15.00	\$125.00	\$0.07	\$0.25	\$3.00	\$2.00	\$50.00			\$30.00
	205.00%	205.00%	205.00%	205.00%	205.00%	205.00%	205.00%		Overhead:	0%	0%	0%	0%	0%	0%	0%	0%			0%
	10%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%		Fixed Fee:	0%	0%	0%	0%	0%	0%	0%	0%			0%
\$184.53	\$150.98	\$124.14	\$87.23	\$93.94	\$150.98	\$63.75	Gross Rate:	\$0.51	\$15.00	\$125.00	\$0.07	\$0.25	\$3.00	\$2.00	\$50.00	\$30.00				
I. Project Management																				
Contract Administration	10	20	5					\$ 5,485.60				60				1	\$ 34.20	\$ 5,519.80		
Subconsultant Coordination								\$ -									\$ -	\$ -		
Workplan Development	1	2	4					\$ 983.05				100	6				\$ 8.50	\$ 991.55		
Subtotal	11	22	9	0	0	0	0	\$ 6,468.65	0	0	0	160	6	0	0	0	\$ 42.70	\$ 6,511.35		
II. Design Phase																				
Preliminary Design																				
Prepare Kickoff Meeting Agenda and Sign In Sheet		1						\$ 150.98									\$ -	\$ 150.98		
Conduct/Attend Kickoff Meeting and On-Site Investigation		16	16					\$ 4,401.92	600	12	2	12		2			\$ 742.84	\$ 5,144.76		
Prepare and Distribute Kickoff Meeting Minutes		2						\$ 301.96				12					\$ 0.84	\$ 302.80		
Sponsor Certification for Consultant Selection			1					\$ 124.14				2					\$ 0.14	\$ 124.28		
Review Record Drawings			2		4			\$ 624.04						50			\$ 150.00	\$ 774.04		
Miscellaneous CAD Work/File Transfers				8				\$ 697.84									\$ -	\$ 697.84		
Develop Design Criteria			2					\$ 248.28				4					\$ 0.28	\$ 248.56		
Paving Limits		1	2	8	4			\$ 1,472.86					10	4			\$ 14.50	\$ 1,487.36		
Horizontal Alignments					4			\$ 375.76				8					\$ 0.56	\$ 376.32		
Vertical Alignments					4			\$ 375.76				8					\$ 0.56	\$ 376.32		
Marking Layout			2		8			\$ 999.80					10	4			\$ 14.50	\$ 1,014.30		
Pavement Design		1	2		8			\$ 1,150.78				16					\$ 1.12	\$ 1,151.90		
Submit Pavement Design Form 5100-1			2					\$ 248.28				8					\$ 0.56	\$ 248.84		
Construction Phasing and Safety Plans		1	4	8	4			\$ 1,721.14					30				\$ 7.50	\$ 1,728.64		
Construction Schedule		1	1					\$ 275.12					30				\$ 7.50	\$ 282.62		
Preliminary Design Report	1	2	8	10	10	8	8	\$ 5,009.15					50		8	2	\$ 472.50	\$ 5,481.65		
Preliminary Design Meeting at FAA	4	4	4	4	4			\$ 1,838.60	50	3							\$ 70.50	\$ 1,909.10		
7460 Forms			2	4	4			\$ 972.96									\$ -	\$ 972.96		
KDHE Permit/SWPPP								\$ -									\$ -	\$ -		
Design Plans																				
Cover				2	1			\$ 268.40					4	1			\$ 4.00	\$ 272.40		
Index of Sheets and General Abbreviations				4	1			\$ 442.86					4	1			\$ 4.00	\$ 446.86		
Estimate of Quantities				4	4			\$ 724.68					4	1			\$ 4.00	\$ 728.68		
Construction Control and Safety Notes		4	4	8	2			\$ 1,986.20					4	1			\$ 4.00	\$ 1,990.20		
General Airport Site Plan			2	8	4			\$ 1,321.88					4	1			\$ 4.00	\$ 1,325.88		
Survey Control Plan								\$ -									\$ -	\$ -		
Safety & Phasing Plans		4	8	8	8			\$ 3,046.40					16	4			\$ 16.00	\$ 3,062.40		
Safety Details				4	4			\$ 724.68					4	1			\$ 4.00	\$ 728.68		
Geometric Layout Plan								\$ -									\$ -	\$ -		
Demolition Plan								\$ -									\$ -	\$ -		
Demolition Details			2	8	4			\$ 1,321.88					4	1			\$ 4.00	\$ 1,325.88		
Grading and Drainage Plan								\$ -									\$ -	\$ -		
Storm Sewer Profiles								\$ -									\$ -	\$ -		
Drainage Details								\$ -									\$ -	\$ -		
Paving Plans			2	8	4			\$ 1,321.88					8	2			\$ 8.00	\$ 1,329.88		
Elevation Plan								\$ -									\$ -	\$ -		
Profile Sheets (6 Sheets)								\$ -									\$ -	\$ -		
Pavement Joint Details			2	8	4			\$ 1,321.88					8	2			\$ 8.00	\$ 1,329.88		
Typical Sections			2	8	4			\$ 1,321.88					8	2			\$ 8.00	\$ 1,329.88		
Cross Sections (15 Sheets)								\$ -									\$ -	\$ -		
Pavement Marking Plan		1	2	8	4			\$ 1,472.86					16	4			\$ 16.00	\$ 1,488.86		
Pavement Marking Details				4	2			\$ 536.80					8	2			\$ 8.00	\$ 544.80		
Specifications																				
Front, Inside, Back Covers					1			\$ 93.94				6					\$ 0.42	\$ 94.36		
Certification Page					1			\$ 93.94				8					\$ 0.56	\$ 94.50		
Table of Contents					1			\$ 93.94				4					\$ 0.28	\$ 94.22		

Design Scope of Services/Fee Estimate

Project: Runway 4-22 Rehabilitation AIP 3-20-0028-32 Date: 20OCT2014
 Location: Hays Regional Airport By: JRB
 Consultant: Page: ___ of 3

Task	Labor Required							Total Labor Cost	Expenses Required									Total Expense Cost	Total Task Cost	
	PIC	PM	Sr. AE	Tech.	Jr. AE	QC	Clerical		Mile	Meals	Hotel	8.5x11	11x17	Plots	Prints	Reports	Ship			
	\$55.00	\$45.00	\$37.00	\$26.00	\$28.00	\$45.00	\$19.00		Rate:	\$0.510	\$15.00	\$125.00	\$0.07	\$0.25	\$3.00	\$2.00	\$50.00			\$30.00
	205.00%	205.00%	205.00%	205.00%	205.00%	205.00%	205.00%		Overhead:	0%	0%	0%	0%	0%	0%	0%	0%			0%
	10%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%		Fixed Fee:	0%	0%	0%	0%	0%	0%	0%	0%			0%
\$184.53	\$150.98	\$124.14	\$87.23	\$93.94	\$150.98	\$63.75	Gross Rate:	\$0.51	\$15.00	\$125.00	\$0.07	\$0.25	\$3.00	\$2.00	\$50.00	\$30.00				
List of Drawings					1			\$ 93.94				4					\$ 0.28	\$ 94.22		
Invitation to Bid				1				\$ 124.14				8					\$ 0.56	\$ 124.70		
Intructions to Bidders				1				\$ 124.14				12					\$ 0.84	\$ 124.98		
Proposal/Sealed Bid				1				\$ 124.14				32					\$ 2.24	\$ 126.38		
Bid Bond				1				\$ 124.14				4					\$ 0.28	\$ 124.42		
Mandatory Contract Provisions				1				\$ 124.14				80					\$ 5.60	\$ 129.74		
Contract				1				\$ 124.14				4					\$ 0.28	\$ 124.42		
Performance Bond				1				\$ 124.14				8					\$ 0.56	\$ 124.70		
FAA General Provisions				1				\$ 124.14				148					\$ 10.36	\$ 134.50		
Special Provisions				1				\$ 124.14				28					\$ 1.96	\$ 126.10		
Table of Contents - Technical Specifications					1			\$ 93.94				4					\$ 0.28	\$ 94.22		
State Wage Rate Requirements					1			\$ 93.94				4					\$ 0.28	\$ 94.22		
Federal Wage Rate Requirements					1			\$ 93.94				4					\$ 0.28	\$ 94.22		
M-101 Mobilization					1			\$ 93.94				8					\$ 0.56	\$ 94.50		
M-102 Maintenance of Traffic					1			\$ 93.94				8					\$ 0.56	\$ 94.50		
P-150 Demolition					1			\$ 93.94				12					\$ 0.84	\$ 94.78		
P-152 Excavation and Embankment					1			\$ 93.94				16					\$ 1.12	\$ 95.06		
P-153 Watering					1			\$ 93.94				8					\$ 0.56	\$ 94.50		
P-156 Temporary Erosion Control					1			\$ 93.94				8					\$ 0.56	\$ 94.50		
P-209 Crushed Aggregate Base Course					1			\$ 93.94				12					\$ 0.84	\$ 94.78		
P-501 Portland Cement Concrete Pavements			1					\$ 124.14				64					\$ 4.48	\$ 128.62		
P-605 Joint Sealing Filler					1			\$ 93.94				16					\$ 1.12	\$ 95.06		
P-620 Runway and Taxiway Painting					1			\$ 93.94				12					\$ 0.84	\$ 94.78		
AC 150/5370-2E					1			\$ 93.94				28					\$ 1.96	\$ 95.90		
Geotech Report					1			\$ 93.94				40				2	\$ 62.80	\$ 156.74		
Divider Sheets					1			\$ 93.94				32					\$ 2.24	\$ 96.18		
90% Submittal																				
Plans		2	2	4	4			\$ 1,274.92				46	23	92		4	\$ 384.50	\$ 1,659.42		
Specifications		4	8				8	\$ 2,107.04							6	2	\$ 360.00	\$ 2,467.04		
Design Report		2	8		4		4	\$ 1,925.84							6		\$ 300.00	\$ 2,225.84		
Prepare Review Meeting Agenda and Sign In Sheet			1					\$ 124.14				12					\$ 0.84	\$ 124.98		
Attend Review Meeting/Field Check		16	16					\$ 4,401.92	600	12	3						\$ 861.00	\$ 5,262.92		
Prepare and Distribute Review Meeting Minutes			1					\$ 124.14				12					\$ 0.84	\$ 124.98		
QA/QC Review						16		\$ 2,415.68				23			2	2	\$ 165.75	\$ 2,581.43		
Written Response to Sponsor and FAA Review Comments		4	2					\$ 852.20				12					\$ 0.84	\$ 853.04		
Final Submittal																				
Plans		1	1	2	2			\$ 637.46				46	23	92		2	\$ 324.50	\$ 961.96		
Specifications		2	4				2	\$ 926.02							6	2	\$ 360.00	\$ 1,286.02		
Design Report								\$ -									\$ -	\$ -		
QA/QC Review						8		\$ 1,207.84								2	\$ 60.00	\$ 1,267.84		
Address Sponsor, FAA, and QC Review Comments		4	2					\$ 852.20				12					\$ 0.84	\$ 853.04		
								\$ -									\$ -	\$ -		
Issued for Bid Submittal																				
Plans		1	1	2	2			\$ 637.46					23	575		4	\$ 1,339.00	\$ 1,976.46		
Specifications					2			\$ 187.88							25		\$ 1,250.00	\$ 1,437.88		
Design Report								\$ -									\$ -	\$ -		
Sponsor Certification for Plans and Specifications			1					\$ 124.14									\$ -	\$ 124.14		
								\$ -									\$ -	\$ -		
Subtotal	5	74	129	128	129	32	22	\$ 57,626.79	1250	27	5	740	337	152	759	53	22	\$ 7,087.55	\$ 64,714.34	
Total Design Phase Fees																			\$ 64,714.34	
III. Bidding Phase																				
Assist with Advertisement		1						\$ 150.98									\$ -	\$ 150.98		
Prepare Plan Holder's List					1			\$ 93.94									\$ -	\$ 93.94		
Distribute NTB to Contractors and Organizations			2					\$ 248.28									\$ -	\$ 248.28		
Prepare Pre-Bid Meeting Agenda, Sign-in Sheet			1					\$ 124.14									\$ -	\$ 124.14		
Conduct Pre-Bid Meeting		2	2					\$ 550.24				50					\$ 3.50	\$ 553.74		
Prepare Pre-Bid Meeting Minutes			2					\$ 248.28				16					\$ 1.12	\$ 249.40		
Answer Questions			8					\$ 993.12									\$ -	\$ 993.12		
Prepare Addenda		1	1	2	2			\$ 637.46				40					\$ 2.80	\$ 640.26		
Prepare Bid Opening Form					1			\$ 93.94									\$ -	\$ 93.94		

Design Scope of Services/Fee Estimate

Project: Runway 4-22 Rehabilitation AIP 3-20-0028-32 Date: 20OCT2014
 Location: Hays Regional Airport By: JRB
 Consultant: Page: ___ of 3

Task	Labor Required							Total Labor Cost	Expenses Required									Total Expense Cost	Total Task Cost	
	PIC	PM	Sr. AE	Tech.	Jr. AE	QC	Clerical		Mile	Meals	Hotel	8.5x11	11x17	Plots	Prints	Reports	Ship			
	\$55.00	\$45.00	\$37.00	\$26.00	\$28.00	\$45.00	\$19.00		Rate:	\$0.510	\$15.00	\$125.00	\$0.07	\$0.25	\$3.00	\$2.00	\$50.00			\$30.00
	205.00%	205.00%	205.00%	205.00%	205.00%	205.00%	205.00%		Overhead:	0%	0%	0%	0%	0%	0%	0%	0%			0%
	10%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%		Fixed Fee:	0%	0%	0%	0%	0%	0%	0%	0%			0%
							Gross Rate:	\$0.51	\$15.00	\$125.00	\$0.07	\$0.25	\$3.00	\$2.00	\$50.00	\$30.00				
Conduct Bid Opening							\$ -										\$ -	\$ -		
Bid Tabulation					2		\$ 187.88					40					\$ 10.00	\$ 197.88		
Review/Copy Bid Packages					2		\$ 187.88				100					1	\$ 37.00	\$ 224.88		
Recommendation of Award			1				\$ 124.14										\$ -	\$ 124.14		
Prepare Grant Agreement		4		2			\$ 778.38				40					1	\$ 32.80	\$ 811.18		
Develop Construction Contracts			2		4		\$ 624.04								8	1	\$ 430.00	\$ 1,054.04		
Sponsor Certification of Construction Contracts			1				\$ 124.14										\$ -	\$ 124.14		
Return Bid Bonds					1		\$ 93.94									4	\$ 120.00	\$ 213.94		
Develop Construction Observation Program							\$ -										\$ -	\$ -		
Subtotal	0	8	20	4	13	0	\$ 5,260.78		0	0	0	246	40	0	0	8	7	\$ 637.22		
Total Bidding Phase Fees																		\$ 5,898.00		
IV. Subcontracts																				
Survey																		\$ -		
Geotech																	\$ 15,500.00	\$ 15,500.00		
Total Subcontract Fees																		\$ 15,500.00		
Total Cost for Design Fee (Items I, II, III & IV)																		\$ 92,623.69		

John Braun

From: Hadel, Dave <dhadel@burnsmcd.com>
Sent: Thursday, October 23, 2014 4:36 PM
To: John Braun
Cc: Fuehne, Jason
Subject: FW: Hays Regional Airport: Runway 4-22 Subsurface Investigation and Petrographic Analysis Update

John:

Below is the email thread which was requesting FAA to consider eliminating the subsurface investigation and petrographic analysis. Both of these items will prove to be valuable in consideration of future rehabilitation projects for Runway 4-22. However, for this current project, they may not be as beneficial.

The FAA is asking us to perform this work and they are providing 90% of the federal funding for the entire project. It is my opinion not to deviate from their decision and continue forward with that element of project work.

Let me know if you have any questions regarding this dialogue.

David G. Hadel, P.E.
Director of Aviation Services
Burns & McDonnell
Aviation and Federal
Direct: (816) 822-3378
Main: (816) 333-9400
Mobile: (816) 805-1941
Fax: (816) 822-3415
www.burnsmcd.com

From: Dan.Wilson@faa.gov [<mailto:Dan.Wilson@faa.gov>]
Sent: Thursday, October 23, 2014 2:56 PM
To: Hadel, Dave
Subject: RE: Hays Regional Airport: Runway 4-22 Subsurface Investigation and Petrographic Analysis Update

Let's get the cores and petrography it can possibly be attributed to the reason for the panel replacement.

Daniel E. Wilson, P.E.
Federal Aviation Administration
Airports Division, ACE-600
Room 364
901 Locust
Kansas City, MO 64106-2325
dan.wilson@faa.gov
816-329-2643

From: Hadel, Dave [<mailto:dhadel@burnsmcd.com>]
Sent: Thursday, October 23, 2014 8:39 AM
To: Wilson, Dan (FAA)

Cc: Fuehne, Jason

Subject: Hays Regional Airport: Runway 4-22 Subsurface Investigation and Petrographic Analysis Update

Dan:

Burns & McDonnell is in the process of procuring the subsurface analysis and petrographic analysis for this project. We received a draft fee of \$12,500 for the subsurface investigation and required traffic control, and \$1,500/petrographic core. Obtaining three cores, the cost is \$14,500. The total price for this effort is \$16,500 (preliminary number). I will receive their final proposal later today.

The costs for these efforts seems to be within reason. However, the planned remediation work probably does not warrant this effort. It is understood that the items requested will provide very good insight to the present condition of the subsurface conditions and a determination of ASR/D-cracking that has been observed on the runway by multiple engineers from the FAA and Burns & McDonnell. It may also be used to support a larger more significant rehabilitation project in future years.

The Sponsor recognizes the importance of making an early determination for these potential conditions. However, they are also attempting to manage their funds and spend them in the best way possible. As a result of the Sponsor's questioning/concern and the risk of seeming repetitive with my previous request, is this investigation needed for the current programmed work?

Thanks,

Dave

David G. Hadel, P.E.
Director of Aviation Services
Burns & McDonnell
Aviation and Federal
Direct: (816) 822-3378
Main: (816) 333-9400
Mobile: (816) 805-1941
Fax: (816) 822-3415
www.burnsmcd.com

Commission Work Session Agenda

Memo

From: Toby Dougherty, City Manager

Work Session: November 6, 2014

Subject: Hays Mall CID Request – Development Agreement and Adopting Ordinance

Person(s) Responsible: Toby Dougherty, City Manager

Summary

If the City Commission chooses to move forward with Hays Mall LLC's request for the creation of a Community Improvement District (CID), the next step in the process would be to draft a Development Agreement. City staff has a few suggested inclusions for the Development Agreement that include specific time constraints for completion of the proposed projects and detailed procedures that outline the process used to submit, review and reimburse for eligible project costs. City staff would also like to hear the Governing Body's thoughts on what should be included in a Development Agreement.

Background

Hays Mall LLC has submitted a petition for the creation of a Community Improvement District on the Mall property that would impose a one-cent sales tax which would be utilized to reimburse Hays Mall LLC for up to \$3.14 million of costs associated with upgrades and improvements to the Mall property. The first step in the statutorily-outlined process was for the City Commission to hold a public hearing on the matter. That public hearing was held at the October 23, 2014 regular meeting. Should the Commission choose to move forward with the process, the next step involves negotiating a development agreement, and ultimately, adopting an ordinance creating the Community Improvement District.

Discussion

As for the ordinance that creates the Community Improvement District, it is a pretty straight forward document that authorizes the imposition of an additional sales tax on a specific piece of property. With regard to Hays Mall LLC's request, the details to be worked out are in the Development Agreement.

Attached to this memo is a draft Development Agreement that has been reviewed by the City's bond counsel. In addition to the standard language, City staff has included:

- A deadline of July 2016 for the completion of projects associated with the request of Hays Mall LLC. The City's CID Policy is not meant to be utilized to save money for future projects. The intent of the CID Policy is to reimburse property

owners for already-incurred fixed costs, so therefore, City staff feels that, if the CID is approved, Hays Mall LLC should enact the improvements as quickly as possible to make the Mall more attractive for perspective tenants. City staff would suggest that all improvements need to be completed within 18 months of the adoption of the Community Improvement District.

- To be reimbursed for eligible costs associated with a Community Improvement District, the applicant must submit detailed expenditure records that need to be reviewed by the City's bond counsel. If not done in an orderly manner, this could impose a lot of extra work on City staff as well as bond counsel. Therefore, City Staff has included language in the Development Agreement stating there will only be two periods where receipts are to be submitted to determine whether or not the costs incurred are eligible. These submissions would be upon completion of Phase I and Phase 2 projects only. City staff feels this would streamline the process and make it much easier for everyone involved.

The City Commission will likely have thoughts and ideas of what should and should not be part of a Development Agreement, and City staff would like to hold discussion on the subject at the November 6, 2014 Work Session. Once the City Commission determines, through consensus, what should be included in a Development Agreement, City staff will work with the attorney representing Hays Mall LLC to make sure both parties are accepting of the suggestions.

Legal Consideration

N/A

Financial Consideration

There are no financial implications in regard to what is being discussed.

Action Requested

City staff is requesting the City Commission determine if it wants to move forward with the CID process. If the consensus is that they do want to move forward with the CID process, City staff is asking for input on the required Development Agreement.

Supporting Documentation

Proposed Development Agreement

9-18-14 Work Session Memo from Finance Director Kim Rupp & Attachments – Initial CID Petition

Draft: October 31, 2014

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF HAYS, KANSAS

AND

HAYS MALL LLC

**FOR IMPLEMENTATION OF THE HAYS MALL
COMMUNITY IMPROVEMENT DISTRICT**

DATED _____, 2014

**DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE
HAYS MALL COMMUNITY IMPROVEMENT DISTRICT**

This Development Agreement for Implementation of the Hays Mall Community Improvement District (the “Agreement”) is entered into by and between the CITY OF HAYS, KANSAS, a municipal corporation (the “City”) and HAYS MALL LLC, a Kansas limited liability company (the “Developer”) (collectively referred to as the “Parties”) and is dated and effective as of the date executed by both parties. In consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Section 1. Purpose.

The Hays Mall Community Improvement District (the “District”) was formed on _____, 2014, by virtue of Ordinance No. ____ enacted by the governing body (the “Governing Body”) of the City pursuant to the Petition for the Creation of a Community Improvement District, as amended, (the “Petition”) initially filed with the City on _____, 2014 in accordance with the Kansas Community Improvement District Act, K.S.A. 12-6a26 *et seq.*, as amended (the “Act”).

The purpose of the District is to undertake and finance District projects to provide economic development related improvements including, but not limited to: (a) interior improvements; (b) exterior improvements; (c) parking lot repair, milling, overlay and sidewalk improvements; (d) demolition; (e) marquee and signage upgrades; (f) remodeled entrances and doors; and (g) exterior landscaping, monuments, islands, irrigation, lighting, and beautification, all to those certain premises known as The Mall at Hays, Kansas and as more particularly described in this Agreement (collectively the “Community Improvement District Projects”).

The purpose of this Agreement is to outline the rights and obligations of the Developer and City as they relate to the District and to provide for the reimbursement to the Developer of certain eligible costs (the “Eligible Project Costs”) of the development of the Community Improvement District Projects from a one percent (1%) sales tax imposed on the selling of tangible personal property at retail or rendering or furnishing of taxable services within the District in accordance with the Act (the “CID Sales Tax”).

The legal description of the real property included within the District boundaries (the “Project Site”) is set forth on **Exhibit A**.

Section 2. The Parties.

(A) The City represents and warrants that it is a municipal corporation and a city of the second class under the laws of the state of Kansas (the “State”), exercising governmental powers and organized and existing pursuant to K.S.A. 14-101 *et seq.* The principal office of the City is: P.O. Box 490, Hays, Kansas, 67601, Attention: City Manager.

(B) The Developer represents and warrants that it is a Kansas limited liability company duly organized and existing under the laws of the state of Kansas. Throughout the term of this Agreement, Developer agrees to maintain its status as a Kansas limited liability company, in good standing and authorized to do business in the State. The principal office and mailing office of the Developer is: Hays Mall LLC, 16 East 34th Street, 16th Floor, New York, NY 10016, Attention: Gabriel Jeidel.

Section 3. Project Costs.

The estimated Costs of the Community Improvement District Projects are \$3,144,936.00 plus certain financing costs, such as interest at the Actual Interest Rate for Borrowed Funds but no more than the WSJ Prime Rate plus 5% as published at the time of this Agreement all as specifically described on **Exhibit B** (collectively the “Project Costs”).

All Project Costs, plus the City Administrative Fee (defined herein), are proposed to be funded by the District (collectively, the “Eligible Project Costs”) will be privately financed as a pay-as-you-go financing (as defined in the Act). In no event shall any of the following costs be considered Eligible Project Costs: (1) costs incurred by the Developer prior to the City’s adoption of the Ordinance creating the District, other than architectural, engineering, legal, financial, and consulting fees; or (2) costs related to the acquisition of personal property, including furnishings and removable equipment. A description of Project Costs and Eligible Project Costs is set forth on **Exhibit B**, attached hereto and incorporated herein. The parties agree that the amounts of the Eligible Project Costs may be adjusted among any of the stated categories, except as provided herein, provided the total Eligible Project Costs to be reimbursed are related to and within the reasonably anticipated scope of the Project.

Developer agrees and covenants that all Eligible Project Costs shall be acquired, constructed and installed and paid in an amount not less than \$3,144,936.00 no later than the completion date of July 1, 2016.

The Developer will be reimbursed for the Eligible Project Costs as moneys are deposited in the District fund through the imposition of the CID Sales Tax, after payment of the City Administrative Fee, all in accordance with **Section 4** of this Agreement.

For purposes of this Agreement, the term “Actual Rate for Borrowed Funds” shall mean and refer to the interest rate being paid by the Developer on its third party loan obligation incurred to pay for the Project Costs. The Actual Rate of Borrowed Funds shall be submitted by the Developer to the City in the form of an affidavit from the Developer. The term “WSJ Prime Rate” shall mean and refer to the interest rate published in *The Wall Street Journal* as the prime interest rate for U.S. commercial banks, as adjusted semi-annually on each January 1 and July 1 as such prime interest rate is adjusted. For purposes of reimbursement of interest under this Agreement, interest shall be calculated on the basis of a 360-day year of twelve 30-day months and shall accrue from the date of the advance by Developer’s lender. All requests for reimbursement of interest shall be on the applicable form attached hereto as **Exhibit C** and accompanied by both the documentation showing the calculation of the interest and such other supporting documentation as the City may reasonably request.

Section 4. Administration of CID Sales Tax.

(A) Subject to and as specified by the terms and conditions of this Agreement, the City agrees to perform or provide for the performance of the administration of the financing of the Eligible Project Costs pursuant to the Act and this Agreement. The City shall provide notification to the Secretary of Revenue of the State of Kansas to commence the collection and reporting of the CID Sales Tax within the District, at the same time and in the same manner provided for the collection of Kansas State Retailers’ Sales Tax.

(B) Pursuant to K.S.A. 12-6a26 *et seq.*, the City shall establish a segregated trust fund to be designated the “Hays Mall Community Improvement District Sales Tax Fund” (the “Fund”), which shall be held and administered by the City in trust for the benefit of the District in accordance with this Agreement. The revenue received by the City as CID Sales Tax shall not be deemed to be City general

funds and shall not be commingled with any funds of the City, except, provided that the City shall be entitled to withdraw 0.5% of each distribution of CID Sales Tax revenue (the “City Administrative Fee”) as such revenues are received by the City from the State Department of Revenue, as payment for the City’s cost of administering the District.

(C) The Developer agrees to provide the City written notice of all current owners and occupants of the District in the Annual Report required by the City’s Economic Development Policy, and at all other times upon the written request of the City. Such Annual Report shall be submitted by each March 1 for the prior calendar year.

(D) Excluding any tenant or subtenant currently operating within the District, the Developer agrees to, and shall cause all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the District to be obligated by written contract (lease agreement or other enforceable document) to:

(i) provide to the City simultaneously with submission to the Kansas Department of Revenue the monthly sales tax returns for their facilities in the District;

(ii) be obligated by written contract (lease agreement or other enforceable document) to provide to the City, annually by each December 31, a tax clearance letter; and

(iii) provide to the City a consent to release information regarding aggregate CID Sales Tax revenues generated within the District to the Developer, any trustee or escrow agent appointed by the City with respect to the CID Sales Tax revenues, and the City’s accountants, financial advisors and legal counsel.

Developer agrees to request the above and foregoing information and documentation from current tenants and subtenants operating within the District, and will use reasonable commercial efforts to incorporate the terms of this **Section 4(D)** into the terms of any lease, sublease, or other document granting property or occupancy rights within the District. The obligations of this subparagraph shall be a covenant running with the land and shall be enforceable against all businesses operating in the District and shall only terminate upon the passage by the City of an ordinance terminating the District. Excluding any tenant or subtenant currently operating within the District, the Developer hereby agrees that each such lease agreement shall provide that the City is an intended third party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against such tenant or purchaser.

(E) Except as provided in this **Section 4(D)(iii)**, and to the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 79-3234 and 79-3657. In furtherance of maintaining the confidentiality of the information provided in this section, the City shall take all reasonable steps necessary to ensure that such information is kept confidential.

Section 5. Reimbursement Procedures.

The City’s agreement to fund Eligible Project Costs is conditioned upon the following:

(A) All costs submitted for reimbursement shall be identified as Eligible Project Costs by this Agreement.

(B) The Developer shall submit to the City Manager an invoice (in substantially the form attached to this Agreement as **Exhibit C**), signed by the Developer, with supporting documentation

identifying the Eligible Project Costs for which the Developer seeks reimbursement. A maximum number of two (2) invoices may be submitted by Developer to the City Manager for approval.

The supporting documentation shall include copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfer or other payment of cash by the Developer for the Eligible Project Costs, lien waivers or other evidence that no mechanic's liens exist with respect to the construction of the Community Improvement District Projects for which reimbursement is sought, and such other documentation as the City shall reasonably request.

The invoice shall contain a certification by the Developer that the costs submitted for reimbursement are for Eligible Project Costs under this Agreement that such expense has been paid by or on behalf of the Developer, and that such expense has not been previously submitted for reimbursement hereunder.

(C) The City Manager shall determine whether the cost submitted is for an Eligible Project Cost within thirty (30) business days of the date the invoice with all necessary documentation is submitted by the Developer. If the City Manager does not provide a response within thirty (30) business days of the date the invoice with all necessary documentation is submitted, the cost submitted on the invoice shall be deemed approved. If the City Manager determines that such cost is not for a Eligible Project Cost under this Agreement or that the invoice is incomplete, the City Manager shall notify the Developer of such determination in writing, setting forth in detail the basis for such denial or such missing documentation. The Developer may appeal such denial to the Governing Body by filing a written request to be heard by the Governing Body with the City Clerk within seven (7) business days of the receipt of the written denial. The Governing Body shall conduct a hearing within thirty (30) days of receipt of such request and render a decision immediately upon the conclusion of such hearing.

(D) If CID Sales Tax revenue is available in the Fund, after payment of the City Administrative Fee, the requested reimbursement shall be paid to the Developer within ten (10) days of the approval by the City Manager or the Governing Body, if required.

(E) If the invoices for Eligible Project Costs submitted and approved exceed the amounts then available in the Fund after payment of the City Administrative Fee, such invoices shall be paid as CID Sales Tax revenue becomes available. The City will make monthly payments on any outstanding Eligible Project Costs approved by the City for reimbursement as CID Sales Tax revenue becomes available, such payments being due on the first day of each month as long as the CID Sales Tax remains in effect, except, provided that the City shall have no obligation to make any payments to the Developer under this Agreement so long as (i) the Developer is in default of any provision of this Agreement or (ii) any assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the District (except for existing tenants or subtenants) are not in compliance with the provisions of **Section 4(D)** of this Agreement.

Section 6. City and Other Governmental Permits.

Before beginning construction of any aspect of the Community Improvement District Projects, the Developer shall, at its expense, obtain or cause to be obtained any necessary permits or licenses which may be required by the City, Ellis County or any other governmental agency having jurisdiction over the Community Improvement District Projects. The City agrees to provide all customary assistance to the Developer in obtaining construction permits issued by the City.

Section 7. Rights of Access.

For purposes of insuring compliance with this Agreement, representatives of the City shall have rights of access to the Community Improvement District Projects, without charges or fees, during normal construction hours during the period of construction. Representatives of the City shall have such access to inspect work performed or being performed in the construction of the Community Improvement District Projects. City representatives shall carry proper identification, insure their own safety and shall not interfere with construction activity unless such activity is apparently in violation of this Agreement, City codes, state or federal regulations, statutes or other law. The right of access granted by this Section shall be in addition to the City's rights to access the Community Improvement District Projects in the exercise of its proper authority to regulate for and provide for public safety.

Section 8. No Obligation to Build.

Nothing contained in this Agreement shall require Developer to construct any of the Community Improvement District Projects. Notwithstanding the foregoing, as set out in **Section 5** above, Developer shall only be entitled to seek funding of those Eligible Project Costs actually incurred.

Section 9. Default and Remedies.

(A) The failure or delay by either of the Parties to this Agreement to perform any term, covenant or provision of this Agreement required of such party, shall be a default under this Agreement, subject to rights of cure, as specified below.

(B) Any party to this Agreement claiming a default (the "Claimant") shall give written notice of such claimed default to the other party, describing such default. Such notices shall be given at the addresses of the Parties stated in **Section 2** of this Agreement.

(C) A Claimant shall not institute legal proceedings against the other party nor be entitled to damages if, within fourteen (14) days from the receipt of a notice of claimed default, the other party undertakes acts to cure, correct or remedy such claimed default, proceeds with due diligence to complete such cure, correction or remedy and such cure correction or remedy is completed within thirty (30) days of the date such party received a notice of default, provided, however, if such default requires more than thirty (30) days to correct, the nonperforming party shall not be deemed in default hereunder if such party commences curing the default within fourteen (14) days after receipt of written notice thereof and diligently prosecutes the cure to completion.

Upon the occurrence and continuance of a default by the Developer, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate the Developer's rights under this Agreement.

2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such default.

Upon termination of this Agreement for any reason, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or Eligible Project Costs otherwise incurred or paid by Developer.

If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 10. Governing Law, Jurisdiction.

(A) This Agreement shall be governed by, interpreted and enforced pursuant to the laws of the state of Kansas.

(B) The Parties agree that any legal actions arising out of this Agreement will be instituted in the District Court of Ellis County, Kansas or, in the case of federal jurisdiction, in the Federal District Court of the District of Kansas.

Section 11. Rights and Remedies Cumulative, Waivers.

Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties shall be cumulative, and the exercise by one party of one or more such rights shall not preclude the exercise by it, at the same or different times, of any other rights or remedies specified herein. Any failure or delay by either party in asserting any of its rights and remedies as to any default hereunder shall not operate as a waiver of such default or of any rights or remedies specified hereunder, or deprive either party of its right to assert and enforce any such right or remedy.

Section 12. Amendments.

The Developer and the City agree to cooperate and consider reasonable requests for amendments to this Agreement, provided that, any such amendments must be approved by the Governing Body and the Developer, shall be in writing, and shall not substantially alter the basic business terms of this Agreement.

Section 13. Term.

Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect for the earlier of twenty-two (22) years from the date of approval of the Project or until all Eligible Project Costs have been reimbursed to the Developer.

Section 14. Transfer and Assignment.

The Developer may assign this Agreement and the rights, duties and obligations hereunder and may assign or pledge its rights to payments due to the Developer pursuant to **Section 5** of this Agreement, in whole or in part, upon a written request of the Developer with a copy of the proposed assignment and assumption agreement, only with the express prior written consent of the City evidenced by a resolution approved by the governing body of the City, including a copy of any agreement evidencing such assignment or pledge to such related entity. The foregoing restrictions on assignment shall not apply (a) to any security interest granted to secure indebtedness to any construction or permanent lender, and (b) to the sale, rental and leasing of portions of the District for the uses permitted under the terms of this Agreement or in the ordinary course of the Developer's business. No sale, rental or lease of the Project Site, in whole or in part, shall be deemed to be an assignment of the Developer's rights to payments pursuant to this Agreement, unless such assignment is expressly made by Developer with the express prior written consent of the City evidenced by a resolution approved by the governing body of the City and recorded in the Office of the Register of Deeds of Ellis County, Kansas.

The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Ellis County, Kansas. This Agreement shall be recorded by the Developer at its expense, and proof of recording shall be promptly provided to the City.

Section 15. Notices, Demands, Communications Among Parties.

Written notices, demands and other communications between the City and Developer shall be deemed delivered under this Agreement if given by personal service, registered or certified mail, postage prepaid and return receipt requested, or by overnight courier, to the principal offices of the City and the Developer set forth in **Section 2** of this Agreement.

Section 16. Entire Agreement.

This Agreement is executed in duplicate originals, each of which shall be considered an original. This Agreement includes pages 1 through 9, and Exhibits A, B, and C which constitutes the entire agreement and understanding of the Parties.

This Agreement supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all of any part of the subject matter of this Agreement.

Section 17. Severability.

The invalidity or inability to enforce any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

Section 18. No Liability of City Officials or Employees.

All liabilities under this Agreement on the part of the City are solely corporate liabilities of the City, and, no officer, employee, or agent of the City shall have any personal or individual liability under this Agreement for anything done or omitted to be done by the City hereunder.

Section 19. Mutual Assistance.

The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 20. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 21. Indemnification of City.

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the “City Indemnified Parties”) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys fees, resulting from, arising out of, or in any way connected with:

1. the Developer’s actions and undertaking in implementation of the Project Plan or this Agreement; and
2. the negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project.
3. any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act (“RCRA”; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer’s activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an “Action”) is begun or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event.

C. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

Section 22. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 23. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 24. Recordation of Agreement. The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Ellis County, Kansas. This Agreement shall be recorded by the Developer at Developer's sole cost and expense, and proof of recording shall be provided to the City.

[Remainder of page intentionally left blank. Signature page follows.]

EXHIBIT A
Legal Description

TRACT A:

A tract of land in HAYS PLAZA FIRST ADDITION to the City of Hays, Ellis County, Kansas, described as follows: Beginning at the intersection of the East line of U.S. Highway 183 and the South line of 33rd Street; thence East along the South line of 33rd Street a distance of 918.2 feet to intersect the West line of Broadway Avenue; thence South along the West line of Broadway Avenue, a distance of 1,220.56 feet to intersect the North line of 29th Street; thence West along the North line of 29th Street a distance of 925.25 feet to intersect the East right-at-way line of U.S. Highway 183; thence North along the East line of U.S. Highway 183 a distance of 1,216.28 feet to the point of beginning;

AND

TRACT B:

That portion of the eastern one-half (1/2) of U.S. Highway 183 right-at-way located between the South line of 33rd Street and the North line of 29th Street, all in the City of Hays, Ellis County, Kansas.

EXHIBIT B
Project Costs

EXHIBIT C

[Form of Developer’s Invoice for Reimbursement]

**INVOICE FOR REIMBURSEMENT
FOR ELIGIBLE PROJECT COSTS**

City of Hays, Kansas
Attention: City Manager

You are hereby requested by the undersigned, the Authorized Developer Representative, acting on behalf of Hays Mall LLC, a Kansas limited liability company (the “Developer”) to disburse funds held by you in Hays Mall Community Improvement District Sales Tax Fund created pursuant the authority in K.S.A. 12-6a26 *et seq.* and set forth in the Development Agreement Between the City of Hays, Kansas and Hays Mall LLC, for Implementation of the Hays Mall Community Improvement District, dated _____, 2014 (the “Agreement”) to reimburse expenditures made by the Developer for Eligible Project Costs (as defined in the Agreement) as described on and in the amounts set forth in the Reimbursement Schedules attached to this invoice and incorporated herein by this reference (the “Reimbursement Schedules”).

I hereby certify that the amounts requested in the attached Reimbursement Schedules have been paid by the Developer in payment of Eligible Project Costs as defined in the Agreement.

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the Hays Mall Community Improvement District Sales Tax Fund.

I have attached to the Reimbursement Schedules copies of the contract, invoice or other billing for the Eligible Project Costs for which Developer seeks reimbursement, along with copies of the Developer’s check, evidence of wire transfers or other evidence of payment by or on behalf of the Developer of the costs of such Eligible Project Costs and hereby certify that such copies are true and accurate copies of the original documents.

All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.

All of the Developer’s representations set forth in the Agreement remain true and correct as of the date hereof.

DATED _____, 20____.

Developer

Pursuant **Section 5** of the Agreement, I hereby request reimbursement of the amounts specified below and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete and that Developer has previously paid as an Eligible Project Costs:

REIMBURSEMENT SCHEDULE

<u>Payee Name</u>	<u>Date of Payment by</u> <u>Developer</u>	<u>Purpose or Nature of Payment</u>	<u>Amount</u>
-------------------	---	-------------------------------------	---------------

Initials: Developer

Note: Copies of bills, contracts, checks and other evidence reflecting the amounts shown above (as described in Section 5 of the Agreement) should be attached to this Reimbursement Schedule.

Commission Work Session Agenda

Memo

From: Kim Rupp, Director of Finance

Work Session: September 18, 2014

Subject: Review of Petition and Application for the Hays Mall Community Improvement District

Person(s) Responsible: Kim Rupp, Director of Finance

Summary

On August 11, 2014, Hays Mall LLC submitted a petition to create a Community Improvement District (CID), an application for economic development incentives, a cost benefit analysis and the required application fee. All materials have been reviewed by bond counsel, Gina Riekhof, Gilmore & Bell, P.C. and are found to meet all the requirements of Kansas law and the City of Hays Economic Development Policy. Staff recommends the commission set a public hearing to create the Hays Mall CID.

Background

The petition seeks to create a CID encompassing the area bounded on the north by E 33rd, on the west by Vine, on the south by E 29th, and on the east by the access road on the east side of the mall. The proposed CID would impose a new 1% sales tax used to reimburse the developer, Hays Mall, LLC on a pay-as-you-go basis for up to \$3,144,936 of costs incurred to make improvements to the Mall which includes:

- *interior mall improvements/renovation
- *parking lot 1.5" mill 2" overlay
- *exterior LED lighting
- *demolition of the bank drive thru and Montana Mikes
- *exterior insulation finishing system
- *mall entrances upgrades
- *landscaping

This would make the total sales tax 9.4% at all the Hays Mall stores.

Discussion

Bond counsel, Gina Riekhof, Gilmore & Bell P.C. has reviewed all the documentation submitted. Her detailed memo is attached. The owners have signed the petition and all other aspects of it comply with the requirements of K.S.A. 12-6a26 and is a valid petition for a CID under Kansas law.

All general aspects of Section 9 regarding CIDs in the Eco Devo Policy have been met. However, detail and clarification will need to be made concerning the interior furnishings

given they are not eligible for reimbursement as per policy. That can be addressed in the Development Agreement.

Once the hearing is held and if approved an ordinance published the next step would be to consider a Development Agreement to specify all of the terms and conditions of the project including the eligible and ineligible costs.

Legal Consideration

The City Attorney has reviewed the Memorandum, and based upon the fact that bond counsel has approved the procedure and reviewed all documents, there are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

The application fee of \$1000 and the deposit of \$5000 have been paid by Hays Mall LLC. The \$5000 is retained to pay for the City's out of pocket costs associated with the City's review of the application including costs of legal counsel. The Eco Devo Policy provides that if these costs incurred exceed the fee collected, the applicant shall reimburse the City for the additional.

Options

The City Commission has the following options:

- Move the petition forward by setting a hearing date on the creation of the Hays Mall CID
- Decline the petition for the Hays Mall CID
- Provide other direction to city staff

Recommendation

Move the petition forward by setting a hearing date on the creation of the Hays Mall CID.

Action Requested

Move the petition forward by setting a hearing date on the creation of the Hays Mall CID.

Supporting Documentation

Memo from Gina Riekhof, Gilmore & Bell, P.C.
Petition and application package from Hays Mall LLC
City of Hays Economic Development Policy



816-221-1000 MAIN
816-221-1018 FAX
GILMOREBELL.COM

GILMORE & BELL PC
2405 GRAND BOULEVARD, SUITE 1100
KANSAS CITY, MISSOURI 64108-2521

ST. LOUIS
WICHITA
OMAHA | LINCOLN

TO: TOBY DOUGHERTY, CITY MANAGER
FROM: GINA RIEKHOF, GILMORE & BELL, P.C.
DATE: SEPTEMBER 8, 2014
RE: HAYS MALL COMMUNITY IMPROVEMENT DISTRICT APPLICATION

On August 11, 2014, Hays Mall LLC submitted a Petition to create a Community Improvement District (“CID”), an Application for Economic Development Incentives, a Cost Benefit Analysis and the required application fee. At the City’s request, we have reviewed these materials to determine whether the Petition complies with Kansas law and whether the Application meets requirements contained in the City’s Economic Development Policy.

Summary of the Petition. The Petition seeks to create a CID encompassing the area generally bounded on the north by E 33rd Street, on the west by Vine Street, on the south by E 29th Street, and on the east by the access road that runs north-south on the east side of the mall. The proposed CID would impose a new 1% sales tax on sales within the CID boundaries (the “CID Sales Tax”). The CID Sales Tax would be used to reimburse the Developer, Hays Mall, LLC, on a pay-as-you-go basis, for up to \$3,144,936.00 of costs incurred to make certain improvements to the Mall and the surrounding property, as further described in the Petition.

Compliance with State Law. City staff has confirmed that Hays Mall LLC and Stanley E. Dreiling are the current owners of record of all of the real estate to be included in the CID. These owners have signed the Petition. All other aspects of the Petition comply with the requirements set forth in K.S.A. 12-6a26 *et seq.* Thus, the Petition is a valid petition to create a CID under Kansas law.

Compliance with the City’s Economic Development Policy. The Governing Body will need to determine whether the project meets the general incentive standards set forth in Section 1 of the City’s Economic Development Policy. An argument may be made that the project would expand existing industry, and/or retain businesses which are good corporate citizens and which add to the quality of life in Hays.

Based on representations made in the Application, the project appears to meet the criteria established in Section 4 of the Policy for retail development incentives (> 50,000 square feet, at least \$10,000,000 in annual retail sales and at least 25 employees).

The project may meet the specific criteria for creating a CID established in Section 9 of the Policy. The Application suggests that the project will develop new businesses, strengthen economic development and employment opportunities, enhance tourism amenities, and upgrade older retail real estate. The total reimbursable expenditures for the project exceed \$250,000. It is unclear whether the project uses higher standards for design than what is currently required by City guidelines. While the project is not

contemplated to extend public infrastructure to areas not currently served, Phase II of the project does contemplate landscape improvements within the Vine Street right-of-way.

The proposed pay-as-you-go method of financing meets the City’s Policy requirements.

The scope of the project may meet the City’s Policy requirements. While the general description of the project broadly references “interior improvements” and “exterior improvements”, Item (8) on Exhibit C more specifically references “Interior Renovation/Finish.” The Policy provides that interior furnishings are not eligible for reimbursement. It is unclear whether the Petition contemplates any interior furnishings or other ineligible costs to be reimbursed from CID Sales Tax proceeds.

It should be noted that the City and the Developer may more clearly specify eligible and ineligible costs and specific design standards in a Development Agreement related to the Project.

Next Steps. If the Commission determines to move forward with further consideration of the Petition, the Commission will need to adopt a Resolution calling a public hearing on the creation of the CID. A draft Resolution is attached.

Once a Resolution calling the public hearing has been adopted, the resolution must be published once a week for two consecutive weeks and sent via certified mail to all owners of property within the proposed CID. The hearing may be held more than seven days after the final publication and ten days after delivery of the certified mail notice to property owners.

Following the public hearing, the Commission may consider an ordinance to create the CID and a resolution approving the Development Agreement.

If the Commission wishes to proceed with further consideration of the Petition, it is also advisable to direct staff to begin negotiations with the Developer on a Development Agreement to specify all of the terms and conditions of the project, eligible and ineligible costs, and the process for pay-as-you-go reimbursement to the Developer. The Developer has submitted a draft Development Agreement for consideration. Neither staff nor Gilmore & Bell have reviewed the draft Development Agreement to date, but will do so upon direction from the Commission about how to proceed.

If the Commission wishes to proceed, the proposed schedule for further consideration of the CID could look like this:

September 18	Work session
September 25	Commission approve resolution calling public hearing
September 26	Mail notice provided to property owners
September 29	First publication of notice
October 6	Second publication of notice
October 16	Work session to consider Development Agreement and Ordinance establishing CID
October 23	Public Hearing; Commission consider approval of Ordinance establishing CID and resolution approving Development Agreement

LAW OFFICES
BARBER EMERSON, L.C.

1211 MASSACHUSETTS STREET
POST OFFICE BOX 667
LAWRENCE, KANSAS 66044
(785) 843-6600
FACSIMILE (785) 843-8405

JOHN A. EMERSON
BYRON E. SPRINGER
RICHARD L. ZINN
CALVIN J. KARLIN
JANE M. ELDREDGE
MARK A. ANDERSEN*
TERRENCE J. CAMPBELL*
MATTHEW S. GOUGH*

LINDA K. GUTIERREZ
CATHERINE C. THEISEN

RICHARD A. BARBER
(1911-1998)

GLEE S. SMITH, JR.
OF COUNSEL

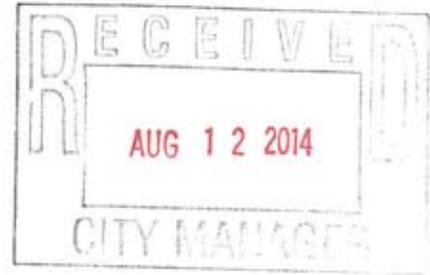
Matthew S. Gough
Email: mgough@barberemerson.com

*ADMITTED IN KANSAS AND MISSOURI

August 11, 2014

VIA FEDERAL EXPRESS

Mr. Toby Dougherty
City Manager
1507 Main Street
Hays, Kansas 67601



Re: Hays Mall Community Improvement District ("CID")

Dear Mr. Dougherty:

On behalf of the Hays Mall LLC, I am pleased to enclose a fully executed Petition and related documents to create a CID at the Hays Mall, together with an application fee in the amount of \$6,000.00.

We look forward to hearing from you and appreciate the opportunity to work with the City of Hays on this project.

Very truly yours,

BARBER EMERSON, L.C.


Matthew S. Gough

MSG:plh

Enclosures

cc: Hays Mall LLC
DP Management, LLC
Gina Riekhof, Gilmore & Bell, P.C.

-PETITION

**FOR THE CREATION OF THE HAYS MALL
COMMUNITY IMPROVEMENT DISTRICT**

TO: The Governing Body of the City of Hays, Kansas (the "Governing Body")

The undersigned, being the owners of record, whether resident or not, of more than 55% of the land area contained within the hereinafter described proposed Community Improvement District (the "District") to be located within the city of Hays, Kansas (the "City"), do hereby request that the Governing Body create such District and authorize the construction of the District project improvements herein after set forth, all in the manner provided by K.S.A. 12-6a26 *et seq.* (the "Act"). In furtherance of such request, the petitioners state as follows:

General Nature of the Proposed District Project

The real estate being improved by this Project includes the commercial property generally known as the Mall at Hays, and a portion of public right-of-way located along the Mall's western property line, along Vine Street. The general nature of the proposed District project (the "Project") to be constructed within the District includes but is not limited to: (a) interior improvements; (b) exterior improvements; (c) parking lot repair, milling, overlay and sidewalk improvements; (d) demolition; (e) marquee and signage upgrades; (f) remodeled entrances and doors; and (g) exterior landscaping, monuments, islands, irrigation, lighting, and beautification, all to those certain premises more particularly described in this Petition.

Estimated Costs of the Proposed District Projects

The total estimated cost of the proposed Projects is \$3,144,936.00 plus reimbursable interest, as more particularly set forth in Exhibit C, attached to and, by reference, incorporated in this Petition, all of which plus the City's administrative costs is proposed to be funded by the District ("Reimbursable Project Costs").

Proposed Method of Financing the Proposed Projects

The Project will be privately financed. The Reimbursable Project Costs will be financed on a pay as you go basis, i.e., the Reimbursable Project Costs will be paid for by the Developer without the issuance of notes or bonds by the City, and the Developer will be reimbursed for the Reimbursable Project Costs as moneys are deposited in the District fund through the imposition of a Community Improvement District sales tax (the "CID Sales Tax").

Proposed Amount and Method of Assessment

There will be no special assessments on property within the boundaries of the proposed District to pay the costs of the Projects described by this Petition.

Proposed Amount of Community Improvement District Sales Tax

A CID Sales Tax will be imposed in the amount of 1.0% on the selling of tangible personal property at retail or rendering or furnishing of taxable services within the proposed District.

Boundaries of Proposed Community Improvement District

The proposed District is bounded by the center right-at-way line of U.S. Highway 183 (Vine Street), to the West, the South line of 33rd Street, to the North, the West line of Broadway Avenue, to the East, and the North line of 29th Street, to the South. The legal description of the proposed District is set forth on **Exhibit A** attached hereto and incorporated by reference herein. A map generally outlining the boundaries of the proposed District is attached as **Exhibit B** hereto, and incorporated by reference herein.

Notice to Petition Signers

The names of the signers of this Petition may not be withdrawn from this Petition by the signers hereof after the Governing Body commences consideration of this Petition, or, later than seven (7) days after the filing hereof, whichever occurs first. The signers of this Petition consent to any assessments to the extent described herein without regard to benefits conferred by the Projects.

[Balance of Page Intentionally Left Blank]

EXHIBIT A

LEGAL DESCRIPTION

TRACT A:

A tract of land in HAYS PLAZA FIRST ADDITION to the City of Hays, Ellis County, Kansas, described as follows: Beginning at the intersection of the East line of U.S. Highway 183 and the South line of 33rd Street; thence East along the South line of 33rd Street a distance of 918.2 feet to intersect the West line of Broadway Avenue; thence South along the West line of Broadway Avenue, a distance of 1,220.56 feet to intersect the North line of 29th Street; thence West along the North line of 29th Street a distance of 925.25 feet to intersect the East right-at-way line of U.S. Highway 183; thence North along the East line of U.S. Highway 183 a distance of 1,216.28 feet to the point of beginning;

AND

TRACT B:

That portion of the eastern one-half (1/2) of U.S. Highway 183 right-at-way located between the South line of 33rd Street and the North line of 29th Street, all in the City of Hays, Ellis County, Kansas.

EXHIBIT B

MAP OF HAYS MALL CID BOUNDARY

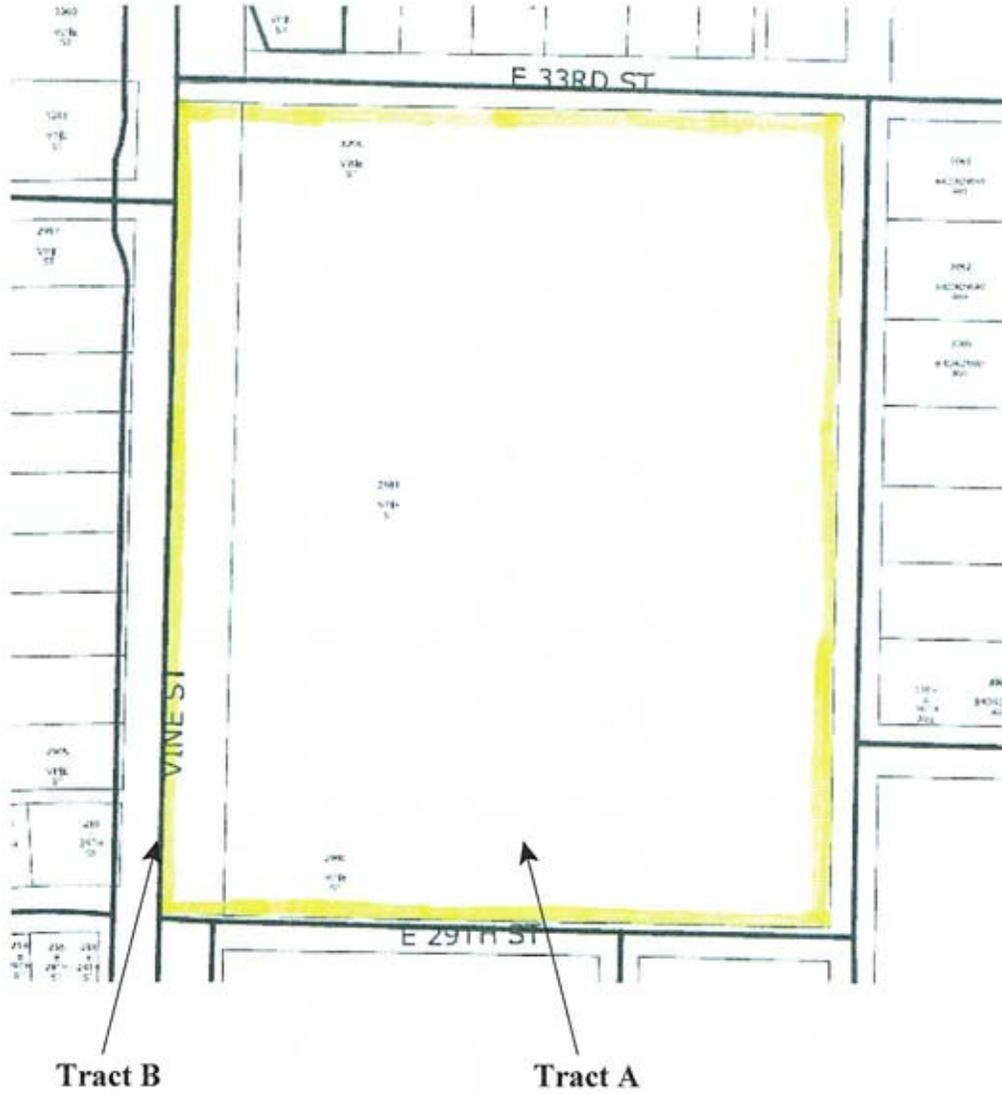


EXHIBIT C
REIMBURSABLE PROJECT COSTS

[Attach Reimbursable Project Costs]

Estimated Hays Redevelopment Costs As of June 25, 2014

		<u>Hard Costs</u>		
			<u>Phase 1</u>	<u>Phase 2</u>
1) Interior Mall Improvements	Lighting (LED)		\$102,400	
	Flooring (Tile)		\$378,456	
	Misc.		\$29,000	
2) Parking Lot 1.5" mill 2" overlay			\$400,000	
3) Exterior Lighting (LED)			\$136,900	
4) Demolition	Bank Drive Thru		\$15,000	
	Montana Mikes		\$25,000	
5) Exterior Insulation Finishing System (EIFS)				\$400,000
6) Mall Entrance	Main Entry			\$25,000
	4 Sets of Side Entries			\$50,000
7) Landscapes/New Islands	Irrigation			\$170,000
	Curb and Gutter			
	Plantings			
	Seating			
	Trash Receptacle			
8) Interior Renovation/Finish				\$ 1,000,000
9) Contingency			\$56,340	\$32,250
10) General Conditions/Supervisions/Constr. Mgmt.			\$56,340	\$32,250
	Total Hard		\$1,199,436	\$1,709,500
		<u>Soft Costs</u>		
11) City of Hays CID Application Fee	CID Application Fee		\$1,000	
	Deposit for City's Attorney's Fees		\$5,000	
12) Fees and Expenses of Consultants	Planners, Attorneys, and Financial Consultants		\$80,000	\$12,000
	Architectural and Engineering Fees		\$45,000	
13) Financial Costs	Lender Finance Charges and Fees 1%		\$13,000	\$8,000
	Construction Period Interest		\$50,000	\$22,000
	Total Soft		\$194,000	\$42,000
	Total		\$1,393,436	\$1,751,500
Total Project Cost				\$3,144,936

Note: The above costs are estimates only and exclude reimbursable post-construction financing costs, which are also requested for reimbursement. Cost estimates are based on prices for goods and services in 2014, and thus the actual cost incurred over multiple years may be higher. CID Costs shall not be limited to the cost estimates above, but shall include all actual costs incurred directly related to the Hays Mall CID Project described above, including construction and associated design and other soft costs, plus interest as set forth in the Development Agreement to be executed between the Developer and the City. The amounts set forth for any particular line item in such column shall not proceed. Rather, amounts may be moved among the line items shown above.

CITY OF HAYS APPLICATION FOR ECONOMIC INCENTIVES

I. GENERAL INFORMATION

1. Hays Mall LLC 2014
Name of Applicant Firm Date of Request
2. Local Address 785-843-6600
2938 Vine Street Telephone Number of Primary Contact
- Hays, Kansas 67601 785-843-8405
Fax Number
mgough@barberemerson.com
e-mail address
- Headquarters Address
Attn: GJ Realty, 49 W. 37th St., 9th Floor 212-889-4417
Telephone Number
- New York, NY 10018 Same as above
Fax Number
gjeidel@aol.com
e-mail address
3. Names and titles of the corporate principal officers and directors including local principal officers and/or management personnel, if known, of the applicant:
- | | |
|-------------------------------|---|
| <u>Gabriel Jeidel</u>
Name | <u>Manager of Hays Mall LLC</u>
Title |
| <u>Terry Clauff</u>
Name | <u>CEO, DP Management, LLC, Property Mgr</u>
Title |
| <u>Josh Vickery</u>
Name | <u>Specialist, DP Management, LLC</u>
Title |
| <u>Matthew Gough</u>
Name | <u>Attorney, Barber Emerson, L.C.</u>
Title |
4. How long has the firm been in business? Hays Mall LLC acquired the Mall in November 2006. DP Management, LLC has professionally managed the Mall since that time.
5. Has the applicant or any principal thereof:
Been convicted or any crime other than a traffic violation in the past ten (10) years?
 Yes X No
- Had Federal or State tax liens filed against them? Yes X No
- Had a court judgment rendered against them that remains unpaid? Yes X No
- Been declared insolvent, bankrupt or been in receivership? Yes X No

Filed an application for tax abatements or incentives in another community?

Yes No

The name, address and telephone numbers of two banking or credit references:

1. Maureen J. Zegler, First Vice President Regional Manager, Valley National Bank, 275 Madison Avenue, New York, NY 10016, (646) 329-0503.
2. Terry Clauff, CEO, DP Management, LLC, 11506 Nicholas St., #100, Omaha, NE 68154, (402) 493-2800.

6. Names and addresses of all persons or firms that will be listed as owner(s) of the property to receive incentives:

<u>Hays Mall LLC, its assigns</u>	<u>Same as above</u>
Name	Address
_____	_____
Name	Address
_____	_____
Name	Address
_____	_____
Name	Address
_____	_____

7. Provide a brief history of your company, including the types of developments completed (for commercial developments, please list names of retailers and service firms):

Hays Mall LLC is managed by Mr. Gabriel Jeidel. His companies, including GJ Realty, own or control several dozen shopping centers in the United States, as summarized on the enclosed summary of Jeidel Shopping Center Holdings.

8. Describe in general terms the legal structure of your business. Specifically indicate how your business is organized (i.e., corporation, partnership, etc.), where the entity is domiciled, ownership, subsidiaries or affiliates and any other information necessary to understand how you are legally organized.

Hays Mall LLC is a Kansas limited liability company in good standing in the State of Kansas. See attached Certificate of Good Standing.

9. Not applicable.

10. Attach to this application the names, locations and contacts of other governments from which you have received or applied for economic incentives, including but not limited to Tax Increment Financing (TIF), Transportation Development District (TDD) bonds, STAR bonds, tax abatements and/or industrial revenue bonds if applicable.

check here if **NOT** applicable.

II. NATURE OF THE IMPROVEMENTS

1. Location of improvements: See attached CID Petition.

2. Land to be purchased: See attached CID Petition.

sq. feet or acres _____

value/purchase price: _____

3. New construction or modification: See attached CID Petition.

sq. feet: _____ Cost: \$ _____

Identify Construction:

4. New Machinery and Equipment subject to personal property taxes (include approximate purchase dates and estimated useful life): See attached CID Petition.

Description: _____

Cost: \$ _____

5. Please state the reason for the establishment of the new facility or the expansion or replacement of the existing facility:

The Mall at Hays was originally constructed in the mid-1970's, and is part of the "North Vine District," as defined in the City of Hays, Kansas 2012 Comprehensive Plan. The Plan recognizes that the Mall remains an important anchor for Hays, and that the Mall is in need of contemporary commercial development and site enhancements to help protect the Mall's value. Although the Mall continues to be a major retail center in Hays, the aging condition of the Mall is negatively impacting the Mall's ability to attract new retailers and out-of-town visitors. The Project includes landscaping improvements within the Vine Street right-of-way as part of Phase II. As a major component of the North Vine District, which stands as a gateway to Hays and represents visitors' first contact with the city, improving the appearance and vibrancy of the Mall is a primary goal of the Comprehensive Plan.

The proposed CID Project, as described in more detail in the CID Petition, helps reinforce the North Vine District's role as the gateway to Hays by implementing a number of the Comprehensive Plan's recommendations. For example, the Project includes a new landscaping element, including improvements in the Vine Street right-of-way, parking lot, and sidewalk reconfiguration, similar to the conceptual renderings enclosed with this Application. The redesigned parking lot advances the Plan's goal of creating a walkable, aesthetically pleasing gateway. The CID Project enables the Applicant to upgrade and modernize the exterior and interior of the Mall, in an effort to re-energize the Mall as a regional attraction and promote further infill development of the site.

This application satisfies the City's development policy for retail development. The Mall exceeds 50,000 square feet, generates greater than \$10,000,000 in annual retail sales, and employs more than 25 employees.

6. What are the approximate starting and completion dates for the project? The completion date is defined as the date you will be ready to utilize the new or expanded facility.

1st Quarter 2015 or earlier
Start Date

Year end 2017 or earlier
Completion Date

III. PROPOSED USE AND ECONOMIC BENEFIT

1. What type of new or expanded business activity does the applicant propose?

The CID Project enables the revitalization of the Mall by remodeling and rehabilitating the physical facility, which activities promote the attraction of new tenants to the Mall and the potential for increased retail revenue. The improvements will increase the tax base and will promote increases in retail sales at the Mall.

2. List the type of retail or service firm to be located in the proposed development (include details of the nature and scope of the operation of the business):

In addition to existing retailers and tenants of the Mall, the Project increases the likelihood that the vacant and underdeveloped portions of the Mall will be utilized.

3. What percentage of the facility will the applicant occupy? 0 %

4. Do any of the proposed retailers or service firms have a product or process that may pose or create an environmental hazard when it is sold, destroyed or discarded?

No.

5. Please list all new employees and proposed wages, excluding fringe benefits, by the job titles included in the Annual Wage Survey prepared by the Kansas Department of Human Resources, if possible. Not applicable.

Category Full-time Employees	Job Title	Salary Range	# New Employees	# of Transfers	Avg. Annual Salary	Date Hired
Management						
Professional						
Technical						
Clerical						
Production/ Assembly						

Category Part-time employees	Job Title	Salary Range	# New Employees	# of Transfers	Avg. Annual Salary	Date Hired

6. What are the employer's share of fringe benefits including health insurance but excluding vacation, holidays, and sick leave, as a percentage of annual salary by employee category. Also indicate the percentage of health insurance cost paid by the employer.

Category	Fringe Benefit %	Health Insurance (% Paid by Employer)
Management		
Professional		
Technical		
Clerical		
Production/Assembly		

Note: Percentage varies with salary level if all employees receive the same benefit package.

7. Briefly describe your medical, vacation, sick leave and retirement benefits. (Attach any appropriate benefit summary publications if applicable)

Not applicable. _____

8. Provide a breakdown of your annual operating expenses. Indicate the percentage of total annual operation expenses that will be spent locally within Ellis County for each item. For firms expanding their facilities and operations in Ellis County, indicate the current annual operating expenses and provide a projection for the incremental expenses after the expansion. For firms planning to newly locate in Ellis County an accurate projection of future annual operational expenses need to be provided.

Type of Expense	Actual ¹	Projected Total ²	% Spent in Ellis County	
	\$ Amount	\$ Amount	Actual %	Projected Total %
Professional services (legal, accounting, advertising, etc.)				
Business service (training, maintenance)				
cleaning services				
transportation				
office supplies				
material and goods				
other (specify)				

Annual Operational Expenses³

Actual Expenses
Subtotal \$ _____

IV. TAX ABATEMENT INFORMATION (not applicable to Retail Development; complete only if requesting property tax abatement).

A. Amount or percentage of tax abatement requested and duration: _____

B. In-lieu-of-tax payments offered and duration (see Section 7.B. of the City's Economic Development Policy):

C. Why tax abatement is a critical factor in determining whether the proposed project is to be completed?

¹ For existing facility, if applicable.

² After construction or expansion of new facility.

³ Do not report labor costs, debt service, purchase of equipment subject to personal property tax.

V. OTHER INCENTIVE INFORMATION

Annual Operational Expenses⁴

Type of Expense	Actual (\$ amount)	Projected Total (\$ amount)
Telephone		
Electricity		
Gas		
Water		
Waste Water		
Garbage		
Cable		
Other		

**Actual Expenses
Subtotal \$ _____**

1. State all incentives being requested within this application:
None.

2. Provide reasons why economic incentives are necessary for the project:
The improvements will assist in the Applicant's ability to attract new tenants for vacant and underutilized areas of the Mall, which is currently a challenge. The Project's improvements advance the goals of the Comprehensive Plan. Without CID assistance, and in the absence of guaranteed rental increases or new tenants, the Applicant is unable to justify the capital expenditures needed to revitalize the Mall. The Mall is presently in a "catch 22," and the purpose of the CID is to enable the project improvements to occur without renegotiating existing leases. The City of Hays will not be required to expend any funds to support the project. As a "pay as you go" project, the Applicant will pay all project costs up front, and seek reimbursement from the CID over a period of time.

3. What improvements or services will need to be provided by the City or County to accommodate this improvement?
None.

⁴ Do not report labor costs, debt service, purchase of equipment subject to personal property tax.

VI. GENERAL CONDITIONS

The following general conditions are understood and agreed to by the firm receiving economic incentives from the City of Hays:

1. The applicant must agree to and reimburse the City for the costs of any legal, financial, or administrative research and work done in reviewing the proposal, preparing other necessary legal documents, and researching the qualifications of the applicant.
2. The applicant will be expected to sign a performance agreement as referenced in Section 13 of the City's Economic Development Policy, as a condition to the granting of any incentive.
3. Prior to the City's approval of any economic incentives, the applicant's proposal and information may require approval from the Kansas Department of Commerce and/or other state agencies.
4. The applicant agrees to provide additional information considered necessary by the City Manager to make a recommendation to the City Commission on granting the economic incentives.
5. Each business receiving economic incentives must complete an annual report by March 1 of each year covering the previous calendar year. Any business that has received an economic incentive shall pay an annual renewal fee of \$100.00.
6. Enclosed is the application fee of \$1,000.00 and a deposit of \$5,000.00, payable to the City of Hays, Kansas. The \$5,000.00 deposit will be retained by the City to pay for the City's out of pocket costs associated with review of this application, as further described in Section 6 (Fee Schedule) of the Economic Development Policy.

I (we) verify that the above information and assurances made are complete and correct to the best of my (our) knowledge.

**HAYS MALL LLC,
a Kansas limited liability company**



Gabriel Jeidel, Manager

7/24/2014

Date

City of Hays Supplemental Questionnaire

1. Name of Applicant Firm: Hays Mall LLC, a Kansas limited liability company
2. Firm's SIC Code: 531120
3. Description and purpose of the new business or expansion:

See Application for Economic Incentives and CID Petition.

Capital Investment

Market or retail value of the new or additional investment:

	First Expansion	Second	Third	Fourth
4. Land	0			
5. Building & Improvements (Est.)	\$1,393,436	\$1,751,500		
6. Furniture, Fixtures, & Equipment				

Sales and Purchases

Expected sales and purchases due to the expansion:

	Sales	Purchases
7. Year 1	See attached.	
8. Year 2		
9. Year 3		
10. Year 4		
11. Year 5		
12. Year 6		
13. Year 7		
14. Year 8		
15. Year 9		
16. Year 10		

What percentage will be subject to sales tax:

	Sales	Purchases
17. Year 1	100%	100%
18. Year 2	100%	100%
19. Year 3	100%	100%

- n/a % 20. What is the expected percentage of annual net taxable income on which state corporate income tax will be computed?

Additional Annual Utility Expenditures due to the Expansion

	Construction Period	Year One of Expansion
21. Telephone	Not applicable	
22. Electricity		
23. Gas		
24. Water		
25. Waste Water		
26. Garbage		
27. Cable		
28. Other		

_____ % 29. By what percentage are utility bills expected to increase during the remaining years of the expansion?

New Employees due to Expansion

	New Hires	Average Annual Salaries	Moving to the County	Moving from Out-of-state
30. Year 1	Unknown			
31. Year 2				
32. Year 3				
33. Year 4				
34. Year 5				
35. Year 6.				
36. Year 7				
37. Year 8				
38. Year 9				
39. Year 10				

New Construction

	Initial Construction or Expansion	2 nd Expansion	3 rd Expansion	4 th Expansion
40. Total Construction Cost	\$1,393,436	\$1,751,500		
41. Construction Profit Percentage	Unknown	%	%	%

Construction Materials Purchased

	Initial Construction or Expansion	2 nd Expansion	3 rd Expansion	4 th Expansion
42. In the State	Unknown			
43. In the County				
44. In the City				

Costs of Furniture, Fixtures, & Equipment Purchased

	Initial Construction or Expansion	2 nd Expansion	3 rd Expansion	4 th Expansion
45. In the State	Unknown			
46. In the County				
47. In the City				

Construction Workers and Salaries

	Initial Construction or Expansion	2 nd Expansion	3 rd Expansion	4 th Expansion
48. Number of construction workers	Unknown			
49. Total salary paid average worker				
50. Total construction salaries				
51. Household size of average worker				

Visitors due to the Expansion

	Out-of-town visitors expected
52. Year 1	Unknown
53. Year 2	
54. Year 3	
55. Year 4	
56. Year 5	
57. Year 6	
58. Year 7	
59. Year 8	
60. Year 9	
61. Year 10	

- Unknown 62. How many days will an average visitor to your firm be expected to stay in the area?
- Unknown 63. How many nights will a visitor to your firm be expected to stay overnight in city hotels or motels?
- Unknown 64. How many nights will a visitor to your firm be expected to stay overnight anywhere in the county?

Economic Development Worksheet

Benefits/Cost Analysis

Firm's Name: Hays Mall LLC

Extraordinary Payments the Firm will Make

	To the City	To the County	To the State
	No extraordinary	payments	anticipated
65. Construction Period			
66. Year 1	\$	\$	\$
67. Year 2	\$	\$	\$
68. Year 3	\$	\$	\$
69. Year 4	\$	\$	\$
70. Year 5	\$	\$	\$
71. Year 6	\$	\$	\$
72. Year 7	\$	\$	\$
73. Year 8	\$	\$	\$
74. Year 9	\$	\$	\$
75. Year 10	\$	\$	\$

Extra Costs to Provide Infrastructure and/or Services for this Expansion

	City Costs	County Costs	State Costs
	No additional	costs anticipated	from government
76. Construction Period			
77. Year 1	\$	\$	\$
78. Year 2	\$	\$	\$
79. Year 3	\$	\$	\$
80. Year 4	\$	\$	\$
81. Year 5	\$	\$	\$
82. Year 6	\$	\$	\$
83. Year 7	\$	\$	\$
84. Year 8	\$	\$	\$
85. Year 9	\$	\$	\$
86. Year 10	\$	\$	\$

Where New Employees Live

As a Percentage of the		
Total Number of New		
Employees		
Unknown	87.	In the city
_____ %	88.	In the school district where the firm is located
_____ %	89.	In the county
_____ %	90.	In the region

Where New Employees Shop

Percent of shopping

Unknown	91. In Kansas
Unknown	92. In the County
Unknown	93. In the City

New Employee Housing and Schools

Unknown	94. Household size of a typical new employee
	95. School age children in household of a typical new employee
%	96. Percentage of new employees moving to the community for whom new housing will be required.

Indirect New Employees

As a Percentage of the
Total Number of New
Employees

Unknown	97. Moving to the county
%	98. Of those, moving from out-of-state

Construction Workers

Where are construction workers expected to spend their salaries?

Unknown	99. In the State of Kansas
%	100. In the County
%	101. In the City

Visitors Spending

102. Daily retail spending by a visitor, excluding lodging
103. Average daily hotel/motel room rates

	Of that, in the City
In the County	
Unknown	\$
\$	\$

Please refer to the Hays Mall Community Improvement District Analysis of Costs, Benefits and Project Feasibility for additional information.

HAYS MALL LLC,
a Kansas limited liability company



Gabriel Jeidel, Manager

7/24/2014

Date

I. Overview.

This Analysis is intended to be a supplement to the *Supplemental Questionnaire* (the “Questionnaire”) provided by Hays Mall LLC, a Kansas limited liability company (the “Applicant”). The Questionnaire is based upon the Kansas Department of Commerce CBA Worksheet (found online at <http://www.kansascommerce.com/DocumentCenter/View/3107>). That worksheet, like the Questionnaire, is intended for and is most applicable to new or expanding businesses seeking property tax abatements. The proposed Hays Mall Community Improvement District (the “Project”) does not request the abatement of any tax, and does not seek any tax increment-based incentive. Consequently, large portions of the Questionnaire and the *Application for Economic Incentives* (the “Application”) are inapplicable to the Project.

In response to information requested by the City of Hays, Kansas (the “City”) in Section 15 of the City’s Economic Development Policy (the “Policy”), this is an summary of public benefits derived from using the Community Improvement District (“CID”) Act, K.S.A. 12-6a26 *et seq.* (the “Act”) to revitalize The Mall at Hays (the “Mall”). This Analysis does not repeat the information contained in the Application, the Supplement, or the CID Petition (the “Petition”), but is intended to be read in conjunction with those documents.

II. Sales History.

The proposed Project contains approximately 216,406 square feet of retail space. Presently, approximately 63,500 square feet of the Mall is vacant, much of which has been vacant for several years. The following table illustrates the Project’s annual sales revenue in each of the last six full calendar years, based in part upon information provided by the Kansas Department of Revenue (i.e., year 2008 through 2012):

<u>Year</u>	<u>Est. Annual Sales</u>
2013	\$18,474,164.00
2012	\$25,656,689.94
2011	\$25,387,109.36
2010	\$24,816,133.36
2009	\$23,007,349.62
2008	\$23,646,039.86

The above figures illustrate that until year 2013, revenues at the Mall were relatively flat, with average annual growth at approximately 2%, which is far less than the City-wide 5.9% sales tax increase in year 2012 (as stated in the City’s 2012 Annual Report). Beginning in year 2013, sales tax revenues have decreased, but by a greater percentage than reported in the City’s 2013 Annual Report. This trend is due in part to decreased occupancy rates (from approximately 74% in 2012 to approx. 70.6 % occupancy rate in 2014). As of January 1, 2014, the Hibbett Sporting Goods and Montana Mikes leases expired, and the spaces formerly occupied by those tenants (approx. 9,500 square feet) is presently vacant.

The Mall already represents a major sales tax generator for the City of Hays. At the City's 1.75% rate of local sales tax, \$20,000,000 of annual sales at the mall creates \$350,000.00 of local sales tax. Assuming new tenant(s) occupying the vacant portions of the Mall generate an average of \$100/sq. ft. of retail sales per year (which appears to be a reasonable estimate based on past sales history), the current vacancies represent a potential opportunity cost of approximately \$6,350,000 in annual sales, which roughly translates into \$111,000 of potential local sales tax paid to the City of Hays. If the Project succeeds in reenergizing the Mall as a local and regional retail draw and causes the Mall's the occupancy rate to stabilize at 90%, there is a substantial potential gain to the City in the form of increased sales tax receipts generated by the Mall, in addition to the current sales tax revenues generated by the Mall. The Project's improvements may also increase the Mall's appraised value for ad valorem property tax purposes and may create opportunity for potential new construction of retail outbuildings on the Mall property.

The anticipated cost of the Project is \$3,144,936.00 plus eligible interest. Based on the above projections, CID revenues will probably be more than adequate to reimburse the Applicant's eligible expenses prior to the 22-year maximum life of the CID. Once all project expenses are repaid, the CID tax will expire. If the CID tax fails to fully reimburse the Applicant over the full term of the Project, the Applicant has no recourse to recover the deficiency from the City.

III. Direct Costs to the City.

The proposed Project is a "pay as you go" CID project that requires the Applicant to directly pay all of the costs of the Project. The Project requires no street reconfigurations, utility relocations, infrastructure, or other public costs. All of the City's expenses incurred, whether in the form of outside legal counsel or other costs, will be paid by the Applicant or reimbursed to the City as part of the City's administrative fee. The Project requires no new city emergency services or police protection.

IV. Benefit to the City.

In addition to the potential increases in sales tax revenue created by the Project, as discussed in Part II, above, the Project implements several major recommendations on the 2012 Comprehensive Plan, including landscaping improvements within the Vine Street right-of-way as part of Phase II of the Project. Please refer to the Application and Petition for a more detailed discussion of those improvements.

V. Cost versus Benefit.

From the City's perspective, there is no financial cost to the use of CID financing. The Mall pays the City's direct costs related to the formation of the CID. The CID imposes an additional one percent (1%) on taxable sales within the Project itself, not the City at large. The potential benefit of the Project, as summarized above and elsewhere, is both tangible and intangible. Because the City's direct costs are zero, the benefit to cost ratio easily exceeds the 1.25:1 ratio required by the City's Economic Development Policy.

FUNDING AGREEMENT
(Proposed Community Improvement District)

This Funding Agreement ("Agreement") is entered into this _____ day of _____, 2014, between the **CITY OF HAYS, KANSAS** ("City"), and **HAYS MALL LLC**, a Kansas limited liability company ("Developer").

RECITALS

WHEREAS, the City is a city of the second class organized and existing under the laws of the State of Kansas, with its principal office located at 1507 Main Street, Hays Kansas 67601; and

WHEREAS, the Developer is a Kansas limited liability company engaged in the business of development with its principal office located at 49 W. 37th Street, 9th Floor, New York, NY 10018. The City has been requested by the Developer to consider approval of a community improvement district (the "District"), in accordance with the Community Improvement District Act, K.S.A. 12-6a26 *et seq.* (the "Act") (the "Request") and, if such Request is approved by the City, the City may be requested to provide such other services and assistance as may be required to implement and administer the Request through its completion; and

WHEREAS, the City does not have a source of funds to finance costs incurred for additional legal, financial and planning consultants or for direct out-of-pocket expenses and other reasonable costs resulting from services rendered to the Developer to review, evaluate, process and consider the Request for creation of the District and implementation of a community improvement district sales tax (collectively, the "Charges");

WHEREAS, the City acknowledges that the risks and costs of preliminary planning activities and other requirements associated with the preparation of the Request are greater than those associated with ordinary development and desire to provide an inducement to Developer to assume the costs of the Request; and

WHEREAS, the parties desire to enter into this Agreement to provide for the funding of consultants used by the City to evaluate the Request and to provide an inducement to Developer to assume the costs of the Request.

AGREEMENT

1. Services to be Performed by the City. The City shall:
 - A. Prepare or consult with the Developer on the preparation of and consider the Request in accordance with the provisions of the Act, give all notices in a timely manner, make all legal publications and hold hearings as required by the Act;
 - B. Provide necessary staff, legal, financial, and planning assistance to prepare and present the Request to the City and to prepare and present required resolutions and ordinances to the City Commission, including the use of outside counsel and consultants;
 - C. If the City Commission approves the Request, provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for implementation of the Request; and

D. If a definitive agreement is entered into, provide the necessary staff, legal, financial and planning assistance to administer such agreement.

2. Initial Deposit. In order to insure the prompt and timely payment of the Charges, the Developer shall establish a fund in the amount of Five Thousand Dollars (\$5,000.00) (the "Deposit") by paying such amount to the City contemporaneously with the execution of this Agreement, receipt of which is hereby acknowledged. The City shall pay in accordance with this agreement initial Charges from the Deposit and shall promptly submit an itemized statement therefore to the Developer to re-establish the Deposit so that there is always a Five Thousand Dollars (\$5,000.00) cash balance available against which additional charges and payments may be applied on a current basis. The City shall submit monthly statements itemizing the Charges paid from the Deposit during the preceding month.

3. Additional Funding.

A. The City shall submit to Developer an itemized statement for actual out-of-pocket expenses necessary to perform its obligations hereunder. Such statements shall be submitted on a monthly basis. The Developer shall pay the City the amounts set forth on such statements (the "Additional Funds") within thirty (30) days of receipt thereof. If such funds are not so received, the unpaid balance shall be subject to a penalty of one and one half percent (1.5%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to Section 5.a. Developer shall supply the Additional Funds in a timely manner so that City activities may continue without interruption.

B. The City and the Developer agree that the Developer shall reimburse the City for actual out-of-pocket expenses necessary to perform the City's obligations hereunder using George K. Baum & Company, as financial advisor to the City, Gilmore & Bell, P.C. for bond counsel, and such other special consultants and advisors as the City deems necessary to perform its obligations under this Agreement.

4. Disbursement of Funds. The City shall disburse the Deposit and Additional Funds for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Agreement as payment for such expenses become due. Upon reasonable notice, the City shall make its records available for inspection by Developer with respect to such disbursements.

5. Termination.

A. In the event the Developer fails to perform any of its obligations herein, the City may terminate this Agreement, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within thirty (30) days after written notice to the Developer of the default. Termination by the City shall also terminate any duties and obligations of the City with respect to this Agreement, including, but not limited to, the City's processing of Developer's Request. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all reasonable expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

B. The parties hereto acknowledge that the Developer may determine to abandon the Request. Upon notice of abandonment by the Developer, this Agreement shall terminate and the City may terminate any other agreement between the parties and shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this

Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

C. In the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable hereunder, the Developer shall reimburse the City as set forth in Section 3. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

6. Reimbursement By the City. All amounts paid by the Developer to the City pursuant to this Agreement are expected to be eligible "costs" in accordance with the Act, which would be eligible to be reimbursed to the Developer from bonds or on a pay-as-you basis from CID sales tax revenues or special assessments.

7. Notice. Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City of Hays, Kansas
City Manager
1507 Main Street
Hays, Kansas 67601

With a copy to:

Gina M. Riekhof
Gilmore & Bell P.C.
2405 Grand Blvd., Suite 1100
Kansas City, Missouri 64108

To the Developer:

Hays Mall LLC
Attn: GJ Realty
49 West 37th Street, 9th Floor
New York, NY 10018

With a copy to:

Barber Emerson, L.C.
Matthew S. Gough
P.O. Box 667
Lawrence, KS 66044

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

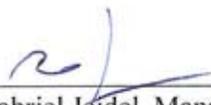
8. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which will be an original and when all of the parties to this Agreement have signed at least one (1) copy, such copies will constitute a fully executed and binding Agreement.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF HAYS, KANSAS

By: _____
City Manager

HAYS MALL LLC
a Kansas limited liability company

By:  _____
Gabriel Jeidel, Manager

SUBJECT	ISSUED BY	LAST REVISION DATE	CURRENT EFFECTIVE DATE
ECONOMIC DEVELOPMENT POLICY	City Commission	4-26-12	7-11-13

SECTION 1. INTRODUCTION

The City of Hays is interested in encouraging economic activity and the creation of jobs, thereby broadening its tax base and improving the quality of life for its citizens. Further, the use of public funds to stimulate business growth may be necessary or desirable in certain cases. The decision to provide incentives to a business is guided by the expectation that the financial benefits to the City will produce a sufficient return on the City’s investment and that the business will be a good fit for the community. All proposed incentives are subject to a public hearing. Governmental agencies are not eligible for financial incentives under this policy. No elected or appointed officer, employee or committee of the City, Hays Area Chamber of Commerce or Ellis County Coalition for Economic Development employee, board, or other public or private body or individual, shall be authorized to speak for and/or commit the City Commission to the granting of an incentive. This policy is meant to encourage the following:

- A. Research and development-based businesses
- B. High-tech businesses
- C. Environmentally friendly businesses
- D. Expansion of existing industry
- E. Business start-ups
- F. Recruitment of new companies from out-of-state
- G. The retention of businesses which are good corporate citizens that will add to the quality of life in Hays through their leadership and support of local civic and philanthropic organizations.
- H. Training and development of Hays area employees
- I. The establishment of businesses that will be good stewards of the City of Hays’ water sources.

The City Commission reserves the right to deviate from this policy when, in the opinion of the Commission, it is in the best interests of the City to do so.

SECTION 2. DEFINITIONS

“City” means the City of Hays, Kansas.

"Economic development purposes" shall mean the establishment of a new business or the expansion of an existing business, which:

- A. is or will be primarily engaged in any one or more of the Kansas basic industries; or
- B. is or will be primarily engaged in the development or production of goods or the provision of services for out-of-state sale; or
- C. is or will be primarily engaged in the production of raw materials, ingredients or components for other enterprises which export the majority of their products; or

- D. is a national or regional enterprise which is primarily engaged in interstate commerce; or
- E. is or will be primarily engaged in the production of goods or the provision of services which will supplant goods or services which would be imported into the city; or
- F. is the corporate or regional headquarters of an enterprise, which is primarily engaged in out-of-state business activities.

“Environmentally friendly businesses” shall mean:

- Firms with programs or activities that reduce the impact of activities on the environment.
- Businesses that are not damaging to the environment, or directed at preventing environmental damage.

“High-Tech Businesses” shall mean both manufacturing and non-manufacturing businesses that have a great dependence on science and technology innovation that leads to new or improved products or services. High-Tech Business involves intensive use of new scientific and technical knowledge. It is often characterized by reliance on significant inputs of knowledge, depending more on having access to the knowledge produced in universities and other educational institutions. It tends to hire and keep personnel who have advanced skills. High-Tech Businesses are more sensitive to the quality of local universities and other educational institutions as providers of knowledge and education of high-skilled workers and may be more sensitive to local quality of life, encouraging high-skilled workers from elsewhere to be hired. High-Tech Business often has special infrastructure needs, such as broadband communications. Goods and services produced by High-Tech Businesses frequently require a longer development time than ordinary goods and services, requiring some ability to generate equity capital or other “maturing” capital.

“Kansas basic industry” shall mean:

- Agriculture;
- Mining;
- Manufacturing;
- Interstate transportation;
- Wholesale trade which is primarily engaged in multi-state activity or which has a major import supplanting effect within the state;
- Financial services which are primarily engaged in providing such services for interstate or international transactions;
- Business services which are primarily engaged in providing such services to out-of-town markets;
- Research and development of new products, processes or technologies;
- Tourism activities, which are primarily engaged in for the purpose of attracting out-of-state tourists.

As used in these subsections, “primarily engaged” means engagement in an activity by an enterprise to the extent that not less than 51% of the gross income of the enterprise is derived from such engagement.

SECTION 3. INDUSTRIAL ECONOMIC DEVELOPMENT

The City will be selective as to the kinds of industrial businesses (i.e., businesses that are not retail businesses) that are recruited and assisted. In general, the primary objective of the City’s industrial Economic Development Policy is to target new and expanding businesses that are environmentally sound, strengthen our local economy, and demonstrate a need for public financial support in order to locate or expand in Hays. Additionally, the City favors industry that creates high-caliber

employment, such as high-skill, high-wage jobs with increased employee benefits and superior working conditions.

When considering proposals brought before the City, City staff and the City commission shall be cognizant of the investment being made by the business, the risk involved in doing business, and the reputation of the City which is created by decisions that are made.

Examples of available incentives that may be available to industrial businesses may include; Property Tax Abatement, Industrial Revenue Bonds, Job Bounty Program, Tax Increment Financing (TIF), Transportation Development Districts (TDD), Community Improvement District (CID), or other available programs as approved by the Kansas Legislature.

SECTION 4. RETAIL DEVELOPMENT

The purpose of this section is to establish the official policy and procedures of the City for the granting of incentives for new and expanding retail businesses not otherwise addressed within this policy.

The primary objectives of the City in granting incentives to retail businesses for development include the expansion of the sales tax base, general enhancement of quality of life, development as the regional hub for goods and services in northwestern Kansas, and the expansion of the property tax base.

Examples of available incentives that may be available to retail businesses may include; Job Bounty Program, Tax Increment Financing (TIF), Transportation Development Districts (TDD), Community Improvement District (CID), Sales Tax and Revenue Bonds (STAR Bonds), or other available programs as approved by the Kansas Legislature.

A single development requesting additional assistance must also meet all of the following criteria:

- A. The development must be at least 50,000 square feet
- B. Generate \$10,000,000/yr. in retail sales
- C. Employ twenty five (25) or more employees

SECTION 5. ECONOMIC DEVELOPMENT APPLICATION

New or existing businesses that seek financial incentives from the City must file an *Application for Economic Incentives* before their request can be considered. The application shall contain the following information:

- A. Specific information on incentives being requested
- B. Company profile including longevity of company, principal officers, stockholders and clients
- C. Audited financial statements – last five (5) years or since date of incorporation if company has not been in existence for five (5) years
- D. Completed (attached) *Application for Economic Incentives* and *Supplemental Questionnaire*
- E. Business Plan as it relates to the proposed business to be located in Hays
- F. Cost Benefit Analysis (See Section 14)

The City will not consider the granting of any incentive unless the business submits a full and complete application, and provides additional information as may be requested by the City

Commission. The accuracy of the information provided in the application shall be verifiable by the applicant. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any resolution adopted in reliance on said information. Applications will not be considered after the issuance of building permits. Refer to Section 6 for application and renewal fee information.

SECTION 6. FEE SCHEDULE

Any individual business requesting any incentive shall pay to the City a nonrefundable application fee of \$1000 plus a deposit of \$5,000.00 to be retained by the City to pay for the City's out of pocket costs associated with the City's review of the application and other actions and agreements associated with the proposed incentive, including but not limited to the City's cost of legal counsel, financial advisors and consultants necessary to evaluate the application and administer the incentive. In the event that costs for third-party services incurred by the City exceed the fee collected, the applicant shall reimburse the City for such additional cost, immediately upon request, but no later than prior to final consideration of the incentive by the Governing Body. The application fee and deposit shall be submitted at the same time the *Application for Economic Incentives* is submitted. At its discretion, the City Commission may consider waiving a portion of the fee or deposit upon request, based upon need. In addition, any business which has been granted an incentive shall pay an annual nonrefundable renewal fee in the amount of \$100.00.

The City requires the use of its designated Bond Counsel and its designated Financial Advisor. The City reserves the right to approve the selection of other necessary participants in the administration of an incentive, including but not limited to, the underwriter and trustee/fiscal agent. The City, at its discretion, may retain additional independent advisors to assist the City in analyzing the merits of the application and in making a determination of its approval at the applicant's expense. Examples of additional advisors include economic or environmental specialists, or a certified public accountant.

SECTION 7. PROPERTY TAX ABATEMENT POLICY

A. Policy.

The grant of property tax abatement will be considered for real and personal property being added to the tax rolls by "Kansas basic industry," in accordance with the provisions set by Article 11, Section 13 of the Constitution of the State of Kansas and the provisions of K.S.A. 12-1740 *et seq.* and K.S.A. 79-201a.

The City may approve for economic development purposes a property tax abatement on real and personal property used exclusively in the following business activities:

- Conducting research and development;
- Manufacturing articles of commerce;
- Storing goods that are sold or traded in interstate commerce;
- Corporate or regional headquarters of a multi-state enterprise which is primarily engaged in activities that take place outside of Kansas;
- High-tech businesses.

B. Abatement Amount and Term.

While Kansas law permits an exemption up to 100 percent of the qualified investment for up to 10 years, it shall be the policy of the City to normally provide property tax abatement and require payments in lieu of taxes (PILOTs) as set forth in the following schedule for portions of a project that meet the economic development goals of the City set forth in Sections 1 and 3 and that qualify for abatement under Kansas law. The abatement level is based on the **higher of the capital investment AND job creation.**

<u>Abatement Level</u>	<u>Capital Investment¹</u>	<u>Job Creation²</u>
<u>Matrix for High-Tech Businesses and Research and Development-Based Businesses</u>		
50% abatement for 10 years	Minimum: \$500,000 Maximum: \$3,750,000	Minimum: 25 Eligible Net New Jobs Maximum: 50 Eligible Net New Jobs
100% abatement for 10 years	>\$3,750,000	>50 Eligible Net New Jobs
<u>Matrix for All Other Business Types</u>		
25% abatement for 10 years	Minimum: \$500,000 Maximum: \$2,500,000	Minimum: 25 Eligible Net New Jobs Maximum: 50 Eligible Net New Jobs
50% abatement for 10 years	Minimum: \$2,500,001 Maximum: \$10,000,000	Minimum: 51 Eligible Net New Jobs Maximum: 125 Eligible Net New Jobs
75% abatement for 10 years	Minimum: \$10,000,001 Maximum: \$30,000,000	Minimum: 126 Eligible Net New Jobs Maximum: 250 Eligible Net New Jobs
100% abatement for 10 years	>\$30,000,000	>250 Eligible Net New Jobs

¹ Capital Investment will be determined by increase in appraised value from the appraised value of the property on the date of the application compared to the appraised value on the January 1 after completion of improvements, all as determined by tax appraisal from the Ellis County Appraiser’s office.

² “Eligible Net New Jobs” means each full-time equivalent job created above the monthly average full-time equivalent employee count for the 12-month period preceding the date of application. In order for a job to qualify as a “Eligible Net New Job,” each job must pay wages greater than 100% of the Region 1 wage average based on the applicant’s 4-digit NAICS code. The number of Eligible Net New Jobs must be reported annually pursuant to Section 15, and if the actual number of Eligible Net New Jobs in any year during the abatement term is less than the Eligible Net New Jobs set forth in the application, the abatement level for the remaining abatement term will be reduced in accordance with the table above.

The abatement term for projects considered under the authority of Article 11, Section 13 of the Constitution of the State of Kansas shall begin in the calendar year after the calendar year in which the business commences its operations locally. The abatement term for projects considered under the authority of K.S.A. 12-1740 *et seq.* and K.S.A. 79-201a shall begin in the calendar year after the calendar year in which industrial revenue bonds are issued.

C. Procedure.

1. Action by the City. The City shall consider granting a tax exemption pursuant to this Policy after receipt of a complete application from the applicant in a form prescribed by the City together with the application fee and deposit. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the

project's preliminary site plans and building elevations, to prepare a cost benefit analysis, and to contact the county and the unified school district within which the property proposed for exemption is located. The project's site plans and building elevations are subject to final approval to ensure that they are similar to the preliminary plans and elevations submitted.

Based on each application and such additional information as may be requested by the City, the City shall prepare or cause to be prepared a cost benefit analysis of the proposed exemption on the city and state of Kansas, which analysis shall be used by the Governing Body in considering the request for abatement, and shall be sufficient to meet statutory requirements for obtaining property tax abatement. In making its decision, the Governing Body may also consider any fiscal and/or economic impact analyses performed by the county and the unified school district within which the property proposed for exemption is located.

Prior to formal action on each resolution of intent, the Governing Body shall conduct a public hearing thereon, to be scheduled at least seven days after publication of notice. Notice of the hearing shall also be sent to the Ellis County Clerk's Office and the unified school district within which the property proposed for exemption is located.

Any grant of property tax abatement shall be accompanied by Performance Agreement as set forth in Section 13 of this Policy, and continuing abatement shall be subject to annual review as set forth in Section 15 of this Policy.

All documents necessary to consider granting a tax exemption, including the cost benefit analysis, notice of hearing, and any resolutions or ordinances, shall be prepared or reviewed by the City's Bond Counsel.

2. Action by the State Court of Tax Appeals. If the abatement request is granted, the applicant shall prepare and submit to the City by each February 1, a copy of the abatement application required by K.S.A. 79-213 and 79-210, and the statement required by K.S.A. 79-214 for the cessation of an exempt use of property. The City Clerk shall submit such application and statement to the County Appraiser, who will forward to the Court of Tax Appeals. The City Clerk shall provide a copy of the ordinance, as published in the official city newspaper, granting an abatement from taxation to the applicant for use in filing an initial request for tax abatement as required by K.S.A. 79-213, and by K.S.A. 79-210 for subsequent years. The City expressly notes to applicants that no abatement can be provided without the approval of the State Court of Tax Appeals.

D. Payment of PILOTs.

Any payment in lieu of taxes, which shall be required of a business granted a property tax abatement of less than 100% for 10 years, shall be paid to the County Treasurer, with notice of the amount and date paid provided to the City. The County Treasurer is directed to apportion the payment, under the provisions of subsection (3) of K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes by each of the applicable taxing subdivisions. The specific provisions for payment of PILOTs shall be set forth in the Performance Agreement between the City and the applicant.

SECTION 8. INDUSTRIAL REVENUE BOND POLICY

A. Policy.

It shall be the policy of the City to consider the issuance of industrial revenue bonds pursuant to K.S.A. 12-1740 *et seq.* (the "IRB Act") for the purposes set out in Section 1 of this Policy, and the IRB Act. Industrial revenue bonds may also be issued for the purpose of property tax abatement, as set forth in Section 7 of this Policy.

B. Sales Tax Exemption for Construction Materials.

Labor and materials, as well as equipment purchased with IRB proceeds may be exempt from State and local sales tax. The City reserves the right to grant or deny such sales tax exemption in connection with the issuance of IRBs, to be determined on a case-by-case basis.

C. Cost Reimbursement/Issuance Fee.

The applicant shall reimburse the City for all costs associated with the issuance of bonds, including but not limited to, the cost-benefit analysis, all legal publication notices, application fees to the Court of Tax Appeals, the City's bond counsel fees and all other miscellaneous costs.

For projects requesting tax abatement in connection with the issuance of industrial revenue bonds, the City shall receive an issuance fee of (i) 25 basis points (.0025) of the first \$10 million par amount of bonds being issued or the amount of constitutional tax abatement being requested, plus (ii) 20 basis points (.002) of the par amount of the second \$10 million of bonds being issued or the amount of constitutional tax abatement being requested, plus (iii) 10 basis points (.001) of the par amount in excess of \$20 million of bonds being issued or the amount of constitutional tax abatement being requested. In no event shall the issuance fee be less than \$1,500 or more than \$100,000. The fee shall be due and payable at the time the bonds are issued.

SECTION 9. COMMUNITY IMPROVEMENT DISTRICT POLICY

A: POLICY STATEMENT

It is the policy of the City to consider the establishment of CIDs for reimbursable expenses in the amount of \$250,000 or greater in order to promote economic development and tourism within the City. An applicant may petition the City to utilize special assessments or a special sales tax to fund projects eligible under the CID statutes. In considering the establishment of a CID, the Governing Body shall consider whether the proposed CID will achieve the economic development purposes outlined in Section 1 of this Policy.

It is the further policy of the City that a CID shall only be established for projects where the applicant/developer pays for the cost of eligible CID improvements (at no cost to the City) and agrees to be reimbursed on a pay-as-you-go basis for such costs from the City's receipt of CID sales tax revenues or CID special assessment revenues.

The use of CIDs should not alter the requirements of the City's Economic Development Policy in regard to the development paying for public infrastructure or meeting building codes. When

establishing a CID, special consideration will be given to public benefits. These benefits may include, but are not limited to, strengthening economic development and employment opportunities, reducing blight, enhancing tourism and cultural amenities, upgrading older retail real estate and commercial neighborhoods, and promoting sustainability and energy efficiency.

B: CRITERIA

It shall be the policy of the City to create a CID, if, in the opinion of the Governing Body, it is in the best interest of the City to do so. The Governing Body shall consider the following factors when creating a CID:

1. The project meets the City's economic development goals by expanding existing businesses or develops new businesses described in Section 1 of this Policy, and/or strengthens economic development and employment opportunities, reduces blight, enhances tourism and cultural amenities, upgrades older retail real estate and commercial neighborhoods, and promotes sustainability and energy efficiency.
2. The project uses higher standards for the design of improvements and materials used in making improvements within the CID, compared to the minimum requirements set forth in the City's current design guidelines.
3. The project extends public infrastructure to parts of the City that are not currently served by such infrastructure.

C: PROJECT ELIGIBILITY

1. It is the intent of the City to allow only projects involving capital investment and improvements to qualify for reimbursement. Purchase of consumables, and items or property considered to be operating expenses shall not qualify for reimbursement.

The following projects within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, equip or extend shall be eligible for reimbursement out of the proceeds of the community improvement district sales tax:

- a. Public buildings, structures and facilities, and private not-for-profit museums;
- b. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements;
- c. Parking garages;
- d. Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
- e. Parks, lawns, trees and other landscape;
- f. Communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks;
- g. Outdoor cultural amenities, including but not limited to, sculptures and fountains;
- h. Private buildings, structures and facilities;

- i. To produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, decoration of any public place in the district, promotion of such activity and special events;
 - j. To support business activity and economic development, including, but not limited to, development, retention, and the recruitment of developers and businesses;
 - k. To provide or support training programs for employees of businesses.
2. Generally, projects not listed in the foregoing eligibility section shall not be eligible for reimbursement out of the proceeds of a Community Improvement District sales tax. Additionally, the following projects within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend shall be ineligible for reimbursement out of the proceeds of a community improvement district sales tax:
- a. Airports, railroads, light rail and other mass transit facilities;
 - b. Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.
 - c. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons for public property, buildings and outdoor spaces.
 - d. To provide or contract for cleaning, maintenance and other services to public property, buildings and outdoor spaces;
 - e. To contract for or conduct economic impact, planning, marketing or other studies related to the district.
 - f. Indoor cultural amenities, including but not limited to, paintings, murals and display cases, which are not located in a private not-for-profit museum;
 - g. To operate or to contract for the provision of music, news, child-care, or parking lots or garages, and buses, minibuses or other modes of transportation;
 - h. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons inside private buildings;
 - i. To provide or contract for cleaning, maintenance and other services to private property;
 - j. The purchase of inventory and/or supplies for use or resale.
 - k. To purchase interior furnishings.
 - l. To purchase advertising or participation and any promotional expenses.
 - m. Any other projects not permitted by state statute, as amended from time to time.

D: METHOD OF FINANCING

The governing body will consider creation of a CID where (1) the costs of CID improvements will be financed on a pay-as-you-go basis from CID sales tax revenues or (2) the costs of CID improvements consisting only of public infrastructure improvements will be financed from CID special assessments. In the instance where public infrastructure CID improvements will be financed from CID special assessments, the City will consider the issuance of special obligation CID special assessment bonds. The City will not issue special obligation or general obligation bonds for CID improvements, other than the limited circumstances set forth in this section. The proposed method of financing will be clearly shown in the petition.

E: PROCESS

The process for creation of a CID shall be as follows:

1. *Petition and Supplemental Information.* An applicant requesting that the City create a CID shall first submit a petition to the City. Such petition shall contain all of the information

required by K.S.A. 12-6a26 *et seq.* and shall contain all of the required signatures of property owners as set forth in the Community Improvement District Act. Such petition shall also contain an agreement by the applicant to pay all out of pocket costs incurred by the City related to the City's review of the petition, including but not limited to the City's cost of legal counsel and financial advisors necessary to evaluate the petition. In addition to the information required by K.S.A. 12-6a26 *et seq.*, applicants must file (a) an Application for Economic Incentives and Supplemental Questionnaire, as provided by the City's Economic Development Policy, (b) a site plan for all public and private improvements to be located within the proposed CID, and (c) a business plan evidencing that the applicant has the financial ability to complete the proposed project in a timely manner and operate the project for the term of the proposed CID. The applicant shall furnish such additional information as requested by the City in order to clarify the petition or to assist staff or the Governing Body with the evaluation of the petition.

2. *Application Fee and Deposit.* The application fee and deposit, as well as any costs and expenses required to be paid by the applicant pursuant to Section 6 may be deemed costs of the improvements, and may be reimbursable to the extent permitted by the Community Improvement District Act and as authorized by the Governing Body.
3. *Timing of Submissions.* The petition and all additional information required by this Policy must be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's site plans, and to analyze the merits of the proposed CID in the context of existing economic development and infrastructure projects.
4. *Public Hearing.* Upon receipt of the petition and all additional information required by this Policy, the Governing Body may order a public hearing on the creation of a CID and the imposition of a CID sales tax. The Governing Body shall give public notice and hold such hearing in the manner required by the Community Improvement District Act.
5. *Governing Body Findings; Development Agreement Required.* After the public hearing is conducted, the Governing Body shall determine the advisability of creating a CID pursuant to the Community Improvement District Act. If advisable, the Governing Body may create a CID by adopting an ordinance. Contemporaneously with the adoption of an ordinance creating a CID, the Governing Body shall consider a Development Agreement between the City and the applicant setting forth the specific terms and conditions under which the City will reimburse the applicant on a pay-as-you-go basis for the costs of certain CID Improvements.

F: APPLICANT REQUIREMENTS

1. The applicant shall provide a tax clearance letter from the State of Kansas Department of Revenue to determine and ensure the applicant is compliant with all primary Kansas Tax Laws. An annual submission of the tax clearance from the State of Kansas Department of Revenue is required.
2. If a CID is created, the applicant must complete an annual report by March 1 of each year covering the previous calendar year.
3. If a CID is created, the applicant must agree in the Development Agreement to pay to the City an annual administrative fee equal to 0.5% of the annual CID revenue generated within the CID, to cover the administration and other City costs related to the CID. This fee is in

lieu of the annual renewal fee of \$100.00 set forth in the City's Economic Development Policy for other economic development incentives.

G: PAYMENT OF CERTAIN COSTS

The City shall require the applicant to enter into a funding agreement or other evidence of the applicant's agreement to pay costs incurred by the City for additional legal, financial and/or planning consultants, or for direct out-of pocket expenses and other costs relating from services rendered to the City to review, evaluate, process and consider the petition for a CID, as well as the continued maintenance of the escrow account for CID revenues and for the processing of payments of CID eligible costs. Such costs and expenses may be deemed costs of the project, to the extent permitted by the Community Improvement District Act.

H: AUTHORITY OF GOVERNING BODY

The Governing Body reserves the right to deviate from any policy when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that is in the best interests of the City. Additionally, the Governing Body, by its inherent authority, reserves the right to reject any proposal or petition for creation of a CID at any time in the review process when it considers such action to be in the best interests of the City.

SECTION 10. RURAL HOUSING IMPROVEMENT DISTRICT POLICY

A: POLICY STATEMENT

It is the policy of the City to consider the establishment of a RHID for a development containing a minimum of ten renter occupied low-income or income-qualified units. It is the further policy of the City that a RHID shall only be established for projects where the applicant/developer pays for the cost of eligible RHID improvements (at no cost to the City) and agrees to be reimbursed on a pay-as-you-go basis for such costs from the City's receipt of RHID revenues.

B. CRITERIA

It shall be the policy of the City to create a RHID, if, in the opinion of the Governing Body, it is in the best interest of the City to do so. The Governing Body shall consider the following factors when creating a RHID:

1. Assure taxpayers that the City is not financing an already viable project.
2. Assure taxpayers that the City is not financing an unreasonably high profit margin for developers. Each developer will be required to submit a detail of development costs and net operating income including an Internal Rate of Return to be compared to the market for reasonableness.
3. Assure taxpayers that the development provides the City safeguards committing the developer to complete the project.

The Development Plan required by statute for each project must determine that the incremental ad valorem property tax revenues generated by the RHID, together with other funds committed by the Developer, will cover the estimated eligible costs of the project. All Development Plans must assume that the initial estimated incremental property tax revenues will remain flat over

the term of the RHID (i.e., no plan may assume increasing incremental property tax revenues will be available to cover project costs).

All development requests must utilize drought tolerant landscaping and water efficient fixtures in order to minimize impact on water resources. City staff will provide the necessary guidance.

C: ELIGIBLE COSTS

It is the intent of the City to allow only the following development expenditures within a RHID to qualify for reimbursement out of RHID revenues:

1. Acquisition of property within the RHID
2. Payment of relocation assistance
3. Site Preparation
4. Sanitary and storm sewers and lift stations
5. Drainage conduits, channels and levees
6. Street grading, paving, curbs and gutters
7. Street lighting
8. Underground public and limited private utilities, all located within the public right-of-way
9. Sidewalks
10. Water mains and extensions

D: METHOD OF FINANCING

The governing body will consider creation of a RHID where eligible costs will be financed on a pay-as-you-go basis from incremental ad valorem tax revenues generated within the RHID. The City will not issue special obligation bonds for RHID improvements.

E: PROCESS

The process for the creation of an RHID District shall be as follows:

1. *Application and Supplemental Information.* An applicant requesting that the City create a RHID must file:
 - a. an Application for Economic Incentives and Supplemental Questionnaire, as provided by the City's Economic Development Policy,
 - b. a Housing Needs Analysis meeting the requirements of K.S.A. 12-5244(a) and the guidelines of the Kansas Department of Commerce, and incorporating the findings contained in the Current Hays Housing Assessment.
 - c. a Development Plan meeting the requirements of K.S.A. 12-5245, and
 - d. a business plan evidencing that the applicant has the financial ability to complete the proposed project in a timely manner and that the project meets the criteria for establishment of a RHID, as set forth in this Policy.

The applicant shall furnish such additional information as requested by the City in order to clarify the application or to assist staff or the Governing Body with the evaluation of the application.

2. *Application Fee and Deposit.* The application fee and deposit as well as any costs and expenses required to be paid by the applicant pursuant to Section 6 of the Economic Development Policy are not reimbursable pursuant to the Rural Housing Incentive District Act. The applicant will pay all out of pocket costs incurred by the City related to the City's review of the application, all documents related to consideration of a RHID and the development agreement, including but not limited to the City's cost of legal counsel and financial advisors necessary to evaluate and create the proposed RHID.
3. *Timing of Submissions.* The application and other information required by this Policy must be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the submitted documents and analyze the merits of the proposed RHID in the context of existing economic development policy.
4. *Secretary of Commerce Approval.* If the Governing Body determines that it is in the best interest of the City to approve the the Housing Needs Analysis and move forward with the proposed Development Plan, the Governing Body shall adopt a resolution approving the Housing Needs Analysis and submit such analysis to the Kansas Secretary of Commerce for approval. If the Secretary of Commerce agrees within the findings of the Governing Body set forth in such resolution, the Governing Body may proceed with the establishment of an RHID.
5. *Development Agreement.* Upon receipt of approval from the Secretary of Commerce, but before the Governing Body takes further action with respect to the creation of the RHID, the City and the Developer shall negotiate a development/performance agreement to implement the proposed Development Plan and including the requirements of this Policy, including particularly the requirements of Section 14 of this Policy related to Performance Agreements.
6. *Public Hearing.* When the Development Plan, a draft Development Agreement, and all additional information required by the RHID Act and this Policy are ready to be presented to the Governing Body the Governing Body will consider adopting a resolution ordering a public hearing on creation of the RHID and adoption of the plan. The Governing Body shall give such notice and hold such hearing in the manner required by the RHID Act.
7. *Governing Body Findings.* After the public hearing is conducted, if advisable, the Governing body may create an RHID district by adopting an ordinance creating the district, adopting the Development Plan, and approving the Development Agreement.

F: PAYMENT OF CERTAIN COSTS

The City shall require the applicant to enter into a funding agreement or other evidence of the applicant's agreement to pay costs incurred by the City for additional legal, financial and/or planning consultants, or for direct out-of pocket expenses and other costs relating from services rendered to the City to review, evaluate, process and consider the request for RHID. Such costs and expenses are the applicant's sole responsibility, and are not generally reimbursable pursuant to the RHID Act.

G: AUTHORITY OF THE GOVERNING BODY

The Governing Body reserves the right to deviate from any policy when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that is in the best interests of the City. Additionally, the Governing Body, by its inherent authority, reserves the right to reject any proposal or request for the creation of an RHID at any time in the review process when it considers such action to be in the best interest of the City or whenever, in the opinion of the City Commission sufficient properties are already available for the type of development being considered.

I: REVIEW

The RHID policy will be in place as long as there is a need for low-income and income-qualified housing. The City expects the Housing Needs Assessment will be updated every three to five years.

SECTION 11. JOB BOUNTY PROGRAM

The Job Bounty Program of the City is to encourage new and/or existing businesses to hire employees. To participate in the Job Bounty Program, a prospective employer must agree to hire at least ten (10) full-time employees at an hourly wage of no less than \$10.00/hr. For the purpose of this program, a full-time employee is one that works forty (40) hours per week or two thousand eighty (2080) hours per year. Anything below these levels will be considered part-time and will not be eligible for benefits under this program.

For those employers creating ten (10) or more full-time jobs paying no less than \$10.00/hr., the Job Bounty Program, subject to the City's budgetary limitations, shall receive the following:

1. For each full-time position created paying no less than \$10.00/hr. base salary, not including employee benefits, tips, commissions, bonuses, or other incentives, the City will pay to the employer \$1,000 per job provided that funds shall be paid in 20% increments over a five (5) year period. The employer will be required to provide, at the end of each year, in order to receive Job Bounty funds for that year, an audited payroll showing those ten (10) or more jobs were filled throughout the one year period.
2. For full-time jobs exceeding \$15.00/hr base salary, not including employee benefits, tips, commissions, or other incentives, the City will pay \$1500 per job on the same basis as noted previously including creation of a minimum of ten (10) jobs per company per agreement.

No Job Bounty proceeds will be paid for the creation of jobs that do not meet established hour and wage requirements as outlined above. It is specifically noted that an employer will apply for a specified number of jobs with the initial application. If the employer creates less than the number of jobs included in the application, no Job Bounty funds will be distributed. Job Bounty funding is allocated on a one-time occurrence per company. Retroactive funding activities, as stated in Section 17 of this policy, are not allowed under this policy.

No jobs may be created, or employees hired, under Job Bounty application until formal review by the City Manager's Office and formal approval has been given by the City Commission subject to all of the activities contained in this policy.

SECTION 12. MEMORANDUM OF UNDERSTANDING

Authority to issue memorandums of understanding to consider requests for economic development incentives shall lie only with the City Commission. Such memorandums of understanding shall only be issued by the City Commission, and as an expression of good faith intent, but shall not in any way bind the City to the granting of an incentive. Such memorandums of understanding shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of memorandums of understanding.

SECTION 13. NOTICE AND HEARING

No incentive shall be granted by the City prior to a public hearing thereon. Notice of the public hearing shall be published at least seven days prior to the hearing in the official city newspaper, giving the time and place, and the hearing may be held at a regular or special meeting of the City Commission. The City Manager shall thereupon notify the Ellis County Commissioners, the superintendent of the appropriate school district, and the clerk of any taxing jurisdiction, excluding the state, which derives or could derive property taxes from the affected business advising them of the scheduled public hearing and inviting their review and comment. Upon request, the City Manager shall provide any such public agency with a copy of the application, which shall remain confidential unless released by the City Commission. The applicant business shall be invited, but not required, to attend the public hearings.

SECTION 14. PERFORMANCE AGREEMENT

Any incentive granted pursuant to this policy shall be accompanied by a Performance Agreement between the applicant and the City, which shall include provisions governing the situation if an applicant fails to meet the wage, number of jobs, and/or capital investment projections set forth in the original application. Each incentive shall be reviewed annually. The City Commission shall receive the annual review report, and if the City Commission determines that a business or project is not in compliance with the provisions of the Performance Agreement, then the incentive may be modified pursuant to the Performance Agreement as the City Commission deems appropriate. Modifications to the incentive may include, but are not limited to, termination of the incentive, reduction of any incentive (including but not limited to reductions in tax abatement due to failure to meet requirements as set forth in Section 7) and claw-back of any existing incentive. To the extent necessary, the County Appraiser and the State Court of Tax Appeals shall be notified of appropriate actions to modify any incentive.

SECTION 15. COST BENEFIT ANALYSIS

The Cost Benefit Analysis will offer a wide spectrum of information as it pertains to development, the adequacy, or inadequacy of, financial incentives, and finally, the net gain, current and future, of entering into these types of endeavors on behalf of the citizens of the City. The Cost Benefit Analysis should address the following items:

1. **DIRECT COSTS TO THE CITY.** Any identified direct cost should be included in the analysis. Examples of these types of costs include municipal infrastructure to the business site, and costs of providing city emergency services such as fire and police protection.
2. **BENEFIT TO THE CITY.** Direct benefits include wages/salaries/benefits paid to employees, any taxes collected (property, sales, franchise fees), purchases of products/services from local vendors.
3. **COST VERSUS BENEFIT.** From a community perspective, incentives are used because a net benefit is expected. A desired benefit to cost ratio must be at least in the 1.25:1 ratio. Proposed economic development projects that achieve this benchmark traditionally employ a higher proportion of local labor, including managers, at an above-average hourly wage.

This analysis should identify the particulars involving the developer's proposal. This should include confirmation of the size of the store, financial information, number of employees, pay scale, tax collections, and other areas involving development. The developer is responsible for the development of this analysis including any cost incurred.

SECTION 16. ANNUAL REVIEW FOR COMPLIANCE

All incentives granted shall be subject to an annual review to ensure that the ownership, use of property, and the economic performance of the business, including the capital investment, employment, and wages, are pursuant to requirements and criteria of this policy, the application, and the conditions of the granting of incentives. The review shall also include a comprehensive review of the entire incentive period for the business (if applicable), including milestones and project phases for the business. The annual review shall provide an opportunity for the company receiving the incentive to describe their achievements, especially in the areas of environmentally sound practice, community engagement and services, and job training. If the business:

- A. no longer qualifies for the incentive pursuant to law or this policy;
- B. substantially fails to meet the expectations set forth in the application for an incentive, including failure to meet employment, wage, or capital investment plans in the application; or
- C. substantially fails to meet the criteria or objectives of this policy;

the City Commission, after notice and a public hearing, may modify any incentive by ordinance or resolution.

The City reserves the right to issue any level of penalties that it deems necessary. These may include; 1) rescissions, which is a complete cancellation of the incentive, 2) penalties, which are fines charged when the business does not meet a certain level of performance or relocates, and finally, 3) recalibrations, which are the provisions for changing the incentive in some manner in order to accommodate an evolving economic climate. The use of these tools will provide a safety net to the community, ensuring that its investment in the business will result in the positive benefits it expects.

Each business receiving an incentive shall be required to complete an annual report by March 1. The information in the report will cover the time period of January 1 through December 31 of the previous year. The annual report will be reviewed by May 1.

By May 1 of each year, an annual report listing all financial incentives that remain in effect will be presented to the City Commission. The annual report shall include information regarding when the incentive was granted, when the incentive expires, current property taxes paid for the property, in lieu of tax payments, amount of any industrial revenue bonds issued, the assessed value of the property, number of employees, salary and payroll of employees, and any additional information concerning the operation of the business receiving the incentive, and other information as requested by the City Commission.

The failure of a business (a) to provide accurate and timely information to the City in the preparation of the annual report or (b) to comply with the performance standards set forth in the Performance Agreement, shall be grounds for the modification or revocation of the incentive granted.

The City may require an annual renewal application to be filed or other information necessary to assure the continued qualification of the exempt business. Any material omission or misstatement of fact in information provided to the City in any such statement or renewal application may be cause for repeal of any incentive ordinance adopted, renewed or extended in reliance thereon.

SECTION 17. TRANSFER OF OWNERSHIP OR USE

Incentives granted by the City may be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application, along with the renewal fee, for an incentive. The City shall be notified by the business of any change in ownership and any substantive change in the use of a tax exempt property.

SECTION 18. RETROACTIVE GRANTING OF INCENTIVES; “BUT FOR” PRINCIPLE

No incentives, including the granting of Job Bounty funding, will be distributed on a retroactive funding basis. Incentives will be granted pursuant to the guidelines of this policy and effective on the date indicated and approved by the City Commission.

Each application for incentive shall demonstrate that the incentive will make such a difference in determining the decision of the business to locate, expand or remain in the City that the business would not otherwise be established, expanded or retained without the availability of the abatement.

SECTION 19. WAIVER OF STATEMENT REQUIREMENTS

The City Commission reserves the right to grant or not to grant an incentive under circumstances beyond the scope of this Statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the City Commission that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest.

SECTION 20. AMENDMENTS

The City Commission of the City retains the right to amend any portion of this policy as needed.

SECTION 21. TAX CLEARANCE CERTIFICATION

Any person, company, or entity receiving economic incentives under this policy must provide a Tax Clearance Certificate from the State of Kansas Department of Revenue on an annual basis prior to December 31. The Tax Clearance Certificate requirement will be in effect until such time that incentives are no longer being utilized.

SECTION 22. MANDATORY REVIEW

This policy will be subject to a mandatory review by the City Commission every three years.

Commission Work Session Agenda

Memo

From: Paul M. Briseno, Assistant City Manager

Work Session: November 6, 2014

Subject: Transient Guest Tax Rate

Person(s) Responsible: Toby Dougherty, City Manager
Paul M. Briseno, Assistant City Manager

Summary

A 2006 resolution dictates the Transient Guest Tax (TGT) rate of 5% will automatically reduce to 4% once the Welcome Center Debt is paid. This debt was paid October 31st, or four years early. Commission action is necessary to keep the rate at 5%. The 2015 budget details the continued use of 5% TGT to pay for future marketing of the Hays/Ellis County attractions as well as selected outside agencies. The tax is paid by visitors and current rate is comparable, if not lower, than most cities.

Staff recommends approving a resolution setting the transient guest tax at 5%.

Background

Transient Guest Tax is paid by transient guests, generally non-Hays citizens, who stay in local motel/hotels. This revenue is used to fund activities of the Convention and Visitors Bureau and portion of the Welcome Center debt.

In 2006 City Commission increased the Transient Guest Tax from 4% to 5% to pay for the construction of the Welcome Center at 27th and Vine. According to the 2006 resolution, once debt on the facility is paid the TGT will automatically revert back to 4% at the end of the quarter the final payment is made. The Welcome Center facility's final debt payment was scheduled for November 2018. However due to incremental increased TGT revenue received over the years, the final payment was made October 31st.

Discussion

The 2014 budget reflects the final payment for the facility and 2015 approved budget utilizes the current 5% TGT level. Specifically these funds would assist in:

- Promotions and printing
- Way finding projects
- Airport marketing
- Funding quality of life agencies, including ½ Downtown Hays Development Corporation
- Other community marketing opportunities

To keep current TGT rate and accomplish the aforementioned results, the Commission will need to pass a resolution to keep the current rate.

At the September 18th Hays Convention and Visitors Bureau Advisory Board meeting the group voted to recommend keeping the TGT at 5% as budgeted. Members agreed with Commissions budget to fund recommended outside agencies and other CVB marketing endeavors.

Legal Consideration

There are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

A rate of 5% TGT is calculated in the 2015 budget. Should Commission decide to reduce the TGT rate 2015 budgeted, projects, and operations as well as outside agency funding would need to be adjusted in future years.

Options

Options include the following:

- Approve the resolution setting the Transient Guest Tax at 5%
- Provide staff with a different direction
- Do nothing

Recommendation

Staff recommends approving a resolution setting the transient guest tax at 5%.

Action Requested

Approve the resolution setting the transient guest tax at 5%.

Supporting Documentation

Recommended Resolution

Peer City TGT Comparison

10-30-14 Memo from Hays Convention and Visitors Bureau Advisory Committee

Minutes of Convention and Visitors Bureau Advisory Committee

2006 Resolution

RESOLUTION NO. _____

**A RESOLUTION SETTING THE TRANSIENT GUEST TAX
WITHIN THE CITY OF HAYS, KANSAS.**

WHEREAS, the City of Hays, Kansas, pursuant to Charter Ordinance No. 23, as passed on September 14, 2006, is to set a transient guest tax, at a rate not to exceed 5%, to be levied in the City of Hays; and

WHEREAS, on December 28, 2006, the Governing Body adopted Resolution No. 2006-029 which provided for a transient guest tax to be levied in the City of Hays at the rate of 5.0%, until the end of the quarter year in which final payment for all improvements for the Convention and Visitor's Bureau building at 27th & Vine Street is completed, at which time the rate shall be 4.0%, until modified pursuant to Resolution; and

WHEREAS, the City of Hays has made arrangements to pay for said improvements early and it has determined that it is in the best interests of the City of Hays, Kansas, to set the transient guest tax rate at 5% from and after payment for all of said improvements.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS, that the transient guest tax to be levied in the City of Hays, Kansas, shall be and is hereby set at the rate of 5.0% until future Resolution by the Governing Body of the City of Hays, Kansas.

This resolution shall be effective upon its passage.

Adopted by the Commission on the _____ day of November, 2014.

HENRY SCHWALLER, IV
Mayor

ATTEST:

BRENDA KITCHEN
City Clerk

(SEAL)

<u>City</u>	<u>T.G.T.</u>	<u>State/Local Sales Tax</u>	<u>Total</u>
City of Hays	5%	8.40%	13.40%
Abilene	6.50%	8.25%	14.75%
Dodge City	8%	8.80%	16.80%
Ellis	5%	8.65%	13.65%
Emporia	6%	8.15%	14.15%
Garden City	6%	8.30%	14.30%
Great Bend	6%	7.90%	13.90%
Hutchinson	7%	8.40%	15.40%
Junction City	5%	9.40%	14.40%
Kansas City	8%	8.77%	16.77%
Lawrence	6%	8.70%	14.70%
Liberal	6%	8.40%	14.40%
Manhattan	6%	8.40%	14.40%
McPherson	5%	8.15%	13.15%
Newton	6%	8.15%	14.15%
Russell	4%	8.15%	12.15%
Salina	6.70%	8.05%	14.75%
Topeka	7%	8.80%	15.80%

October 30, 2014

TO: Hays City Commissioners

FROM: Hays Convention & Visitors Bureau Advisory Board

RE: Transient Guest Tax Rate

With the final payoff of the Welcome Center building at 2700 Vine at the end of 2014, the Transient Guest Tax is scheduled to return to the rate of 4%.

As a result of the 2015 budget process, the Convention and Visitors Bureau budget will be responsible for funding other tourism interests such as Wild West Festival, the Sister Cities initiative and Downtown Hays Development Corporation.

With these latest budget developments, the CVB Advisory board voted at our August meeting to request the City Commission to return the Transient Guest Tax rate to 5% to maintain current and future CVB budgetary planning to bring outside guests into the City of Hays.

**HAYS CONVENTION & VISITORS BUREAU
MINUTES**

**Thursday, Sept. 18th, 2014
Lunch Meeting**

Welcome Center Conference Room

PRESENT

Andy Stanton - Chair

Lina Miller

Don Westfall

Tammy Younger

GUESTS

Paul Briseno

Staff

Jana Jordan

Janet Kuhn

The Hays Convention and Visitors Bureau Advisory Committee Meeting was called to order by Chair Andy Stanton.

APPROVAL OF MINUTES FROM THE APRIL MEETING – Andy

There was a review of the April meeting. No revisions were made.

CVB STAFF CHANGES – Jana

Jana reported that Ruben had decided to retire a couple of months ago. Staff was in the process of hiring his replacement. The City Manager had asked the process be put on hold for a couple of months.

Jana also informed the group she would be retiring and in fact Friday the 19th of Sept. would be her last day with the City of Hays. She expressed her thanks for all the assistance and support she has received over the years and assured the group they will be left in good hands.

2015 Proposed Budget/Revisions – Jana & Paul

Jana reviewed the budget that had been presented earlier for the CVB 2015 budget. Several changes have occurred over the summer months. The decision has been made to pay the Welcome Center building debt off in the fall of 2014. The current ordinance reads that when the building is paid off the local TGT will revert from 5% to 4%.

Paul explained over the summer months the City Commission had a great deal of discussion about the TGT and appropriate use of those funds with the budget process. Through discussion of the advisory group, it was decided the TGT should remain at 5% and help fund five different requesting agencies as well as additional CVB opportunities. Paul noted in November the Commission will need to address returning the TGT to 5%. Don made a motion and Lina seconded to

write a letter of support from the CVB Advisory Board to keep the TGT at 5% and support City Commission action. Motion carried.

I-70 Welcome Signs – Jana

Jana reported the Welcome Sign project is moving ahead. There needs to be several details worked out but the project should be a reality in 2015. Paul will be taking the lead on the project.

DIRECTOR & STAFF REPORTS

Jana reported the convention center project is still moving ahead. It is in a private developers hands and for more detailed information please contact Aaron White.

The CVB Advisory Board is in terrible shape and needs new members as soon as possible. We are especially low in representation from the lodging industry. Six of the 11 members must represent the lodging industry. Jana strongly suggested the group meet in November to discuss Advisory Board members before Dec. 1st when several terms expire.

Janet talked about the groups she is working with this fall including the Sept. 20th Church Tour. This is the last one of the season and there are approx. 25 participants on the tour. An evaluation should be conducted to assess the value of the tours.

OTHER BUSINESS – Andy

There being no other business Andy graciously thanked Jana for her years of service and wished her luck in the future.

ADJOURNMENT – Andy

Andy adjourned the meeting.

RESOLUTION NO. 2006-029

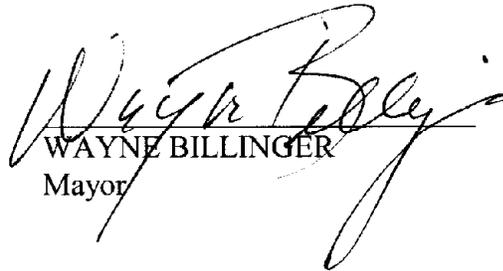
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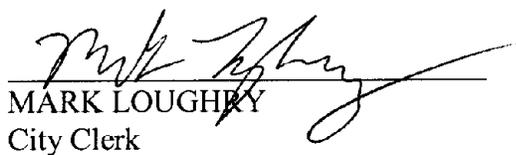
NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS, that it is necessary to set a transient guest tax to be levied in the City of Hays; and the City hereby sets that rate at 5.0%, until the end of the quarter year in which final payment for all improvements for the Convention and Visitor's Bureau building at 27th & Vine Street is completed, at which time the rate shall be 4.0%, until modified pursuant to law.

This resolution shall be effective upon its passage.

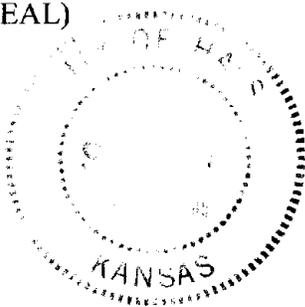
Adopted by the Commission on the 28th day of December, 2006.


WAYNE BILLINGER
Mayor

ATTEST:


MARK LOUGHRY
City Clerk

(SEAL)



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