

**CITY OF HAYS COMMISSION MEETING  
THURSDAY, DECEMBER 12, 2013 – 6:30 P.M.  
AGENDA**

1. Call to order by Chairperson.
2. **MINUTES:** Consider approval of the minutes from the regular meeting held on November 26, 2013. (PAGE 1)
3. **CITIZEN COMMENTS:** (non-agenda items).
4. **CONSENT AGENDA:** (Items to be approved by the Commission in one motion, unless objections are raised).
  - A. **Cereal Malt Beverage License Applications:** Consider approving various Cereal Malt Beverage License renewals for 2014. (PAGE 7)
  - B. **Mayoral Appointment Recommendations:** Sister Cities Advisory Board (PAGE 9)

**UNFINISHED BUSINESS**

(No business to review)

**NEW BUSINESS**

5. **HAYS RECREATION COMMISSION POOL REIMBURSEMENT FOR 2013:** Consider approving the reimbursement request from the Hays Recreation Commission for one-half of the total loss for pool operations for the 2013 season to be paid from the Swimming Pool budget for 2013. (PAGE 13)
6. **CONCEALED CARRY IN MUNICIPAL BUILDINGS:** Consider approving Resolution No. 2013-024 to allow for a four-year exemption from the requirements of House Bill 2052 for City-owned buildings. (PAGE 29)
7. **41<sup>ST</sup> STREET CONSTRUCTION – AWARD OF BID AND CONSTRUCTION ENGINEERING AGREEMENT:** Consider authorizing the Mayor to sign the resolution from KDOT authorizing the commitment of City funds awarding a contract to APAC-Kansas, Inc. for the reconstruction of 41st Street, and to sign the three-party agreement with KDOT and Alfred Benesch & Company for Construction Engineering Inspection for the reconstruction of 41st Street. (PAGE 71)
8. **2014 STATEMENT OF LEGISLATIVE PRIORITIES:** Consider approving the 2014 Statement of Legislative Priorities for the City of Hays. (PAGE 113)
9. **ADDENDUM TO THE MEMORANDUM OF AGREEMENT WITH THE HAYS FIREFIGHTERS LOCAL 2119 FOR 2014:** Consider approving the Addendum to the Memorandum of Agreement between the City of Hays and the Hays Firefighters Local 2119 for 2014. (PAGE 119)

10. [REPORT OF THE CITY MANAGER](#) (PAGE 123)
11. **COMMISSION INQUIRIES AND COMMENTS**
12. **EXECUTIVE SESSION (IF REQUIRED)**
13. **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.**

MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF HAYS, KANSAS  
HELD ON NOVEMBER 26, 2013

**1. CALL TO ORDER BY CHAIRMAN:** The Governing Body of the City of Hays, Kansas met in regular session on Tuesday, November 26, 2013 at 6:30 p.m.

Roll Call: Present: Kent Steward  
Eber Phelps  
Shaun Musil  
Ron Mellick

Absent: Henry Schwaller IV

Chairperson Steward declared that a quorum was present and called the meeting to order.

**2. MINUTES:** There were no corrections or additions to the minutes of the regular session held on November 14, 2013; the minutes stand approved as presented.

**3. FINANCIAL STATEMENT:** Finance Director Kim Rupp reported month-to-date general fund sales tax collections were at \$650,165 which is just \$1,826 or .28% ahead as compared to last year. The year-to-date general fund sales tax collections are up \$34,661 or .57%. The six month running average on general fund sales tax collections is up slightly at .52%.

The Finance/City Clerk's Office invested \$4,200,000 of maturing or renewing certificates with a weighted average interest rate of .18%. The portfolio of certificates of deposit on October 31, 2013 totaled \$53,000,000 with a weighted average interest rate of .23%. The total balance of the Money Market account on October 31, 2013 was \$800,000 with a current yield of .20%. Total investments are up \$4,750,000 when compared to this time last year.

Ron Mellick moved, Eber Phelps seconded, that the Financial Statement for the month of October, 2013 be approved.

Vote: Ayes: Kent Steward  
Eber Phelps  
Shaun Musil  
Ron Mellick

**4. CITIZEN COMMENTS:** There were no comments.

**5. CONSENT AGENDA:** Eber Phelps moved, Shaun Musil seconded, that the following Consent Agenda item be approved:

Business Resolution AR-02, Series 2013, being a resolution expressing appreciation to Abbey Gonzalez who assumed ownership of the previous Roxie's Hair Designs & Tanning Salon, 705 Fort Street, now Lulu's Hair & Tanning Salon.

Vote: Ayes: Kent Steward  
Eber Phelps  
Shaun Musil  
Ron Mellick

## **NEW BUSINESS**

**6. GOLDEN BELT ESTATES 5<sup>TH</sup> ADDITION ENGINEERING SERVICES AGREEMENT (DANBY LANE AND JAGGER COURT):** Western Plains Service Corporation has petitioned the City for street, storm sewer, water, and sanitary sewer improvements to an area containing 34 lots within Blocks 1 and 2 of the Golden Belt Estates 5th Addition. Ruder Engineering and Surveying, L.L.C. has now prepared a contract for engineering services to include engineering design, contractor solicitation, construction engineering, and warranty inspection. The contract is for a not to exceed amount of \$49,400.

Eber Phelps moved, Shaun Musil seconded, to approve the Engineering Services Agreement with Ruder Engineering & Surveying, LLC for an amount not

to exceed \$49,400 for the development of Blocks 1 and 2, Golden Belt Estates 5th Addition.

Vote: Ayes: Kent Steward  
Eber Phelps  
Shaun Musil  
Ron Mellick

**7. PUBLIC WORKS BUILDING REMODEL – AWARD OF BID:** Bids have been received for the remodel of the Public Works building. The low bid is from Paul-Wertenberger Construction, Inc. in the amount of \$58,800. The work included in this bid, is for Phase II of the remodeling of the Public Works building, which is key to meeting the long term operational goals of both the Public Works and Utilities Departments. Phase I was completed in-house earlier this year.

Shaun Musil moved, Ron Mellick seconded, to accept the bid from Paul-Wertenberger Construction Inc. in the amount of \$58,800 to be funded in equal proportions from Public Works General Administration, Stormwater, and Water Conservation Funds.

Vote: Ayes: Kent Steward  
Eber Phelps  
Shaun Musil  
Ron Mellick

**8. REQUEST FOR PROPOSALS (RFP) FOR HAYS REGIONAL AIRPORT ENVIRONMENTAL ASSESSMENT:** The Hays Regional Airport's commercial service is subsidized under the US Department of Transportation Essential Air Service (EAS) Program and currently provided by Great Lakes Airlines consisting of 32 flights per week to and from Denver utilizing a 19 passenger Beach 1900 Turboprop aircraft. EAS contracts are for a two year period and the next round of EAS bids for Hays are due December 2, 2013. The City of Hays anticipates bids that may involve turbojet aircraft (regional jet service), which would trigger the need for an environmental assessment for first time jet service. Therefore, staff solicited proposals from firms specializing in environmental assessments of this

type and four proposals were received. The low bid came from Jviation, Denver, Colorado and Overland Park, Kansas with a bid of \$29,000.

Eber Phelps moved, Ron Mellick seconded, that the City Manager be authorized to enter an agreement with Jviation to perform an environment assessment for first time scheduled jet service in the amount of \$29,000 to be funded from City Commission Financial Policy Projects Fund.

Vote: Ayes: Kent Steward

Eber Phelps

Shaun Musil

Ron Mellick

**9. CITY EMPLOYEE HEALTH INSURANCE FOR 2014:**

The City of Hays received Blue Cross Blue Shield (BCBS) of Kansas' renewal rates for 2014. The renewal includes an increase of 23%. The increased premiums are the result of higher claims in 2012 and 2013. The City went out for bids and Coventry Health Care came back with a fully-insured plan comparable to our current Traditional Plan at a .77% decrease from 2013 rates. Staff recommends Coventry Health Care as the 2014 provider offering a single option fully-insured plan comparable to our current Traditional Plan.

Ron Mellick moved, Shaun Musil seconded, to authorize the City Manager to sign the 2014 Coventry Health Care Plan contract in the estimated premium amount of \$1,567,000 to provide health insurance for City of Hays employees paid for out of the Employee Benefit Levy Fund.

Vote: Ayes: Kent Steward

Eber Phelps

Shaun Musil

Ron Mellick

**10. SHORT-TERM DISABILITY INSURANCE FOR 2014:**

The City has provided Short-Term Disability insurance to all full-time City employees since 2006. This is paid in full by the City of Hays. Each year the City, through Freedom Claims, goes out for bids to find the most competitive rate possible. This year the City received four bids. The lowest bid is Aetna at \$0.333/\$10, an

estimated annual cost of \$43,655. This price is only valid if the City approves Coventry Health Care as the City's health insurance provider for 2014 as this is a packaged price. The rate is guaranteed for two years.

Shaun Musil moved, Eber Phelps seconded, to authorize the City Manager to complete an application applying for Short-Term Disability insurance with Aetna with the estimated premium amount of \$43,655 paid for out of the Employee Benefit Levy Fund.

Vote: Ayes: Kent Steward

Eber Phelps

Shaun Musil

Ron Mellick

**11. PROGRESS REPORT:** Assistant Director of Public Works John Braun reported a recent award of excellence received at the Hays Regional Airport - Part 139 Certification.

Assistant City Manager Paul Briseno reported on various city related events, activities and projects.

**12. REPORT OF THE CITY MANAGER:** The City Manager had no additional items to report.

**13. COMMISSION INQUIRIES AND COMMENTS:** Commissioner Mellick observed a water line break on Vine Street and thanked the Utilities workers for their hard work. He also wished everyone a happy and safe Thanksgiving.

Commissioner Musil wished everyone happy Thanksgiving and safe travels.

Commissioner Phelps mentioned he was recently elected to the Economic Development Committee and the Ellis County Extension Board.

**14. EXECUTIVE SESSION:** Ron Mellick moved, Eber Phelps seconded, that the Governing Body recess to executive session at 7:20 p.m. for five minutes to discuss attorney-client privileged communications. The executive session included the City Commissioners, the City Manager, the Assistant City Manager, and the City Attorney. K.S.A. 75-4319 authorizes the use of executive session to discuss the topics stated in the motion.

Vote: Ayes: Kent Steward  
Eber Phelps  
Shaun Musil  
Ron Mellick

No action was taken during executive session.

The meeting adjourned at 7:25 p.m.

Submitted by: \_\_\_\_\_

Brenda Kitchen – City Clerk

**CITY OF HAYS**  
**AGENDA ITEM COVER SHEET**

**COMMISSION AGENDA ITEM NO. 4A**

**MEETING DATE: 12-12-13**

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**TOPIC:**

Cereal Malt Beverage License Applications

**ACTION REQUESTED:**

Approve the Cereal Malt Beverage License Renewals for 2014.

**NARRATIVE:**

Per Charter Ordinance No. 10, it is required for any person selling cereal malt beverages at retail in the City of Hays to secure a license for each place of business.

Attached is a list of businesses requesting renewal of their CMB licenses for 2014. All have met the required criteria for renewal.

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Toby Dougherty, City Manager  
Kim Rupp, Director of Finance

**ADMINISTRATION RECOMMENDATION:**

Approve the Cereal Malt Beverage License Renewals for 2014.

**COMMITTEE RECOMMENDATION(S):**

n/a

**ATTACHMENTS:**

Cereal Malt Beverage License Renewals List

## BEER LICENSE NEW AND RENEWALS

### Class A - General Retailer

#### For Consumption on Premises Only

<u>Business Name</u>	<u>Business Location</u>
China Garden	2503 Vine Street
Wild West Fest Saloon	Municipal Park 4th and Main

#### For Consumption on Premises Only - Sunday Sales Allowed

<u>Business Name</u>	<u>Business Location</u>
Lucky Hays Inc	2405 Vine Street
Taco Shop	333 West 8th Street
Pizza Hut	2102 Vine Street
Hays Baseball Association	200 E. 4th Street
Pizza Hut	1308 Vine St

### Class B - Limited Retailer

#### For Consumption on Premises Only

<u>Business Name</u>	<u>Business Location</u>
Volga German Society	North Frontier Park

#### For Sale in Original and Unopened Containers and Not for Consumption on Premises

<u>Business Name</u>	<u>Business Location</u>
Main Street Express	1601 Main
Walgreens #06285	2600 Vine Street
CX Smokeshop	335 W 8th St
Casey's Retail Company	1600 East 27th Street
Cerv's	2701 Vine Street
IC 66 Division of Cerv's LLC	3701 Vine Street
Dillon Store #61	1902 Vine Street
Southside Convenience	703 Vine Street
Golden Ox Truck Stop	3610 Vine Street PO Box 772
Wal-Mart Supercenter #0664	4301 Vine Street
Kwik Shop, Inc # 759	1301 Vine Street
Love's Country Store #44	2500 Vine Street
Casey's Retail Company	1301 Canterbury Drive
Qwest Fuel Convenience Store	1000 East 41st Street
Cerv's	2722 Hall Street
Dillon Store #14	517 W. 27th Street

**CITY OF HAYS**  
**AGENDA ITEM COVER SHEET**

**COMMISSION AGENDA ITEM NO. 4B**

**MEETING DATE: 12-12-13**

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**TOPIC:**

Mayoral Appointment Recommendations

**ACTION REQUESTED:**

Receive Mayor Steward's proposed appointments to the Sister Cities Advisory Board.

**NARRATIVE:**

The following proposed appointments will be presented for approval at the December 26, 2013 City Commission meeting.

Sister Cities Advisory Board

Dawne Leiker – unexpired term to expire 1-1-16 (1<sup>st</sup> term)

Patricia Levy – 3-year term to expire 1-1-17 (1<sup>st</sup> term)

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Mayor Steward

**ADMINISTRATION RECOMMENDATION:**

N/A

**COMMITTEE RECOMMENDATION(S):**

N/A

**ATTACHMENTS:**

Applications Received for this Board

CITY OF HAYS  
APPLICATION FOR SERVING ON A CITY BOARD OR COMMITTEE

Email: [dpleiker@yahoo.com](mailto:dpleiker@yahoo.com)

Date: 11/27/2013

Name: Dawne Leiker

Address: 1501 Marjorie Dr.

Day Time Phone Number: 785-639-3981

Evening Phone Number: same

Place of Employment: Fort Hays State University

How long have you been a Resident of Hays: Attended FHSU as an undergraduate, then returned to live here 23 years ago.

Name of Board(s) you are interested in serving on: Sister Cities Committee

How much time could you devote per month: 10-15 hours

Are you related to anyone who is currently serving on a Board/Committee?: No

If Yes, Explain:

Briefly describe why you are interested in serving on a Board/Committee for the City of Hays: I understand the Sister Cities Committee is working to re-evaluate and perhaps redefine its role as a city of Hays committee. I welcome the opportunity to contribute to the process in whatever way I can.

Please list any groups or activities that you participate in, or have previously participated in, that demonstrates your involvement in the community: I'm a member of Soroptimists International, serving on the public relations committee for the organization. I have helped coordinate the Women's Leadership Conference and Ben Franklin Papers events, hosted by FHSU's Center for Civic Leadership. As a member of First Presbyterian Church, I've served on the congregational life committee and participated in the choir.

CITY OF HAYS  
APPLICATION FOR SERVING ON A CITY BOARD OR COMMITTEE

Email: [plevy@fhsu.edu](mailto:plevy@fhsu.edu)

Date: 12/8/2013

Name: Patricia Levy

Address: 205 W. 21st St.

Day Time Phone Number: 785-656-4018

Evening Phone Number: 785-628-8318

Place of Employment: Fort Hays State University

How long have you been a Resident of Hays: 11 and a half years

Name of Board(s) you are interested in serving on: Sister Cities

How much time could you devote per month: once a week - two hour meeting

Are you related to anyone who is currently serving on a Board/Committee?: No

If Yes, Explain:

Briefly describe why you are interested in serving on a Board/Committee for the City of Hays: I was approached by another board member due to my personal and professional social work background with cultural diversity with minority students and with mentoring international students at FHSU. I also have an international background myself from having lived in Israel for many years.

Please list any groups or activities that you participate in, or have previously participated in, that demonstrates your involvement in the community: FHSU Diversity Awareness Committee  
FHSU Internationalization Committee Host Family for about 5 years through FHSU Sabbatical teaching and research at a historically black college (Southern University at New Orleans) with minority students  
An FHSU summer research grant to Israel in a senior day center. Presentations in Japan, Israel, and Greece and international publications in Australia, England, and Greece.  
Teach classes with diversity content including a general education class on Multiculturalism (Diversity in the U.S.) that Saudi and Chinese students have attended. Professionally also volunteered to counsel international students at the Kelly Center at FHSU



# CITY OF HAYS

## AGENDA ITEM COVER SHEET

COMMISSION AGENDA ITEM NO. 5

MEETING DATE: 12-12-13

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**TOPIC:**

Hays Recreation Commission Pool Reimbursement for 2013

**ACTION REQUESTED:**

City Staff recommends approval to proceed with the pool reimbursement request for an amount of \$20,451.72 with funding from the 2013 Pool Budget Other Contractual Services Line Item.

**NARRATIVE:**

A reimbursement has been requested by the Hays Recreation Commission for an amount of \$20,451.72 which is one-half of the total loss for pool operations (\$40,903.43) for the 2013 season. The current contract states that "After financial reports are compiled as described in the agreement, any operating loss or surplus incurred by the contractor will be shared on a 50% City-50% Contractor basis as long as the Contractors portion of the loss does not exceed \$26,000". The attendance at the Hays Aquatic Park was down significantly do to weather conditions in 2013 with 46,270 patrons visiting the pool when compared to 58,999 in 2012.

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Toby Dougherty, City Manager  
Jeff Boyle, Director of Parks

**ADMINISTRATION RECOMMENDATION:**

As Director of Parks, I recommend approval to proceed with the pool reimbursement request for an amount of \$20,451.72 with funding from the 2013 Pool Budget Other Contractual Services Line Item.

**COMMITTEE RECOMMENDATION(S):**

N/A

**ATTACHMENTS:**

- Staff Memo
- Copy of the November 15, 2013 letter to Toby Dougherty, City Manager, from Roger Bixenman, HRC Superintendent discussing the 2013 Pool Season.
- Summary of Pool Operations – 2013 Pool Season
- Summary of Pool Subsidy (2000-2013)
- Copy of the Pool Services Agreement

# Commission Work Session Agenda

## Memo

**From:** Jeff Boyle, Director of Parks

**Work Session:** December 5, 2013

**Subject:** City of Hays/Hays Recreation Commission Joint Meeting

**Person(s) Responsible:** Roger Bixenman, HRC Superintendent  
Jeff Boyle, Director of Parks

### Summary

A joint meeting between the City of Hays and the Hays Recreation Commission (HRC) is scheduled for December 5, 2013. Items for discussion include:

- 1) Review the 2013 Pool Season Financial Report from the Hays Recreation Commission. City Staff recommends approval to proceed with the pool reimbursement request for an amount of **\$20,451.72** with funding from the 2013 Pool Budget Other Contractual Services Line Item.
- 2) Review current fees from other Aquatic Parks in Kansas. HRC Staff and City Staff recommend approval to increase the daily admission fees at the Hays Aquatic Park from \$3.00 to \$4.00 for 3-year olds and above for the 2014 swim season.
- 3) Review the 2013 Bickle-Schmidt Sports Complex Financial report from the Hays Recreation Commission.

### Background

The City of Hays contracts with the Hays Recreation Commission (HRC) to manage area pools and for all scheduling needs of the various recreational areas in Hays such as ball fields, soccer fields and the new Bickle-Schmidt Sports Complex. Each year the HRC and the City of Hays conduct a joint meeting to discuss general operations and/or any other facility needs or expectations that may need to be addressed.

### Discussion

There are several items for discussion for the December 5, 2013, HRC/City of Hays Joint meeting.

- 1) Review the 2013 Pool Season Financial Report from the Hays Recreation Commission. Consider approving the reimbursement request from the Hays

Recreation Commission for an amount of **\$20,451.72** which is one-half of the total loss for pool operations (\$40,903.43) for the 2013 season. The current contract states that “After financial reports are compiled as described in the agreement, any operating loss or surplus incurred by the contractor will be shared on a 50% City-50% Contractor basis as long as the Contractors portion of the loss does not exceed \$26,000”. The attendance at the Hays Aquatic Park was down significantly do to weather conditions in 2013 with 46,270 patrons visiting the pool when compared to 58,999 in 2012. Likewise, the attendance at Wilson Pool dropped from 5,085 patrons in 2012 to 3,740 in 2013.

- 2) Review current fees from other Aquatic Parks in Kansas and consider approving HRC Staff and City Staff’s recommendation to increase the daily admission fees at the Hays Aquatic Park from \$3.00 to \$4.00 for 3-year olds and above.
- 3) Review the 2013 Bickle-Schmidt Sports Complex Financial Report. The Bickle-Schmidt Sports Complex report from the HRC shows a total loss of \$21,884.47. The City’s YTD expenditures (November13, 2013) from the Bickle-Schmidt Sports Complex total \$168,896.14. Staff expects to end the year with total expenditures from the maintenance budget in the \$181,000-\$185,000 range. The current contract states that “The Hays Recreation Commission and the Hays City Commission agree to conduct a joint meeting to discuss the financial profit/loss of the facility for the year including disbursement of funds as needed or as agreed upon by both parties”. There is no reimbursement being requested by the Hays Recreation Commission.

### **Legal Consideration**

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

### **Financial Consideration**

The HRC is requesting a 50% reimbursement, as outlined in the Pool Services Agreement, for the operational losses (\$40,903.43) at Wilson Pool and the Hays Aquatic Park. The total reimbursement request from the City of Hays is one-half or 50% of this amount or **\$20,451.72**.

### **Options**

**Option 1:** Approve the request to pay the Hays Recreation Commission for 50% of the pool losses in the amount of \$20,451.72 and deny or alter the requested Hays Aquatic Park fee increase amount.

**Option 2:** Do nothing. It should be noted that there is a legal agreement in place for the pools that states “After financial reports are compiled as described in the agreement, any operating loss or surplus incurred by the contractor will be shared on a 50% City-50% Contractor basis as long as the Contractors portion of the loss does not exceed \$26,000”.

**Option 3:** Provide further guidance on how staff should proceed.

### **Recommendation**

Staff recommends conducting a joint meeting with the Hays Recreation Commission and the Hays City Commission on December 5, 2013 with specific discussions relating to the agenda items mentioned in the memorandum. City Staff recommends approval to proceed with the pool reimbursement request from the Hays Recreation Commission for one-half of the total contractual revenue loss for an amount of **\$20,451.72** with funding from the 2013 Pool Budget Other Contractual Services Line Item.

Staff will present a rate change at a work session or regular meeting based on the December 5<sup>th</sup> Commission discussion/desire.

### **Action Requested**

Conduct a joint meeting with the Hays Recreation Commission and the Hays City Commission on December 5, 2013 including formal action to proceed with the pool reimbursement request from the Hays Recreation Commission for one-half of the total contractual revenue loss for an amount of **\$20,451.72** with funding from the 2013 Pool Budget Other Contractual Services Line Item.

### **Supporting Documentation**

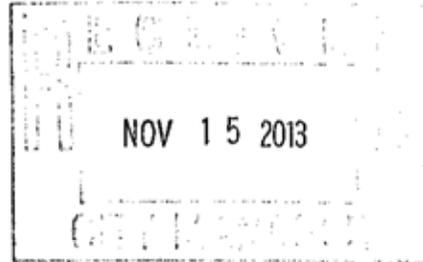
- 1) Copy of the November 15, 2013 letter to Toby Dougherty, City Manager, from Roger Bixenman, HRC Superintendent discussing the 2013 Pool Season.
- 2) Summary of Pool Operations – 2013 Pool Season
- 3) Summary of statewide pool admission fees
- 4) Summary of past admission rates
- 5) Summary of Attendance/Season Pass/Pool Rentals
- 6) Summary of Pool Subsidy (2000-2013)
- 7) Copy of the Pool Services Agreement.
- 8) Copy of a the November 18, 2013 letter to Toby Dougherty, City Manager, from Roger Bixenman, HRC Superintendent discussing the 2013 Bickle-Schmidt Sports Complex season.
- 9) Summary of Bickle-Schmidt Sports Complex – 2013 Season
- 10) Summary of Bickle-Schmidt Sports Complex participation
- 11) Copy of the Bickle-Schmidt Sports Complex Facilities Agreement



HAYS RECREATION COMMISSION  
November 15, 2013

Home Page: [www.haysrec.org](http://www.haysrec.org) • E-Mail: [hrc@haysrec.org](mailto:hrc@haysrec.org)

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



Dear Toby:

Enclosed you will find a Year to Date financial statement with regard to the Hays Aquatic Park and Wilson Pool. For pool operation in 2013, the City of Hays will need to reimburse the HRC a total of \$ 20,451.72. Last year the City's portion was \$6,344.95.

In 2013, at the Hays Aquatic Park the average attendance for the 73 actual days open was 616 compared to 80 days in 2012 for an average daily attendance of 728. We had a total of 46,270 visitors to the HAP in 2013. Aquatic park admission was down from 2012 by \$20,331.10. June was the most attended month of the pool season. Our average noon time temperature this year was 81 degrees compared to 89 degrees in 2012. We did not open 7 days in 2013 compared to one day in 2012. Many days we opened late or closed early due to the weather and we also had many overcast days where the temperature was around 75 degrees which really hurt our attendance.

Weather affected Wilson pool in 2013 as well. Wilson pool had an average of 59 patrons per day compared to 70 patrons per day in 2012. We had a total of 3,740 visitors to Wilson pool compared to 5,085 in 2012.

In the attached report, I have included the financial picture as it relates to HRC only. Also attached is an admission summary for 2013.

Other than the weather which is out of our control we felt the patrons that took advantage of the pool enjoyed a great experience. Strictly from a financial stand point it wasn't a very good year, but weather played a tremendous role in this. The low attendance due to the weather also affected concession sales which were down considerably from 2012. However, our pool staff under the leadership of Grant Lacy is outstanding. His staff at the pool under his guidance continues to be strong, the park is beautiful and we once again have a wonderful facility in Hays. These parks have a profound impact on our community. It is our pleasure to be a part of it.

If I can be of any service to you after your review of the enclosed information, please do not hesitate to contact me.

Sincerely,

Roger Bixenman CPRP

**Hays Recreation Commission  
Summary of Pool Operation  
For the 2013 Pool Season**

<b>HRC Revenue</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Aquatic Park Admission	98,858.98	95,982.10	75,651.00
HAP Fitness Classes	1,633.75	1,922.00	1,602.25
Season Passes	57,525.00	55,053.00	52,051.00
Concessions Revenue	5,324.45	62,260.72	50,546.34
Scholarship Season Passes	8,880.00	15,562.00	13,130.00
Scholarship Revenue	-	755.00	-
Wilson Pool Admission	2,923.40	3,387.25	2,215.00
Wilson Pool Concessions	-	1,251.50	1,283.00
Pool Rental Revenue	7,207.50	5,867.75	5,253.00
Swim Lesson Revenue	10,647.50	10,152.00	8,287.50
Miscellaneous Income	3,159.00	2,553.00	1,980.00
<b>Total Actual Revenue YTD</b>	<b>196,159.58</b>	<b>254,746.32</b>	<b>211,999.09</b>
<b>HRC Direct Expenses</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Concession Expenses	-	26,041.66	23,992.07
Concession Salaries	-	25,618.60	17,105.15
HAP Salaries	126,715.87	128,825.33	126,775.00
HAP Promotions	3,866.00	2,760.00	2,869.73
HAP Maintenance	817.26	1,295.33	1,407.78
HAP Supplies	4,599.04	5,162.63	4,765.91
Guard Incentive Expense	34.93	16.00	-
Scholarship Pass Expense	-	11,235.00	9,230.00
Wilson Salaries	6,915.75	8,167.81	7,140.00
Wilson Supplies	200.00	-	-
HAP Fitness Salary	1,551.63	1,254.00	1,542.00
Guard Uniform Expense	5,159.81	4,015.13	4,943.18
Swim Lesson Salary	4,816.61	3,706.84	4,153.15
Swim Lesson Expense	585.00	610.00	300.00
<b>Total Direct Expenses YTD</b>	<b>155,261.90</b>	<b>218,708.33</b>	<b>204,223.97</b>
<b>HRC Administrative Expenses</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Administrative Salary	26,475.00	27,560.00	28,175.00
Workers Compensation	1,781.28	1,834.25	2,033.12
FICA	12,652.09	14,927.64	14,139.43
Benefits	3,960.00	3,960.00	3,960.00
Insurance Liability Charge	2,553.00	446.00	371.00
<b>Total Administrative Expenses YTD</b>	<b>47,421.37</b>	<b>48,727.89</b>	<b>48,678.55</b>
<b>Total Expenses Year to Date</b>	<b>202,683.27</b>	<b>267,436.22</b>	<b>252,902.52</b>
<b>Revenue Over/(Under) Expenses as of 09-24-2013</b>	<b>(6,523.69)</b>	<b>(12,689.90)</b>	<b>(40,903.43)</b>
<b>City of Hays Portion</b>	<b>(3,261.85)</b>	<b>(6,344.95)</b>	<b>(20,451.72)</b>
<b>HRC Portion</b>	<b>(3,261.85)</b>	<b>(6,344.95)</b>	<b>(20,451.72)</b>

Facility	Daily Admission Rate	Individual Season Pass Rate	Group Season Pass Rate
<b>Derby "Rock City Rapids"</b>	0-2 yrs = Free	\$65	NA
	3-17 yrs = \$8.00		
	18 yrs and up = \$9.00		
<b>McPherson Water Park</b>	0-3 yrs = Free	\$75	\$210
	4-7 yrs = \$2.00		
	8-17 yrs = \$3.00		
	18-61 yrs = \$4.00		
	62 yrs and up = \$3.00		
<b>Salina "Kenwood Cove"</b>	0-2 yrs = Free	3-17 yrs = \$60	\$180
	3-17 yrs = \$3.50	18 yrs and up = \$100	
	18-61 yrs = \$5.50		
	62 yrs and up = \$2.50		
<b>Great Bend "The Wetlands"</b>	0-3 yrs = Free	\$40.00 for 15 admissions	NA
	3-17 yrs = \$3.00		
	18 yrs and up = \$4.00		
<b>Colby Aquatic Park</b>	0-3 yrs = Free	\$65	\$160
	4 yrs and up = \$5.00		
<b>Hutchinson "Salt City Splash"</b>	0-2 yrs = Free	3-7 yrs = \$25 with paying adult	NA
	3-7 yrs = \$1.75 with paying adult	8-17 yrs = \$50	
	8-17 yrs = \$3.50	18 yrs and up = \$60	
	18 yrs and up = \$4.75		
<b>Hays Aquatic Park</b>	0-2 yrs = Free	\$40	NA
	3 yrs and up = \$3.00		

## Admission Rates of the Hays Aquatic Park and Wilson Pool

*In 2005 the admission rates at the Hays Aquatic Park and Wilson Pool were changed. The following are the rates from 2005-2007.*

- **Hays Aquatic Park (2005-2007)**
  - Ages 2 and under = Free
  - Ages 3 and up (Monday – Friday) = \$2.50
  - Ages 3 and up (Saturday & Sunday) = \$3.00
- **Wilson Pool (2005-2007)**
  - Ages 2 and under = Free
  - Ages 3 and up = \$1.75

*In 2008 these rates were changed again to the following:*

- **Hays Aquatic Park (2008-Present)**
  - Ages 2 and under = Free
  - Ages 3 and up = \$3.00
- **Wilson Pool (2008-Present)**
  - Ages 2 and under = Free
  - Ages 3 and up = \$2.00

# HRC Aquatics

## Attendance Numbers

- **2013**
  - 50,010 swimmers
    - 46,270 swimmers at the Hays Aquatic Park
    - 3,740 swimmers at Wilson Pool
- **2012**
  - 64,084 swimmers
    - 58,999 people at the Hays Aquatic Park
    - 5,085 people at Wilson Pool
- **2011**
  - 64,559 swimmers
    - 60,971 people at the Hays Aquatic Park
    - 3,588 people at Wilson Pool
- **2010**
  - 65,731 swimmers
    - 62,290 people at the Hays Aquatic Park
    - 3,441 people at Wilson Pool

## Season Pass Numbers

- **2013**
  - 1,734 passes sold for \$55,629
    - 1413 regular passes
    - 321 scholarship passes
- **2012**
  - 1,951 passes sold for \$61,037
    - 1,565 regular passes
    - 386 scholarship passes
- **2011** (*we started to sell passes for \$40 instead of \$35*)
  - 1,924 passes sold for \$61,514
    - 1,593 regular passes
    - 330 scholarship passes
- **2010**
  - 2,002 passes sold for \$58,205
    - 1,695 regular passes
    - 291 scholarship passes

## Pool Rental Numbers

- **2013**
  - 6 Full Aquatic Park Rentals
  - 6 Aquatic Park Party Rentals
  - 12 Wilson Pool Rentals
- **2012**
  - 4 Full Aquatic Park Rentals (\$500 each)
  - 13 Aquatic Park Party Rentals (\$50 each)

- 13 Small Wilson Pool Party Rentals (\$75 each)
  - 7 Big Wilson Pool Party Rentals (\$100 each)
- **2011**
  - 5 Full Aquatic Park Rentals
  - 3 Aquatic Park Party Rentals
  - 13 Small Wilson Pool Party Rentals
  - 1 Big Wilson Pool Party Rental
- **2010**
  - 6 Full Aquatic Park Rentals
  - 13 Aquatic Park Party Rentals
  - 9 Small Wilson Pool Party Rentals
  - 0 Big Wilson Pool Party Rentals

<i>Facility</i>	<i>year</i>	<i>total attendance</i>	<i>average attendance per day</i>	<i>dollar amount subsidized by City of Hays</i>
Hays Aquatic Park	2000	83,162	934	\$26,000
Hays Aquatic Park	2001	84,767	874	\$26,000
Hays Aquatic Park	2002	76,294	820	\$26,000
Hays Aquatic Park	2003	62,622	732	\$20,274.20
Hays Aquatic Park	2004	50,377	655	\$15,701.97
Hays Aquatic Park	2005	56,090	728	\$4,306.39
Hays Aquatic Park	2006	56,857	701	\$3,486.37
Hays Aquatic Park	2007	54,088	643	\$15,661.16
Hays Aquatic Park	2008	56,116	728	\$5,820.13
Hays Aquatic Park	2009	54,513	736	\$14,424.36
Hays Aquatic Park	2010	62,290	716	\$5,380.89
Hays Aquatic Park	2011	60,971	753	\$3,261.85
Hays Aquatic Park	2012	58,999	728	\$6,344.95
Hays Aquatic Park	2013	46,270	617	\$20,451.72

Wilson Pool	2003	2,951	38
Wilson Pool	2007	1,518	37
Wilson Pool	2008	2,332	38
Wilson Pool	2009	2,018	32
Wilson Pool	2010	3,441	45
Wilson Pool	2011	3,588	53
Wilson Pool	2012	5,085	71
Wilson Pool	2013	3,740	59

File ✓  
Calendar ✓

**POOL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 14<sup>th</sup> day of September, 2006, by and between the City of Hays, a municipal corporation, hereinafter referred to as the "City" and the Hays Recreation Commission hereinafter referred to as the "Contractor".

WHEREAS, the City owns and maintains Wilson Pool and the Hays Aquatic Park for the benefit of its citizens; and

WHEREAS, the City desires to engage the Contractor to maintain said swimming pools and perform other service, as more fully set out within this document.

NOW, THEREFORE, it is agreed by and between the City and the Contractor as follows:

I. Contractor agrees to:

- a) Keep and maintain all equipment owned by the City in good working condition and perform all such repairs that may properly be accomplished on the premises with Contractor's personnel using City equipment, if needed, provided all repairs or maintenance beyond the Contractor's expertise should be performed under the Contractor's supervision at the City's expense only after receiving approval from the City Parks Director.
- b) Have the sole responsibility of hiring, training, and supervising all personnel needed to provide the services herein described. The Contractor shall be responsible for all employee benefits including Workman's Compensation, Social Security withholding, unemployment compensation, or any other payroll requirements as set forth by the United States or Kansas Statutes. A certificate of Workman's Compensation Insurance, which shows the Contractor has valid and adequate coverage, must be filed with the City annually.
- c) Furnish all labor and work necessary to maintain Wilson Pool and the Hays Aquatic Park and related grounds in a workmanlike manner consistent with generally accepted operation standards (Red Cross, Ellis and Associates, or other nationally recognized programs).
- d) Operate said pools for an admission by the general public during the swimming season. Swimming season is generally defined as the time between Memorial Day through Labor Day.

General use by the public of these facilities may be suspended, for weather related incidents (including lightning, thunderstorms or excessive wind) or labor shortages. Priority for pool operations during labor shortages shall be (1) Hays Aquatic Park and (2) Wilson Pool. A decision to close any of the above mentioned pools will be at the discretion of the Aquatic Director according to the policies established within this Agreement. The Contractor shall notify the City of any closures as soon as possible.

- e) Coordinate a comprehensive aquatics program, outside of the general public swim times, including, but not limited to, swim lessons, aquasize sessions, swim meets, swim team practices, special events, and facility rentals.

- f) Maintain the grounds immediately surrounding all swimming pools including but not limited to litter pick-up. For Hays Aquatic Park, grounds maintenance shall also include turf maintenance.
- g) Maintain the swimming pool water in a safe and sanitary condition and prepare the pools for operation prior to the pool season and secure the pools after the end of the season.
- h) Keep in a clean and sanitary condition the pool premises to include, but not limited to, the pool deck, shower rooms, locker facilities, parking lot area, tube storage area, sundeck, loose equipment (deck chairs, inner tubes, roping, etc.), and other related items.
- i) Establish, collect, and account for admission charges, by pools, for all pools, provided that any admission charges to said pools shall be approved by the City Commission of the City of Hays.

Other Fees:

The Contractor has the right to charge fees for other activities not listed. All revenues received from any such charges will be added to the total revenue received by the Contractor as required in Section V of this agreement.

- j) Keep records of all receipts from admissions, rentals, and concessions along with all expenses for pool operation (both direct and indirect) and provide the City adequate, full, complete, and itemized accounting of said receipts and expenses, by pool, by November 1<sup>st</sup> of each year. Indirect expenses include:
  - 10% of the HRC Office Manager's annual salary.
  - 5% of the HRC Superintendent's annual salary
  - 66% of the HRC Aquatic Director's annual salary and benefits.
- k) Maintain an admission policy, which does not discriminate against any person because of race, national origin, age, sex, or physical handicap.
- l) Assist the City in developing an annual budget in accordance with the City's budget schedule, for approval by the City Commission. Make requests and estimates for materials and repairs to all pool facilities to the Park Director prior to April 1 of each year, for possible inclusion in the next year's City budget.
- m) Provide for the purchase of all other materials not specifically mentioned in this agreement, and provide for the necessary manpower for minor structural building and pool repairs. "Minor" structural building and pool repairs shall mean any repair less than \$500.00.
- n) Provide and pay for any telephone service for all public swimming pools.
- o) Provide concessions at all pools to a level deemed appropriate by the Superintendent of the Hays Recreation.
- p) Create and maintain management practices that create a friendly and cordial atmosphere for the mutual enjoyment of all citizens.

II. City agrees to:

- a) Furnish such equipment it deems necessary for use by the Contractor in providing the services herein described.
- b) Provide and pay for major structural repairs to all pools dealing with plumbing, filtering, electrical, or mechanical equipment. "Major" structural repairs shall include any repair in excess of \$500.00. Such "Major" repairs must be authorized by the Park Director of the City and follow City Purchasing Policy.
- c) Provide and pay for needed materials and equipment such as swimming pool ladders, paint, paint supplies, guard stands, diving boards, etc.
- d) Pay all electric and gas utility costs for all pools.
- e) Provide for water and sewage services at all pools as well as all water sanitation chemicals for all pools.
- f) Provide sanitation during the off-season months.
- g) Provide that all pools are in good sound mechanical condition and are in compliance with the Americans with Disabilities Act (ADA) prior to the opening of each pool season.

III. Both parties agree:

- a) The City shall have at all times control of all pool premises and access to the same.
- b) The City Park Director and the City Manager or designee shall be the principal contacts for overseeing this agreement. The Superintendent of the Hays Recreation Commission shall be the principal contact for the Contractor in administering this agreement.

IV. Contract term:

- a) This agreement shall be in force for a five (5) year period beginning January 1, 2007, through December 31, 2011, unless terminated by either party by giving notice to the other at least 60 days prior to February 1 for the ensuing summer season. It is understood that an evaluation of the previous year's services shall be conducted by both parties. This evaluation shall be reviewed by both parties and may be used as a basis for modification of the following year. All modifications of this agreement must be done by mutual consent. Unless otherwise stipulated in other sections, this agreement shall be automatically renewed for five (5) years, unless either party notifies the other of its intention to renegotiate the lease at least one hundred twenty (120) days prior to the termination of the primary term of this lease or any extension thereof.

V. Compensation:

In consideration for operating and maintaining pools in the manner described in this agreement, the City and Contractor agree to the following financial terms:

After financial reports are compiled as described in the agreement, any operating loss or surplus incurred by the Contractor will be shared on a 50% City – 50% Contractor basis as long as the Contractor's portion of the loss does not exceed \$26,000.

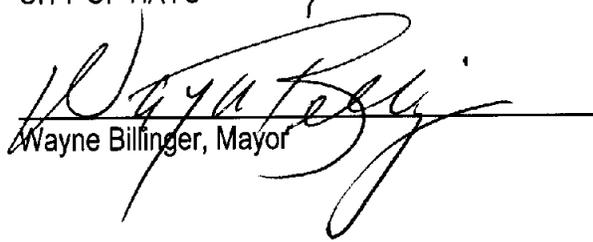
Contractor shall have the option to request early partial payment if expenses over revenue for the pools cause a cash flow shortage.

VI. Annual Appropriation:

- a) This agreement is subject to annual appropriations of the City and/or Contractor.

IN WITNESS WHEREOF, both parties have executed this contract this 14<sup>th</sup> day of September, 2006.

CITY OF HAYS



Wayne Billinger, Mayor

ATTEST:



Mark Loughry, Director of Finance/City Clerk

CONTRACTOR  
HAYS RECREATION COMMISSION



Mark Junk, Chairman



# CITY OF HAYS

## AGENDA ITEM COVER SHEET

COMMISSION AGENDA ITEM NO. 6

MEETING DATE: 12-12-13

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**TOPIC:**

Concealed Carry Update

**ACTION REQUESTED:**

Approve Resolution No. 2013-024 to allow for a four-year exemption as required by House Bill 2052.

**NARRATIVE:**

The Kansas Legislature passed House Bill (HB) 2052 and made it legal to carry concealed weapons within public buildings. The general rule of HB 2052 says that any state or municipal building must have “adequate security measures” in place to prevent any weapon from entering the building and properly post Attorney General-approved signage if that state or municipal building desires to restrict the licensed concealed carry of handguns within its walls. HB 2052 does allow for a 4-year exemption from these requirements. This exemption would require the City of Hays to have a security plan for each building and provide “adequate security” for the occupants. City staff is recommending the 4-year exemption for 12 City-owned buildings.

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Toby Dougherty, City Manager  
Don Scheibler, Chief of Police

**ADMINISTRATION RECOMMENDATION:**

It is the recommendation of City staff that the City pursue a 4-year exemption from the requirements of HB 2052 for the 12 City-owned buildings.

**COMMITTEE RECOMMENDATION(S):**

NA

**ATTACHMENTS:**

Staff Memo on Concealed Carry Update  
Kansas House Bill 2052  
Attorney General Review of HB 2052  
Attorney General Opinion on “Adequate Security Measures” and “Adequate Security”  
LKM Legal Forum article “Concealed Carry Four Year Exemption”  
LKM Concealed Carry Briefing  
Resolution No. 2013-024 (to be presented at the 12-12-13 Commission meeting)

# Commission Work Session Agenda

## Memo

**From:** Don Scheibler, Chief of Police

**Work Session:** December 5<sup>th</sup>, 2013

**Subject:** Concealed Carry in Municipal Buildings Update

**Person(s) Responsible:** Toby Dougherty, City Manager  
Don Scheibler, Chief of Police

### Summary

The Kansas Legislature passed House Bill (HB) 2052 and made it legal to carry concealed weapons within public buildings. The general rule of HB 2052 says that any state or municipal building must have “adequate security measures” in place to prevent any weapon from entering the building and properly post Attorney General-approved signage if that state or municipal building desires to restrict the licensed concealed carry of handguns within its walls. HB 2052 does allow for a 4-year exemption from these requirements. This exemption would require the City of Hays to have a security plan for each building and provide “adequate security” for the occupants. City staff is recommending the 4-year exemption for 12 City owned buildings.

### Background

In 2006, the Kansas Legislature passed the Personal and Family Protection Act, which provided the opportunity for citizens of Kansas to apply for a license to carry concealed firearms. The first licenses were issued on January 3, 2007, and since that time over 80,000 Kansans have applied for a concealed carry permit. As of October 1, 2013, over 72,000 concealed carry licenses have been issued in Kansas. Beginning July 1, 2013, the State of Kansas also began recognizing all valid concealed carry licenses issued by another State or the District of Columbia.

The Personal and Family Protection Act initially did not allow for concealed carry in municipal buildings so long as the building was properly marked with the appropriate signage. In 2013, the Kansas Legislature passed HB 2052, which authorizes the carrying of concealed firearms in municipal buildings. HB 2052 states that after July 1, 2013, a municipal building must have “adequate security measures” in place and properly approved signage if that municipality desires to restrict the licensed concealed carry of handguns within the building.

A provision in HB 2052 allowed for a 6-month exemption from the required changes. On June 27, 2013, the City of Hays requested and received this exemption in order to allow City staff to review and make recommendations to the Commission on how to proceed. This exemption ends January 1, 2014.

### **Discussion**

A review of HB 2052 shows that the City of Hays must take some action prior to January 1, 2014 in reference to the issue of allowing concealed carry in City owned buildings. HB 2052 provides the City with three possible options for each building:

- 1) Allow the concealed carry of firearms in the building,
- 2) Provide “adequate security measures” and not allow concealed carry in the building, or
- 3) Request a four-year exemption that will enable exempted buildings to refrain from installing “adequate security measures,” while still prohibiting concealed carry licensees from carrying handguns into the building.

City staff has reviewed and prepared an analysis for each of these options.

#### **Allow the Concealed Carry of Firearms**

The City has the option of removing the prohibited concealed carry sign from the entrance and allowing the concealed carry of firearms within the building. This will allow those people with a concealed carry license to enter into the City owned building with a gun to conduct their business. There are no initial costs for this option, and it will not require any further action by the City to be in compliance with HB 2052.

It should be noted that the City has a policy that prohibits City employees, with the exception of law enforcement, from carrying a firearm while at work. While HB 2052 is conflicted in this area, the League of Kansas Municipalities (LKM) and the City Attorney both agree that the City may restrict or prohibit the carrying of concealed firearms by their employees while on City property or while engaged in their official duties if the city does so through the policy manual.

While allowing the concealed carry of firearms is the least expensive of the three options, it is not known if it will improve the security of the building or make it safer. It is the opinion of City staff that allowing more guns in the building will increase the likelihood of an incident or an accident occurring, causing the occupants of the building to be endangered.

#### **Prohibit the Concealed Carry of Firearms**

HB 2052 provides the City with the option to prohibit the carrying of concealed firearms in a city building. To do this, the City must provide “adequate security measures” to ensure that no weapons are permitted to be carried into such building and mark the entrances with the appropriate signage. A building that contains both public access

entrances and restricted access entrances is required to provide adequate security measures at the public access entrances only.

HB 2052 defines “adequate security measures” as “the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public.” This means the City would be required to staff all public access points with security personnel and electronic equipment. This option would help to restrict weapons into City buildings through public access points but not at employee entrances.

City staff investigated and determined that it would cost an estimated \$5,000 to install a permanent security station with a metal detector. Currently, the City has ten buildings (not counting the Aquatic Park and Wilson pool buildings) that are accessible to the public. To install a security station at each building entrance would cost \$50,000.00. This could be done for significantly less money by using hand-held metal detector wands, but it would increase the danger to the security staff. To staff the entrances to those facilities would require a minimum of 13 employees. These employees would cost an estimated \$585,000.00 annually with benefits. This cost may be reduced by using a security service vendor or by using personnel with less training. Additional annual costs would include equipment and training for the security personnel.

While this option provides the best security and does improve the safety of the buildings’ occupants, the mere cost alone makes it hard to justify. Citizens have become frustrated with City staff in the past, and Commission meetings can become contentious; however, City staff is unable to recall an incident where a violent act has occurred in a City building that would have justified the use of deadly force (firearm). City staff believes that the members of our community are not prepared, nor is it necessary, for them to be searched every time they attend a Commission meeting, pay a water bill, or visit the Welcome Center. City staff does not recommend this option.

#### **Four-Year Exemption to HB 2052**

HB 2052 provides for a 4-year exemption that will enable exempted buildings to refrain from installing “adequate security measures,” while still prohibiting concealed carry licensees from carrying handguns into the building. This exemption requires the City to establish a security plan and adopt a resolution to exempt the buildings from the requirements of the act. The only requirement of the security plan is that it provides “adequate security” to the occupants of the building.

HB 2052 does not define “adequate security,” and it is the opinion of the Attorney General (AG) that it does not mean the same as “adequate security measures.” According to the AG’s Opinion 2013-14, “adequate security” must be construed according to its ordinary meaning. The ordinary meaning of “adequate” is “satisfactory or acceptable in quality or quantity.” Thus, whether security is “adequate” must be

determined on a case-by-case basis for each building, and the City makes this determination.

City staff has completed a risk assessment and security plan for the following 12 City owned buildings:

- |                                     |                                     |
|-------------------------------------|-------------------------------------|
| 1) Public Works Facility            | - 1002 Vine Street                  |
| 2) Water Plant Facility             | - 1000 Vine Street                  |
| 3) Hays Regional Airport Terminal   | - 3950 East 8 <sup>th</sup> Street  |
| 4) Airport Fire Department          | - 3950 East 8 <sup>th</sup> Street  |
| 5) Waste Water Treatment Plant      | - 1498 Hwy 40 Bypass                |
| 6) Parks Department Office Facility | - 1546 Hwy 183 Alt.                 |
| 7) City Hall / Hays Fire Department | - 1507 Main Street                  |
| 8) Hays Welcome Center              | - 2700 Vine Street                  |
| 9) Golf Course Club House           | - 1450 Golf Course Road             |
| 10) Hays Aquatic Park Building      | - 300 Main Street                   |
| 11) Wilson Pool Building            | - 101 East 28 <sup>th</sup> Street  |
| 12) Recycling Facility              | - 1780 West 55 <sup>th</sup> Street |

The risk assessment for each building shows that potential for violence at these building is minimal. The City has always made it a priority to provide a safe and secure environment for our employees to work in and for our citizens to live in. It is the opinion of City staff that there is adequate security at each of these buildings to merit the prohibition of the carrying of concealed firearms as authorized by the Personal and Family Protection Act.

While adequate security is currently in place, the risk assessments for each building did help identify several areas where improvement could be made to increase the safety for the occupants of each of the buildings. These improvements include, but are not limited to, installing “panic buttons” and electronic door locks, limiting access to buildings, and continuing employee training on safety and security. City staff recommends these improvements in the future no matter what option is chosen.

If the City should choose to take the 4-year exemption, the City must prepare a notice of exemption and adopt a resolution exempting each building. The exemption notice and resolution for each building must then be sent to the AG’s office and the Hays Police Department. The City must keep the security plan for each building on file. The security plan is not reviewed by the State of Kansas and is not subject to the Kansas Open Records Act; however, it must be made available to the AG and local law enforcement if requested.

City staff contacted 8 comparable communities and found that the common theme is that HB 2052 is very confusing and open to interpretation in many areas. As a result most communities are still in the process of determining what action to take reference HB 2052. Junction City has taken the 4-year exemption for all City owned buildings and Ellis County is pursuing the 4-year exemption for all county owned buildings, with the exception of the Ellis County Court House which will not allow concealed carry.

McPherson, Salina, Emporia, and Manhattan all said that they had, were in the process, or were considering exempting their city government buildings. Colby plans on removing the signs and allowing concealed carry in all buildings with the exception of their community building. Only Newton and Garden City indicated that it was their intention to take down all the signs on January 1<sup>st</sup>, 2014. Fort Hays State University has taken the 4-year exemption for their campus.

<b>Municipalities</b>	<b>4-Year Exemption</b>	<b>Allow Concealed Carry</b>	<b>Notes</b>
Newton		X	All Buildings
Garden City		X	All Buildings
Junction City	X		All Buildings
McPherson	X		City Hall & Municipal Court
Emporia	X		Municipal Building
Colby	X		Community Building
Manhattan	X		Municipal Building
Salina	X		City Government Building
<b>Other</b>			
Fort Hays State	X		4-Year Exemption for Entire Campus
Ellis County	X		4-Year Exemption for All Buildings

### **Legal Consideration**

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

### **Financial Consideration**

Providing adequate security measures as defined in HB 2052 and not allowing concealed carry in the 12 City owned buildings will require an estimated \$50,000.00 in electronic equipment. There will also be an annual cost of \$585,000.00 to staff the security access points. Any costs incurred are the result of an unfunded mandate by the State of Kansas and will be the responsibility of the City.

### **Options**

There are three options for each of the 12 City owned buildings.

Option #1: Remove the signs and allow the concealed carry of firearms.

Option #2: Provide adequate security measures as define in HB 2052 and not allow concealed carry in the building, or

Option #3: Pursue the 4-year exemption from the requirements of HB 2052. This exemption would require the City to have a security plan for each building and provide adequate security for the occupants.

### **Recommendation**

It is the recommendation of City staff that the City pursue a 4-year exemption from the requirements of HB 2052 for the 12 City owned buildings.

### **Action Requested**

Request the Commission discuss and provide direction for staff.

### **Supporting Documentation**

Kansas House Bill 2052

Attorney General Review of HB 2052

Attorney General Opinion on “Adequate Security Measures” and “Adequate Security”

LKM Legal Forum article “Concealed Carry Four Year Exemption

LKM Concealed Carry Briefing

Senate Substitute for HOUSE BILL No. 2052

AN ACT concerning firearms; dealing with the personal and family protection act; amending K.S.A. 2012 Supp. 21-6302, 21-6309, 45-221, 75-7c05, 75-7c06, 75-7c10 and 75-7c17 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 45-221j and 45-221k.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) Unlawful discharge of a firearm is the reckless discharge of a firearm within or into the corporate limits of any city.

(b) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:

(1) The firearm is discharged in the lawful defense of one's person, another person or one's property;

(2) the firearm is discharged at a private or public shooting range;

(3) the firearm is discharged to lawfully take wildlife unless prohibited by the department of wildlife, parks and tourism or the governing body of the city;

(4) the firearm is discharged by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;

(5) the firearm is discharged by special permit of the chief of police or by the sheriff when the city has no police department;

(6) the firearm is discharged using blanks; or

(7) the firearm is discharged in lawful self-defense or defense of another person against an animal attack.

(c) A violation of subsection (a) shall be a class B nonperson misdemeanor.

New Sec. 2. (a) The carrying of a concealed handgun as authorized by the personal and family protection act shall not be prohibited in any state or municipal building unless such building has adequate security measures to ensure that no weapons are permitted to be carried into such building and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.

(b) Any state or municipal building which contains both public access entrances and restricted access entrances shall provide adequate security measures at the public access entrances in order to prohibit the carrying of any weapons into such building.

(c) No state agency or municipality shall prohibit an employee who is licensed to carry a concealed handgun under the provisions of the personal and family protection act from carrying such concealed handgun at the employee's work place unless the building has adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.

(d) It shall not be a violation of the personal and family protection act for a person to carry a concealed handgun into a state or municipal building so long as that person is licensed to carry a concealed handgun under the provisions of the personal and family protection act and has authority to enter through a restricted access entrance into such building which provides adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.

(e) A state agency or municipality which provides adequate security measures in a state or municipal building and which conspicuously posts signage in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto, prohibiting the carrying of a concealed handgun in such building, as authorized by the personal and family protection act, such state agency or municipality shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(f) A state agency or municipality which does not provide adequate security measures in a state or municipal building and which allows the carrying of a concealed handgun as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(g) Nothing in this act shall limit the ability of a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of a handgun or other firearm concealed or unconcealed by any person into any secure area of a building located on such premises, except those areas

of such building outside of a secure area and readily accessible to the public shall be subject to the provisions of subsection (b).

(h) Nothing in this section shall limit the ability of the chief judge of each judicial district to prohibit the carrying of a concealed handgun by any person into courtrooms or ancillary courtrooms within the district provided that other means of security are employed such as armed law enforcement or armed security officers.

(i) The governing body or the chief administrative officer, if no governing body exists, of a state or municipal building, may exempt the building from this section until January 1, 2014, by notifying the Kansas attorney general and the law enforcement agency of the local jurisdiction by letter of such exemption. Thereafter, such governing body or chief administrative officer may exempt a state or municipal building for a period of only four years by adopting a resolution, or drafting a letter, listing the legal description of such building, listing the reasons for such exemption, and including the following statement: "A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act." A copy of the security plan for the building shall be maintained on file and shall be made available, upon request, to the Kansas attorney general and the law enforcement agency of local jurisdiction. Notice of this exemption, together with the resolution adopted or the letter drafted, shall be sent to the Kansas attorney general and to the law enforcement agency of local jurisdiction. The security plan shall not be subject to disclosure under the Kansas open records act.

(j) The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may exempt any building of such institution from this section for a period of four years only by stating the reasons for such exemption and sending notice of such exemption to the Kansas attorney general:

(1) A state or municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;

(2) a state or municipal-owned adult care home, as defined in K.S.A. 39-923, and amendments thereto;

(3) a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto;

(4) an indigent health care clinic, as defined by K.S.A. 2012 Supp. 65-7402, and amendments thereto; or

(5) a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto, including any buildings located on the grounds of such institution and any buildings leased by such institution.

(k) The provisions of this section shall not apply to any building located on the grounds of the Kansas state school for the deaf or the Kansas state school for the blind.

(l) For purposes of this section:

(1) "Adequate security measures" means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances.

(2) The terms "municipality" and "municipal" are interchangeable and have the same meaning as the term "municipality" is defined in K.S.A. 75-6102, and amendments thereto, but does not include school districts.

(3) "Restricted access entrance" means an entrance that is restricted to the public and requires a key, keycard, code, or similar device to allow entry to authorized personnel.

(4) "State" means the same as the term is defined in K.S.A. 75-6102, and amendments thereto.

(5) (A) "State or municipal building" means a building owned or leased by such public entity. It does not include a building owned by the state or a municipality which is leased by a private entity whether for

profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing.

(B) On and after July 1, 2014, provided that the provisions of section 3, and amendments thereto, are in full force and effect, the term “state and municipal building” shall not include the state capitol.

(6) “Weapon” means a weapon described in K.S.A. 2012 Supp. 21-6301, and amendments thereto.

(m) This section shall be a part of and supplemental to the personal and family protection act.

New Sec. 3. (a) A license issued under K.S.A. 75-7c01 et seq., and amendments thereto, shall authorize the licensee to carry a concealed handgun in the state capitol in accordance with the provisions of K.S.A. 75-7c01 et seq., and amendments thereto.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2014, unless the legislative coordinating council determines that on July 1, 2014, the state capitol does have adequate security measures, as that term is defined in section 2, and amendments thereto, to ensure that no weapons are permitted to be carried into the state capitol. Such determination shall be made on or after June 1, 2014, but no later than July 1, 2014.

(c) This section shall be a part of and supplemental to the personal and family protection act.

Sec. 4. K.S.A. 2012 Supp. 21-6302 is hereby amended to read as follows: 21-6302. (a) Criminal carrying of a weapon is knowingly carrying:

(1) Any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) concealed on one’s person, a dagger, dirk, billy, blackjack, slung-shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) on one’s person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) any pistol, revolver or other firearm concealed on one’s person except when on the person’s land or in the person’s abode or fixed place of business; or

(5) a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically.

(b) Criminal carrying of a weapon as defined in:

(1) Subsections (a)(1), (a)(2), (a)(3) or (a)(4) is a class A nonperson misdemeanor; and

(2) subsection (a)(5) is a severity level 9, nonperson felony.

(c) Subsection (a) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(4) shall not apply to:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto;

(6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a, and amendments thereto;

(7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c19, and amendments thereto; ~~or~~

(8) *law enforcement officers from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C; or*

~~(8)~~(9) any person carrying a concealed handgun as authorized by K.S.A. 2012 Supp. 75-7c01 through 75-7c17, and amendments thereto.

(e) Subsection (a)(5) shall not apply to:

(1) Any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor;

(2) any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsection (a)(5) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory; or

(3) any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.

(f) Subsection (a)(1) shall not apply to any ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the knife to overcome the bias towards closure to assist in the opening of the knife.

(g) It shall not be a violation of this section if a person violates the provisions of K.S.A. 2012 Supp. 75-7c03, and amendments thereto, but has an otherwise valid license to carry a concealed handgun which is issued or recognized by this state.

(h) As used in this section, "throwing star" means the same as prescribed by K.S.A. 2012 Supp. 21-6301, and amendments thereto.

Sec. 5. K.S.A. 2012 Supp. 21-6309 is hereby amended to read as follows: 21-6309. (a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm ~~on the grounds in any of the following places:~~

- (1) Within any building located within the capitol complex;
- (2) within the governor's residence;

(3) on the grounds of or in any building on the grounds of the governor's residence;

(4) within any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building; or

(5) within any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse.

(b) Violation of this section is a class A misdemeanor.

(c) This section shall not apply to:

(1) A commissioned law enforcement officer;

(2) a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state;

(3) any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer; or

(4) a member of the military of this state or the United States engaged in the performance of duties; or

~~(5) a person with a license issued pursuant to or recognized under K.S.A. 2012 Supp. 75-7c01 et seq., and amendments thereto, except in buildings posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and in the areas specified in subsections (a)(2) and (a)(3).~~

(d) It is not a violation of this section for the:

(1) Governor, the governor's immediate family, or specifically authorized guest of the governor to possess a firearm within the governor's residence or on the grounds of or in any building on the grounds of the governor's residence; or

(2) United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a firearm within any county courthouse and court-related facility, subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 2012 Supp. 75-7c19, and amendments thereto; or

(3) *law enforcement officers from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C, to possess a firearm.*

(e) *It is not a violation of this section for a person to possess a handgun as authorized under the personal and family protection act.*

(f) Notwithstanding the provisions of this section, any county may elect by passage of a resolution that the provisions of subsection (d)(2) shall not apply to such county's courthouse or court-related facilities if such:

(1) ~~Facilities~~ *Buildings* have adequate security measures to ensure that no weapons are permitted to be carried into such ~~facilities~~ *buildings*;

~~(2) facilities have adequate measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options;~~

~~(3)~~(2) county also has a policy or regulation requiring all law enforcement officers to secure and store such officer's firearm upon entering the courthouse or court-related facility. Such policy or regulation may provide that it does not apply to court security or sheriff's office personnel for such county; and

~~(4)~~(3) ~~facilities~~ *buildings* have a sign conspicuously posted at each entryway into such ~~facility~~ *building* stating that the provisions of subsection (d)(2) do not apply to such ~~facility~~ *building*.

~~(f)~~(g) As used in this section:

(1) "Adequate security measures" ~~means the use of electronic equipment and personnel to detect and restrict the carrying of any weapons into the facility, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes~~ *shall have*

*the same meaning as the term is defined in section 2, and amendments thereto;*

(2) “possession” means having joint or exclusive control over a firearm or having a firearm in a place where the person has some measure of access and right of control; and

(3) “capitol complex” means the same as in K.S.A. 75-4514, and amendments thereto.

~~(g)~~<sup>(h)</sup> For the purposes of ~~subsection~~ *subsections* (a)(1), (a)(4) and (a)(5), “building” and “courthouse” shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

Sec. 6. K.S.A. 2012 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2012 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2012 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition or disposal of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has au-

thority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or releasee, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) ~~the ombudsman of corrections,~~ the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third-party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers, DD Form 214. Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safe-house or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the pur-

pose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(51) Records of a public agency which identify the home address or home ownership of a law enforcement officer as defined in K.S.A. 2012 Supp. 21-5111, and amendments thereto, parole officer, probation officer, court services officer or community correctional services officer. The agency head of such law enforcement office, parole office, probation office, court services office or community correctional services office or such individual officer shall file with the custodian of such record a request to have such officer's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such officer's identifying information from such public access.

(52) Records of a public agency which identify the home address or home ownership of a federal judge, a justice of the supreme court, a judge of the court of appeals, a district judge, a district magistrate judge, the United States attorney for the district of Kansas, an assistant United States attorney, the attorney general, an assistant attorney general, a district attorney or county attorney or an assistant district attorney or assistant county attorney. Such person or such person's employer shall file with the custodian of such record a request to have such person's identifying information removed from public access. Within seven days of receipt of such requests, the public agency shall remove such person's identifying information from such public access.

(53) *Records of a public agency that would disclose the name, home address, zip code, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act, K.S.A. 2012 Supp. 75-7c01 et seq., and amendments thereto.*

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for

inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 7. K.S.A. 2012 Supp. 75-7c05 is hereby amended to read as follows: 75-7c05. (a) The application for a license pursuant to this act shall be completed, under oath, on a form prescribed by the attorney general and shall only include:

(1) (A) Subject to the provisions of subsection (a)(1)(B), the name, address, social security number, Kansas driver's license number or Kansas nondriver's license identification number, place and date of birth, a photocopy of the applicant's driver's license or nondriver's identification card and a photocopy of the applicant's certificate of training course completion; (B) in the case of an applicant who presents proof that such person is on active duty with any branch of the armed forces of the United States, or is the dependent of such a person, and who does not possess a Kansas driver's license or Kansas nondriver's license identification, the number of such license or identification shall not be required;

(2) a statement that the applicant is in compliance with criteria contained within K.S.A. 2012 Supp. 75-7c04, and amendments thereto;

(3) a statement that the applicant has been furnished a copy of this act and is knowledgeable of its provisions;

(4) a conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under K.S.A. 2012 Supp. 21-5903, and amendments thereto; and

(5) a statement that the applicant desires a concealed handgun license as a means of lawful self-defense.

(b) The applicant shall submit to the sheriff of the county where the applicant resides, during any normal business hours:

(1) A completed application described in subsection (a);

(2) ~~except as provided by subsection (g),~~ a nonrefundable license fee of \$132.50, if the applicant has not previously been issued a statewide license or if the applicant's license has permanently expired, which fee shall be in the form of two cashier's checks, personal checks or money orders of \$32.50 payable to the sheriff of the county where the applicant resides and \$100 payable to the attorney general;

(3) a photocopy of a certificate or an affidavit or document as described in subsection (b) of K.S.A. 2012 Supp. 75-7c04, and amendments thereto, or if applicable, of a license to carry a firearm as described in subsection (d) of K.S.A. 2012 Supp. 75-7c03, and amendments thereto; and

(4) a full frontal view photograph of the applicant taken within the preceding 30 days.

(c) (1) The sheriff, upon receipt of the items listed in subsection (b) of this section, shall provide for the full set of fingerprints of the applicant to be taken and forwarded to the attorney general for purposes of a criminal history records check as provided by subsection (d). In addition, the sheriff shall forward to the attorney general a copy of the application and the portion of the original license fee which is payable to the attorney general. The cost of taking such fingerprints shall be included in the portion of the fee retained by the sheriff. Notwithstanding anything in this section to the contrary, an applicant shall not be required to submit fingerprints for a renewal application under K.S.A. 2012 Supp. 75-7c08, and amendments thereto.

(2) The sheriff of the applicant's county of residence or the chief law enforcement officer of any law enforcement agency, at the sheriff's or chief law enforcement officer's discretion, may participate in the process by submitting a voluntary report to the attorney general containing readily discoverable information, corroborated through public records, which, when combined with another enumerated factor, establishes that the applicant poses a significantly greater threat to law enforcement or the public at large than the average citizen. Any such voluntary reporting shall

be made within 45 days after the date the sheriff receives the application. Any sheriff or chief law enforcement officer submitting a voluntary report shall not incur any civil or criminal liability as the result of the good faith submission of such report.

(3) All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff's office which shall be used solely for the purpose of administering this act.

(d) Each applicant shall be subject to a state and national criminal history records check which conforms to applicable federal standards, including an inquiry of the national instant criminal background check system for the purpose of verifying the identity of the applicant and whether the applicant has been convicted of any crime or has been the subject of any restraining order or any mental health related finding that would disqualify the applicant from holding a license under this act. The attorney general is authorized to use the information obtained from the state or national criminal history record check to determine the applicant's eligibility for such license.

(e) Within 90 days after the date of receipt of the items listed in subsection (b), the attorney general shall:

(1) Issue the license and certify the issuance to the department of revenue; or

(2) deny the application based solely on: (A) The report submitted by the sheriff or other chief law enforcement officer under subsection (c)(2) for good cause shown therein; or (B) the ground that the applicant is disqualified under the criteria listed in K.S.A. 2012 Supp. 75-7c04, and amendments thereto. If the attorney general denies the application, the attorney general shall notify the applicant in writing, stating the ground for denial and informing the applicant the opportunity for a hearing pursuant to the Kansas administrative procedure act.

(f) Each person issued a license shall pay to the department of revenue a fee for the cost of the license which shall be in amounts equal to the fee required pursuant to K.S.A. 8-243 and 8-246, and amendments thereto, for replacement of a driver's license.

(g) (1) A person who is a retired law enforcement officer, as defined in K.S.A. 2012 Supp. 21-5111, and amendments thereto, shall be: (A) Required to pay an original license fee of \$75, which fee shall be in the form of two cashier checks or money orders, \$25 payable to the sheriff of the county where the applicant resides and \$50 payable to the attorney general, as provided in subsection (b)(2), to be forwarded by the sheriff to the attorney general; (B) exempt from the required completion of a ~~weapons~~ handgun safety and training course if such person was certified by the Kansas commission on peace officer's standards and training, or similar body from another jurisdiction, not more than eight years prior to submission of the application; (C) required to pay the license renewal fee; (D) required to pay to the department of revenue the fees required by subsection (f); and (E) required to comply with the criminal history records check requirement of this section.

(2) Proof of retirement as a law enforcement officer shall be required and provided to the attorney general in the form of a letter from the agency head, or their designee, of the officer's retiring agency that attests to the officer having retired in good standing from that agency as a law enforcement officer for reasons other than mental instability and that the officer has a nonforfeitable right to benefits under a retirement plan of the agency.

(h) *A person who is a corrections officer, a parole officer or a corrections officer employed by the federal bureau of prisons, as defined by K.S.A. 75-5202, and amendments thereto, shall be: (1) Required to pay an original license fee as provided in subsection (b)(2); (2) exempt from the required completion of a handgun safety and training course if such person was issued a certificate of firearms training by the department of corrections or the federal bureau of prisons or similar body not more than one year prior to submission of the application; (3) required to pay the license renewal fee; (4) required to pay to the department of revenue the fees required by subsection (f); and (5) required to comply with the criminal history records check requirement of this section.*

Sec. 8. K.S.A. 2012 Supp. 75-7c06 is hereby amended to read as follows: 75-7c06. (a) The attorney general shall be the official custodian of

all records relating to licenses issued pursuant to the personal and family protection act.

(b) Except as provided by subsections (c) and (d), records relating to persons issued licenses pursuant to this act, persons applying for licenses pursuant to this act or persons who have had a license denied pursuant to this act shall be confidential and shall not be disclosed ~~in a manner which enables identification of any such person pursuant to the Kansas open records act~~. Any disclosure of a record in violation of this subsection is a class A misdemeanor.

(c) Records of a person whose license has been suspended or revoked pursuant to this act shall be subject to public inspection in accordance with the open records act.

(d) The attorney general shall maintain an automated listing of license holders and pertinent information, and such information shall be available at all times to all law enforcement agencies in this state, other states and the District of Columbia when requested for a legitimate law enforcement purpose.

(e) Within 30 days after the changing of a permanent address, or within 30 days after the discovery that a license has been lost or destroyed, the licensee shall notify the attorney general of such change, loss or destruction. The attorney general, upon notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may order a licensee to pay a fine of not more than \$100, or may suspend the licensee's license for not more than 180 days, for failure to notify the attorney general pursuant to the provisions of this subsection.

(f) In the event that a concealed handgun license is lost or destroyed, the license shall be automatically invalid, and the person to whom the license was issued, upon payment of \$15 to the attorney general, may obtain a duplicate, or substitute thereof, upon furnishing a notarized statement to the attorney general that such license has been lost or destroyed.

Sec. 9. K.S.A. 2012 Supp. 75-7c10 is hereby amended to read as follows: 75-7c10. *Subject to the provisions of section 2, and amendments thereto:*

(a) Provided that the ~~premises are~~ *building is* conspicuously posted in accordance with rules and regulations adopted by the attorney general as ~~premises a building~~ where carrying a concealed handgun is prohibited, no license issued pursuant to or recognized by this act shall authorize the licensee to carry a concealed handgun into ~~the building of:~~

~~(1) Any place where an activity declared a common nuisance by K.S.A. 22-3901, and amendments thereto, is maintained;~~

~~(2) any police, sheriff or highway patrol station;~~

~~(3) any detention facility, prison or jail;~~

~~(4) any courthouse, except that nothing in this section would preclude a judge from carrying a concealed handgun or determining who may carry a concealed handgun in the judge's courtroom;~~

~~(5) any polling place on the day an election is held;~~

~~(6) any state office;~~

~~(7) any facility hosting an athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education;~~

~~(8) any facility hosting a professional athletic event not related to or involving firearms;~~

~~(9) any drinking establishment as defined by K.S.A. 41-2601, and amendments thereto;~~

~~(10) any elementary or secondary school, attendance center, administrative office, services center or other facility;~~

~~(11) any community college, college or university;~~

~~(12) any child exchange and visitation center provided for in K.S.A. 75-720, and amendments thereto;~~

~~(13) any community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto; any mental health clinic organized pursuant to K.S.A. 65-211 et seq., and amendments thereto; any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, or a state psychiatric hospital, as follows: Larned state hospital, Osawatimic state hospital or Rainbow mental health facility;~~

~~(14) any public library operated by the state;~~

~~(15) any day care home or group day care home, as defined in Kansas administrative regulation 28-4-113, or any preschool or childcare center, as defined in Kansas administrative regulation 28-4-420, or~~

~~(16) any place of worship~~ any building.

(b) Nothing in this act shall be construed to prevent:

(1) Any public or private employer from restricting or prohibiting by personnel policies persons licensed under this act from carrying a concealed handgun while on the premises of the employer's business or while engaged in the duties of the person's employment by the employer, except that no employer may prohibit possession of a handgun in a private means of conveyance, even if parked on the employer's premises; or

(2) any private business or city, county or political subdivision from restricting or prohibiting persons licensed or recognized under this act from carrying a concealed handgun within a building or buildings of such entity, provided that the ~~premises are~~ building is posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection ~~(f)~~ (h), as ~~premises a building~~ where carrying a concealed handgun is prohibited.

~~(c) (1) It shall be a violation of this section to carry a concealed handgun in violation of any restriction or prohibition allowed by subsection (a) or (b) if the premises are posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (f). Any person who violates this section shall be guilty of a misdemeanor punishable by a fine of: (A) Not more than \$50 for the first offense; or (B) not more than \$100 for the second offense. Any third or subsequent offense is a class B misdemeanor.~~

*Any private entity which provides adequate security measures in a private building and which conspicuously posts signage in accordance with this section prohibiting the carrying of a concealed handgun in such building as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.*

*(2) Any private entity which does not provide adequate security measures in a private building and which allows the carrying of a concealed handgun as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.*

*(3) Nothing in this act shall be deemed to increase the liability of any private entity where liability would have existed under the personal and family protection act prior to the effective date of this act.*

*(d) The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may permit any employee, who is licensed to carry a concealed handgun as authorized by the provisions of K.S.A. 75-7c01 et seq., and amendments thereto, to carry a concealed handgun in any building of such institution, if the employee meets such institution's own policy requirements regardless of whether such building is conspicuously posted in accordance with the provisions of this section:*

*(1) A unified school district;*

*(2) a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto;*

*(3) a state or municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;*

*(4) a state or municipal-owned adult care home, as defined in K.S.A. 39-923, and amendments thereto;*

*(5) a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto; or*

*(6) an indigent health care clinic, as defined by K.S.A. 2012 Supp. 65-7402, and amendments thereto.*

*(e) (1) It shall be a violation of this section to carry a concealed handgun in violation of any restriction or prohibition allowed by subsection (a) or (b) if the building is posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (h). Any person who violates this section shall not be subject to a criminal penalty but may be subject to denial to such premises or removal from such premises.*

*(2) Notwithstanding the provisions of subsection (a) or (b), it is not*

a violation of this section for the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a handgun within any of the buildings described in subsection (a) or (b), subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person who is not in compliance with K.S.A. 2012 Supp. 75-7c19, and amendments thereto.

(3) *Notwithstanding the provisions of subsection (a) or (b), it is not a violation of this section for a law enforcement officer from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C, to possess a handgun within any of the buildings described in subsection (a) or (b), subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district.*

(f) *On and after July 1, 2014, provided that the provisions of section 3, and amendments thereto, are in full force and effect, the provisions of this section shall not apply to the carrying of a concealed handgun in the state capitol.*

~~(d)~~(g) For the purposes of this section—

(1) “Adequate security measures” shall have the same meaning as the term is defined in section 2, and amendments thereto;

(2) “building” shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

~~(e)~~(h) Nothing in this act shall be construed to authorize the carrying or possession of a handgun where prohibited by federal law.

~~(f)~~(i) The attorney general shall adopt rules and regulations prescribing the location, content, size and other characteristics of signs to be posted on ~~premises~~ a building where carrying a concealed handgun is prohibited pursuant to subsections (a) and (b). Such regulations shall prescribe, at a minimum, that:

(1) The signs be posted at all exterior entrances to the prohibited buildings;

(2) ~~they~~ the signs be posted at eye level of adults using the entrance and not more than 12 inches to the right or left of such entrance;

(3) the signs not be obstructed or altered in any way; and

(4) signs which become illegible for any reason be immediately replaced.

Sec. 10. K.S.A. 2012 Supp. 75-7c17 is hereby amended to read as follows: 75-7c17. (a) The legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed handguns for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed handguns for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this act is subjectively or arbitrarily denied the person’s rights. No city, county or other political subdivision of this state shall regulate, restrict or prohibit the carrying of concealed handguns by persons licensed under this act except as provided in *section 2, and amendments thereto, and in* subsection (b) of K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6309, and amendments thereto. Any existing or future law, ordinance, rule, regulation or resolution enacted by any city, county or other political subdivision of this state that regulates, restricts or prohibits the carrying of concealed handguns by persons licensed under this act except as provided in *section 2, and amendments thereto, and in* subsection (b) of K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6309, and amendments thereto, shall be null and void.

(b) Prosecution of any person licensed under the personal and family protection act, and amendments thereto, for violating any restrictions on licensees will be done through the district court.

(c) The legislature does not delegate to the attorney general the au-

thority to regulate or restrict the issuing of licenses provided for in this act, beyond those provisions of this act pertaining to licensing and training. Subjective or arbitrary actions or rules and regulations which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this act or which create restrictions beyond those specified in this act are in conflict with the intent of this act and are prohibited.

(d) This act shall be liberally construed. This act is supplemental and additional to existing constitutional rights to bear arms and nothing in this act shall impair or diminish such rights.

Sec. 11. K.S.A. 2012 Supp. 21-6302, 21-6309, 45-221, 45-221j, 45-221k, 75-7c05, 75-7c06, 75-7c10 and 75-7c17 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

\_\_\_\_\_  
HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*

## **Kansas Personal and Family Protection Act**

### **2013 Legislative Changes**

The 2013 Kansas Legislature enacted two bills that make significant changes to the Personal and Family Protection Act (“the Act”) and that affect the rights and responsibilities of concealed carry license (“CCL”) holders.

Senate Bill 21, which was proposed by the Attorney General’s Office, makes numerous technical and conforming changes to the Act. One significant substantive change is the manner in which Kansas will recognize CCLs issued by other states and jurisdictions.

**House Bill 2052 makes numerous changes to the Act. One significant change is the law governing when state or municipal buildings may exclude CCL holders from carrying concealed handguns into the building.**

## **FREQUENTLY ASKED QUESTIONS**

### **SB 21 (L. 2013, ch. 36)**

SB 21 amends K.S.A. §§ 12-16,124 (local regulation of firearms), 21-6304 (criminal possession of a firearm by a felon), 21-6614 (expungement of arrests, charges and convictions), 75-7c03 (CCL recognition), 75-7c04 (licensing standards), 75-7c05 (CCL application process), 75-7c07 (administration of licenses) and 75-7c25 (records of involuntary mental health commitments).

#### **Q: What does the amendment in Section 1 do?**

A: This amendment addresses K.S.A. 12-16,124(a) and 12-16,124(d) by cleaning up a reference in each to an old KPFPA statute (75-7c11) that was repealed in 2010. It also amends 12-16,124(b)(2) and (b)(4) so that those protections are afforded to CCLs from other jurisdictions which are recognized by Kansas.<sup>1</sup>

#### **Q: I have an expunged felony conviction. Do the changes in Sections 2 and 3 of SB 21 mean that that expunged conviction cannot be used when reviewing my application?**

A: Generally, no. Prior felony convictions that occur in Kansas’ state court system result in four (4) categories of firearm prohibition periods in Kansas: lifetime (under subsection (a)(1)); a 10 year prohibition for more serious person and drug felonies (under (a)(3)(A)) or for certain

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<sup>1</sup> See discussion of amendments to K.S.A. 75-7c03 below for updates to recognition in Kansas.

nonperson felonies (under (a)(3)(B)); and a catch-all 5 year prohibition period under (a)(2) for any felony that does not fit subsections (a)(1) or (a)(3).<sup>2</sup>

Under Kansas law, the general rule is that the expungement of a felony conviction **will not** sever any state or federal firearms prohibition. The amendment in Section 2 to K.S.A. 21-6304 and the amendments to K.S.A. 21-6614 in Section 3 reiterate this point. They make it clear that the **only** time a firearms prohibition is severed by expungement (or pardon) of a prior felony is when that prior felony conviction falls into 21-6304(a)(3)(A). **NOTE:** The expungement of that felony will only sever any firearm's restrictions for that felony; if the individual has other criminal history that resulted in a loss of firearm rights then that loss is not affected by the expungement. Some felony offenses listed in (a)(3)(A) are not expungeable, however. If you have felony criminal history, you need to consult with private legal counsel about your specific situation and discuss whether Kansas law allows you to possess firearms.

Felony convictions that occurred in another state or in any federal court will have to survive the firearms expungement, set-aside, pardon or restoration procedures of that other jurisdiction and the restoration procedures of Kansas law under 21-6304 before the individual will be considered eligible to possess firearms in Kansas (and, therefore, be eligible for a CCL).

**Q: I live in another state and have a non-expired CCL from that State. Am I lawful to carry concealed handguns in Kansas?**

A: On and after July 1, 2013, Kansas will honor any "valid" concealed carry license that is issued by another state or the District of Columbia so long as the holder of that CCL is not a resident of Kansas. Section 4 of SB 21 amends K.S.A. 75-7c03 to allow this broader recognition.

So long as the non-Kansas CCL is "valid" (defined as non-expired and not revoked or suspended) and so long as the holder is not a resident of Kansas, that non-Kansas CCL will be honored by Kansas.

**Q: I am moving to Kansas from another state and have a non-Kansas CCL. Can I continue to carry concealed using my non-Kansas CCL?**

A: By law, a resident of Kansas whose only authority to carry concealed comes through CCL must either have a Kansas CCL or fit the active duty military exception. For new residents to Kansas between July 1, 2010, and June 30, 2013, the Attorney General will issue a 90-day temporary receipt to that resident once they have submitted a Kansas CCL application which includes a copy of their valid non-Kansas CCL license which is currently honored by Kansas.

On and after July 1, 2013, for new residents to Kansas (new as of July 1, 2010, and later), upon receiving a Kansas CCL application from that resident, which includes a copy of **any** valid non-Kansas CCL, the Attorney General will issue a 180-day receipt to continue carrying while that application is pending. The Attorney General's office will determine whether that applicant's

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<sup>2</sup> Felony convictions that occur in another state must satisfy the restoration procedures from that state and Kansas; prior Federal felony convictions must satisfy any Federal restoration procedures as well as those time limits of Kansas law.

non-Kansas CCL was issued after receiving training which was equal to or greater than the training imposed by Kansas law in order to receive a Kansas CCL.

- If the non-Kansas CCL was issued after receiving equal to or greater training compared to Kansas law, then the applicant will not have to complete the Kansas training course in order to become approved;
- If the non-Kansas CCL was issued after receiving no training or training that was not equal to or greater than that of Kansas, then the individual will have until the expiration of their 180-day receipt to complete the Kansas training course. If the applicant fails to complete the Kansas training before the expiration of their 180-day receipt, their application will be denied.

**Q: If my current non-Kansas CCL did not require any training or my training was not equal to or greater than Kansas' CCL training, do I have to take the Kansas training course before applying?**

A: No. Simply follow the directions for supplying a completed application (minus the Kansas training certificate) through the sheriff of your county of residence and the Attorney General's office will send you a 180-day receipt that will enable you to continue carrying while you locate a Kansas training course to take during that 180 days. Be sure you attach a copy of your valid non-Kansas CCL to the application. If, however, you fail to submit that Kansas training certificate before the expiration of your 180-day receipt, your application will be denied.

**Q: I have a non-Kansas CCL that did not require any training, but I keep up with my marksmanship regularly at the range and I've taken some other trainings since then. Can those trainings be used to bypass the Kansas training?**

A: The training used to bypass the Kansas training must have been used to obtain the non-Kansas CCL for which the applicant is relying upon. If the training occurred after that license's issuance, it will not be considered for the Kansas license.

**Q: I believe my prior non-Kansas CCL training will meet the equal to or greater than standard. What do I need to do when applying for the Kansas CCL?**

A: Attach copies of the training certificate and all documentation you have which will show the nature of the training you completed (i.e., the topics covered and the live-fire demonstration). Providing the Attorney General's office more information to review ahead of time should help reduce the review time for the application. **NOTE:** Some of the more popular training courses, such as the NRA Basic Pistol course, will not need extra documents submitted with that training certificate as the course requirements for those courses are readily known or locatable. However, a course which is less widely known may require more documents to show the course's framework.

**Q: Because Kansas now recognizes all CCL licenses and permits for non-residents, if I move to Kansas will my non-Kansas CCL be proof of training?**

A: Not necessarily. On and after July 1, 2013, the training used to obtain the non-Kansas CCL will be reviewed to determine whether that previous training was “equal to or greater than” that required by Kansas concealed carry law. Some states require no training at all and some states have training standards that may or may not meet those of Kansas.

The Attorney General was given the discretion to compile a list of states whose training would meet this equal to or greater than standard or review each application on a case by case basis. Irrespective of what a state requires by law, the Attorney General’s office will review the training that the applicant actually received to determine that qualification. The Attorney General’s office understands that a state’s concealed carry law may not require an applicant to demonstrate handgun proficiency during training – but the applicant may have done such a demonstration during their training and the Attorney General’s office does not want to discount that.

**Q: If it takes me almost the entire 180 days to get a Kansas training certificate to the Attorney General’s office, will my 180-day receipt be extended while application finishes the review process?**

A: No. Once the 180-day receipt expires, there is no extension. This is why it is important to get the Kansas training done as soon as possible in order to avoid any periods where you will not be able to lawfully carry.

**Q: In my prior state of residence, my position as a certified law enforcement officer enabled me to bypass the Kansas training course. Is there a similar allowance for a Kansas CCL?**

A: There are several points to cover here, but the short answer is “no.”

“Law enforcement officers” in Kansas do not need a Kansas CCL in order to carry a concealed firearm. However, if they desire a CCL, then the law currently requires them to complete the concealed carry training course as well. There are a couple of exceptions to this general rule.

If you can produce proof, by letter from your former agency, that you retired from your law enforcement agency for reasons other than mental instability and are otherwise in compliance with K.S.A. 75-7c05(g), and amendments thereto, then you qualify for a training course bypass; or

If you are a “corrections officer, a parole officer or a corrections officer employed by the federal bureau of prisons” and you can produce proof that you last completed a Department of Corrections or Bureau of Prisons firearms qualification from the past year – then you are exempt from the Kansas training course. If your DOC or BOP firearms qualification was more than one year ago, and you do not qualify for the exception above, you will need to take the Kansas training course.

If you have further questions after reading the above, send the Concealed Carry Licensing Unit an email to [ksagcc@ksag.org](mailto:ksagcc@ksag.org) and staff will respond as quickly as possible to your questions.

### **S. Sub for HB 2052 (L. 2013, ch. 105)<sup>3</sup>**

#### **Q: What does the language of HB 2052, section 2, set out to do?**

A: The general rule of Section 2 is that on and after July 1, 2013, any “state or municipal building” must have “adequate security measures” in place to prevent any weapon from entering the building and properly post Attorney General-approved signage if that state or municipal building desires to restrict the licensed concealed carry of handguns within its walls.

NOTE: There are exceptions and exemptions to this general rule.

#### **Q: Who does this general rule affect?**

A: In a broad sense, this section affects any “state or municipal building;” and it affects those who are authorized to carry a concealed handgun under the Kansas Personal and Family Protection Act.

#### **Q: Who does this general rule not affect?**

A: The general rule will have no effect on the buildings of private businesses – even if the building is one that is state-owned or municipally-owned and leased by a private business. Any building that is held by the state or a municipality for revenue bond financing is likewise exempt from coverage as a “state or municipal building.”

Also not affected by this section are: Kansas schools for the deaf and blind; the secure areas of any buildings for a correctional facility, jail facility or a law enforcement agency; and courtrooms where the chief judge of the judicial district has prohibited firearms (provided there are other means of security available – such as armed security or law enforcement).

The last group of unaffected state or municipal buildings will be those that would ordinarily qualify under the act but which exercise one of three allowed exemptions. Those exemptions are found under subsections (i) and (j) of Section 2.

#### **Q: If we are not an automatically exempted building, where can we find the exemptions available to us in the law?**

A: The Legislature has offered three exemptions but not all three are available to all “state or municipal buildings.” These exemptions within Section 2 will enable exempted buildings to refrain from installing “adequate security measures,” if they choose, for a maximum of four and one-half years in some instances while still prohibiting concealed carry licensees from carrying handguns into the building.

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<sup>3</sup> Session law reference to ch 105 is subject to change as directed by the Kansas Secretary of State’s office.

There is a general six-month exemption available to any Section 2-covered state or municipal building. This exemption is found under Section 2(i) and it will run from July 1, 2013, through December 31, 2013.

There is a four-year exemption for specifically enumerated buildings found under Section 2(j).

And there is a catch-all four year exemption for any other qualified state or municipal building also found under Section 2(i).

**Q: We are the governing body (or I am the chief administrative officer) of a state or municipal building that is not automatically exempted from this Section. How do we (I) seek an exemption from this law until we've had a better opportunity to review it and the effects it might have?**

A: This answer will depend on what date the question is being asked and which exemption your building's management is entitled to ask for.

If you are wanting to exercise the 2013 six-month exemption (good through December 31, 2013) from Section 2(i), then your building's governing body or, if no governing body exists, chief administrative officer can submit a letter exercising the exemption to the Attorney General's Concealed Carry Unit and a letter exercising the exemption to the law enforcement agency of local jurisdiction. No further information (security plans, reasons etc.) are required for this exemption.

If you are a building that falls under those specified in Section 2(j) and you are seeking to institute the four year exemption at any point, then the governing body (or chief administrative officer if no governing body exists) is required to submit a letter exercising that exemption to the Attorney General (no letter to the law enforcement agency of local jurisdiction is required by statute – but may be beneficial regardless in the sense of Notice to that agency). Included within that letter must be stated the reasons why the exemption is being exercised.

NOTE: The buildings specified in 2(j) are:

- state or municipal-owned medical care facilities, defined under K.S.A. 65-425;
- state or municipal-owned adult care homes, defined by K.S.A. 39-923;
- community mental health center organized under 19-4001 et seq;
- indigent health care clinics defined by 65-7402; and
- postsecondary educational institutions as defined by 74-3201b (including buildings that are leased by the institution).

On and after January 1, 2014, if you oversee a state or municipal building (again, as a governing body or, where no governing body exists, the chief administrative officer) other than those specified under Section 2(j) and it is determined that the four year exemption under 2(i) will be exercised, then you must:

- provide a letter of the exemption (via resolution or letter) to the Attorney General and law enforcement agency of local jurisdiction;

- include a legal description of the building(s) being exempted;
- include the reasons for seeking the exemption; and
- include the following statement: “A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act.”
- Make a copy of the security plan(s) available to local law enforcement or the Attorney General’s office upon request. **DO NOT** mail a copy of the security plan to the Attorney General’s office with your four-year exemption letter.

**Q: Once the four-year exemption is coming to an end, how can we renew the exemption?**

A: Under the current language of the law, the four year exemptions were only allowed for a one-time use. After the four years has run, the buildings will either need to allow licensed concealed carry or have adequate security measures and proper signage in place.

**Q: Who can submit an exemption notice?**

A: By statute, the exemption request must come from the governing body of the state or municipal building. If no governing body exists for that building, then the chief administrative officer for the building must submit the exemption notice.

**Q: How long does the exemption review process take?**

A: There is no review process. Exemptions are not “granted” or “denied” as no authority to do so was provided in the statute. The Attorney General will return a file stamped copy of the exemption letter to acknowledge its receipt. If the exemption appears to be missing any information (particularly with regard to the 2(i) four-year exemptions where more information is required), the Attorney General may include a letter of response which explains that the Attorney General’s office believes the exemption to be deficient. Ultimately, however, it will be up to the exercising body or administrative officer to make sure that the exemption exercised was done so in accordance with the statutory guidelines of Section 2.

**Q: Within the four-year exemption of Section 2(i), the required statement mandates that a security plan be “developed” – are there any guidelines for what the security plan should entail?**

A: No. The term “security plan” was not a defined term within the act. The only guidance given by the Legislature is that the security plan must supply “adequate security to the occupants of the building.”

**Q: Does the fact that the security plan has to have been developed mean that the security plan must be active at the point of requesting an exemption?**

A: Yes. The four-year exemption in Section 2(i) cannot be sought to further develop a security plan for the building. It must provide “adequate security to the occupants of the building” at the time the exemption is requested.

**Q: Within Section 2(i)’s statement for the security plan, what is meant by “adequate security” for the building’s occupants – does “adequate security” equal the definition of “adequate security measures?”**

A: The Legislature did not provide a separate definition for what constitutes “adequate security” and it was not defined under Section 2(i) to mean the same as “adequate security measures.” If exercising a security plan that has “adequate security” for the building’s occupants is equal to having “adequate security measures” then there would be no need for the exemption; the Legislature would essentially be requiring the building to have “adequate security measures” in place before the building could exempt itself from having to install “adequate security measures.”

**Q: Does a copy of the “security plan” need to be attached to the 2(i) four-year exemption request?**

A: **No**. The security plan needs to be maintained on file in case the Attorney General or law enforcement agency of local jurisdiction should request it for review.

**Q: If a member of the public wishes to examine the security plan that was declared in the 2(i) exemption request, do they have a right to see it?**

A: No. Per Section 2(i), the security plan itself is not a record subject to the Kansas Open Records Act.

**Q: If a building(s) has elected to exercise one of the allowed exemptions, what effect does that have for licensees carrying concealed into that building?**

A: Licensed concealed carry could be restricted through the proper posting of Attorney General-approved signage at all entrances to the building(s) and the building would not be required to have adequate security measures in place. Essentially, most concealed carry law would remain as it was pre-July 1, 2013.

NOTE: K.S.A. 75-7c10 was amended in other ways during the 2013 session, including a revision to the penalty section. That new penalty section would still be effective even if the building has exempted itself. The penalty for violating 75-7c10 would not revert back to its misdemeanor position of pre-July 1, 2013.

**Q: Will the Attorney General be maintaining a complete list of the buildings that have given Notice of exemption?**

A: No. There is no statutory directive to compile or publish this information.

**Q: If the Attorney General is not maintaining a list of the exempt buildings, how do licensees know whether or not a state or municipal building has sought exemption?**

A: On and after July 1, 2013, the original Attorney General-approved signage for buildings to restrict licensed concealed carry will be insufficient postings for state and municipal buildings who have exempted themselves from having “adequate security measures.” The Attorney General’s Office has designed a new sign by temporary regulation for state or municipal buildings that exempt themselves from the provisions of Section 2. The new signage includes specific text and will need to be displayed at all of the buildings’ entrances.

**Q: If we choose to allow concealed carry within our buildings without the “adequate security measures” in place, and later determine that we would like to exempt the buildings, will that be allowed?**

A: As the law stands, the language would not prevent such a procedure. Again, the four-year exemption is currently a one-time use.

**Q: I am a CCL holder who works in a qualifying state or municipal building. If my building does not put adequate security measures in place and the building does not exercise an exemption from Section 2, can I carry while I’m at work?**

A: Yes. Section 2(c) states that adequate security measures and signage are necessary in order to “prohibit” an employee from carrying on and after July 1, 2013.

NOTE: Again, if the building has exempted itself, then the law largely reverts back to its pre-July 1, 2013 position and K.S.A. 75-7c10(b) language relating to employer/employee relations would still be in effect.

**Q: I am a CCL holder who works in a qualifying state or municipal building. My building has put in place “adequate security measures” and posted the public entrances with Attorney General-approved signage. But I am able to access my building through private access entry – am I still allowed to carry concealed while at work?**

A: Maybe. The answer will depend upon whether your employer has authorized you, as an employee, to carry concealed or whether the employer has a policy against employees carrying concealed in the building.

If the latter is the employer’s position, then the answer to this question is that, under Section 2(d), it is not a violation of the Act for you to carry concealed into such a building. However, other laws or actions may be applicable to you. An employee-licensee should consider consulting with private legal counsel about their legal rights in that scenario.

**Q: Same as above, except the employee-licensee does not have restricted access entrance to the adequately secured and properly posted building?**

A: Again, such an employee may be allowed by the employer to carry concealed in certain situations but here, absent that authorization, the licensee violates the Act and, again, other laws or actions may be applicable. Again, consult private legal counsel to know your full, personal legal rights in that situation.

**Q: I was reading through the provisions of HB 2052, and I see under Section 9, which addresses K.S.A. 75-7c10, that statute still says an employer can restrict my ability to carry concealed while I'm engaged in the duties of my employment. Does 75-7c10 or Section 2 control these restrictions?**

A: For state or municipal buildings, Section 2 controls. As is clearly spelled out in Section 9, K.S.A. 75-7c10 was amended there so that the entirety of that statute will be subject to Section 2 on and after July 1, 2013. Any employer/employee restrictions will have to comply with Section 2 at that point in time – unless an exemption (granted by the Legislature or exercised by the state or municipal building's management) applies. For any other employer/employee scenario – K.S.A. 75-7c10 controls.

**Q: What are “adequate security measures?”**

A: By definition within Section 2, “adequate security measures” involves “the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public.”

**Q: Does the building have to provide secure storage for weapons that are discovered during screening?**

A: No. Storage is not required, but it is allowed.

**Q: Do all entrances of a qualifying state or municipal building have to have “adequate security measures” in place in order to restrict licensed concealed carry?**

A: No, but all public access entrances do under Section 2(b). If other entrances are “restricted access entrances” then those entrances are not required to have “adequate security measures.”

**Q: Is the State Capitol building now accessible for those authorized to carry concealed under the KPFPA?**

A: No. However, between June 1, 2014, and June 30, 2014, the legislative coordinating council will review the security position of the Capitol building and, if “adequate security measures” are not in place by that point in time, CCL holders will be allowed within the Kansas Capitol building.

**Q: I am an individual who is carrying concealed under the authority of the Law Enforcement Officer's Safety Act (LEOSA). Am I allowed to carry concealed into buildings restrict concealed carry under the KPFPA?**

A: As of July 1, 2013, LEOSA carry in Kansas will be more broadly recognized in Kansas. See HB 2052, Sections 4, 5 and 9.

NOTE: LEOSA carry could still be limited in buildings where metal detectors and personnel are employed to detect weapons. The provisions of Section 2 only apply to licensed concealed carry pursuant to the Personal and Family Protection Act, but other adequately secured buildings may have complete weapons bans except those carried by their own personnel.

**Q: What other changes did HB 2052 bring about related to concealed carry in Kansas?**

A: Under Section 5, K.S.A. 21-6309 is amended in several respects. First, under subsection (a), some language was clarified about those places that are off-limits to firearms. Second, former subsection (c)(5) is removed and is now found in a modified form under new subsection (e). This new language eliminates some prior limitations that applied to CCL holders while at the Governor's residence, grounds of the Governor's residence, etc. Third, in subsection (f) some clerical changes were made to the statute to remove the terms "facility" or "facilities" and instead refer to "building" or "buildings." And, finally, in the definitions for 21-6309(g), "adequate security measures" is now defined by reference to the definition found in Section 2.

Under Section 6 of the Bill, the Kansas Open Records Act was amended by adding a new paragraph (53) in subsection (a). This section states that "records of a public agency that would disclose the name, home address, zip code, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act,..." are protected information that are not subject to disclosure by the agency unless otherwise required by law.

**Retired Law Enforcement Officers:** In Section 7, K.S.A. 75-7c05 is amended in several ways. First, as of July 1, 2013, all CCL applicants will pay the full application fee of \$132.50 (\$32.50 to the County sheriff where they reside and they will pay \$100.00 to the Attorney General). This will affect those who are applying as retired law enforcement officers. Other fees will be required, such as the training course and getting the actual license card issued through the DMV.

The other manner in which K.S.A. 75-7c05 was modified in HB 2052 is that qualified corrections officers, parole officers or a corrections officer employed by the federal Bureau of Prisons will be exempted from taking the Kansas training course if they were last firearm certified by the Department of Corrections or federal Bureau of Prisons (or similar body from another jurisdiction) within the past year.

Section 8 amends K.S.A. 75-7c06 to simply reflect the modifications made within the Kansas Open Records Act as spelled out under HB 2052, Section 6.

Section 9 amends K.S.A. 75-7c10, making the entire statute is subject to Section 2. Next, the previously listed locations of subsection (a) were removed and the prior bright-line rule of being able to post Attorney General-approved signage on “buildings” is made even brighter.

One substantive change made by HB 2052 is that licensees will no longer be subject to a criminal penalty for simply carrying past a properly posted Attorney General-approved sign. The licensee will be subject to denial of entry or removal from the building. If licensees fail to comply with removal commands, a “criminal trespass” charge may apply. In other words, if you carry past a properly posted Attorney General-approved sign, and are asked to leave the premises – do so.

Under subsection (c), the Legislature sought to include some liability protections for private businesses. Those are when: (1) the business complied with adequate security measures and posted signage; or (2) allows licensed concealed carry into the building. The Legislature also included language stating the act is not meant to increase liabilities as they exist under the personal and family protection act.

New subsection (d) allows various entities (including K-12 school districts and postsecondary education institutions) the option of allowing staff to carry within their buildings even if Attorney General-approved signage is properly posted on the building(s). And finally, a new reference to the state capitol building is added in new subsection (f).

Finally, Section 10 of HB 2052 amends K.S.A. 75-7c17 to reflect the new provisions of Section 2.



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

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October 23, 2013

ATTORNEY GENERAL OPINION NO. 2013- 14

Michael A. Montoya  
Saline County Counselor  
256 S. Santa Fe Ave.  
Salina, KS 67402-1220

Re: State Departments; Public Officers and Employees—Firearms—Personal and Family Protection Act

Synopsis: For the purposes of the Personal and Family Protection Act (PFPA), a “state or municipal building” does not include a single floor within a county courthouse. A county may restrict the carrying of firearms into a county courthouse only by providing adequate security measures at the public entrances to the courthouse and by posting the courthouse as prohibiting the concealed carry of handguns in accordance with the PFPA and regulations promulgated by the Attorney General. The chief judge of a judicial district may prohibit the carrying of concealed handguns into courtrooms or ancillary courtrooms within the district provided that other means of security are employed.

“Adequate security measures” and “adequate security” are not synonymous for the purposes of K.S.A. 2013 Supp. 75-7c20. Cited herein: K.S.A. 2013 Supp. 75-7c01; 75-7c10; 75-7c20; K.A.R. 16-11-7.

\* \* \*

Dear Mr. Montoya:

As Saline County Counselor, you request our opinion whether Saline County may restrict the concealed carry of handguns into part, but not all, of the Saline County courthouse. You also ask whether the terms “adequate security” and “adequate security

measures” are synonymous for the purposes of the Personal and Family Protection Act (PFPA).<sup>1</sup>

### ***Prohibiting Weapons on One Floor of a Municipal Building***

Your first question involves several provisions of the PFPA. First, K.S.A. 2013 Supp. 75-7c20(a) states:

The carrying of a concealed handgun as authorized by the personal and family protection act shall not be prohibited in any state or municipal building unless such building has adequate security measures to ensure that no weapons are permitted to be carried into such building and the building is conspicuously posted in accordance with K.S.A. 75–7c10, and amendments thereto.

“State or municipal building” is defined as:

[A] building owned or leased by such public entity. It does not include a building owned by the state or a municipality which is leased by a private entity whether for profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing.<sup>2</sup>

In your letter, you state that the Saline County courthouse currently is posted as prohibiting concealed carry. You further state that only the third floor of the courthouse has electronic equipment and security personnel to detect and restrict the entry of all weapons on that floor. Public visitors may only access the third floor through elevators, and must pass through security upon exiting the elevator.

You ask whether the courthouse may allow concealed carry on the other floors but continue to restrict all weapons on the third floor. In other words, you ask whether the third floor of the Saline County courthouse may be considered a separate “building” for the purposes of the PFPA.

We note that the term “building” itself is not defined in the PFPA, so we ascertain its meaning from its ordinary definition.<sup>3</sup> One ordinary definition of a building is “a structure with a roof and walls, such as a house or factory.”<sup>4</sup> Another ordinary definition is “a relatively permanent enclosed construction over a plot of land, having a roof and usually windows and often more than one level, used for any of a wide variety of activities, as living, entertaining, or manufacturing.”<sup>5</sup> Based upon these definitions, it is our opinion

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<sup>1</sup> K.S.A. 2013 Supp. 75-7c01 et seq.

<sup>2</sup> K.S.A. 2013 Supp. 75-7c20(l)(5)(A).

<sup>3</sup> “In the absence of a statutory or common-law definition of [a phrase], this court will employ the ordinary meaning of the words used by the legislature.” *State v. Taylor*, 27 Kan. App. 2d 539, 541 (2000).

<sup>4</sup> “Building.” Oxford Dictionaries. Oxford University Press.

<http://oxforddictionaries.com/definition/english/building> (accessed on August 21, 2013).

<sup>5</sup> “Building.” Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc.

<http://dictionary.reference.com/browse/building> (accessed on August 21, 2013).

that the Saline County courthouse as a *whole* is a building for the purposes of K.S.A. 2013 Supp. 75-7c20. However, a single floor within a courthouse cannot be reasonably defined as a “building” because the ordinary definition of “building” includes all floors within the building.

Because the Saline County courthouse is a municipal building as defined in the PFPA, the county may restrict the concealed carry of handguns into the courthouse only by providing adequate security measures at public entrances to the courthouse and posting signs in accordance with the PFPA and regulations promulgated by the Attorney General.<sup>6</sup> However, the chief judge of each judicial district may prohibit the carrying of a concealed handgun by any person into *courtrooms* or ancillary courtrooms within the district “provided that other means of security are employed such as armed law enforcement or armed security officers.”<sup>7</sup>

### ***Adequate Security vs. Adequate Security Measures***

We now turn to your second question. K.S.A. 2013 Supp. 75-7c20(i) states that the governing body or chief administrative officer of a municipal building may exempt such building from the provisions of K.S.A. 2013 Supp. 75-7c20 for a period of four years beginning January 1, 2014, by adopting a resolution or drafting a letter with the following statement: “A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act.”

Although “adequate security” is not defined by statute, K.S.A. 2013 Supp. 75-7c20(l)(1) defines “adequate security measures” as follows:

“Adequate security measures” means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances.

You ask whether the phrase “adequate security” referred to in K.S.A. 2013 Supp. 75-7c20(i) has the same meaning as “adequate security measures.”

It is presumed the legislature understood the meaning of the words it used and intended to use them; that the legislature used the words in their ordinary and common meaning; and that the legislature intended a

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<sup>6</sup> See K.S.A. 75-7c10(i) and K.A.R. 16-11-7.

<sup>7</sup> K.S.A. 2013 Supp. 75-7c20(h).

different meaning when it used different language in the same connection in different parts of a statute.<sup>8</sup>

Following this rule of statutory construction, we note that the legislature chose not to use the defined term “adequate security measures” as part of the statement that must be included in a resolution or letter claiming the four-year exemption from the provisions of K.S.A. 2013 Supp. 75-7c20. In addition, we note that the statement about “adequate security” is required to obtain a four-year exemption, but no exemption is necessary if the building provides “adequate security measures.” Therefore, the terms “adequate security” and “adequate security measures” cannot be synonymous.

Instead, “adequate security” must be construed according to its ordinary meaning. The ordinary meaning of “adequate” is “satisfactory or acceptable in quality or quantity.”<sup>9</sup> Thus, whether security is “adequate” must be determined on a case-by-case basis for each building.

Sincerely,

Derek Schmidt  
Attorney General

Sarah Fertig  
Assistant Attorney General

DS:AA:SF:sb

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<sup>8</sup> *Rogers v. Shanahan*, 221 Kan. 223-24 (1976).

<sup>9</sup> “Adequate.” Oxford Dictionaries. Oxford University Press.  
<http://oxforddictionaries.com/definition/english/adequate> (accessed on October 1, 2013).



## Conceal Carry Four Year Exemption

I am writing this on my first day back to work following the annual conference which was in Overland Park this year. At the conference, I presented a workshop on the new conceal carry statutes and the process of establishing the four year exemption that is available to municipalities. The four year exemption will allow municipalities to continue to prohibit those with a conceal carry license from entering a public building while carrying their concealed handgun. Based on the discussion and questions asked, I felt that there was still some confusion about this issue and so I will attempt to answer some of the questions and clear up the confusion this change in the law has created.

First, I will review the requirements for establishing a four year exemption pursuant to 2013 Kan. Sess. Ch. 105. This is the legislation that, in part, allows conceal carry license holders to enter public buildings armed with a concealed handgun. If a governing body does not want to allow this to happen they have two options, meet the "adequate security measures"<sup>1</sup> as defined by the statute or establish a four year exemption. Assuming the desire is to establish the four year exemption a city must:

1. Adopt a resolution or draft a letter containing the legal description of the building being exempted, the reason for the exemption and this statement; "A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act."<sup>2</sup>

2. A copy of the security plan must be maintained on file by the city.

3. The security plan must be made available to the Attorney General and local law enforcement if requested.

4. Notice of the exemption as well as a copy of the resolution or letter must be sent to the Kansas Attorney General and local law enforcement.

What do you accomplish by doing this? A city is able to continue to post public buildings with the sign that tells all licensed conceal carry members of the public they must not enter the building carrying their concealed handgun. In other words, the way it has been since conceal carry was first established in Kansas.

**Who says what the security plan is and if it is sufficient?**

The answer is each governing body since there is no state agency oversight. A majority of the governing body will have to agree that the security plan is sufficient for them to approve the resolution or letter containing the language required by the statute.<sup>3</sup>

**Does the security plan need to include the installation of the equipment needed to meet the definition of adequate security measures?** My answer is that it can if that is the goal of the governing body but, there is nothing in the statute mandating what is in the security plan so it is not necessary.

**Who determines if the security plan supplies adequate security to merit prohibiting the carrying of a concealed handgun?** The governing body makes the decision. If a majority of the governing body agrees to approve the language in a resolution or letter then it is deemed adequate.

**What are adequate security measures?** Adequate security measures, as defined by the statute, "means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public..."<sup>4</sup>

**If we install adequate security measures do the personnel need to be armed law enforcement officers?** No. The statute only requires that a city have personnel at the public entrance monitoring the metal detector or using the metal detector wand.<sup>5</sup>

**What happens in four years when the exemption expires?** If there is no change in the law a city will have to remove the no conceal carry signs from all public buildings that do not have adequate security measures in place.

**What is the penalty for not establishing the exemption but keeping the signs on the doors?** There is no penalty in the statute for leaving the signs up without establishing the exemption or installing adequate security measures. However, a governing body would be exposing the city to a civil lawsuit. It is not recommended that any city take this position.

**Can a city prevent a conceal carry license holder from carrying in open areas such as parks and ball fields?** No. This law only applies to public buildings and not open areas. If a city has signage banning conceal carry at these types of facilities the signs need to be removed.

**Can a city combine several buildings into the security plan and resolution?** I do not recommend that a city attempt to combine multiple buildings. The statutes refer to the building being exempted and therefore, I interpret that to mean that each building should have its own plan, resolution and notice. Keep in mind that a resolution is all that is required so there is no publication expense.

I hope that this has helped to answer some questions that a local governing body might have concerning the establishment of the four year exemption. If this has raised other questions please feel free to contact me at the League offices. As always the League of Kansas Municipalities takes no position concerning individual gun rights. LKM is concerned with the ability of local governments to control and regulate the use of locally owned public buildings.

 Eric Smith is Legal Counsel at the League of Kansas Municipalities. He can be reached at [esmith@lkm.org](mailto:esmith@lkm.org) or (785) 354-9565.

### (Endnotes)

1 2013 Kan. Sess. Ch. 105, New Sec. 2(1)(1)

2 2013 Kan. Sess. Ch. 105, New Sec. 2(i)

3 Id.

4 2013 Kan. Sess. Ch. 105, New Sec. 2(1)(1)

5 Id.



## Concealed Carry Briefing

The Legislature passed and Governor Brownback signed HB 2052 which authorizes the carrying of concealed weapons in state and municipal buildings. The following is a summary of the key elements of that bill.

**Effective Date:** July 1, 2013. However, if your city would like time to assess your buildings and make specific determinations, you can simply send a letter to the Attorney General and local law enforcement. In that case, you will have until January 1, 2014 to make such determinations. While there is no deadline specified regarding the submission of this letter, you must do so by July 1, 2013, in order to prevent the law from going into effect in your city. A sample letter can be found at <http://www.lkm.org/legislative/briefings/concealedcarry/exemption2052letter.doc>.

**Applies to:** The State (with certain exceptions) and municipalities. It does not include school districts.

**Possible Outcomes:** Under the provisions of this bill, cities will have the following choices:

1. Remove your no-carry signs and allow concealed carry in your municipal buildings;
2. Provide metal detectors or wands and personnel at each public entrance. Cities can then post the building as no-carry.
3. Assess your buildings and establish a security plan for the buildings. In this case, the buildings will be eligible for a 4-year exemption from the law. The City of Wichita and Sedgwick County recently completed such an assessment. The model for the City of Wichita and Sedgwick County is available here: <http://www.lkm.org/legislative/briefings/concealedcarry/WichitaSGCountyModel.pdf>

**Liability:** Public entities will be exempted from liability for the actions or omissions of concealed carry permit holders if:

1. The entity provides door security and posts the building as no-carry **or**
2. The entity allows concealed carry in their buildings.

**Exemption:** The Legislature has provided for a 4-year exemption if the public entity establishes a security plan and adopts a resolution to exempt certain buildings from the requirements of the act. Such resolution shall include the following statement: "A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act." The security plan may be developed by the police chief.

A copy of the security plan shall be maintained on file. Notice of the exemption, together with the resolution, shall be sent to the Kansas Attorney General and to the law enforcement agency of local jurisdiction. Security plans are not subject to KORA.

**Employees:** Cities may restrict or prohibit the carrying of concealed handguns by their employees while on their premises or while engaged in their official duties if the city does so through their personnel policies. Failure to adopt such restrictions in personnel policies will allow public employees to carry concealed handguns in public buildings and while engaged in their duties.

# CITY OF HAYS

## AGENDA ITEM COVER SHEET

COMMISSION AGENDA ITEM NO. 7

MEETING DATE: 12-12-13

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**TOPIC:**

41<sup>st</sup> Street Construction – Award of Bid and Construction Engineering Agreement

**ACTION REQUESTED:**

Authorize the Mayor to sign the resolution from KDOT authorizing the commitment of City funds awarding a contract to APAC-Kansas, Inc for the reconstruction of 41<sup>st</sup> Street, and to sign the three-party agreement with KDOT and Alfred Benesch & Company for Construction Engineering Inspection for the reconstruction of 41<sup>st</sup> Street.

The City share to be paid to KDOT is \$798,000 from the Capital Projects Fund.

**NARRATIVE:**

Residents of Hays have long anticipated the reconstruction of 41<sup>st</sup> Street. Since 2008, City Staff has been working with KDOT and engineering consultants on the design of the project. Bids were recently opened at KDOT, and APAC-Kansas, Inc. of Hays is the low bidder. In addition, KDOT has provided a three party agreement for Construction Engineering Inspection Services. The agreement between the City, KDOT and Alfred Benesch & Company details the consultants scope of work and responsibilities as it relates to the Project. KDOT administers the contract and makes the payments to the consultant. The City's share for both construction and inspection is estimated to be \$798,000. KDOT has asked for a resolution committing the City's share of the funding in the amount of \$798,000 and authority to award the bid to APAC. The City's share of the cost is funded from Capital Projects.

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Toby Dougherty, City Manager  
I.D. Creech, Director of Public Works

**ADMINISTRATION RECOMMENDATION:**

Staff recommends directing the Mayor to sign the resolution from KDOT authorizing the commitment of City funds awarding a contract to APAC-Kansas, Inc, and to sign the three-party agreement with KDOT and Alfred Benesch & Company for Construction Engineering Inspection for the reconstruction of 41<sup>st</sup> Street.

**COMMITTEE RECOMMENDATION(S):**

NA

**ATTACHMENTS:**

Staff Memo  
KDOT Authority to Award Letter  
KDOT Resolution  
KDOT Project Cost Summary Sheet  
2013 CIP Budget Project Data Sheet  
KDOT Agreement No. 360-13

# Commission Work Session Agenda

## Memo

**From:** John Braun, Assistant Director of Public Works

**Work Session:** December 5, 2013

**Subject:** 41<sup>st</sup> Street Construction – Award of Bid and Construction Engineering Agreement

**Person(s)** Toby Dougherty, City Manager  
**Responsible:** I.D. Creech, Director of Public Works

### Summary

Residents of Hays have long anticipated the reconstruction of 41<sup>st</sup> Street. Since 2008, City Staff has been working with KDOT and engineering consultants on the design of the project. Bids were recently opened at KDOT, and APAC-Kansas, Inc. of Hays is the low bidder. In addition, KDOT has provided a three party agreement for Construction Engineering Inspection Services. The agreement between the City, KDOT and Alfred Benesh & Company details the consultants scope of work and responsibilities as it relates to the Project. KDOT administers the contract and makes the payments to the consultant. The City's share for of both construction and inspection estimated to be \$798,000. KDOT has asked for a resolution committing the City's share of the funding in the amount of \$798,000 and authority to award the bid to APAC. The City's share of the cost is funded from Capital Projects.

### Background

Since 2008, City Staff has been working with KDOT on a project to reconstruct 41<sup>st</sup> Street from the US-183 By-pass to Hall Street. The project is being funded in part through the Federal Highway Administration Surface Transportation Program.

The project will reconstruct 41<sup>st</sup> Street from the US-183 By-pass to Hall Street. The old roadway will be removed and replaced with three-lanes of 8" concrete pavement complete with curb and gutter on both sides, new storm sewer pipe and inlets, a 10' wide concrete multi-use path along the north side, no sidewalk on the south side, and stormwater Best Management Practices improvements in two places.

Staff will give a presentation at the December 5<sup>th</sup> work session showing various plan sheets and diagrams describing the project.

## Discussion

KDOT opened bids in Topeka on November 13, 2013. Two contactors submitted bids:

Smoky Hill Construction, Salina      \$3,734,518.40

APAC-Kansas, Inc., Hays                \$2,939,483.20

KDOT has submitted a letter asking for authorization to award the construction contract to the low bidder APAC, and pass a resolution committing the City's share of funding for the project. See attachments.

The Resolution authorizing KDOT to award the contract and commitment of City funds needs to be executed and returned to KDOT by December 16, 2013. The actual payment of the City's share needs to be made by January 2, 2014.

When awarded the bid, the contractor must begin by March 24, 2014, and they have 180 working days for construction, which should result in project completion by the end of 2014.

KDOT will schedule and host an open house in February 2014, sometime prior to starting the construction. At this meeting, City Leaders, property owners along the project, media, general public, and any other stake holders, will be invited to listen to a project overview, review the plans, and ask questions of the engineers and contractor.

In addition, KDOT has provided a three party agreement for Construction Engineering Inspection Services for the reconstruction of 41<sup>st</sup> Street from US-183 By-pass to Hall Street. The agreement between the City, KDOT and Alfred Benesch & Company details the consultants scope of work and responsibilities as it relates to the Project. KDOT administers the contract and makes the payments to the consultant. The City's share for inspection is 20% of the \$496,667.55 estimated inspection cost and is included in the \$798,000 estimated City Share, which is detailed in Financial Considerations section of this memo.

## Legal Consideration

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

## Financial Consideration

The 2013 Budget included \$1,885,000 for the City's Share of the project as summarized below:

	City CC - FPP	City Special Parks	City Stormwater	City Water/Sewer	City Total	KDOT	Total
Design	\$235,000				\$235,000		\$235,000
Land Acquisition	\$250,000				\$250,000		\$250,000
Inspection	\$104,000				\$104,000	\$416,000	\$520,000

Hike and Bike		\$102,000			\$102,000		\$102,000
Storm BMPs			\$133,500		\$133,500		\$133,500
H2O Adjustment				\$50,000	\$50,000		\$50,000
Eligible Construction	\$1,010,500				\$1,010,500	\$2,704,000	\$3,714,500
Total Project Cost	<b>\$1,599,500</b>	<b>\$102,000</b>	<b>\$133,500</b>	<b>\$50,000</b>	<b>\$1,885,000</b>	<b>\$3,120,000</b>	<b>\$5,005,000</b>

See the attached Project Detail Sheet.

Based on the actual bid and the information provided by KDOT, an updated summary of costs is shown below:

	City CC - FPP	City Special Parks	City Stormwater	City Water/Sewer	City Total	KDOT	Total
Design	\$240,317				\$240,317		\$240,317
Land Acquisition	\$61,000				\$61,000		\$61,000
<b>Subtotal</b>	<b>\$301,317</b>				<b>\$301,317</b>		<b>\$301,317</b>
Inspection	\$126,507				\$126,507	\$429,125	\$555,632
Hike and Bike		\$71,252			\$71,252		\$71,252
Storm BMPs			\$35,543		\$35,543		\$35,543
H2O Adjustment				\$94,200	\$94,200		\$94,200
Remaining Construction	\$470,252				\$470,252	\$2,276,951	\$2,747,203
Total Const + Insp	<b>\$596,759</b>	<b>\$71,252</b>	<b>\$35,543</b>	<b>\$94,200</b>	<b>\$797,754</b>	<b>\$2,706,076</b>	<b>\$3,503,830</b>

Total Project	\$898,076.00	\$71,252.00	\$35,543.00	\$94,200.00	\$1,099,071.00	\$2,706,076.00	\$3,805,147.00
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To summarize, the City's share of construction would come from the following sources:

Financial Policy Projects -	\$596,759
Special Parks -	\$71,252
Stormwater -	\$35,543
Water/Sewer -	\$94,200
<b>TOTAL</b>	<b>\$797,754</b>

KDOT requires the City to pay the City's share up front (before construction). After construction, if there are any change orders or variations in cost, KDOT will audit the project and credit the City any overpayment, or bill the City any additional amount due.

Since this is an upfront estimate of the City's share, KDOT has rounded the City share up to \$798,000.

## Options

The Commission has the following options:

Option 1: Direct the Mayor to sign the resolution from KDOT authorizing the commitment of City funds awarding a contract to APAC-Kansas, Inc, and to sign the three-party agreement with KDOT and Alfred Benesch & Company for Construction Engineering Inspection for the reconstruction of 41<sup>st</sup> Street.

Option 2: Provide alternate direction to staff.

Option 3: Do nothing

### **Recommendation**

City staff recommends Option 1.

### **Action Requested**

Consider directing the Mayor to sign the resolution from KDOT authorizing the commitment of City funds awarding a contract to APAC-Kansas, Inc for the reconstruction of 41<sup>st</sup> Street and to sign the three party agreement with KDOT and Alfred Benesch & Company for Construction Engineering Inspection for the reconstruction of 41<sup>st</sup> Street.

The City share to be paid to KDOT is \$798,000 from the Capital Projects Fund.

### **Supporting Documentation**

KDOT Authority to Award Letter  
KDOT Resolution  
KDOT Project Cost Summary Sheet  
2013 CIP Budget Project Data Sheet  
KDOT Agreement No. 360-13



Dwight D. Eisenhower State Office Building  
700 S.W. Harrison Street  
Topeka, KS 66603-3745

Mike King, Secretary  
Ronald J. Seltz, P.E., Chief

Phone: 785-296-3861  
Fax: 785-296-2079  
Hearing Impaired - 711  
publicinfo@ksdot.org  
http://www.ksdot.org

Sam Brownback, Governor

November 25, 2013

**Project Number: 26 U-2295-01**

Asst Pub Wrks Dir  
John Braun-Asst Pub Wrks Dir  
1002 Vine Street  
Hays, Kansas 67601-3464

Dear Mr. Braun:

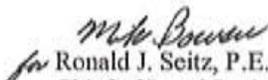
We are listing below the bidder and the low bid received at Topeka, Kansas on 11/13/2013 for the above numbered project.

CONTRACTOR	TYPE OF WORK	AMOUNT
APAC KANSAS INC SHEARS DIVISION  1600 N LORRAINE STE 1 PO BOX 1605, HUTCHINSON KS	Grading and Surfacing	\$ 2,939,483.20

This is considered satisfactory when compared with the engineer's estimate, and we believe that contracts should be awarded to the low bidder. If this bid is considered acceptable to the City, please sign the enclosed resolution and return it to this office. In order to guarantee the low bid, we must receive the expected resolution on or before December 16, 2013. Upon receipt of the signed resolution and approval by the Secretary of Transportation the contract will be awarded.

A combination of bid items and construction engineering and contingencies less \$3,120,000 Maximum State funds will require City matching funds in the amount of \$798,000 . The City remittance should be made on or before January 2, 2014.

Sincerely,

*for*   
Ronald J. Seitz, P.E.  
Chief of Local Projects

RJS:SSC:mb  
Enclosures

c: Mayor/City Manager, w/a  
Ms. Rhonda Seitz, Chief of Fiscal Services  
District Engineer

**AUTHORITY TO AWARD CONTRACT  
COMMITMENT OF CITY FUNDS**

November 25, 2013

2 Copies to City  
Project Number: 26 U-2295-01  
City of Hays

WHEREAS bids were received at Topeka, Kansas on 11/13/2013 for the performance of work covered by plans on the above numbered project, and

WHEREAS the bidder and the low bid or bids on work covered by this project were:

CONTRACTOR	TYPE OF WORK	AMOUNT
<b>APAC KANSAS INC SHEARS DIVISION 1600 N LORRAINE STE 1 PO BOX 1605, HUTCHINSON KS</b>	<b>Grading and Surfacing</b>	<b>\$ 2,939,483.20</b>

WHEREAS bids are considered satisfactory and have been recommended by the Secretary of Transportation of the State of Kansas, hereinafter referred to as the SECRETARY, for consideration and acceptance of the work on this project as covered by such bid or bids.

**A combination of the bid plus construction engineering and contingencies less \$3,120,000 Maximum State Funds = \$798,000 matching City Funds.**

BE IT FURTHER RESOLVED that the City funds in the amount of \$798,000 which are required for the matching of Maximum State Funds are hereby pledged by the County to be remitted to the Chief of Fiscal Services of the Department of Transportation of the State of Kansas on or before January 2, 2014 for use by the SECRETARY in making payments for construction work and engineering on the above designated project with final cost being determined upon completion and audit of the project.

Adopted this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, Kansas.

Recommended for Approval:

\_\_\_\_\_, Mayor  
City Engineer

Attest: \_\_\_\_\_, Member

(Seal)

\_\_\_\_\_, Member

\_\_\_\_\_  
City Clerk

Revised 12/03  
DOT FORM 1309

**11/25/2013 Bid Letting for Project No. 26 U-2259-01  
Process for Estimating the City of Hays's Share of the Project**

<b>Construction and CE Breakdown</b>	
Actual Bid	\$2,939,483
Water(for grading)	\$8,715
<b>Sub-Total Actual Bid Amount</b>	<b>\$2,948,198</b>
LPA CE Contract	\$496,668
KDOT CE (2%) Estimated	\$58,964
<b>Sub-Tot. Const. and CE (Total Proj. Costs)</b>	<b>\$3,503,830</b>
State-aid Non-Participating Const. Costs	\$102,010
State-aid Non-Participating CE	\$19,225
PE Costs	\$0
Railroad Costs	\$0
ROW Costs	\$0
Utility Costs	\$0
<b>State Participating Project Costs</b>	<b>\$3,382,594</b>

<b>CE Breakdown</b>	
Total LPA CE and	\$555,632
State Non-Participating	\$19,225
State Participating	\$536,406

**Maximum Participating CE \$3,120,000**

<b>State/City Participation Summary</b>	
State Participating	<b>\$3,382,594</b>
Sub-Total State Participating	<b>\$3,382,594</b>
80% State Part. of Project Costs	\$2,706,076
20% City Part. of Project Costs	\$676,519
100% City Funds Due to Max.	\$0
100% City Funds	\$121,235
<b>Total Project Cost</b>	<b>\$3,503,830</b>

<b>Totals</b>			
	<b>City Funds</b>	<b>State Funds</b>	<b>Total Funds</b>
State Non-Participating Construction	\$102,010	\$0	\$102,010
State Non-Participating CE	\$19,225	\$0	\$19,225
80% State Part. of Project Costs	\$0	\$2,706,076	\$2,706,076
20% City Part. of Project Costs	\$676,519	\$0	\$676,519
100% City Funds Due to Max.	\$0	\$0	\$0
<b>Total</b>	<b>\$797,754</b>	<b>\$2,706,076</b>	<b>\$3,503,830</b>

**Amount to bill City (rounded up) \$798,000**

<b>Key</b>
- Kansas Department of Transportation
LPA - Local Public Authority
Construction Engineering (Inspection)
Const. - Construction

**PROJECT FORM**

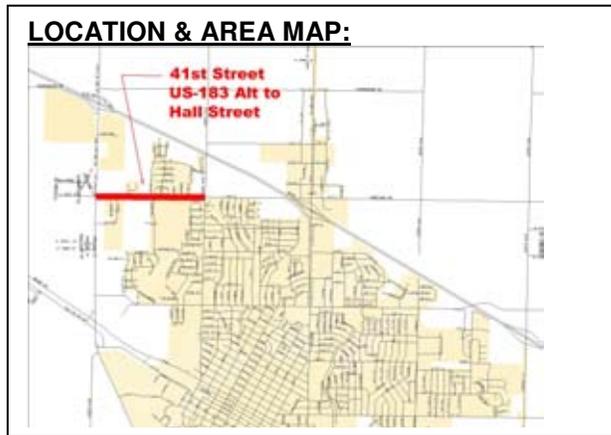
**PROJECT:** 41<sup>st</sup> Street – US-183 Alt to Hall Street

**FISCAL YEAR:** 2013

**PROJECT NO:** 2008-03

**FUND:** Commission Financial Policy Projects

**DEPARTMENT:** Public Works



**PROJECT DESCRIPTION:** Reconstruction of 41<sup>st</sup> Street from the US-183 Alternate to Hall Street. The project is currently in the design process, with right of way acquisition to start soon.

The approved design is a concrete, 3-lane roadway with curb & gutter and 10' wide multi-use (hike/bike) path running the full length of the project along the north side. The design will also include some environmentally friendly improvements at the stormwater crossings at the far west end of the project and between Fillmore and Harrison draining onto the golf course.

**NEED, JUSTIFICATION, BENEFIT:** Improve 41<sup>st</sup> Street to provide better safety for pedestrians and bicyclists utilizing 41<sup>st</sup> Street, improve the failing road way, and to better serve the traffic related to new developments in the northwest portion of the City.

**CONSEQUENCES OF DELAYING OR ELIMINATING THIS PROJECT:** The current roadway is in need of repairs; delay will cause additional maintenance and repair costs. In addition, the existing roadway is not very safe for pedestrians and bicyclists.

**THIS PROJECT IS RELATED TO THE FOLLOWING:** This is the next project on the City's list for KDOT Surface Transportation Program (STP) projects, which is funded at 80% of eligible construction costs.

**EXPLANATION OF IMPACT ON OPERATING BUDGET:** The reconstruction of this roadway would reduce future operating budgets regarding street maintenance.

**TIME-LINE/CURRENT STATUS:** The project is currently under design. The KDOT bid opening date is scheduled for October 2013 for construction in 2014.

**COMMENTS:**

\$102,000 to oversize the 10' multi-use path over the cost of a standard sidewalk is to be funded from Special Parks.  
 \$133,500 for stormwater quality improvements is to be funded from the Stormwater Utility.  
 \$50,000 for Waterline relocation is to be funded from the Water/Sewer Fund

	City CC - FPP	City Special Parks	City Stormwater	City Water/Sewer	City Total	KDOT	Total
Design	\$235,000.00				\$235,000.00		\$235,000.00
Land Acquisition	\$250,000.00				\$250,000.00		\$250,000.00
Inspection	\$104,000.00				\$104,000.00	\$416,000.00	\$520,000.00
Hike and Bike		\$102,000.00			\$102,000.00		\$102,000.00
Storm BMPs			\$133,500.00		\$133,500.00		\$133,500.00
H2O Adjustment				\$50,000.00	\$50,000.00		\$50,000.00
Eligible Construction	\$1,010,500.00				\$1,010,500.00	\$2,704,000.00	\$3,714,500.00
<b>Total Project Cost</b>	<b>\$1,599,500.00</b>	<b>\$102,000.00</b>	<b>\$133,500.00</b>	<b>\$50,000.00</b>	<b>\$1,885,000.00</b>	<b>\$3,120,000.00</b>	<b>\$5,005,000.00</b>

<b>IMPACT ON OPERATING BUDGET:</b>		<b>FINANCING:</b>	
Prior to 2013	\$	Financial Policy Projects	\$1,599,500
2013	\$	Special Parks	\$102,000
2014	\$	Stormwater	\$133,500
2015	\$	Water/Sewer Fund	\$50,000
2016	\$	KDOT/Federal Grant Funds	\$3,120,000
5-YEAR TOTAL:	\$	TOTAL	\$5,005,000

**FIVE-YEAR COST BREAKDOWN SCHEDULE: (Financial Policy Projects Funding Only)**

	<b>Prior to 2013</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>After 2017</b>	<b>Total</b>
Planning & Design	\$200,000	\$35,000						\$235,000
Land		\$250,000						\$250,000
Construction		\$1,010,500						\$1,010,500
Inspection		\$104,000						\$104,000
<b>Total</b>	<b>\$200,000</b>	<b>\$1,399,500</b>						<b>\$1,599,500</b>

**CITY'S ORIGINAL**

**CONTRACT FOR CONSTRUCTION  
ENGINEERING INSPECTION BY CONSULTANT  
(COST PLUS NET FEE AGREEMENT)**

**PROJECT NO. 26 U-2295-01  
CITY OF HAYS  
ELLIS COUNTY**

**CMS Contract No. \_\_\_\_\_**

**THIS AGREEMENT** is entered into and effective the date signed by the Secretary or designee, by and between City of Hays, hereinafter referred to as the "LPA" (Local Public Authority), as principal, and the consulting engineering firm of Alfred Benesch and Company, hereinafter called the "Consultant," and the Secretary of Transportation of the State of Kansas acting by and through the Kansas Department of Transportation, hereinafter referred to as the "Secretary." The Secretary acts as agent for the LPA pursuant to authority vested in K.S.A. 68-169 and an agreement between them dated December 3, 2012. The Consultant's address is 3226 Kimball Avenue, Manhattan 66503. The LPA, Consultant, and Secretary are hereinafter referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, the LPA desires to accomplish the "Project," consisting of 1.04 miles of Grading and Surfacing, located on 41<sup>st</sup> Street from US-183 Bypass to Hall Street with the aid of LPA and State funds, and

**WHEREAS**, the LPA does not have sufficient qualified engineering employees to accomplish the construction engineering services on this Project within a reasonable time and the LPA deems it advisable and is desirous of engaging the professional services and assistance of a qualified consulting engineering firm to do the necessary construction engineering, and

**WHEREAS**, the Consultant has represented and by entering into this Agreement now represents, it is in full compliance with the statutes of the State of Kansas for registration of professional engineers and all personnel to be assigned to perform the services required under this Agreement are fully qualified to perform the services in a competent and professional manner, and

**WHEREAS**, the Consultant has indicated it desires to perform the services set forth in the Agreement upon the terms and conditions set forth below, and

**WHEREAS**, the approved plans and specifications for said Project are available in the KDOT Headquarters in Topeka, and

**WHEREAS**, the LPA, Consultant, and the Secretary desire to set forth in this instrument their understanding and agreements relating to the construction engineering and allocation of costs for the said Project.

**NOW, THEREFORE**, in consideration of the covenants of the Parties and to give this Agreement full force and effect in providing the benefits hereinbefore mentioned, the Parties hereto mutually agree as follows:

**I. SCOPE OF SERVICES**

**A. DEFINITIONS**

- (1) The term "LPA" shall mean City of Hays and its authorized employees.
- (2) The term "KDOT" shall mean the Kansas Department of Transportation and its authorized representatives.
- (3) The term "Consultant" shall mean the consulting engineering firm and its authorized employees who will be performing the work required under this Agreement.
- (4) The term "FHWA" shall mean the Federal Highway Administration and its authorized representatives.
- (5) The term "Contractor" shall mean the individual, partnership, joint ventures, corporation, or agency undertaking the performance of the work designated under the terms of the construction contract.
- (6) The term "Specifications" shall mean the current Standard Specifications for Road and Bridge Construction of KDOT, as incorporated in the construction contract specifications and supplementals thereto.
- (7) The term "Construction Contract Proposal" shall mean the offer of the bidder or Contractor on the Project, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.
- (8) The term "Special Provisions" shall mean the directions or requirements peculiar to a project and not otherwise thoroughly or satisfactorily included in the Specifications, and which are contained in the Construction Contract Proposal.
- (9) The term "Plans" shall mean the approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be done by the Contractor.
- (10) The term "Contract Documents" shall mean the Specifications, Construction Contract Proposal, Special Provisions, and Plans, as defined above.
- (11) The term "Manual" shall mean the Construction Manual, the Forms and Documentation Manual and all other publications of data and information produced by KDOT for the instruction of its employees and furnished in bound or collected form.
- (12) The term "Field Engineer" shall for the administrative control of this Agreement be considered to mean Metro Engineer, Field Engineering Administrator and/or Area Engineer.

**B. GENERAL RESPONSIBILITIES AND DUTIES**

- (1) The Consultant shall perform engineering services necessary and incidental to the accomplishment of the Project to the satisfaction of KDOT, and as more fully detailed in Special Attachment No. 1 - Specific Construction Provisions.
- (2) The Consultant will require all personnel comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8, Fluorescent Vests, as a minimum, while inspection is being performed.
- (3) The Consultant shall furnish services, labor, materials, equipment, supplies and incidentals, other than those hereinafter designated to be furnished by KDOT, necessary to conduct and complete the services.
- (4) The services performed under this Agreement shall at all times be subject to the review and approval of KDOT.
- (5) The Consultant and/or LPA's principal contact with KDOT shall be through the construction field office.
- (6) The services performed under this Agreement shall comply with all applicable federal and state laws and regulations.
- (7) Compliance with all of the foregoing shall be considered to be within the purview of this Agreement and shall not constitute a basis for additional or extra compensation.

**C. CONTROL AND AUTHORITY**

- (1) The authorized representative of KDOT will be designated by the District's Construction Engineer and will be titled the Field Engineer.
- (2) The Field Engineer will delegate to a construction office the overseeing of the Project where a Construction Engineer/Construction Coordinator will be assigned to monitor and coordinate all Project related activity to assure compliance with applicable Federal and State requirements of services performed under this Agreement and all construction activities performed under the Contract Documents.
- (3) The Consultant will designate a Project Engineer/Project Manager and other inspection personnel who are certified by KDOT in the appropriate classification to inspect all work performed and materials furnished. The Consultant may designate a Chief Inspector who will perform the duties and have the responsibilities of the Project Engineer/Project Manager. The Project Engineer/Project Manager is not authorized to alter or waive the provisions of the Specifications or the Construction Contract Proposal. The Project Engineer/Project Manager is not authorized to issue instructions contrary to the

Plans and Specifications, or to act as foreman for the Contractor, however, the Project Engineer/Project Manager shall have the authority to reject work or materials until any questions at issue can be referred to and be decided by the Field Engineer.

- (4) The Project Engineer/Project Manager shall serve as field supervisor of all Consultant personnel and services performed under this Agreement, and to act as liaison between the Consultant and KDOT.
- (5) The Project Engineer/Project Manager shall transmit all reports and paperwork to, and communicate and coordinate with the Construction Engineer/Construction Coordinator.
- (6) Orders or instructions issued by the Field Engineer will be transmitted through the Construction Engineer/Construction Coordinator and will in turn be transmitted through the Project Engineer/Project Manager to the Contractor. If in the absence of the Project Engineer/Project Manager a matter needs prompt attention, the Construction Engineer/Construction Coordinator will give the necessary orders and then notify the Project Engineer/Project Manager.
- (7) In the event of a controversy, the Project Engineer/Project Manager shall confer with the Construction Engineer/Construction Coordinator to determine proper course of action.

In the event the Construction Engineer/Construction Coordinator and the Project Engineer/Project Manager cannot agree the Construction Engineer/Construction Coordinator will promptly contact the Field Engineer or the District Construction Engineer of KDOT who will determine the necessary course of action.

- (8) The Consultant warrants it is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgement rendered against (it) by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three years.

#### **D. AGENCY COORDINATION AND COOPERATION**

- (1) Contact and coordination with all affected local, state and federal agencies, private consultants and contractors; the general public; utilities and railroad companies shall be the responsibility of KDOT.
- (2) The Consultant shall cooperate fully with KDOT; and with local, state and federal agencies, the general public, utilities, railroad companies, and private consultants and contractors when so directed by KDOT. Such cooperation may include attendance at conferences.

**E. MEETINGS AND CONFERENCES**

- (1) Conferences as may be necessary for the discussion and review of the services under this Agreement shall be scheduled between the Consultant and KDOT. These conferences may include field review of the Project.
- (2) Conferences may be held upon the request of the Consultant or KDOT.

**II. PROSECUTION AND PROGRESS**

**A. GENERAL**

- (1) Written authority to proceed with the services on any construction Project under this Agreement will be given by KDOT to the Consultant. KDOT will not be responsible for any services performed by the Consultant prior to such authorization or liable for payment therefore.
- (2) Services performed under this Agreement will commence with attendance at a formal Construction Conference by the Consultant and KDOT, unless otherwise stated elsewhere in the Agreement or at the direction of the Construction Engineer/Construction Coordinator during an informal Construction Conference. Attendees at a formal Construction Conference shall include representatives of KDOT's Area Engineer and the Construction office (Construction Engineer/Construction Coordinator) and Consultant's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. KDOT will notify the Consultant of the location, date and time and will make necessary arrangements for the conference. Topics for discussion shall include scope of the Contractor's construction operations and anticipated schedule, review of necessary staffing by the Consultant, lines of communication and authority, equipment needs, standard practices of KDOT, and related subjects.
- (3) The Consultant shall attend the formal Construction Conference held between KDOT, the Contractor and involved utilities and agencies, unless otherwise stated elsewhere in the Agreement.
- (4) The Consultant shall have KDOT Certified Inspector(s) of the appropriate classification on the Project or plant site at all times when work which requires inspection is being performed. The inability of a Consultant to provide appropriately certified inspectors for a Project may at the Secretary's discretion, give cause for termination of this Agreement.
- (5) The Agreement shall be considered completed upon payment and notice of written release from KDOT therefore unless previously terminated as provided in Article II, Section C.

- (6) Should KDOT deem it necessary for the Consultant to render additional services for review of contract items, conditions, claims or litigation matters after completion of the Agreement, the Consultant agrees to cooperate and render such requested services. Such services shall be paid for in the amount and manner mutually agreed upon by KDOT and the Consultant.
- (7) A Close-Out Conference may be held upon completion of this Agreement to evaluate the performance of the Consultant. Attendees shall include the Field Engineer, representatives of the construction office (including Construction Engineer/Construction Coordinator) and Consultant's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. KDOT will notify the Consultant of the location, date and time and will make necessary arrangements for the conference. The evaluation shall consider the quality of the Consultant's work, adequacy of staffing, extent of corrections, cooperation and related subjects.

**B. DELAYS AND EXTENSIONS**

- (1) Delays caused through no fault of the Consultant may be cause for extension of time in completion of the work. Time extensions may be granted by KDOT upon reasonable claim and justification by the Consultant. Approved time extensions may also be cause for consideration of adjustments in payment, where warranted and approved by KDOT.

**C. TERMINATION OF AGREEMENTS**

- (1) The right is reserved by KDOT to terminate all or part of this Agreement at any time upon written notice to the Consultant. Such notice shall be sent not less than ten (10) days in advance of the termination date stated in the notice.
- (2) The Consultant may terminate this Agreement, in the event of substantial failure of other Parties to perform in accordance with the terms hereof, upon ten (10) days written notice in advance of the effective date of such termination received by all Parties to this Agreement.
- (3) In the event the Agreement is terminated by KDOT without fault on the part of the Consultant, the Consultant shall be paid for the work performed or services rendered under the Basis of Payment determined for the Agreement.
- (4) In the event the services of the Consultant are terminated by KDOT for fault including but not limited to: unreasonable delays in performance; failure to respond to KDOT requests; and/or unsatisfactory performance on the part of the Consultant, the Consultant shall be paid the reasonable value of the services performed or rendered and delivered to KDOT up to the time of termination. The value of the services performed, rendered and delivered will be determined by KDOT. In the case of any dispute as to payment arising under this Agreement pertinent information will be submitted to a Review Committee for

resolution. The Review Committee will be comprised of a maximum of two (2) representatives from each of the Agreement Parties.

- (5) In the event of the death of any member or partner of the Consultant's firm, the surviving members shall complete the services, unless otherwise mutually agreed upon by the LPA and KDOT and the survivors, in which case the Consultant shall be paid as set forth in Article III, Basis of Payment.

#### **D. SUBLETTING OR ASSIGNMENT OF CONTRACT**

- (1) The Consultant shall not sublet or assign all or any part of the services under this Agreement without the prior written approval of KDOT. Consent by KDOT to assign, sublet or otherwise dispose of any portion of the Agreement shall not be construed to relieve the Consultant of any responsibility for the fulfillment of the Agreement.
- (2) All the applicable terms of this Agreement remain in force and are a condition to any services approved to be sublet or assigned. Specific reference is made to Nondiscrimination and Equal Employment Opportunity, as applicable to the subcontract.

### **III. BASIS OF PAYMENT**

#### **A. GENERAL**

- (1) The Consultant will be paid the supported actual salaries and direct costs, overhead rate and net fee by KDOT for the completed and approved (by KDOT District) services rendered under this Agreement on the basis of and at the Agreement price set forth in the Special Construction Provisions (Special Attachment), and for Extra Work if any, at the compensation therefore set forth in an approved supplement to this Agreement covering such work. The extra work will be paid for separately and in addition to the foregoing amount listed in the Special Construction Provisions (Special Attachment). Payment shall be full compensation for services performed or rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.
- (2) The overhead rate will be submitted by the Consultant for audit within seventy-five (75) days after the completion of the Consultant's fiscal year. The Consultant will assemble work papers for audit at its normal place of business. The overhead rate will be audited on a yearly basis and adjusted at the time of the audit review. If the overhead rate increases or decreases, previous payments will be adjusted so the Consultant is reimbursed for the actual cost for that fiscal year.
- (3) Should the Agreement contain more than one (1) construction project, any and all invoices and the final statement shall itemize charges by individual project.

- (4) Final payment of any balance due the Consultant of the ultimate gross amount earned will be made promptly upon its verification by KDOT, upon completion of the work under this Agreement and its acceptance by KDOT, and upon receipt of the survey notes, records, reports, final estimates, record drawings, Manuals, Contract Documents, guides, and other documents required to be returned or to be furnished under this Agreement.

#### **IV. WORK ORDERS, EXTRA WORK, OR DECREASED WORK**

- (1) Written orders regarding the services to be performed will be given by KDOT. Orders that do not change the scope of services in the Agreement, but increase or decrease the quantity of labor or materials or the expense of the services, shall not annul or void this Agreement.
- (2) The Consultant must proceed with the services as directed by furnishing the necessary labor, equipment, materials and professional services to complete the services within the time limits specified in schedules or as adjusted by agreement of the Parties.
- (3) If in the Consultant's opinion such orders involve services not included in the terms or scope of this Agreement, the Consultant must notify KDOT in writing of this opinion if extra compensation is desired.
- (4) If in the Consultant's opinion such orders would require the discarding or redoing of services which was based upon earlier direction or approvals, the Consultant must notify KDOT in writing if this opinion, and that extra compensation is desired, along with a copy to the LPA.
- (5) Such notification shall include the justification for the claim for extra compensation and the estimated amount of additional fee requested.
- (6) The KDOT will review the Consultant's submittal and, if acceptable, approve a supplement to this Agreement. Services for extra work may only proceed upon authorization by KDOT, which will be followed up with the execution of the supplemental agreement.

#### **V. MISCELLANEOUS PROVISIONS**

##### **A. CONSTRUCTION ENGINEERING STANDARDS**

- (1) All services performed under this Agreement shall be done in accordance with the current standard practices of KDOT as contained in the Contract Documents, Manuals, guides and written instructions of KDOT.
- (2) No variations will be permitted except by written order from KDOT.

**B. REVISION OF SPECIFICATIONS AND PLANS**

- (1) KDOT may, by written notice and without invalidating this Agreement, make changes in the Specifications, Construction Contract, Plans or Special Provisions resulting in the revision or abandonment of services already performed by the Consultant or resulting in work by the Consultant not contemplated in the Agreement.
- (2) Claims by the Consultant for compensation for services resulting from such revisions shall be submitted and processed in accordance with Section IV of this Agreement.

**C. OWNERSHIP OF DOCUMENTS**

- (1) All data provided to the Consultant by KDOT is the sole property of KDOT and is intended for use on this Project only. Any data provided shall not be disclosed to anyone outside the Consultants firm without the express, written permission of KDOT. Upon completion or termination of this Agreement all Manuals, Contract Documents, guides, written instructions, unused forms and record-keeping books, and other written data and information furnished to the Consultant by KDOT for the performance of the Agreement, and all survey notes, diaries, reports, records and other information and data collected or prepared by the Consultant in the performance of this Agreement shall be properly arranged and delivered to KDOT, and shall become the property of KDOT.
- (2) All documents prepared by Consultant pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the Secretary or others on extensions of the Project or on any other Project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at the Secretary's sole risk and without liability or legal exposure to the Consultant; and Secretary shall indemnify and hold harmless Consultant from all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting there from. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Consultant and Secretary.

**D. CONTINGENT FEES**

- (1) The Consultant warrants they have not employed or retained any company or person, other than a bonafide employee working solely for the Consultant to secure this Agreement, and they have not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fees, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty KDOT in consultation with the LPA shall have the right to annul this Agreement without liability.

**E. AGREEMENT ITEMS**

- (1) It is also understood and agreed the Project plans, Specifications, Special Provisions, and Construction Contract Proposal, as available, and the Agreement Estimate and other Special Attachments (Index provides List of Special Attachments and specifically includes Nondiscrimination in Employment) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

**F. ACCESS TO RECORDS**

- (1) The Consultant and subcontractors to the Consultant if any, agree to maintain for inspection and audit by the LPA, and KDOT all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this Agreement and to make such materials available at their respective offices at all reasonable times during the life of the Agreement and for three (3) years from the date of the completion of the project and to furnish copies thereof if requested.
- (2) If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the requesting agency.
- (3) The Consultant will maintain these materials at the Consultant's offices noted in the Specific Construction Provisions.

**G. LEGAL RELATIONS**

- (1) The Consultant shall become familiar with, and shall at all times observe and comply with, all applicable federal, state, and local laws, ordinances and regulations.
- (2) The Consultant shall be responsible for any and all damages to property or persons arising out of an error, omission and/or negligent act in the Consultant's performance of services under this Agreement.

**H. WORKER'S COMPENSATION AND OTHER EMPLOYEES PROVISIONS**

- (1) The Consultant will accept full responsibility for payment of Unemployment Insurance, Worker's Compensation and Social Security as well as income tax deductions and any other taxes or payroll deductions required by State and Federal Law for the Consultant's employees engaged in work authorized by this Agreement.

**I. ERRORS AND OMISSIONS**

- (1) The Consultant shall be responsible for the accuracy of the work performed by the Consultant under the Agreement, and shall promptly make necessary

revisions or corrections resulting from their negligent acts, errors, or omissions without additional compensation.

- (2) The Consultant shall give immediate attention to these revisions or corrections to prevent or minimize delay to the Contractor.
- (3) The Consultant shall be responsible for any damages incurred as a result of their errors, omissions or negligent acts and for any losses or costs to repair or remedy construction.

**J. CONFLICT OF INTEREST**

- (1) The Consultant warrants they have no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the Agreement. Specifically, the Consultant is prohibited from performing contractor construction staking or any other work that is the construction contractor's responsibility on this Project.
- (2) The Consultant will not, without written permission from KDOT, engage the services of any person(s) in the employment of KDOT for any work required by the terms of this Agreement.

**K. CONTRACTUAL PROVISIONS ATTACHMENT**

- (1) The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

**L. HOLD HARMLESS CLAUSE**

- (1) The Consultant hereby expressly agrees to save the Secretary and the LPA and the Secretary's and the LPA's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgements and damages to persons or property caused by the Consultant, it's agents, employees or subcontractors which may result from negligent acts, errors, mistakes or omissions from the Consultant's operation in connection with the services to be performed hereunder.
- (2) The LPA hereby expressly agrees to save the Secretary and the Secretary's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgments and damages to persons or property caused by the LPA, it's agents, employees or subcontractors which may result from negligent acts, errors, mistakes or omissions from the LPA's operation in connection with the services to be performed hereunder.

**M. BINDING AGREEMENT**

- (1) It is further understood this Agreement and all other Agreements entered into under the provisions of this Agreement shall be binding upon the Parties to this Agreement and their successors in office.

**IN WITNESS WHEREOF:** The Parties hereto have caused this Agreement to be signed by their duly authorized officers.

RECOMMEND FOR APPROVAL:

APPROPRIATE LOCAL OFFICIAL:

\_\_\_\_\_  
Hays City Engineer

\_\_\_\_\_  
Mayor of Hays

ATTEST:

\_\_\_\_\_  
Hays City Clerk

ATTEST:

BY \_\_\_\_\_  
Name

\_\_\_\_\_  
Consultant

TITLE: \_\_\_\_\_

\_\_\_\_\_  
Name (Date)

Kansas Department of Transportation  
Michael S. King, Secretary of Transportation

BY: \_\_\_\_\_  
Jerome T. Younger, P. E. (Date)  
Deputy Secretary and  
State Transportation Engineer

## INDEX OF ATTACHMENTS

Special Attachment No. 1	Specific Construction Provisions
Special Attachment No. 2	Certification
Special Attachment No. 3	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994
Special Attachment No. 4	Contractual Provisions Attachment
Special Attachment No. 5	Listing of KDOT Certified Inspectors
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Special Attachment No. 8	Tax Clearance Certificate
Special Attachment No. 9	Certificate of Compliance with K.S.A. 46-239 (c)
Special Attachment No. 10	Required Contract Provision Certification - Federal Funds - Lobbying

## SPECIFIC CONSTRUCTION PROVISIONS

### I. SCOPE OF SERVICES

#### A. SERVICES TO BE PERFORMED BY THE CONSULTANT

The Consultant agrees to:

- (1) Attend all conferences designated by KDOT, or required under the terms of this Agreement.
- (2) Designate a Project Engineer/Project Manager who shall meet KDOT's certification policy and report and transmit Project activity and documents to KDOT's Construction Office.
- (3) Assign KDOT Certified Inspector(s) of the appropriate classifications to the Project to perform the services required under this Agreement in a timely manner to avoid delay to the Contractor.
- (4) Become familiar with the standard practices of KDOT, the Contract Documents (Specifications, Construction Contract Proposal, Special Provisions and Plans), and the Contractor's proposed schedule of operations prior to beginning field services to be performed under this Agreement.
- (5) Perform the Consultant's field operations in accordance with accepted safety practices.
- (6) Furnish all equipment required to accomplish the Consultant's services and to check or test it prior to use on the Project.
- (7) Provide for Consultant personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under this Agreement.
- (8) Undertake the following:

Transmit orders from KDOT to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.

Perform or provide construction surveys, staking, and measurements needed by the Contractor (unless provided for in the contract where contractor construction staking is to be performed as a bid item by the Contractor) and perform measurements and surveys that are involved in the determination of final pay quantities.

Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials, which do not comply with Contract Documents until any questions at issue, can be referred to and be decided by the KDOT's Field Engineer.

Take field samples and/or test materials to be incorporated in the work, and reject those not meeting the provisions of the Contract Documents until any questions at issue can be referred to and be decided by the Field Engineer.

Make certain that test report records or certificates of compliance for materials tested off the Project site and required, prior to the incorporation in the work, have been received.

Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress, including Project Engineer/Manager and Inspector's diaries.

Measure and compute all materials incorporated in the work and items of work completed, and maintain an item account record.

Provide measurement and computation of pay items.

Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required by KDOT and as are applicable to the Project, which may include:

- a. Progress Reports
- b. Weekly statement of working days
- c. Notice of change in construction status
- d. Report of field inspection of material
- e. Test report record
- f. Contractor pay estimates
- g. Pile driving data
- h. Piling record
- i. Final certification of materials
- j. Explanation of quantity variation
- k. Statement of time
- l. Other records and reports as required by the Project

Review, or assist in reviewing, all Contractor submittals of records and reports required by KDOT, as applicable to the Project, which may include:

- a. Requests for partial and final payment
- b. Other reports and records as required by the individual Project

- (9) Prepare and submit if desired by the Consultant, partial payment invoices for services rendered by the Consultant, but not to exceed one submittal per month.
- (10) Collect, properly label or identify, and deliver to KDOT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the Consultant in the performance of this Agreement, upon completion or termination of this Agreement.
- (11) Return, upon completion or termination of this Agreement, all manuals, Contract Documents, guides, written instructions, unused forms and record keeping books, and other documents and materials furnished by KDOT. The Consultant shall be responsible for replacing lost documents or materials at the price determined by KDOT.
- (12) Prepare and submit a certification of Project completion.
- (13) Prepare and submit a final payment voucher for services rendered by the Consultant.
- (14) Prepare and deliver (when Project is completed) one copy of major changes to the plans (by letter) to KDOT. The letter should contain such items as the following:
  - a. Earthwork and Culverts
    1. A revised list of benchmarks
    2. Location of government benchmarks
    3. Major changes in alignment
    4. Major changes in grade line
    5. Established references on cornerstones
    6. Major changes in location of drainage structures
    7. Major changes in flow-line of drainage structures
    8. Drainage structures added or deleted
    9. Any change of access control
  - b. Bridges
    1. Changes in stationing
    2. Changes in type, size or elevation of footings
    3. Changes in grade line

**B. SERVICES TO BE PROVIDED BY THE SECRETARY**

- (1) The Secretary agrees to:
  - a. Make available to the Consultant sufficient copies of the Contract Documents, shop drawings, plan revisions, written instructions and

other information and data considered by KDOT to be necessary to enable the Consultant to perform the services under this Agreement, for the Project to the same standards required of KDOT's personnel.

- b. Provide for the use of the Consultant a sufficient supply of the blank diaries, logs, record keeping books, and reporting forms considered by KDOT to be necessary for the Consultant to perform the services under this Agreement to the same standards required of KDOT'S personnel.
  - c. Provide space in the field office and field laboratory furnished by the Contractor under the terms of the Construction Contract Proposal, for the occupancy and use of the Consultant until completion of the construction work.
  - d. Perform or provide for laboratory testing of materials requiring off-site testing facilities and obtain test reports or certificates of compliance hereof.
  - e. Perform all necessary weld inspection when there is welding for bridge beam connections and splices, and for sign supports. This includes all cross frames, diaphragm connections, and stud welding.
  - f. Designate a Construction Engineer/Construction Coordinator in the Construction Office with the duties and responsibilities set forth in Section IC of the General Construction Provisions of the Agreement.
  - g. Provide, through the Field Engineer and the District Staff, such assistance and guidance to the Consultant as may be reasonably necessary to perform and complete this Agreement in conformance with standard construction engineering practices of KDOT.
- (2) The Secretary reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

## **II. PROSECUTION AND PROGRESS**

- A. It is anticipated that the services to be performed under the construction contract will start in 2014, and be completed by 2014.
- B. The Consultant shall complete all services to be rendered under this Agreement no later than two months after completion of Project construction. Failure to comply may result in disqualification of the Consultant's Project Engineer/Project

Manager or Chief Inspector until proper documentation is submitted and accepted.

### III. BASIS OF PAYMENT

- A. Compensation of services provided by the Consultant under the terms of the Agreement shall be made on the basis of the reimbursable Consultant's actual cost plus a net fee amount of **\$53,722.90**. The actual cost shall be incurred in conformity with the cost principles established in Volume 1, Chapter 7, Section 2 of the Federal-aid Highway Policy Guide and 48 C.F.R. pt. 31 *et seq.* The upper limit of compensation for services detailed in this Agreement shall be **\$496,667.55**.
- B. Compensations for services during the progress of work normally will be made to the Consultant within 30 days after receipt by the Secretary of proper billing and when supported by appropriate documentation. The Consultant may not request partial payments at intervals of more than one per calendar month. Progress billings shall be acceptable to the Secretary before payments can be made to the Consultant. Unless extra work has been authorized by the Secretary, the total of the final payment and previous payments can not exceed the upper limit of compensation approved for the work. If extra work has been authorized it will be reimbursed as per the terms of the supplemental agreements(s).
- C. The Secretary will pay 100 percent of all partial billings up to 95 percent of the upper limit of compensation. Any further amount due will be held until the KDOT field office obtains all deliverables (field books, CMS disks, as-built plans, etc.) from the Consultant. When all deliverables are received by KDOT the remainder due may be paid if requested by the Consultant minus a \$500.00 retainage or the amount earned in excess of 95 percent of the upper limit, whichever is less. If partial payments never reach 95 percent of the upper limit, the Consultant may request payment of 100 percent of the amount earned minus a \$500.00 retainage. The retainage amount will be released to the Consultant when this agreement has been audited by KDOT.
- D. The Secretary will reimburse the Consultant for the approved vouchered amount up to the upper limit of compensation (or upper limit plus any amount approved by a revised supplemental) for work detailed in the Agreement. The payments will be made provided the LPA has submitted to KDOT the estimated LPA's share of the Project cost and the LPA's estimated share of the Construction Engineering cost.
- E. If the Agreement's upper limit of compensation exceeds the amount approved by the FHWA, KDOT will reimburse the Consultant for the approved voucher fee (not to exceed the Agreement's upper limit of compensation unless authorization has been granted and included in a revised supplemental). The LPA will reimburse KDOT for fees vouchered by the Consultant and approved by KDOT up to the upper limit of compensation in the Agreement that may exceed the

FHWA's approved amount unless provisions are provided for payment under state law.

#### **IV. MISCELLANEOUS PROVISIONS**

##### **A. AUTHORIZED REPRESENTATIVES**

- (1) The Field Engineer for KDOT will be Mr. Kevin Zimmer, P.E., whose work address is 1811 West Frontier Road, Hays, Kansas 67601 and work telephone is 785-625-9718.
- (2) The Project Engineer/Project Manager for the Consultant will be Mr. Wade Heim, Certification Number 3236 (expiration date is 12/11/2017), whose work address is 3226 Kimball Avenue, Manhattan, Kansas 66503 and work telephone is 785-539-2202.
- (3) The Chief Inspector for the Consultant will be Mr. Michael Chase, Certification Number 3237 (expiration date is 12/11/2017), whose work address is 3226 Kimball Avenue, Manhattan, Kansas 66503 and work telephone is 785-539-2202.
- (4) The contact person for the LPA will be Mr. John Braun whose work address is 1002 Vine Street, Hays, Kansas 67601 and work telephone is 785-628-7350.

##### **B. ACCESS TO RECORDS**

- (1) All documents and evidence pertaining to costs incurred under this Agreement will be available for inspection during normal business hours in the Consultant's office, located at 3226 Kimball Avenue, Manhattan, Kansas 66503, for a period of three (3) years following final Agreement payment.

**CERTIFICATION  
CERTIFICATION OF CONSULTANT**

I hereby certify that I am the \_\_\_\_\_ and duly authorized representative of the firm  
of \_\_\_\_\_, whose address is \_\_\_\_\_,  
\_\_\_\_\_ and that neither I nor the above firm I here represent has:

- (a) employed or retained for the commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement,
- (b) agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
- (c) paid, or agreed to pay, to any firm, organization of persons (other than a bonafide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Secretary of the Kansas Department of Transportation in connection with this agreement and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

**CERTIFICATION OF THE DEPUTY SECRETARY AND  
STATE TRANSPORTATION ENGINEER**

I hereby certify that I am the Deputy Secretary for Engineering and State Transportation Engineer of the State of Kansas and that the above Consultant or his representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement to

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the above referenced firm in connection with this Agreement, and is subject to applicable state and federal laws, both criminal and civil.

Kansas Department of Transportation  
Michael S. King, Secretary of Transportation

\_\_\_\_\_  
(Date)

By: \_\_\_\_\_  
Jerome T. Younger, P. E.  
Deputy Secretary and  
State Transportation Engineer

**CERTIFICATION OF CITY OF HAYS**

We hereby certify that we are the above-noted City's Appropriate Local Officials authorized to sign for the City and the Consultant noted in Sheet 1 of this Special Attachment or his representative has not been required, directly or indirectly, as an expressed or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or,
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind:

except as herein expressly stated (if any):

We acknowledge that this certificate is to be furnished to the above referenced firm in connection with this Agreement, and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor of Hays

**KANSAS DEPARTMENT OF TRANSPORTATION**

Special Attachment  
To Contracts or Agreements Entered Into  
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,  
REHABILITATION ACT OF 1973, and any amendments thereto,  
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,  
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,  
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY  
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,  
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

**NOTIFICATION**

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

**CLARIFICATION**

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

**Nondiscrimination Clauses**

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) **Compliance with regulations:** The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) **Nondiscrimination:** The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontractors, including Procurements of Material and Equipment:** In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) **Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) **Employment:** The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
  - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) **Disadvantaged Business Obligation**
  - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
  - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
  - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant 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.
- 8) **Executive Order 12898**
  - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

State of Kansas  
 Department of Administration  
 DA-146a (Rev. 06-12)

**CONTRACTUAL PROVISIONS ATTACHMENT**

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Certification		INSPECTOR									
		Bradley Cramer	Justin Davis, PE	Andrew Dailey, PE	Ralph Griпка, PE	Chris Harker, PE	James Petersen, PE	Wade Heim, PE	Mike Chase	Chuck Goodman, PE	Clay Hirt
		INSPECTOR ID									
		1828	3677	3970	3056	3676	4089	3236	3237	1670	3017
Basic Inspection	BI	12/14/2017	11/20/2014	2/8/2018	2/8/2018	11/20/2014	5/8/2018	10/12/2017	12/11/2017	2/19/2015	2/21/2017
Structures	STR	12/14/2017	11/20/2014	2/8/2018	2/8/2018	11/20/2014	5/8/2018	12/14/2017	12/12/2017	2/19/2015	2/22/2017
Asphalt Paving Inspection	API	12/14/2017	11/20/2014	2/8/2018	2/8/2018	11/20/2014	5/8/2018	10/12/2017	12/13/2017	2/19/2015	2/23/2017
Concrete Paving Inspection	CPI	12/14/2017	11/20/2014	2/8/2018	2/8/2018	11/20/2014	5/8/2018	10/12/2017	1/18/2018	2/19/2015	12/15/2016
ACI Aggregate Field Tester	AGF	12/19/2017									
ACI Aggregate Laboratory Tester	AGL										
ACI Concrete Field Tester	CF								2/1/2017		4/22/2016
ACI Concrete Strength Testing Tech	CST							5/7/2015			
Basic Construction Management System	CMB										
Advanced Construction Management System	CMA										
Drilled Shaft Inspection	DSI				3/10/2015						
HMA Plant Management and Inspection	HMA										
IMSA Certification											
Paint, Misc. and Asphalt Sampling											
Pile Driving Inspection	PDI										
Soils Field Tester	SOF										1/31/2018
Soils Laboratory Tester	SOL										
Profilograph Operation	PO										
Statistics											
QC/QA Concrete Specifications									1/18/2017		1/23/2018
QC/QA Cement Treated Base Specifications	QCB								1/18/2017		1/23/2018
QC/QA Asphalt Specifications											
Introduction to Construction Staking	ICS										
Traffic Control Inspection											
Nuclear Gauge Certification								4/10/2018	2/22/2017		
SuperPave Field	SF										
SuperPave Laboratory	SL										

Project No. 26 U-2295-01  
City of Hays  
Ellis County

Supporting Data Sheet  
for  
ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Avg. Sal.</u>	<u>Extension</u>
1. Field Inspection and daily contract documents	(a) Eng.(s) &/or Mang	152@	\$54.00 =	\$ 8,208.00
		672@	\$32.00 =	21,504.00
	(b) Tech.(s)	1,480@	\$22.17 =	32,811.60
		1,768@	\$22.17 =	<u>39,196.56</u>
Subtotal				\$101,720.16
2. On-site Testing	(a) Eng.(s) &/or Mang.	@	\$32.00 =	\$ 0.00
	(b) Tech.(s)	432@	\$22.17 =	9,577.44
		432@	\$22.17 =	9,577.44
		180@	\$22.17 =	<u>3,990.60</u>
Subtotal				\$23,145.48
3. Surveying	(a) Eng.(s) &/or Mang.	@	\$32.00 =	\$ 0.00
	(b) Tech.(s)	288@	\$22.17 =	<u>6,384.96</u>
Subtotal				\$6,384.96
4. Final Paper Preparation	(a) Eng.(s) &/or Mang.	12 @	\$54.00 =	\$ 648.00
		80 @	\$32.00 =	2,560.00
	(b) Tech.(s)	120@	\$22.17 =	2,660.40
		40 @	\$22.17 =	<u>886.80</u>
Subtotal				\$6,755.20
Total Direct Payroll Costs				\$138,005.80

Project No. 26 U-2295-01  
 City of Hays  
Ellis County

## Summary Total Direct Payroll Costs

	<u>Hours</u>	<u>Rate</u>	<u>Extension</u>
(a) Eng.(s) &/or Mang.	= 164	@ \$54.00	= \$ 8,856.00
	= 752	@ \$32.00	= 24,064.00
(b) Tech.(s)	= 2320	@ \$22.17	= 51,434.40
	= 2240	@ \$22.17	= 49,660.80
	= 180	@ \$22.17	= <u>3,990.60</u>
Total Direct Payroll Costs			= \$138,005.80
B. Salary Related Overhead (159.52%)			= <u>\$220,146.85</u>
C. Total Payroll plus Overhead (A + B)			= \$358,152.65
D. Net Fee			= \$ 53,722.90
E. Direct Expenses (Travel, Postage, Misc.)			
Per Diem & Subsistence (360 days @ \$120.00)			= \$43,200.00
Mileage:			
Auto (0 @ \$0.56/mile)			= 0.00
Pickup (42,450 @ \$0.56/mile)			= 23,772.00
Vehicle Use:			
Auto (0 @ \$45.00/day)			= 0.00
Pickup (396 @ \$45.00/day)			= 17,820.00
Postage & Telephone			= 0.00
Testing Laboratory			= 0.00
Equipment Rental			= <u>0.00</u>
Total Other Direct Expenses			= <u>\$84,792.00</u>
TOTAL COST PLUS NET FEE ESTIMATE			= \$496,667.55

**Certification of Final Indirect Costs**

Firm Name: \_\_\_\_\_ Alfred Benesch & Company \_\_\_\_\_

Indirect Cost Rate Proposal: \_\_\_\_\_ 159.52% \_\_\_\_\_

Date of Proposal Preparation (mm/dd/yyyy): November 12, 2013

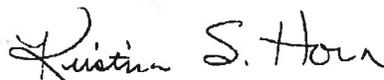
Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): May 27, 2012 to May 26, 2013 \_\_\_\_

*I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:*

- 1.) All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.*
- 2.) This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.*

*All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.*

Signature:



Name of Certifying Official (Print): \_\_\_\_\_ Kristina S. Horn \_\_\_\_\_

Title: \_\_\_\_\_ Chief Financial Officer \_\_\_\_\_

Date of Certification (mm/dd/yyyy): \_\_\_\_\_ November 12, 2013 \_\_\_\_\_



Sam Brownback, Governor  
Nick Jordan, Secretary

[www.ksrevenue.org](http://www.ksrevenue.org)

# CERTIFICATE OF TAX CLEARANCE

Alfred Benesch & Company

**ISSUE DATE**

11/08/2013

**TRANSACTION ID**

T654-3CES-ADUC

**CONFIRMATION NUMBER**

CV24-29AM-UTAS

**TAX CLEARANCE VALID THROUGH 02/06/2014**

*Verification of this certificate can be obtained on our website, [www.ksrevenue.org](http://www.ksrevenue.org),  
or by calling the Kansas Department of Revenue at 785-296-3199*

# KANSAS DEPARTMENT OF TRANSPORTATION

## SPECIAL ATTACHMENT

### CERTIFICATE OF COMPLIANCE WITH K.S.A. 46-239 (c)

Kansas law (K.S.A. 46-239 (c)) requires the Kansas Department of Transportation to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. The following certification must be filled in by the signator of this contract:

\_\_\_\_\_ Yes, this contract is with a legislator or a firm in which a legislator is a member.

Legislator name \_\_\_\_\_

Business phone \_\_\_\_\_

Address (Street, City, State, Zip Code)  
\_\_\_\_\_  
\_\_\_\_\_

or

\_\_\_\_\_ No, this contract is not being entered into with a legislator or a firm in which a legislator is a member.

The signer understands that this certification is factual and reliable and is part of this transaction.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Contract/  
Project No: \_\_\_\_\_  
(if applicable)

County: \_\_\_\_\_  
(if applicable)

REQUIRED CONTRACT PROVISION  
CERTIFICATION - FEDERAL FUNDS - LOBBYING

Definitions

1. Designated Entity: 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.
2. Federal Grant: An award of financial assistance by the federal government (Federal Aid Highway Program is considered a grant program).
3. Influencing (or attempt): Making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of any Federal grant.
4. Person: An individual, corporation, company, association, authority, firm, partnership, society, State or local government.
5. Recipient: All contractors, subcontractors or subgrantees, at any tier, of the recipient of funds received in connection with a Federal grant.

Explanation

As of December 23, 1989, Title 31 U.S.C. (new) Section 1352 limits the use of appropriated federal funds to influence federal contracting. Under this new section no appropriated funds may be used by the recipient of a federal grant to pay any person to influence or attempt to influence a designated entity in connection with the naming of a federal grant or the extension, renewal, amendment or modification of any grant. These restrictions apply to grants in excess of \$100,000.00. Submission of this certification is required for participation in this project by federal law. For each failure to file a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 may be imposed.

Note: If funds other than appropriated federal funds have or will be paid to influence or attempt to influence a designated entity it must be reported. If required, the reporting shall be made on KDOT Form No. 401 "DISCLOSURE OF LOBBYING ACTIVITIES", in accordance with its instructions. KDOT Form No. 401 is available through the Bureau of Local Projects.

THE ABOVE DEFINITIONS, EXPLANATION AND NOTE ARE ADOPTED AND INCORPORATED BY REFERENCE IN THIS CERTIFICATION FOR ALL PURPOSES THE SAME AS IF SET OUT IN FULL IN IT.

The maker of this CERTIFICATION states that it has been signed on the maker's behalf or, if on behalf of some other person, that the maker is vested with legal right and authority to bind and obligate the other person in the making of this CERTIFICATION submitted in regard to this contract.

The maker certifies that: No federal appropriated funds have been paid or will be paid by or on behalf of the maker, to any person, for influencing or attempting to influence any designated person in connection with the awarding of any federal grant or the extension, continuation, renewal, amendment or modification of any federal grant.

In the event that the maker subcontracts work in this contract, the maker will provide to and require the signing of this Certification by the subcontractor, and shall keep and maintain the original signed form as part of the contract with the subcontractor.

The maker understands that this Certification is a material representation of fact upon which reliance was placed as part of this transaction.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_



**CITY OF HAYS**  
**AGENDA ITEM COVER SHEET**

**COMMISSION AGENDA ITEM NO. 8**

**MEETING DATE: 12-12-13**

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**TOPIC:**

2014 Statement of Legislative Priorities

**ACTION REQUESTED:**

Approve the 2014 Statement of Legislative Priorities in preparation for the upcoming Legislative Session.

**NARRATIVE:**

The 2014 Statement of Legislative Priorities contains what the City of Hays feels are the most pressing issues with regard to cities that the State Legislators will deal with in the upcoming session.

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Toby Dougherty, City Manager

**ADMINISTRATION RECOMMENDATION:**

Approval

**COMMITTEE RECOMMENDATION(S):**

None

**ATTACHMENTS:**

2014 Statement of Legislative Priorities

2014

# Statement of Legislative Priorities

As approved by the Hays

City Commission

on

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## **2013 Statement of Legislative Priorities**

In order to communicate issues and goals with its elected legislators, the City of Hays hereby presents its 2014 Statement of Legislative Priorities.

In summary, the 2014 legislative goals for the City of Hays are to improve water planning ability, preserve the current municipal funding framework, and maintain local determination on governance issues that are essential to Hays. The 2013 agenda ensures that Hays remains a strong economic presence in Northwest Kansas while continuing to meet the needs of its citizens. The following items identify the core areas of legislative importance to the City of Hays.

### **Water Conservation and Planning**

Conservation and long-term source preservation are of critical importance to the City of Hays. We support and encourage laws and regulations that allow all cities to become better stewards of their water sources. This includes reuse of existing water as well as recharging aquifers with locally captured stormwater runoff.

We feel the current 20 year planning horizon is too short given the significant infrastructure investment required to develop a new water source. We support laws and regulations that allow for adequate long-term planning for water needs, and oppose laws and regulations that force communities to wait until emergency conditions develop before reacting.

### **Regulation of Local Water Supplies**

In circumstances where the State of Kansas chooses not to regulate or provide oversight, we support giving all cities the ability to regulate and monitor their local water supplies, and the actions that impact those sources. This will allow cities to protect valuable local sources from contamination and depletion.

### **Water Quantity and Quality**

State laws and administrative procedures should provide for the vigorous protection of current and future municipal water supplies from contamination and encroachment.

### **Fair Fares Funding**

In 2006 the Fair Fares program was created with the statutory objective of providing “more air flight options, more competition for air travel, and more affordable air fares for Kansas, including a regional airport in Western Kansas”. From 2006 through 2013 the Fair Fares program was administrated by REAP (Regional Economic Area Partnership). The distribution process was competitive. In 2013 the Kansas Legislature moved Fair Fares administration to the Department of Commerce and required the funds be distributed in a non-competitive manner.

We feel that all airports in Western Kansas should have competitive access to the Fair Fares program and encourage the Legislature to remove non-competitive restrictions.

### **Alcoholic Liquor/Motor Fuel Taxes**

We support the current statutory framework with regard to the collection and distribution of locally collected alcoholic liquor and motor fuel taxes. These taxes are collected locally and redistributed with very specific restrictions on usage. They should not be used to support the State's General Fund.

### **Sales Tax Exemptions**

Given the current and future budget challenges facing both state and local governments, we oppose the continued erosion of the state and local sales tax base with added exemptions. If it is the State's intent to provide exemptions it should be in the form of a state rebate so as not to unduly burden local taxing entities. The Legislature should actively review existing exemptions in order to determine whether the exemptions are still appropriate.

### **Personal Property Tax Exemptions**

We are opposed to any further state mandated property tax exemptions as this practice shifts the tax burden from one tax payer to another. The State of Kansas receives less than ½ of one percent of its revenue from property taxes. If it is the State's intent to provide tax exemptions it should be in the form of a state rebate so as not to unduly burden local taxing entities who rely heavily on property taxes.

### **Revenue Sharing**

As required by State Statutes, the State Legislature should reinstate the City-County Revenue Sharing program and the Local Ad Valorem Tax Reduction program, and should maintain complete funding for the Special City-County Highway Fund. The State should fund all revenue sharing funds at the existing statutorily-required levels.

### **TABOR**

We oppose the application of a Taxpayer Bill of Rights (TABOR) as an erosion of representative democracy which, over time, will erode local determination and jeopardize the ability of cities to make prudent financial decisions.

### **Unfunded Mandates**

We oppose unfunded mandates. If the state or federal governments seek to promote specific policy objectives, such mandates should be accompanied by an appropriate level of funding

### **Stormwater Management**

We encourage KDHE to work with cities and provide technical support in the implementation of reasonable regulations related to stormwater management. We endorse cooperative solutions to stormwater quality and quantity challenges. We oppose regulations that place excessive financial burdens on local governments.

### **Public Property and Rights-of-Way**

We oppose any legislation that restricts the ability of cities to control public property and rights-of-way or the ability of cities to franchise those entities that utilize the rights-of-way. We encourage the Kansas Legislature to protect the ability of cities to manage their rights-of-way and impose franchise fees regarding telecommunication, cable, and utility services.

### **PEERA/Collective Bargaining**

We support the current statutory process in the Public Employer-Employees Relations Act. We oppose any federal or state mandate which would require collective bargaining at the local level.



# CITY OF HAYS

## AGENDA ITEM COVER SHEET

COMMISSION AGENDA ITEM NO. 9

MEETING DATE: 12-12-13

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**TOPIC:**

Addendum to the Memorandum of Agreement with the Hays Firefighters Local 2119 for 2014

**ACTION REQUESTED:**

Authorize the Mayor, City Manager, and Fire Chief to sign the 2014 Addendum to the 2013 thru 2015 Hays Firefighters Local 2119 Memorandum of Agreement.

**NARRATIVE:**

The Hays Firefighters Local 2119 contract contains annual openers for Section 10, Health Insurance, if conditions are met, and Section 15, Wages and Administration of the Pay Plan. The City of Hays and the Hays Firefighters Local 2119 have an agreement for fiscal year 2014, Wages and Administration of the Pay Plan. The agreement states the City will provide members of the Hays Firefighters Local 2119 with a 1% merit increase starting the first payroll in 2014, and the City will continue the current pay ranges.

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Toby Dougherty, City Manager  
Paul Briseno, Assistant City Manager

**ADMINISTRATION RECOMMENDATION:**

City staff recommends that the City Commission approve the Addendum to the contract for 2014 with the Hays Firefighters Local 2119.

**COMMITTEE RECOMMENDATION(S):**

N/A

**ATTACHMENTS:**

Staff Memo  
Addendum to Agreement between the City of Hays and the Hays Firefighters Local 2119

# **Commission Work Session Agenda**

## **Memo**

**From:** Paul Briseno, Assistant City Manager

**Meeting:** December 12, 2013

**Subject:** Addendum to the IAFF Local 2119 Union Contract

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

### **Summary**

The City of Hays and the IAFF Local 2119 have an agreement for fiscal year 2014 Wages, and Administration of the Pay Plan. The agreement states the City will provide members of the IAFF bargaining unit with a 1% Merit increase with the first payroll in 2014 and the City will continue the current pay ranges.

### **Background**

The IAFF contract contains annual openers for Section 10 Health Insurance, if conditions are met, and Section 15 Wages and Administration of the Pay Plan.

### **Discussion**

The City and IAFF began the meet and confer process in April of 2013 to discuss the openers for the 2014 contract. Five meetings were held including mediation. Both parties tentatively agree to the attached proposal.

### **Legal Consideration**

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

### **Financial Consideration**

The City of Hays budget contains a 1% merit increase with the first payroll in 2014 and the City will continue the current pay ranges.

### **Options**

The City Commission has the following options;

1. Adopt the agreement between the City of Hays and the IAFF, International Association of Firefighters Union, Local 2119.
2. Reject the agreement between the City of Hays and the IAFF, International Association of Firefighters Union, Local 2119 and give staff further direction
3. Take no action

### **Recommendation**

Staff recommends the agreed upon language for the 2014 addendum between the City of Hays and IAFF, International Association of Firefighters Union, Local 2119.

### **Action Requested**

Staff requests that the Hays City Commission authorize the Mayor, City Manager, and Fire Chief to sign the 2014 Addendum to the 2013 thru 2015 Union Contract.

### **Supporting Documentation**

Addendum to Agreement between the City of Hays and IAFF, International Association of Firefighters Union, Local 2119.

**ADDENDUM TO AGREEMENT**

**BETWEEN**

**CITY OF HAYS  
AND  
FIREFIGHTERS LOCAL 2119**

This addendum to agreement executed on this 12th day of December, 2013, between the City of Hays, Kansas, hereinafter referred to as the "City", and Firefighters Local 2119, hereinafter referred to as the "IAFF", is intended to be attached to and made a part of the existing Memorandum of Agreement between the City and the IAFF that expires December 31, 2015. This addendum is in effect from January 1, 2014 through December 31, 2014. All portions of this agreement are incorporated therein by reference unless specifically altered or changed by the provisions of this Addendum.

**Section 15. WAGES / ADMINISTRATION OF THE PAY PLAN**

For fiscal year 2014 the City will make the following adjustments: the City will provide members of the IAFF bargaining unit with a 1% Merit increase with the first payroll in 2014 and the City will continue the current pay ranges.

IN WITNESS WHEREOF, the City and the IAFF have hereunto set their hand this 12<sup>th</sup> day of December, 2013.

FOR THE IAFF

FOR THE CITY

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Vice-President

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Secretary-Treasurer

\_\_\_\_\_  
Fire Chief

## COMMISSION INFORMATIONAL MEMORANDUM

TO: City Commission  
FROM: Toby Dougherty, CPM  
City Manager  
DATE: December 6, 2013

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Attached are the following items:

1. The minutes of the October 23, 2013 meeting of the **Hays Recreation Commission Board**.
2. The minutes of the October 28, 2013 meeting of the **Hays Housing Authority Board**.
3. The minutes of the November 4, 2013 meeting of the **Airport Advisory Committee**.
4. The **Great Lakes On-Time Report** for November 2013.

If you have any questions regarding this information, please do not hesitate to contact me.

ab



**HAYS RECREATION COMMISSION  
REGULAR MEETING  
October 23, 2013**

Chair called the meeting to order at 12:02pm.

**Roll Call**

Vice-Chair	Lynn Maska
Secretary	Mark Junk
Commissioner	Nancy Jeter
Commissioner	Clint Albers
Superintendent	Roger Bixenman
Chair	Jeff Briggs-absent

**Approval of Agenda**

Motion by Mark Junk to approve the agenda. Second by Clint Albers. Motion carried 4-0.

**Approval of Minutes**

Motion by Nancy Jeter to approve the minutes of the regular meeting for September 25, 2013. Second by Mark Junk. Motion carried 4-0.

**Audience Participation**

Melissa Romme-ABB&B discussed with the board the financials year to date.

**Written Communication**

Thank you letters were shared with the board.

**Finances**

Financial Statement

Motion by Nancy Jeter to approve the financial statement for September 2013. Second by Mark Junk. Motion carried 4-0.

**Staff Reports**

**Sports Director**

Information was shared with the board concerning sports.

**Program Director**

Information concerning all programming was shared with the board.

**Aquatics Director**

Information was shared with the board concerning aquatics.

**Wellness Director**

Information was shared with the board concerning wellness.

**Sports Complex Director**

Information was shared with the board concerning the sports complex.

## **Superintendent**

Discussion was held concerning out of town teams participation in HRC leagues. Also, discussed were Wave Transportation participation numbers and cost and update on maintenance building construction at the Bickle/Schmidt Sports Complex.

## **Unfinished Business**

No Unfinished Business

## **New Business**

### Foundation Board Meeting

Motion by Mark Junk to close the Regular HRC Board meeting. Second by Nancy Jeter motion carried 4-0.

Motion by Mark Junk to open the HRC Foundation Board meeting. Second by Nancy Jeter motion carried 4-0.

Motion by Nancy Jeter to close the HRC Foundation Board meeting. Second by Mark Junk motion carried 4-0.

Motion by Mark Junk to open the Regular HRC Board Meeting . Second by Clint Albers motion carried 4-0.

## **Board Member Reports**

None

## **Other Action**

None

## **Executive Session**

None

## **Adjournment**

Motion by Nancy Jeter to adjourn the meeting. Second by Clint Albers. Motion carried 4-0.

Respectfully submitted,

Roger Bixenman CPRP  
Superintendent

**Hays Housing Authority  
October 28, 2013**

The Board of Commissioners of the Public Housing Authority of the City of Hays met in the Community Room for the monthly meeting Monday, October 28, 2013.

Commissioners Present:     Gloria Funk, Vice-Chair  
                                  Daron Jamison  
                                  Al Klaus

Commissioners Absent:     Sue Rouse, Chair  
                                  Cathy Van Doren

HHA Staff Present:         Kathy Nelson, Executive Director

**MINUTES**

- Daron Jamison moved to approve the minutes of the September 30, 2013 meeting as presented, Al Klaus seconded the motion. All commissioners voted “Aye” – motion carried.

**AGENDA**

There were no changes or additions to the agenda.

**SECTION 8 FINANCIALS**

September 2013 Section 8 financial reports prepared by the fee accountant were presented to the Commissioners. Al Klaus moved to accept the reports as presented, Daron Jamison seconded the motion. All commissioners voted “Aye” – motion carried. Housing Assistance payments were made on behalf of 70 families for the month of October. One new family is scheduled to lease-up November 1<sup>st</sup>, three families will end participation October 31<sup>st</sup>, and one voucher is currently outstanding.

**BILLS AND COMMUNICATIONS**

- September 2013 Public Housing financial reports prepared by the fee accountant were presented to the Commissioners. Daron Jamison moved to accept the reports as presented, Al Klaus seconded the motion. All commissioners voted “Aye” – motion carried.

**OLD BUSINESS**

**Hays Housing Authority**  
**October 28, 2013**

- **Capital Fund Program** – Commissioners were provided with spreadsheets for the open capital fund grants. Several small dead trees have been removed and the playground will have mulch added to the surface.

**NEW BUSINESS**

- A two bedroom unit that was vacated September 30<sup>th</sup> has been leased up during the month of October. One three bedroom unit is scheduled to lease up November 1<sup>st</sup> and another three bedroom unit will lease up November 18<sup>th</sup>.
- **2014 Payment Standards** – Commissioners were provided with a list of the HUD published Fair Market Rents for 2014 for Ellis County. Housing Authorities are allowed to set Payment Standards within a range between 90 and 110 percent of the Fair Market Rents. Commissioners discussed the effects that various payment standards would have on the success of voucher holders finding appropriate units. Al Klaus moved to approve Resolution #2013-2 maintaining 2014 Payment Standards the same as 2013 Payment Standards, Daron Jamison seconded the motion. All Commissioners voted “Aye” – motion carried.
- **2013 3<sup>rd</sup> Quarter Form 941 and 2013 3<sup>rd</sup> Quarter Kansas Unemployment Tax Return** – Commissioners were provided with a copy of the 2013 3<sup>rd</sup> Quarter Form 941 - Employers Quarterly Federal Tax Return and the 2013 3<sup>rd</sup> Quarter Kansas Unemployment Tax return prepared by the Executive Director. Daron Jamison moved to approve the 2013 3<sup>rd</sup> Quarter Form 941 and the 2013 3<sup>rd</sup> Quarter Kansas Unemployment Tax returns as prepared, Al Klaus seconded the motion. All Commissioners voted “Aye” – motion carried.
- **Utility Allowances** – Kathy Nelson reported that she had completed the annually required study of utility allowances for both the Public Housing program and the Section 8 program and determined that no changes would be needed at this time.

Next meeting will be held Monday, November 25, 2013.

  
\_\_\_\_\_  
Kathy Nelson, Executive Director

  
\_\_\_\_\_  
Sue Rouse, Chair



Airport Advisory Committee Meeting  
November 4, 2013

Members Present:

Bob Johnson  
Errol Wuertz  
Mike Konz  
Gary Wentling  
I. D. Creech  
Chris Springer  
John Braun  
Dan Stecklein  
Lyle Noordhoek - late  
Don Benjamin Absent but excused

1.) Call to Order

2.) Approval of October 7, 2013 Meeting Minutes

Need to make a change in the minutes - Errol Wuertz was absent from the October 7<sup>th</sup> meeting but he was excused.

3.) Discuss Boarding Report

Down 301 passengers from last year this time.

4.) Discuss Runway 16-34 Construction - Update

On schedule for completion in mid November. Concrete work completed. Working on painting and electrical.

5.) Discuss Ribbon Cutting Ceremony for Runway 16-34

There will be a ribbon cutting ceremony November 18<sup>th</sup> at 3:00 P.M.

6.) Discuss Terminal Expansion Update

The TSA would like more workspace. The plan is still flexible at this time so changes can be made. We are still making room for the FAA but they may not decide to move here.

7.) Discuss EAS Funding Update

Contract bids have gone out. Bids are due back by December 2<sup>nd</sup>. The bids have to go through the department of transportation for approval.

8.) Discuss Mill Levy by .5 mills update

Action has been delayed on this item till January 2<sup>nd</sup>. Even if approved, the airport will not see any money from this action till January 2015. The airport needs to show why increased funding is needed.

9.) Discuss City Owned Hangars

Depending on whether the action would be favorable for the future plans of the Hays airport, the City would be willing to offer it's remaining hangars for sale.

10.) Discuss Airport Promotion

The FAA has a fund to help promote airports. Hays has used funds from this source in the past but we may not be able to secure this funding again since it is not available to airports with over 10,000 boardings per year.

11.) Add-On items

Mike Konz is organizing an informal group that could be considered a pilots and hangar owners association for the Hays airport. It is intended to keep local airport users informed of what is going on at the airport and help users connect with the airport better.

John Braun will send out email to members to solicit volunteers to help pick engineering services to do the repair work required on runway 4/22.

12.) Next Meeting December 2, 2013 at 6:30 PM.

13.) Adjourn

Respectfully submitted,

Errol Wuertz

Great Lakes Airlines On-Time Report

Nov-13	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	Under 15 Min On-Time	15-44 Min Late	45-74 Min Late	75 -104 Min Late	105 Min Late or more	Canceled	
Mon-Fri																																					
630	C			C	x	L	C	x			C	C	L	x	x			C	x	C	C	C			C	C	C	C	C		24%	10%				67%	
645	C			C	x	L	C	x			C	C	L	x	x			C	x	C	C	C			C	C	C	C	C		24%	10%				67%	
1016	x			x	C	C	x	x			C	L	x	x	x			C	x	C	C	C			L	x	L	C	C		43%	5%			10%	43%	
1026	x			x	C	C	x	L			C	L	x	x	L			C	x	C	C	C			L	x	L	C	C		33%	14%			10%	43%	
1311	x			x	L	C	x	C			C	x	x	x	x			C	L	x	L	C			C	x	L	x	x		52%	10%		5%	5%	29%	
1321	x			x	L	C	x	C			C	x	x	x	x			C	L	x	L	C			C	x	L	x	x		52%	10%		5%	5%	29%	
1425	x			x	L	L	x	C			C	x	x	x	x			x	L	x	C	x			C	x	L	x	x		62%	5%	5%	5%	5%	19%	
1435	x			x	L	L	x	C			C	x	x	x	x			x	L	x	C	L			C	L	L	x	x		52%	14%	5%	5%	5%	19%	
1626	x			x	C	L	x	L			C	L	x	C	C			L	x	x	C	x			L	x	x	C	L		43%	19%	5%	5%		29%	
1636	x			x	C	L	x	L			C	L	x	C	C			L	x	x	C	x			L	x	x	C	L		43%	10%	14%	5%		29%	
2156	x			L	x	C	x	L			C	L	x	x	x			x	C	C	C	L			C	x	C	C	C		38%	10%		5%	5%	43%	
2206	x			L	x	C	x	L			C	L	x	x	x			x	C	C	C	C			C	x	C	C	C		38%	10%		5%		48%	
Saturday																																					
715		x							x																						75%					25%	
725		x							x																							100%					
1250		C							C																												100%
1300		C							C																												100%
1406		x							x																							75%	25%				
1416		x							x																							75%	25%				
1931		x							C																							75%					25%
1941		x							C																							75%					25%
Sunday																																					
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1300			x						C																						60%					40%	
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1636			C						x																						20%		20%		20%	40%	
2156			C						C																						20%					80%	
2206			C						C																						20%					80%	

Average 43% 9% 3% 2% 3% 40%

Total Flights - 324 140 28 9 8 11 128

Percentage of flights delayed or canceled 57%

No time logged =na

Late=L

On Time=x

Canceled=C

On time means <= 15 minutes