

# Memo

To: City Commission  
From: Toby Dougherty, City Manager  
Date: 3-31-14  
Re: April 3, 2014 Work Session

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Please find the attached agenda and supporting documentation for the April 3, 2014 Work Session.

Items 2, 3 & 4 – Vehicle Abatements (510 West 23<sup>rd</sup>, 1309 Donald and 1812 East 27<sup>th</sup>)

Items 2, 3 and 4 are self-explanatory. Please refer to the attached memorandums from Planning, Inspection and Enforcement Division Superintendent Jesse Rohr.

Item 5 – Recommendation for Zoning Rewrite Consultant

Please refer to the attached memorandum from Jesse Rohr regarding the recommendation of a consultant for the zoning code rewrite. As you are aware, the City's Zoning and Subdivision Regulations were adopted in the 1970s. They are first generation, suburban in nature and not necessarily a good fit for the City of Hays. One of the recommendations of the Comprehensive Plan was to undertake a comprehensive evaluation and rewrite of the Zoning and Subdivision Regulations. City staff solicited proposals for this rewrite and put together a selection committee to review the proposals. After an extensive process, City staff and the Hays Area Planning Commission recommend Kendig Keast Collaborative for the rewrite.

Item 6 – Hays Regional Airport Terminal Project

Please refer to the attached memorandum from Public Works Director I.D. Creech regarding the Hays Regional Airport Terminal Project. As you are aware, City staff has been working with the FAA to design and develop cost estimates for the terminal remodel. While I.D. will discuss it in much more detail at the Work Session on Thursday, City staff feels that we have developed a plan that provides the best long-term viability for the Hays Regional Airport terminal at the best possible cost to the City. The FAA will pay for a significant portion of the remodeling cost; however, there is

going to be a required City match. At this time, City staff is recommending utilizing the Airport reserves and operating expenditures, as well as an allocation from the City Commission Financial Policy Projects, to pay for its share of the remodel.

#### Item 7 – EPA Fine for Exceeding Wastewater Treatment Permit Limits

Please refer to my attached memorandum regarding the EPA fine for exceeding wastewater treatment permit limits. In 2012, while testing a new process at the Wastewater Treatment facility, the permit limit for ammonia was exceeded. This prompted an EPA investigation, and EPA staffers were onsite for several days. Although City staff, and engineers, made the necessary corrections to avoid a similar situation in the future, the Environmental Protection Agency chose to issue a fine for being out of compliance. The City Attorney and Utilities Director Bernie Kitten worked with the EPA to reduce the fine. City staff is requesting that the City Commission approve payment of the fine.

#### Item 8 – Discussion of Snow Removal from Sidewalks

At a previous City Commission meeting, it was asked that a discussion of snow removal from sidewalks be placed on a future work session agenda. In the interim, I took the opportunity to submit a message on the City Managers' Listserv asking how many cities have such an ordinance in effect, and for those that do, how many actively enforce. That document is included in your packet. As you will see, most cities have an ordinance on the books regarding snow removal from sidewalks, but very few enforce. This is due to the difficulties of actually enforcing this ordinance. Most cities find it easier to not mess with it. Up until 2005, the City of Hays had a similar ordinance on the books that was rarely, if ever, enforced. In 2005, the City Commission directed City staff to begin enforcing the ordinance. This coincided with a significant snowfall followed by an ice storm making sidewalks very difficult to clear. Shortly after this event, the City Commission repealed the ordinance. City staff would not recommend adopting an ordinance requiring snow removal from sidewalks.

#### Item 9 – City Commission Rules of Procedure

This is a housekeeping item. City staff is asking the City Commission to review its Rules of Procedure prior to the reorganization. If the Commission feels that changes need to be made, it can direct staff to make the proper modifications.

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**CITY OF HAYS  
CITY COMMISSION WORK SESSION  
THURSDAY, APRIL 3, 2014 – 6:30 P.M.  
AGENDA**

1. **ITEM FOR REVIEW: [March 20, 2014 Work Session Notes \(PAGE 1\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
2. **ITEM FOR REVIEW: [Vehicle Abatement – 510 West 23<sup>rd</sup> Street \(PAGE 7\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
3. **ITEM FOR REVIEW: [Vehicle Abatement – 1309 Donald \(PAGE 15\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
4. **ITEM FOR REVIEW: [Vehicle Abatement – 1812 East 27<sup>th</sup> Street \(PAGE 23\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
5. **ITEM FOR REVIEW: [Recommendation for Zoning Rewrite Consultant \(PAGE 31\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
6. **ITEM FOR REVIEW: [Hays Regional Airport Terminal Project \(PAGE 89\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works
7. **ITEM FOR REVIEW: [EPA Fine for Exceeding Wastewater Treatment Permit Limits \(PAGE 99\)](#)**  
PERSON RESPONSIBLE: Toby Dougherty, City Manager
8. **ITEM FOR REVIEW: [Discussion of Snow Removal from Sidewalks \(PAGE 115\)](#)**  
PERSON RESPONSIBLE: Toby Dougherty, City Manager
9. **ITEM FOR REVIEW: [City Commission Rules of Procedure \(PAGE 117\)](#)**  
RESPONSIBLE PARTY: City Commission
10. **OTHER ITEMS FOR DISCUSSION**
11. **EXECUTIVE SESSION (IF REQUIRED)**
12. **ADJOURNMENT**

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



City of Hays  
City Commission  
Work Session Notes  
March 20, 2014

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

**February 4, 2014 Work Session Notes**

There were no corrections or additions to the minutes of the work session held on March 6, 2014; the minutes stand approved as presented.

**RFP for Broker and Risk Management Services:**

The current contract with Insurance Planning (IPI) for Broker and Risk Management Services will expire on May 1, 2014. The contract with IPI was for a five year term at an annual cost of \$21,600. Request for proposals were mailed to seven potential providers with two responsive and responsible bids received. The incumbent bid \$23,500 and Arthur J Gallagher Risk Management Services bid \$20,000. After careful consideration, due diligence, reference checks and clarification of the provider's core services, city staff is recommending to accept the bid from Arthur J Gallagher.

At the March 27, 2014 Commission meeting, Commissioners will be requested to accept the bid from Arthur J Gallagher in the amount of \$20,000 per year for a five year annual renewal term for Broker and Risk Management Services to be funded from the Intergovernmental Fund.

**Overland Property Group LLC – Resolution of Support**

Overland Property Group, LLC is pursuing tax credits to help finance the construction of additional apartments in Hays. Their proposal is for the development of rental housing to be located on East 22<sup>nd</sup> Street, directly south of Hays Medical Center. The request is for the development of two buildings (each

containing either 16 units, 32 units total or each would contain 24 units, 48 units total) and a club house at a site currently outside the city limits and zoned Agricultural. The proposed development will resemble the structure of the current Stonepost Apartments. As part of the tax credit process, Overland Property Group is asking for a Resolution of Support from the City of Hays. Overland Properties has asked for, and been granted, similar resolutions in the past.

Commissioners will be requested to approve a Resolution in support of the housing development proposed by Overland Property Group, LLC at the March 27, 2014 Commission meeting.

### **Update to Municipal Water Conservation Plan/Drought Response Plan**

The City of Hays has had a Water Conservation and Drought Response Plan since the 1990s. The plan has been periodically updated throughout the years.

City staff has been working with the State of Kansas Division of Water Resources to include private wells in the regulatory actions of the warning and emergency stages of the Drought Response Plan. While inserting the private well language in the Drought Response Plan, City staff took the opportunity to make a couple of small revisions to the plan itself. Changes from the existing plan include:

- Private well compliance with regulations in warning and emergency stages;
- No newly seeded/sodded lawn permits during warning stage;
- Second conservation tier rates identified in warning and emergency stages;
- Power of City Commission to adopt additional emergency water rates identified in emergency stage.

Commissioners will be requested to approve the updated Municipal Water Conservation Plan/Drought Response Plan for the City of Hays at the March 27, 2014 Commission meeting.

### **Drought Response Plan Private Well Requirements**

The purpose of this ordinance is to provide for a progressive water supply conservation program, including the declaration of a water watch, water warning or water emergency and the implementation of voluntary and mandatory water conservation measures throughout the City, including regulation of private well water use, in the event such a watch, warning, or emergency is declared by the governing body. The Kansas Water Office suggested this method to allow legal control of the numerous private wells on our same source of water. Ellis and Salina have similar ordinances enacted.

Commissioners will be requested to approve the Drought Ordinance for the City of Hays at the March 27, 2014 Commission meeting.

### **Landscape Irrigation Regulations**

In an effort to control the amount of water used in new irrigation systems, staff has worked with the Planning Commission to develop regulations governing the amount of irrigated area, the location of sprinkler heads on properties, and the types of vegetation allowed to be irrigated on a given property. The main changes recommended are caps on the total amount of irrigated areas on properties with specific limitations on the most water-hungry landscaping. Staff is recommending adoption of these changes to landscaping standards in Chapter 71 of the Code of Ordinances.

Guy Riedel, owner of CCR Landscaping stated that xeriscaping will be a costly venture because of the expense of transporting materials and excavating the land. He also stated there are efficient irrigation systems capable of using less water.

City Manager Toby Dougherty commented that the problem is people are trying to grow grass in an unnatural ill-suited environment. He stated that if we weren't putting so much water down on lawns, we might not be looking at a \$65 million project for water.

At the March 27, 2014 Commission meeting, Commissioners will be requested to approve the ordinance making these changes as recommended by the Hays Area Planning Commission.

### **Continued Discussion of IAPMO 2012 Green Plumbing & Mechanical Code Supplement**

City staff is recommending adoption of portions of the International Association of Plumbing and Mechanical Officials 2012 Green Plumbing & Mechanical Code Supplement. Adoption of this code will mean, in general, that all water using fixtures in new construction and remodels must be at least 20% more efficient than federal standards and also places restrictions on water uses where there are no state, federal or local rules; for example, car washes and industrial cooling systems.

Commissioner Mellick was concerned with the cost involved with water heater replacement on residential remodels and it was suggested to bring back an alternate version of this portion of the supplement exempting residential remodels from water heater line volume. He also requested information on hot water recirculation systems which do not require a dedicated return line.

Commissioners will be requested to approve the ordinance adopting this green code at the March 27, 2014 Commission meeting.

### **Recommended Changes for Commercial Irrigation**

In 2013, the City Commissioners adopted a second conservation pricing tier for water at residential properties. Due to a wide number of variations in how water is used at commercial properties, a similar change was not adopted concurrently for commercial properties. Staff explored the issue of outdoor water usage at commercial properties and is making the following recommendations:

- Require all new business customers with permanent irrigation systems to install dedicated irrigation meters.
- Change how multi-family properties are billed to a manner more consistent with their residential use.

- Create a new commercial rate structure (second conservation tier) applicable only to those properties irrigating with potable water that do not have a separate irrigation meter. Customers wishing to not be under the new tier can opt to install, at their cost, a dedicated irrigation meter. While water warning status prohibits the connection of new irrigation systems to the potable water supply, these customers will be allowed to install irrigation meters as no new irrigated area is being added.

Commissioners will be requested to approve the ordinances adopting these changes at the March 27, 2014 Commission meeting.

### **Bickle-Schmidt Sports Complex - Website Agreement Addendum with Nex-Tech**

Nex-Tech holds the naming rights for communication services at the Bickle-Schmidt Sports Complex. These services include internet, telephone and other marketing benefits. As part of the naming rights package Nex-Tech agreed to provide a website and services for the facility.

Nex-Tech can no longer provide the website services. To uphold their agreement they are asking for an Addendum to have The News Publishing Company (Hays Daily News) fulfill website requirements. Though the agreement is with the City, the Hays Recreation Commission utilizes this service to promote the facility.

Nex-Tech Chief Operating Officer of Competitive Services, Mike Pollock commented that the visitors of the web site will see no changes. The support and future customization of the site will be provided by Hays Daily News

At the March 27, 2014 Commission meeting Commissioners will be requested to approve the Addendum to agreement for communication services at the Bickle-Schmidt Sports Complex.

### **Other Items for Discussion**

City Manager Toby Dougherty thanked Director of Utilities, Bernie Kitten, Interim Assistant Director of Utilities, Nick Willis, Water Conservation Specialist,

Jason Riegel, Planning Inspection Enforcement Superintendent, Jesse Rohr, Director of Public Works, ID Creech, City Clerk, Brenda Kitchen, and Deputy City Clerk, Jami Breit for their work on the recommended changes regarding water conservation.

The work session was adjourned at 7:55 p.m.

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

Brenda Kitchen – City Clerk

# Commission Work Session Agenda

## Memo

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** April 3, 2014

**Subject:** Vehicle Abatement at 510 W 23<sup>rd</sup>

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

### Summary

The two abandoned vehicles located in the rear yard at 510 W 23<sup>rd</sup> have expired tags deeming them inoperable. Up to this point, all proper notification has been given to the owner of the property. To date, no action has been taken by the owner of the property or the vehicles. The property is vacant and has been unoccupied for several years. The property has not had City water service since 1996. If the vehicles are removed by the city, all costs of abatement will be charged to the owner of the property. Staff recommends approving the resolution allowing the vehicles located at 510 W 23<sup>rd</sup> to be abated by the city.

### Background

The vehicles located within the rear yard at 510 W 23<sup>rd</sup> do not have current and legal tags. The property belongs to Clarence and/or Verlon Monroe from McCracken, Ks and no personal contact has been made with the owner other than the letters by US mail. There have been 8 various violations of one kind or another at this property in the past 2 years. The property is vacant and has been unoccupied for several years. The property has not had City water service since 1996.

### Discussion

Planning, Inspection, and Enforcement is requesting a resolution to abate the inoperable vehicles located within the rear yard at 510 W 23<sup>rd</sup> be placed on the agenda for formal action at the April 10, 2014 City Commission meeting. The property located at 510 W 23<sup>rd</sup> is in violation of City Ordinance Chapter 26 Article II. The vehicles have no current and legal tags, deeming them inoperable. Letters have been sent per City of Hays Ordinance requirements. No progress has been made on these vehicles. Staff is now moving forward for abatement of the vehicles since the owner of the property has not followed through accordingly.

### Legal Consideration

The City is required to follow procedures established by the ordinance cited in the Discussion. Assuming those procedures were followed, the City is allowed to remove and dispose of the vehicle.

## **Financial Consideration**

Any costs associated with the city removing these vehicles will be billed to the property owner. If not paid, an assessment will be placed on the tax rolls.

## **Options**

Options include the following:

- Approve the resolution allowing for the vehicles to be removed
- Do not approve the resolution

## **Recommendation**

Staff recommends approving this resolution allowing the vehicles located at 510 W 23<sup>rd</sup> to be removed from the property.

## **Action Requested**

Approve the resolution to abate the vehicles located on the property at 510 W 23<sup>rd</sup> ten days after the approval date.

## **Supporting Documentation**

Letters to Property Owner  
Pictures  
Resolution

I.D. CREECH, DIRECTOR  
JOHN BRAUN, ASST. DIRECTOR  
1002 VINE ST., HAYS, KS 67601

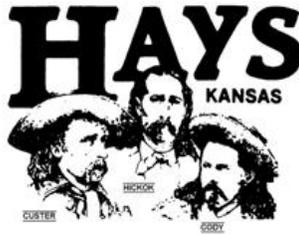
TEL 785-628-7350  
FAX 785-628-7352

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

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

NICK WILLIS, SUPT.  
1002 VINE ST., HAYS, KS 67601

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

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STORMWATER DIVISION  
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SOLID WASTE DIVISION  
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PUBLIC WORKS DEPARTMENT  
[www.haysusa.com](http://www.haysusa.com)

October 8, 2013

Clarence or Verlon Monroe  
508 West Ash  
MCCRACKEN, KS67556

RE: 510 West 23rd

Hays, KS67601

Dear Clarence or Verlon Monroe :

It has come to our attention that a city code violation(s) exist at **510 West 23rd**, Hays, Kansas (photo(s) are attached). The violation consists of **Inoperable Vehicles on Private Property**. Ellis County records indicate that you are the owner of the property. The item(s) listed are in violation of City Ordinance, **Sec. 26-40 (Inoperable Vehicles)**.

We request that you please correct the problem within the next 30 days. We sincerely appreciate your cooperation. Inspectors will revisit the site after **11/11/2013**, and it is our hope that corrective action will have been taken. If not, we will need to take further steps to resolve this issue.

If you have questions, please contact me at the Public Works Department Planning, Inspection, and Enforcement Division at (785)628-7310. Thanks for working with us to keep Hays a safe, attractive and wholesome place to live.

Sincerely,

Chris Rorabaugh  
Building Inspector/Code Enforcement Officer

Enclosed: Pictures

Cc: File  
Resident (if applicable)

**I.D. CREECH, DIRECTOR**  
**JOHN BRAUN, ASST. DIRECTOR**  
1002 VINE ST., HAYS, KS 67601

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ALVIN PEREZ, SUPT.  
1002 VINE ST., HAYS, KS 67601

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

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**PUBLIC WORKS DEPARTMENT**  
[www.haysusa.com](http://www.haysusa.com)

January 3, 2014

Clarence or Verlon Monroe  
508 West Ash  
MCCRACKEN, KS 67556

RE: 510 West 23rd

**VIA CERTIFIED MAIL:**

Dear Clarence or Verlon Monroe:

The violation located at 510 West 23rd, Hays, Kansas still exists (photos attached). We wrote a letter to you on 10/8/2013 requesting that you abate the situation.

You have ten (10) days from the date of receipt of this letter to abate the violation. Failure to abate the violation within ten (10) days will result in the City or its authorized agent to file an abatement process for Inoperable Vehicles on Private Property on your property. The costs will be assessed to the owner or agent in charge of the property. Opportunity will be given to the owner to pay the assessment, and if not paid, it will be added to the property tax as a special assessment. Please note that you have ten (10) days from the receipt of this notice to file a written appeal, requesting a hearing before the governing body.

We ask again that you please resolve this situation immediately. If you have questions or need further explanation, feel free to contact me at (785) 628-7310.

Sincerely,

Chris Rorabaugh  
Building Inspector/Code Enforcement Officer

Enclosed: Pictures

Cc: City Prosecutor  
File



10/07/2013 11:41



01/03/2014 12:14

**RESOLUTION NO. 2014-**

**A RESOLUTION AUTHORIZING THE CITY OF HAYS OR ITS DESIGNATED AGENT TO ABATE NUISANCE LOCATED ON THE PROPERTY AT 510 W 23<sup>rd</sup>, HAYS, KANSAS.**

**WHEREAS**, the City of Hays did enact Ordinance Chapter 26, Article 2, declaring certain matters as inoperable vehicles a violation of City Ordinance and providing for the removal or abatement of inoperable vehicles and further providing for the assessment of costs and penalties; and

**WHEREAS**, on October 7, 2013, January 3, 2014, and February 5, 2014, inspections of the property were conducted by the City of Hays, and said inspections determined the inoperable vehicles on the property at 510 W 23<sup>rd</sup> were in violation of City Ordinance Chapter 26, Article 2; and

**WHEREAS**, on October 8, 2013, a letter was sent to the owner of the property at 510 W 23<sup>rd</sup>, requesting that the owner abate the nuisance by removal of the inoperable vehicles within 30 days; and

**WHEREAS**, on January 3, 2014, a certified letter to the owner of the property at 510 W 23<sup>rd</sup> was prepared giving said owner ten days, upon receipt, in which to abate the nuisance; and

**WHEREAS**, on January 16, 2014, the certified letter to the owner of the property at 510 W 23<sup>rd</sup> was received in the office of Public Works and marked by the United States Postal Service as being unable to deliver;

**WHEREAS**, an inspection of the property done on February 5, 2014, revealed the inoperable vehicles were not abated from the property; and

**WHEREAS**, the Governing Body of the City of Hays desires that the inoperable vehicles on the property at 510 W 23<sup>rd</sup> be abated by the City or its authorized agent.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS, AS FOLLOWS:**

Section 1. That the existence of the inoperable vehicles located at 510 W 23<sup>rd</sup> is hereby found to be in violation of Ordinance Chapter 26, Article 2.

Section 2. That the owner of the property located at 510 W 23<sup>rd</sup> was given proper notice to abate the nuisance condition located at 510 W 23<sup>rd</sup> and has failed to abate the said nuisance.

Section 3. That the City of Hays or its designated agent is hereby authorized to abate the condition causing the violation at

the end of ten days from the date of passage of this Resolution.

Section 4. That the cost incurred by the City shall be charged against the lot located at 510 W 23<sup>rd</sup> as provided in Ordinance Chapter 26, Article 2.

PASSED by the City Commission on the 10<sup>th</sup> day of April, 2014.

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Kent Steward, Mayor

ATTEST:

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Brenda Kitchen, City Clerk

# Commission Work Session Agenda

## Memo

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** April 3, 2014

**Subject:** Vehicle Abatement at 1309 Donald Dr.

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

### Summary

The abandoned vehicle (White Pontiac Firebird) located in the rear yard at 1309 Donald Dr. has expired tags and flat tires therefore deeming it inoperable. Up to this point, all proper notification has been given to the owner of the property. To date, no action has been taken by the owner of the property. If the vehicle is removed by the city, all costs of abatement will be charged to the owner of the property. Staff recommends approving the resolution allowing the vehicle located at 1309 Donald Dr. to be abated by the city.

### Background

The property upon which the vehicle is setting belongs to Dustin Schreurs. The owner resides at this property.

### Discussion

Planning, Inspection, and Enforcement is requesting a resolution to abate the inoperable vehicle (White Pontiac Firebird) located on the property at 1309 Donald Dr. be placed on the agenda for formal action at the April 10, 2014 City Commission meeting. The property located at 1309 Donald Dr. is in violation of City Ordinance Chapter 26 Article II. The vehicle has no current and legal tags and has several flat tires, therefore deeming it inoperable. Letters have been sent per City of Hays Ordinance requirements. No progress has been made on this vehicle. Staff is now moving forward for abatement of the vehicle since the owner of the property has not followed through accordingly.

### Legal Consideration

The City is required to follow procedures established by the ordinance cited in the Discussion. Assuming those procedures were followed, the City is allowed to remove and dispose of the vehicle.

### Financial Consideration

Any costs associated with the city removing these vehicles will be billed to the property owner. If not paid, an assessment will be placed on the tax rolls.

## **Options**

Options include the following:

- Approve the resolution allowing for the vehicles to be removed
- Do not approve the resolution

## **Recommendation**

Staff recommends approving this resolution allowing the vehicle located at 1309 Donald Dr. to be removed from the property.

## **Action Requested**

Approve the resolution to abate the vehicle located on the property at 1309 Donald Dr. ten days after the approval date.

## **Supporting Documentation**

Letters to Property Owner

Pictures

Resolution

I.D. CREECH, DIRECTOR  
JOHN BRAUN, ASST. DIRECTOR  
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**PUBLIC WORKS DEPARTMENT**  
[www.haysusa.com](http://www.haysusa.com)

December 27, 2013

Dustin Schreurs  
1309 Donald Dr.  
HAYS, KS 67601

RE: 1309 Donald Dr.

Dear Dustin Schreurs:

It has come to our attention that a city code violation(s) exist at **1309 Donald Dr.**, Hays, Kansas (photo(s) are attached). The violation consists of **General Nuisance & Inoperable Vehicles on Private Property**. Ellis County records indicate that you are the owner of the property. The item(s) listed are in violation of City Ordinance, **Sec. 26-153 (General Nuisance) & Sec. 26-40 (Inoperable Vehicles)**.

We request that you please correct the problem within the next 5 days. We sincerely appreciate your cooperation. Inspectors will revisit the site after **1/6/2014**, and it is our hope that corrective action will have been taken. If not, we will need to take further steps to resolve this issue.

If you have questions, please contact me at the Public Works Department Planning, Inspection, and Enforcement Division at (785) 628-7310. Thanks for working with us to keep Hays a safe, attractive and wholesome place to live.

Sincerely,

Dean Koehn  
Building Inspector/Code Enforcement Officer

Enclosed: Pictures

Cc: File  
Resident (if applicable)

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January 15, 2014

Dustin Schreurs  
1309 Donald Dr.  
HAYS, KS 67601

RE: 1309 Donald Dr.

**VIA CERTIFIED MAIL:**

Dear Dustin Schreurs:

The violation located at 1309 Donald Dr., Hays, Kansas still exists (photos attached). We wrote a letter to you on 12/27/2013 requesting that you abate the situation.

You have ten (10) days from the date of receipt of this letter to abate the violation. Failure to abate the violation within ten (10) days will result in the City or its authorized agent to file an abatement process for General Nuisance & Inoperable Vehicles on Private Property on your property. The costs will be assessed to the owner or agent in charge of the property. Opportunity will be given to the owner to pay the assessment, and if not paid, it will be added to the property tax as a special assessment. Please note that you have ten (10) days from the receipt of this notice to file a written appeal, requesting a hearing before the governing body.

We ask again that you please resolve this situation immediately. If you have questions or need further explanation, feel free to contact me at (785) 628-7310.

Sincerely,

Dean Koehn  
Building Inspector/Code Enforcement Officer

Enclosed: Pictures

Cc: City Prosecutor  
File



11/21/2013 11:16



12/26/2013 11:36

**RESOLUTION NO. 2014-**

**A RESOLUTION AUTHORIZING THE CITY OF HAYS OR ITS DESIGNATED AGENT TO ABATE NUISANCE LOCATED ON THE PROPERTY AT 1309 DONALD DR., HAYS, KANSAS.**

**WHEREAS**, the City of Hays did enact Ordinance Chapter 26, Article 2, declaring certain matters as inoperable vehicles a violation of City Ordinance and providing for the removal or abatement of inoperable vehicles and further providing for the assessment of costs and penalties; and

**WHEREAS**, on November 21, 2013, December 26, 2013, January 10, 2014, and February 25, 2014, inspections of the property were conducted by the City of Hays, and said inspections determined the inoperable vehicle on the property at 1309 Donald Dr. was in violation of City Ordinance Chapter 26, Article 2; and

**WHEREAS**, on December 27, 2013, a letter was sent to the owner of the property at 1309 Donald Dr., requesting that the owner abate the nuisance by removal of the inoperable vehicle within 5 days; and

**WHEREAS**, on January 15, 2014, a certified letter to the owner of the property at 1309 Donald Dr. was prepared giving said owner ten days, upon receipt, in which to abate the nuisance; and

**WHEREAS**, on January 21, 2014, the certified letter to the owner of the property at 1309 Donald Dr. was verified as received by said owner; and

**WHEREAS**, an inspection of the property done on February 25, 2014, revealed the inoperable vehicle was not abated from the property; and

**WHEREAS**, the Governing Body of the City of Hays desires that the inoperable vehicle on the property at 1309 Donald Dr. be abated by the City or its authorized agent.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS, AS FOLLOWS:**

Section 1. That the existence of the inoperable vehicle located at 1309 Donald Dr. is hereby found to be in violation of Ordinance Chapter 26, Article 2.

Section 2. That the owner of the property located at 1309 Donald Dr. was given proper notice to abate the nuisance condition located at 1309 Donald Dr. and has failed to abate the said nuisance.

Section 3. That the City of Hays or its designated agent is hereby authorized to abate the condition causing the violation at

the end of ten days from the date of passage of this Resolution.

Section 4. That the cost incurred by the City shall be charged against the lot located at 1309 Donald Dr. as provided in Ordinance Chapter 26, Article 2.

PASSED by the City Commission on the 10<sup>th</sup> day of April, 2014.

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Kent Steward, Mayor

ATTEST:

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Brenda Kitchen, City Clerk

# Commission Work Session Agenda

## Memo

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** April 3, 2014

**Subject:** Vehicle Abatement at 1812 E 27<sup>th</sup>

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

### Summary

The abandoned vehicle (GMC Conversion Van) located in the driveway at 1812 E 27<sup>th</sup> has expired tags therefore deeming it inoperable. Up to this point, all proper notification has been given to the owner of the property. To date, no action has been taken by the owner of the property. Personal or phone contact has been made several times with promises made by the owner to remove the vehicle, however the vehicle remains in place as of the date of this memo. If the vehicle is removed by the city, all costs of abatement will be charged to the owner of the property. Staff recommends approving the resolution allowing the vehicle located at 1812 E 27<sup>th</sup> to be abated by the city.

### Background

Staff initially started this case with multiple vehicles. Most were removed from the property with the exception of the remaining van. The property belongs to Richard and Tawnita Augustine who reside at the subject residence.

### Discussion

Planning, Inspection, and Enforcement is requesting a resolution to abate the inoperable vehicle located on the property at 1812 E 27<sup>th</sup> be placed on the agenda for formal action at the April 10, 2014 City Commission meeting. The property located at 1812 E 27<sup>th</sup> is in violation of City Ordinance Chapter 26 Article II. The vehicle has no current and legal tags and has several flat tires, therefore deeming it inoperable. Letters have been sent per City of Hays Ordinance requirements. Personal or phone contact has been made several times with promises made to remove the vehicle, however the vehicle remains in place as of the date of this memo. No progress has been made on this vehicle. Staff is now moving forward for abatement of the vehicle since the owner of the property has not followed through accordingly.

### Legal Consideration

The City is required to follow procedures established by the ordinance cited in the Discussion. Assuming those procedures were followed, the City is allowed to remove and dispose of the vehicle.

## **Financial Consideration**

Any costs associated with the city removing these vehicles will be billed to the property owner. If not paid, an assessment will be placed on the tax rolls.

## **Options**

Options include the following:

- Approve the resolution allowing for the vehicles to be removed
- Do not approve the resolution

## **Recommendation**

Staff recommends approving this resolution allowing the vehicle located at 1812 E 27<sup>th</sup> to be removed from the property.

## **Action Requested**

Approve the resolution to abate the vehicle located on the property at 1812 E 27<sup>th</sup> ten days after the approval date.

## **Supporting Documentation**

Letters to Property Owner  
Pictures  
Resolution

I.D. CREECH, DIRECTOR  
JOHN BRAUN, ASST. DIRECTOR  
1002 VINE ST., HAYS, KS 67601

TEL 785-628-7350  
FAX 785-628-7352

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

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

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

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



ALVIN PEREZ, SUPT.  
1002 VINE ST., HAYS, KS 67601

NICK WILLIS, SUPT.  
1002 VINE ST., HAYS, KS 67601

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

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

STORMWATER DIVISION  
TEL 785-328-7350  
FAX 785-628-7352

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

**PUBLIC WORKS DEPARTMENT**  
[www.haysusa.com](http://www.haysusa.com)

November 22, 2013

Richard & Tawnita Augustine  
1812 E 27th St  
HAYS, KS 67601

RE: 1812 E 27th St

Dear Richard & Tawnita Augustine:

It has come to our attention that a city code violation(s) exist at **1812 E 27th St, Hays, Kansas** (photo(s) are attached). The violation consists of **Inoperable Vehicles on Private Property**. Ellis County records indicate that you are the owner of the property. The item(s) listed are in violation of City Ordinance, **Sec. 26-40 (Inoperable Vehicles)**.

We request that you please correct the problem within the next 5 days. We sincerely appreciate your cooperation. Inspectors will revisit the site after **12/3/2013**, and it is our hope that corrective action will have been taken. If not, we will need to take further steps to resolve this issue.

If you have questions, please contact me at the Public Works Department Planning, Inspection, and Enforcement Division at (785) 628-7310. Thanks for working with us to keep Hays a safe, attractive and wholesome place to live.

Sincerely,

Dean Koehn  
Building Inspector/Code Enforcement Officer

Enclosed: Pictures

Cc: File  
Resident (if applicable)

**I.D. CREECH, DIRECTOR**  
**JOHN BRAUN, ASST. DIRECTOR**  
1002 VINE ST., HAYS, KS 67601

TEL 785-628-7350  
FAX 785-628-7352

**AIRPORT DIVISION**  
BOB JOHNSON, MANAGER  
3950 E 8TH ST., HAYS, KS 67601

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

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

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



ALVIN PEREZ, SUPT.  
1002 VINE ST., HAYS, KS 67601

NICK WILLIS, SUPT.  
1002 VINE ST., HAYS, KS 67601

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

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

**STORMWATER DIVISION**  
TEL 785-328-7350  
FAX 785-628-7352

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

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**PUBLIC WORKS DEPARTMENT**  
[www.haysusa.com](http://www.haysusa.com)

January 22, 2014

Richard & Tawnita Augustine  
1812 E 27th St  
HAYS, KS 67601

RE: 1812 E 27th St

**VIA CERTIFIED MAIL:**

Dear Richard & Tawnita Augustine:

The violation located at 1812 E 27th St, Hays, Kansas still exists (photos attached). We wrote a letter to you on 11/21/2013 requesting that you abate the situation.

You have ten (10) days from the date of receipt of this letter to abate the violation. Failure to abate the violation within ten (10) days will result in the City or its authorized agent to file an abatement process for Inoperable Vehicles on Private Property on your property. The costs will be assessed to the owner or agent in charge of the property. Opportunity will be given to the owner to pay the assessment, and if not paid, it will be added to the property tax as a special assessment. Please note that you have ten (10) days from the receipt of this notice to file a written appeal, requesting a hearing before the governing body.

We ask again that you please resolve this situation immediately. If you have questions or need further explanation, feel free to contact me at (785) 628-7310.

Sincerely,

Dean Koehn  
Building Inspector/Code Enforcement Officer

Enclosed: Pictures

Cc: City Prosecutor  
File



11/21/2013 11:46

**RESOLUTION NO. 2014-**

**A RESOLUTION AUTHORIZING THE CITY OF HAYS OR ITS DESIGNATED AGENT TO ABATE NUISANCE LOCATED ON THE PROPERTY AT 1812 E 27<sup>th</sup>, HAYS, KANSAS.**

**WHEREAS**, the City of Hays did enact Ordinance Chapter 26, Article 2, declaring certain matters as inoperable vehicles a violation of City Ordinance and providing for the removal or abatement of inoperable vehicles and further providing for the assessment of costs and penalties; and

**WHEREAS**, on November 21, 2013, January 22, 2014, and February 25, 2014, inspections of the property were conducted by the City of Hays, and said inspections determined the inoperable vehicle on the property at 1812 E 27<sup>th</sup> was in violation of City Ordinance Chapter 26, Article 2; and

**WHEREAS**, on November 22, 2013, a letter was sent to the owner of the property at 1812 E 27<sup>th</sup>, requesting that the owner abate the nuisance by removal of the inoperable vehicle within 5 days; and

**WHEREAS**, on January 22, 2014, a certified letter to the owner of the property at 1812 E 27<sup>th</sup> was prepared giving said owner ten days, upon receipt, in which to abate the nuisance; and

**WHEREAS**, on January 27, 2014, the certified letter to the owner of the property at 1812 E 27<sup>th</sup> was verified as received by said owner; and

**WHEREAS**, an inspection of the property done on February 25, 2014, revealed the inoperable vehicle was not abated from the property; and

**WHEREAS**, the Governing Body of the City of Hays desires that the inoperable vehicle on the property at 1812 E 27<sup>th</sup> be abated by the City or its authorized agent.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS, AS FOLLOWS:**

Section 1. That the existence of the inoperable vehicle located at 1812 E 27<sup>th</sup> is hereby found to be in violation of Ordinance Chapter 26, Article 2.

Section 2. That the owner of the property located at 1812 E 27<sup>th</sup> was given proper notice to abate the nuisance condition located at 1812 E 27<sup>th</sup> and has failed to abate the said nuisance.

Section 3. That the City of Hays or its designated agent is hereby authorized to abate the condition causing the violation at the end of ten days from the date of passage of this Resolution.

Section 4. That the cost incurred by the City shall be charged against the lot located at 1812 E 27<sup>th</sup> as provided in Ordinance Chapter 26, Article 2.

PASSED by the City Commission on the 10<sup>th</sup> day of April, 2014.

\_\_\_\_\_  
Kent Steward, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Kitchen, City Clerk



# Commission Work Session Agenda

## Memo

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** April 3, 2014

**Subject:** Award of Contract for Zoning Regulation Rewrite

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

### Summary

Primarily as a result of the findings of the 2012 Comprehensive Plan, and upon the recommendations of staff and the Planning Commission, it was decided to pursue a consultant to rewrite the current “first generation” Zoning and Subdivision Regulations. In November of 2013, proposals were sought for the review and rewrite of the current zoning and subdivision regulations. The nine proposals were narrowed down to three by a selection committee comprised of City staff and members of the Planning Commission. Because they meet the requirements of the request for proposals and were the top firm recommended by the Selection Committee, staff recommends entering into a contract with Kendig Keast Collaborative for the rewrite of the Zoning and Subdivision Regulations. The process will cost \$150k and is estimated to take 14 months to complete.

### Background

The City of Hays adopted a new Comprehensive Plan in 2012. One of the findings of the plan that was brought to light is just how outdated and “First Generation” the current zoning and subdivision regulations really are. As a result, the 2014 budget included funding to hire a consultant to review and rewrite the current regulations to something more modern and fitting with the trends of current development and lifestyles.

### Discussion

In November of 2013, proposals were sought for the review and rewrite of the current zoning and subdivision regulations. Nine well-qualified firms from across the nation submitted proposals for consideration. A selection committee comprised of Public Works and City Management staff and two members of the Planning Commission narrowed the proposals down to what was believed to be the three best firms for the project. The firms were from Colorado, Nebraska, and Texas. All three firms had well written proposals and had good things to offer. A face-to-face interview was conducted with each firm in order to try and get a better grasp of their approach to the project and try and get a feel for their personalities and how they would mesh with Hays and this project.

The members of the selection committee met after the interviews and decided to move forward and recommend a firm from Sugar Land, Texas, Kendig Keast Collaborative (KKC). KKC interviewed very well, presented a great selection of similar work in other communities across the nation similar to Hays, and seemed to be the best fit for the project. Their depth of staff, project approach, and proposed deliverables seemed to give them an edge over the other two firms interviewed. Seeing some of KKC's current projects of similar nature to what we are asking as well as recently completed projects made a difference. KKC also offers an on-line code program called encode-360 that staff and others will get to experience throughout this project.

Although this firm is based out of Texas, they do have ties to Kansas and familiarity with Kansas Planning methods and laws. The President of KKC and Principal-in-Charge for this project, Bret Keast, is a K.U. graduate, former Senior Planner for Olathe, Ks., and former President of the Kansas Chapter of the American Planning Association. Matt Bucchin, Project Manager, had also worked at both the City and County level in the planning field prior to working with KKC.

The process as outlined in the proposal is expected to take 14 months. The process has five General steps:

Step 1: Public Participation (including a joint Planning Commission/City Commission meeting) and developers forum

Step 2: Analytic and Strategic Framework (regulation analysis/evaluation, annotated outline)

Step 3: Zoning and Subdivision Regulation Drafting

Step 4: Adoption and Delivery (Public hearings and final adoption)

Step 5: Supplemental Services (Training, Development Guidebook, etc.)

### **Legal Consideration**

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

### **Financial Consideration**

The 2014 budget included funding in the amount of \$150,000. KKC's proposal is expected to cost \$150,000. Although there are additional supplemental services offered by KKC, there is no plan to initiate any of those supplemental services at this time.

### **Options**

The City Commission has the following options:

- Allow the City Manager to enter into a contract with KKC for the Zoning and Subdivision Regulation Rewrite
- Provide staff with other options

### **Recommendation**

The members of the Selection Committee recommend entering into a contract with KKC for the rewrite of the Zoning and Subdivision Regulations.

## **Action Requested**

It is requested that the City Manager be allowed to enter into a contract with KKC for the Zoning and Subdivision Regulation Rewrite.

## **Supporting Documentation**

Bidders List

Professional Service Agreement

Policy to Practice

## Zoning Regulation Rewrite Bidders List

Name of Company	Contact	Address	City	State
Baughman Company, P.A.	Phillip J. Meyer, L.A.	315 Ellis St	Wichita	KS
Camiros Ltd.	Arista Strungys	411 S Wells, Ste 400	Chicago	IL
Clarion Associates LLC	Matt Goebel AICP	621 17th St, Ste 2250	Denver	CO
Confluence	Christopher Shires AICP	417 Delaware Street	Kansas City	MO
GouldEvans	Chris Brewster, AICP, JD	4041 Mill St	Kansas City	MO 64111
Marvin Planning Consultants	Keith A Marvin	1111 Lincoln Mall,	Lincoln	NE
RDG	Amy Hasse	900 Farnham on the	Omaha	NE
White & Smith LLC	Mark White	529 SE 2nd St, Ste B	Lee's	MO
Kendig Keast Collaborative	Bret Keast	1415 Highway 6	Sugar Land	TX
TOP THREE INTERVIEWED				



- (a) Requested additional workshops or meetings other than the number identified in the Scope of Services and project schedule that require added preparation or follow-up or displace other planned trip activities;
- (b) Requested additional trips other than the number identified in the Scope of Services and project schedule;
- (c) Requested additional days or nights added to a scheduled trip that require additional time and direct expenses (e.g., meals, hotel nights, extended car rental and gasoline use, airline change fees, extended airport parking, etc.);
- (d) Other requested work tasks, study activities, or documentation not foreseen or specifically identified in the Scope of Services;
- (e) Requested additional deliverables (e.g., executive summary) or additional physical copies of deliverables, including the submission at key milestones of draft and final written reports and maps other than those specified, or in a quantity greater than the number identified, in the Scope of Services;
- (f) Requested additional revisions (individual or cumulative) to draft and final deliverables that are beyond the single comprehensive round of revisions that are to be collected, consolidated, and annotated by the CLIENT as outlined in the Scope of Services;
- (g) Requested review and provision of recommendations relating to other planning or development related issues and matters other than those for which such findings and recommendations are specified in the Scope of Services;
- (h) Further requested changes to a deliverable which the CONSULTANT has already revised based on review comments and which the CLIENT has already accepted as revised, and which the CONSULTANT determines to be significant and substantive changes to a deliverable already at a point of substantial completion in accordance with the Scope of Services and available budget;
- (i) Requested incorporation of substantive revisions into the draft or final plan document which have arisen since the plan, ordinance, document, maps or other materials delivered to the CLIENT were originally prepared; and
- (j) Other related or unrelated professional planning services that may be requested by the CLIENT.

Any services requested or made necessary by CLIENT and provided by CONSULTANT that are not in the CONSULTANT's determination within the Scope of Services are considered Additional Services. Any time Additional Services are identified in a progress report, an effort will be made to determine if it is possible to amend the Scope of Services in a manner that eliminates or minimizes any increase in the total cost of the project. Time required for such an analysis will be billed as Additional Services. No changes to the Scope of Services will be made without CLIENT's approval, but if it is determined that such changes are possible, and would reduce or eliminate the cost impact of the Additional Services, the Scope of Services will be amended with the consent of CLIENT. However, Additional Services for which offsetting adjustments to the Scope of Services are not reasonably available will be compensated for as described in Article VI below, whether such services are agreed upon in writing or not.

**ARTICLE III**  
**CONSULTANT PERSONNEL**

- 3.1 The CONSULTANT represents that it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CLIENT.
- 3.2 The CONSULTANT may contract with Subconsultants for portions of the work or services under this Agreement with the prior written approval of the CLIENT. The subconsultants to be utilized include enCode-360, LLC. Any work or services subcontracted hereunder shall be specified by a written Agreement and shall be subject to the provisions of this Agreement.

**ARTICLE IV**  
**SUPPORT SERVICES**

- 4.1 The CLIENT agrees to provide the CONSULTANT with support services during conduct of the services listed in Article II, Scope of Services. Support services will include the services described in Exhibit "B" – Support Services, which is attached and made a part of this Agreement.
- 4.2 To the extent authorized by law, the readily available existing data and documentation obtained by the CLIENT that are relevant to the accomplishment of the Scope of Services specified in Article II shall be made available by the CLIENT for use by the CONSULTANT.
- 4.3 The CLIENT shall consider and act on all documents and project work items submitted by the CONSULTANT that require review, comments or approval by the CLIENT within a timeframe specified in Exhibit "A" Scope of Services and/or in the project schedule so as to enable the CONSULTANT to complete the work on schedule as provided in Article V of this Agreement.
- 4.4 The CLIENT agrees to provide the CONSULTANT with support services needed to organize, schedule, notify, provide meeting locations, conduct meetings, and prepare minutes of meetings including committees, workshops, public meetings, and public hearings as described in Article II, Scope of Services. The CONSULTANT will advise and coordinate with the CLIENT to accomplish these support services.
- 4.5 In the event CLIENT fails to provide any of the needed Support Services in a timely or adequate manner, as documented in a progress report, any additional time or expenses incurred or required by CONSULTANT as a result of such failure shall be compensated by CLIENT in the same manner as, and shall be considered to be, Additional Services.

**ARTICLE V**  
**TIME OF PERFORMANCE**

- 5.1 The CONSULTANT shall commence services upon execution of this Agreement and receipt of written Notice-to-Proceed from the CLIENT.

- 5.2 The CONSULTANT shall make a good faith effort to complete the services described in Article II, Scope of Services within Fourteen (14) months from receipt of written Authorization to Proceed by the CLIENT, unless one or more of the following occur:
- (a) This Agreement is terminated in accordance with Article X, Changes or Termination;
  - (b) The Scope of Services and/or Time of Performance are changed in accordance with Article II, Scope of Services or Article X, Changes or Termination; or
  - (c) Matters documented by CONSULTANT in progress reports render such completion schedule impossible or impracticable.
- 5.3 The completion schedule set forth in Paragraph 5.2 may be subject to causes that result in delay over which neither the CONSULTANT nor the CLIENT has any control. Notification and justification for any such delays identified by the CONSULTANT must be included in progress reports. The schedule of work will be extended to include any such delays pursuant to Article X, Changes or Termination.
- 5.4 This Agreement shall terminate upon the CLIENT's final acceptance of work completed by the CONSULTANT, unless otherwise terminated or modified as hereinafter provided.

#### **ARTICLE VI** **COMPENSATION TO CONSULTANT**

- 6.1 The CLIENT shall compensate the CONSULTANT for the professional services performed under this Agreement. For the Basic Services described in Exhibit "A" Scope of Services under Article II, Scope of Services, the CLIENT shall pay to the CONSULTANT on a basis of reimbursement of Actual Costs Incurred ("ACI") in an amount not-to-exceed \$150,000 and zero dollars (\$0.00). ACI includes salary costs, overhead, direct expenses, and profit. The maximum ACI amount may be modified pursuant to Article X, Changes or Termination, in the event of increased cost, change in the Scope of Services, an extension of time beyond that specified in paragraph 5.2, or an increase or decrease in the complexity or character of the work. In addition to ACI, CLIENT agrees to compensate CONSULTANT for any Additional Services, as defined above, whether such services are agreed upon in writing or not. Such Additional Services or expenses shall be invoiced separately by CONSULTANT and paid by CLIENT upon receipt of billing for such services. Such payments shall be in addition to and have no bearing on the above ACI not-to-exceed amount. Payment later than 30 days shall include interest at 1-1/2 percent per month from the date the CONSULTANT receives confirmation of CLIENT receipt of the invoice until the date CONSULTANT receives payment. Such interest is due and payable when the overdue payment is made and is in addition to the above stated total contract amount.
- 6.2 Payment shall be made by the CLIENT upon receipt of a statement from CONSULTANT. The billing statement, certified true and correct by CONSULTANT, shall show the total amount paid and the amount due and payable as of the date of the current statement. Amounts paid and due for Additional Services shall be identified on a separate invoice. Each invoice is due and payable by the CLIENT upon receipt by the CLIENT, subject to the terms of paragraph 6.1.
- 6.3 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the CLIENT for the performance of this Agreement. If at any time during the period of performance under this Agreement, sufficient appropriations and authorization are not

made by the CLIENT, this Agreement shall terminate upon written notice being given by the CLIENT to the CONSULTANT. In such event, CLIENT shall comply with the provisions of Paragraph 10.4 below. The CLIENT's decision as to whether sufficient appropriations are available shall be accepted by the CONSULTANT and shall be final.

**ARTICLE VII**  
**PRODUCT OF SERVICES, COPYRIGHT**

- 7.1 The CONSULTANT and the CLIENT mutually agree that reports, maps and materials prepared or developed under the terms of this Agreement shall be delivered to and become the property of the CLIENT. The CONSULTANT shall have the right to retain copies and to utilize the product of services for marketing purposes, except for any confidential information, as defined in Article XI, hereof.
- 7.2 The CONSULTANT shall furnish the CLIENT with the number of copies of reports as shown in Article II, Scope of Services.
- 7.3 Nothing produced in whole or in part by the CONSULTANT under this Agreement shall be the subject of an application for copyright by or for the CONSULTANT. The CONSULTANT will use existing proprietary software as required.

**ARTICLE VIII**  
**PRIVATE INTERESTS OF PUBLIC OFFICIALS AND CONSULTANT**

- 8.1 No employee, agent, or member of the local public body of the CLIENT shall have any financial interest, direct or indirect in this Agreement or the proceeds thereof, except as allowed in Section 3.1 of this Agreement.

**ARTICLE IX**  
**CERTIFICATIONS OF CONSULTANT**

- 9.1 The CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, any commission, percentage, brokerage fee, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- 9.2 The CONSULTANT presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement.

**ARTICLE X**  
**CHANGES OR TERMINATION**

- 10.1 Except as expressly described above regarding Additional Services, this Agreement may not be altered, changed or amended except by instrument in writing executed by the parties hereto.

- 10.2 The CLIENT may, from time to time, request changes in the Scope of Services and/or time of performance for the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the CLIENT and the CONSULTANT, shall be incorporated in written amendments to this Agreement.
- 10.3 This Agreement may be terminated before the termination date stated in Article V, Time of Performance, by any of the following conditions:
- (a) Right of Either Party to Terminate for Cause - This Agreement may be terminated by either of the parties hereto for failure by the other party to perform in a timely manner and proper manner its obligations under this Agreement. A signed, written notice of such termination shall be delivered to the other party by express mail with point-by-point tracking and such termination shall take effect twenty (20) days after the notice is deposited in the express mail, provided that the failure to perform has not been remedied by that time. By such termination, neither party may nullify obligations already incurred for performance or failure to perform before the date of termination.
  - (b) Right of the CLIENT to Terminate for Convenience - This Agreement may also be terminated by the CLIENT for reasons other than failure by the CONSULTANT to perform in a timely manner and proper manner its obligations under this Agreement. A signed, written notice of such termination shall be delivered to CONSULTANT by fax or registered or certified mail and such termination shall take effect not less than seven (7) days following the date the notice is received by the CONSULTANT.
- 10.4 Upon receipt of a notice of termination under any of the conditions under Paragraphs 6.3 or 10.3 above, the CONSULTANT shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this Agreement. Within thirty (30) days after receipt of the notice of termination, the CONSULTANT shall submit a Final Statement, showing the services performed under this Agreement prior to the effective date of termination. Such Final Statement shall also include any unpaid amounts or unreimbursed expenses, as well as any financial obligations incurred by CONSULTANT on behalf of CLIENT and which cannot reasonably be refunded to CONSULTANT, all of which CLIENT agrees to pay upon receipt of said Final Statement. Data and study products prepared by the CONSULTANT and paid for by CLIENT under this Agreement shall be delivered to the CLIENT if requested.
- 10.5 Notwithstanding the provisions of this Article X, the CONSULTANT shall not be relieved of liability to the CLIENT for damages sustained by the CLIENT by virtue of any negligent act or omission or any breach of the Agreement by the CONSULTANT.

#### **ARTICLE XI** **CONFIDENTIALITY**

- 11.1 Any information determined to be confidential that is provided to or developed by the CONSULTANT in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the CONSULTANT without prior written approval of the CLIENT.

**ARTICLE XII**  
**INSPECTION OF RECORDS**

- 12.1 The CONSULTANT shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the CLIENT to assure proper accounting for all project funds. These records will be retained for three years after the expiration of this Agreement.
- 12.2 Any time during normal business hours and as requested by the CLIENT, the CONSULTANT shall make available to the CLIENT for examination all of its project records with respect to all matters covered by this Agreement and will allow the CLIENT to review, examine, and make excerpts from such records, and to make copies of all contracts, invoices, materials, payrolls, records of personnel conditions of employment, and other data relating to all matters covered by this Agreement. The financial records of the CONSULTANT are maintained in its corporate office located in Sugar Land, Texas, and copies will be available upon request in a timely manner in this office for audit purposes to the CLIENT or its authorized representative.

**ARTICLE XIII**  
**INSURANCE AND INDEMNIFICATION**

13.1 Insurance

- A. The CONSULTANT agrees to maintain Worker's Compensation Insurance to cover all of its own personnel engaged in performing services for the CLIENT under this contract in the following amounts:

Workmen's Compensation: Statutory

- B. The CONSULTANT also agrees to maintain Commercial General Liability, Business Automobile Liability, and Umbrella Liability Insurance, covering claims against the CONSULTANT for damages resulting from bodily injury, death, or property damage from accidents arising in the course of work performed under this Agreement, in the following amounts:

Commercial General Liability Insurance: Personal injury and property damage -- \$500,000.00 combined single each occurrence and \$500,000.00 aggregate;

Business Automobile Liability for all vehicles: Bodily injury and property damage -- \$500,000.00 combined single limit each occurrence;

Umbrella Liability: \$1,000,000.00

13.2 Indemnity

- A. THE CONSULTANT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT, ITS AGENTS, OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND

ALL CLAIMS, DAMAGES, LIABILITIES, LOSSES, AND EXPENSES THAT ARISE OUT OF CONSULTANT'S NEGLIGENCE OR INTENTIONAL WRONGFUL ACTS OR OMISSIONS UNDER THIS AGREEMENT. THE CLIENT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CONSULTANT, ITS AGENTS, OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES, LOSSES, AND EXPENSES THAT ARISE OUT OF CLIENT'S NEGLIGENCE OR INTENTIONAL WRONGFUL ACTS OR OMISSIONS UNDER THIS AGREEMENT.

B. CONSULTANT shall indemnify and hold harmless the City of Hays, Kansas from any and all losses, damages or expenses of any kind arising out of any and all claims, demands or causes of action initiated against the City of Hays, Kansas by competing entities bidding on the project which is the subject of this Agreement, provided such claims or causes of action are clearly based on alleged acts or omissions of CONSULTANT. However, CONSULTANT does NOT indemnify or hold harmless the City of Hays, Kansas against losses, damages, or expenses of any kind are primarily based on allegations of wrongful acts or omissions of the City of Hays, Kansas.

#### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

14.1 Neither the CLIENT nor the CONSULTANT shall be required to perform any term, condition, or covenant of this AGREEMENT while such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, terrorism, civil riot, floods, hurricanes, or other natural disasters, any other cause not within the control of the CLIENT or the CONSULTANT that by the exercise of due diligence the CLIENT or the CONSULTANT is unable, wholly or in part, to prevent or overcome and supersedes all prior agreements and understanding between CLIENT and CONSULTANT concerning the subject matter of this Agreement.

14.2 This Agreement constitutes the entire agreement between the CLIENT and the CONSULTANT. No other agreements, amendments, modifications, implied or otherwise, shall be binding on any of the parties unless set forth in writing and signed by both parties.

A. Additionally, the CONSULTANT shall be bound by the conditions and provisions established in Part II, Chapter 2, Article XI of the City of Hays, Kansas Code of Ordinances, except as modified by Section 13.2(B) of this AGREEMENT.

14.3 The CLIENT and the CONSULTANT agree that this Agreement shall be construed in accordance with the laws of the State of Kansas. Any legal dispute between the parties shall be resolved in the following manner:

The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiation between senior executives of the parties who have the authority to settle the controversy.

The disputing party shall give the other party written notice of the dispute. Within ten days after receipt of said notice, the receiving party shall submit to the other a written response. The notice

and response shall include: (a) a statement of each party's position and a summary of the evidence and arguments supporting its position; and (b) the name and title of the executive who will represent the party. The executives shall meet at a mutually acceptable time and place within twenty days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

If the controversy or claim has not been resolved within thirty days of the meeting of the senior executives, the parties shall endeavor to settle the dispute by non-binding mediation.

If the matter has not been resolved pursuant to the aforesaid non-binding mediation procedures within ninety days of the commencement of such procedure, parties are free to bring their claim in a court of law. Venue for all actions brought pursuant to this agreement is in an Ellis County, Kansas District Court; and all parties consent to Ellis County, Kansas, being the exclusive jurisdiction to resolved said claims or controversies arising pursuant to this agreement.

14.4 If one or more of the provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

14.5 Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be mailed by certified or registered mail addressed as set forth below or at such other address as may be specified by written notice:

CLIENT: Toby Dougherty, City Manager  
City of Hays, Kansas  
PO Box 490 / 1507 Main Street  
Hays, Kansas, 67601

CONSULTANT: Bret C. Keast, President  
Kendig Keast Collaborative  
1415 Highway 6 South, Suite A-300  
Sugar Land, Texas 77478

14.6 The waiver by either party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of this Agreement.

14.7 The CONSULTANT shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CLIENT thereto. Provided however, that claims for money by the CONSULTANT from the CLIENT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CLIENT.

14.8 Successors and Assigns: The CLIENT and the CONSULTANT each binds itself and its successors, executors, administrators and assigns to the other parties of the Contract and to the

successors, executors, administrators and assigns of such other parties, in respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, board member, commissioner, employee or agent of any public body, which is a party hereto.

- 14.9 Reports and Information: The CONSULTANT, at such times and in such forms as the CLIENT may require, shall furnish the CLIENT such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the cost and obligations incurred or to be in connection therewith, and any other matter covered by this Agreement.
- 14.10 Incorporation of Provisions Required by Law. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein and this Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.
- 14.11 Waiver. The failure on the part of any party herein at any time to require the performance by any other party of any portion of this Agreement shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision or any other provision. Any waiver by any party herein of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.
- 14.12 Survival. Any and all representations and conditions made by the CONSULTANT under this Agreement are of the essence of this Agreement and shall survive the execution, delivery and termination of it, and all statements contained in any documents required by the CLIENT, whether delivered at the time of the execution or at a later date, shall constitute representations hereunder.
- 14.13 Cumulative Remedies. In the event of default by any party herein, all other parties shall have all rights and remedies afforded to it at law or in equity to recover damages and to interpret or enforce the terms of this Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.
- 14.14 State or Federal Laws. This Agreement is performed in Hays, Kansas, and, except as otherwise provided herein, is subject to all applicable Federal and State laws, statutes, codes, any and applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal government authority having or asserting jurisdiction.
- 14.15 Equal Employment Opportunity. In the performance of this Agreement, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, or national origin. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of it, state that it is an Equal Opportunity Employer.
- 14.16 Multiple Originals. Two (2) copies of this Agreement are executed; each shall be deemed an original.

\* \* \* \* \*

IN WITNESS HEREOF, the parties have executed this Agreement in duplicate originals in Hays, Kansas.

This \_\_\_\_\_ day of \_\_\_\_\_, 2014.

FOR HAYS:

FOR KENDIG KEAST COLLABORATIVE:

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Bret C. Keast, AICP  
President

ATTEST:

\_\_\_\_\_

**EXHIBIT "A"**  
**ZONING AND SUBDIVISION REGULATIONS**  
**HAYS, KANSAS**

**PROPOSED SCOPE OF SERVICES**

**I.**  
**INTRODUCTION**

**Overview**

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Under contract to the **City of Hays, Kansas**, Kendig Keast Collaborative (KKC) will provide professional community planning services to assist the City in reviewing and re-writing the City's zoning and subdivision regulations. This work will revise and develop new content (standards, criteria, procedures, etc.) and will include appropriate graphics, illustrations, and (in the on-line version of the code) hyperlinks. The development of the zoning and subdivision regulations will build upon the policy framework established with the recent adoption of the Comprehensive Plan, yet will still be guided by an inclusive, public outreach / public participation process which is necessary to facilitate community dialogue and decisions regarding how the regulations implement the "policy" framework.

KKC's project involvement and facilitation will be carried out according to this Scope of Services and contingent upon the Support Services of the City outlined in Exhibit "B" to the Professional Services Agreement to make the best use of the available consultant budget. The City's Project Director will manage the overall process and direct the consultant in performing the project services. KKC will rely on the City Attorney to provide all necessary legal review and support on behalf of the City (i.e., KKC is not expected to provide or budget for separate legal counsel for the project).

**Project Schedule**

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As indicated below under Project Administration, KKC will coordinate with City staff to set the specifics of a detailed and feasible project schedule for the execution and completion of this Scope of Services. The intent is to complete the work efforts outlined under Activities 1-3 in approximately 10 months from the date KKC receives Notice to Proceed from the City (plus time that may be necessary to complete any supplemental services beyond the current scope which the City may request). This will then set the stage for the public hearing by the Hays Area Planning Commission, immediately followed by a workshop by the City Commission. The process for the public hearing, workshop, and consideration of adoption by the City Commission (outlined under Phase 4) is expected to span four months, bringing the entire project duration to about 14 months. However, KKC recognizes that the public hearing and consideration of adoption process is at the City's prerogative and not under KKC's control. KKC will coordinate with City officials and staff to meet the desired timeline. This will require steady progress on the tasks in this Scope of Services; timely receipt of necessary data and information and other input from the City; and prompt review and feedback on KKC's interim and final work products.

## **Project Administration**

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KKC will complete project management activities in coordination with the City's Project Director to ensure schedule adherence, cost control and quality assurance. These activities will include:

- A **WebEx teleconference project kick-off meeting** with key City staff (following receipt of written Notice to Proceed from the City), to review the Scope of Services, detailed schedule, data/information needs, and other project logistics, including for planned public outreach activities (see Task 4, *Logistics and Preliminaries*).
- A complete **driving tour** of the study area with City staff during the first on-site visit.
- Monthly submittal of written **progress reports** in conjunction with each monthly invoice. These reports will describe the project status and document significant work accomplished and activities scheduled for the next progress report period, as well as noting any changes in scope, difficulties encountered, and steps taken to address them.
- Preparation and maintenance throughout the project of a **detailed project schedule**, including due dates for all deliverables, anticipated meeting dates, plus specified review/comment timeframes to ensure adequate time for City review/approval of deliverables.
- Frequent **communication and coordination with the City's Project Director** by email, phone, and written correspondence, as appropriate.

## **II.**

### **CORE PROJECT SERVICES**

#### **Introduction**

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The core project services are divided into four distinct phases that reflect our proven approach for this type of project. The tasks have been organized into this structure to ensure that the requirements of the City are met in the Scope of Services and that the process is efficient and effective. The phases are: (1) public participation; (2) analytic and strategic framework; (3) zoning and subdivision regulation drafting; and (3) adoption, delivery, and electronic publication. Supplemental services are also provided at the end of this Scope of Services in Section III, *Supplemental Services*. The cost of these supplemental services will be in addition to the understood project budget that will be used to fund the core project services presented in this section.

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#### **PHASE 1: PUBLIC PARTICIPATION**

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##### **TASK 1 – Designing and Managing the Outreach and Education Process**

It is our experience that the design and management of the community outreach and education program is largely responsible for the success of the project. This is particularly important for Hays since the regulations are dated and thus, do not reflect current policies or practices, particularly in light of the recently updated Comprehensive Plan. This warrants an engagement program that provides sufficient opportunities for stakeholders and the general community to be directly involved in the code rewrite

process. Perhaps the most important aspect of this program though, is the structure and delivery of public education materials. Information that is released to the public must be readily available, easy to understand, and written in a manner that relates to everyone.

## **TASK 2 – Providing Public Information**

Providing information to and interacting with the public will be in accordance with the following:

1. A sign-in sheet will be available at each public meeting to solicit the name, representation, and contact information (physical and E-mail addresses) of those who choose to participate. These sign-in sheets will be collected and provided to staff to maintain a record of attendance and to develop a contact list for notice of future public input opportunities.
2. The City will be responsible for posting the agendas of scheduled meetings similar to other required public meeting notices. KKC will be responsible for providing to City staff 10 days prior to a scheduled public meeting an electronic meeting notice, which will be emailed by the City to the project participants. In this way, the official meeting notice is from the City.
3. (Optional) If the City contracts with KKC to create, host, and update a designated project web site, KKC will create and upload information at the outset of the project including a brief narrative description of the project, a general description of what will (and will not) be addressed in the project, a tentative calendar of public meetings and input opportunities, key contacts at the City, and information about the consultant. Project web site updates throughout the duration of the project will be undertaken as specified in the proposed project schedule in the response to the RFP, but generally includes an update before and after each meeting and consists of meeting agendas, summaries, and draft deliverables (including PDFs of the PowerPoint presentations, the Proposed Strategic Assessment and Annotated Outline, pertinent handouts at meetings, meeting summaries, and draft regulations).
4. As part of the project orientation teleconference, KKC and the City will establish protocol as to the handling of press interviews, particularly KKC's role and any necessary approvals, and the process for providing input to and by the City on meeting notices, as well as articles (by KKC or the City) in advance of the midpoint briefing of the City Commission and the Hays Area Planning Commission public hearing.
5. KKC will provide a meeting agenda, PDFs of PowerPoint presentations, and other draft deliverables in electronic format prior to the joint Hays Area Planning Commission / City Commission meeting (introductory meeting), the joint Hays Area Planning Commission / City Commission meeting (to discuss and approve the Proposed Strategic Approach and Annotated Outline), the three Hays Area Planning Commission meetings (to discuss the three code modules and zoning map), the midpoint City Commission briefing (which will be scheduled during the same trip where Module 2 of the code is discussed), and for the public hearing. These materials may be disseminated by the City to the press for any pre- and/or post-meeting articles. The City will be responsible for reproducing the meeting materials and disseminating them to the designated attendees (e.g., the Hays Area Planning Commission, City Commission, etc.).
6. Following the joint meeting regarding the Proposed Strategic Approach Annotated Outline, KKC will provide a brief bulleted summary to document the essential meeting outcomes and decisions.

### **TASK 3 – Engaging the Public**

The engagement activities are spelled out in the individual tasks set out in Phase 2, *Analytic and Strategic Framework*, below.

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## **PHASE 2: ANALYTIC AND STRATEGIC FRAMEWORK**

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### **TASK 4 – Logistics and Preliminaries**

A project orientation WebEx teleconference meeting with key staff members will be held following the Notice to Proceed. The purpose of this meeting will be to discuss project logistics (overall project goals, tentative schedule, communication protocol, interagency coordination, contact database); arrange for the delivery of applicable City documents, maps, and data to KKC; identify potential stakeholder groups for interviews (including county representatives). Additionally, this meeting and other meetings with departmental staff (while on-site) will be used to discuss the zoning and subdivision ordinances and their warranted amendments.

Meetings(s):

- Project orientation WebEx teleconference meeting with Project Director and applicable City staff.

Deliverable(s):

- Project schedule.

### **TASK 5 – Review and Incorporate Existing Documents**

KKC will complete a review of the City’s existing planning documents (master plans, land use plans, hazard mitigation plans, etc.), zoning and subdivision regulations, infrastructure mapping, and other documents provided by the City. This review will provide the basis for the work in Tasks 10, 11, and 12, regarding the development and approval of the Proposed Strategic Approach and Annotated Outline, and, Phase 3, *Zoning and Subdivision Regulation Drafting*, and will provide background information for the completion of Task 8, *Interview Stakeholders* and Task 9, *Conduct Field Reconnaissance*.

Meetings(s): No meetings are required for this task.

Deliverable(s): No specific deliverables are required for this task.

### **TASK 6 – Introduction to Hays Area Planning Commission/City Commission**

KKC will present an overview of the project (scope, schedule, participation activities, deliverables, etc.) and facilitate discussion as to the existing ordinances, their strengths and weaknesses, and requested changes and directions. This joint meeting will be open to the public.

Meeting(s): (TRIP No. 1)

- Joint meeting with the Hays Area Planning Commission, City Commission, and the public.

Deliverable(s):

- Adobe PDF of PowerPoint presentation.

#### **TASK 7 – (Optional) Launch Project Web Site**

If the City contracts with KKC to create and maintain a project web site, KKC will secure a domain name, design the framework for a project web site, and launch the web site after approval by the City. The web site will be for the purpose of keeping the public informed as to their opportunities for involvement, upcoming meetings and events, and postings of draft deliverables. See also Task 2, *Providing Public Information*, subsection 3, for a complete description of what will be uploaded and maintained on the project web site.

Meeting(s): No meetings are required for this task.

Deliverable(s):

- (OPTIONAL) Project web site linked to the City web site.

#### **TASK 8 – Interview Stakeholders**

KKC will interview project stakeholders (identified in Task 4) in up to six, one-hour “listening sessions” conducted over two, one-half days, which are intended to provide flexibility for invitees. If an invitee cannot attend the session most pertinent to them, they can join another session if interested. City staff will be responsible for inviting the select individuals. Each session should include a range of 12 to no more than 15 attendees to ensure effective dialogue. The purpose of these sessions is to discover the key regulatory and procedural issues facing Hays.

A second part of the interview process will include meetings over the course of one-half day with groups of City staff members (i.e., public works, legal, Fire/Police, parks, and utilities) to understand their processes, procedures, and practices, as well as to gain a firsthand understanding of the limitations or problems with the administration and enforcement of the current regulations, as well as the internal process of staff review and the public approval processes. This is an essential step to coordinate the development process and identify means for coordinating between departments and with other governmental agencies. In addition, as part of this one-half day portion of the interviews, KKC will also interview members of the City Commission in small groups.

Meeting(s): (TRIP No. 1)

- Up to six, one-hour small group listening sessions.
- One, two-hour meeting with applicable City staff members.
- Up to three meetings with a group of no more than two City Commission members.

Deliverable(s): No specific deliverables are required for this task.

### **TASK 9 – Conduct Field Reconnaissance**

KKC will conduct field reconnaissance to identify the type, pattern, and character of existing land uses, observe development outcomes, and note general areas of improvement. During the reconnaissance, KKC will develop a folder of photographs to document observed conditions and for use in conveying ideas as to development outcomes.

Meeting(s): No meetings are required for this task.

Deliverable(s): None; coordination with City staff will be necessary, but mapping is undertaken for analysis purposes only for the zoning map update.

### **TASK 10 – Proposed Strategic Approach**

The purpose of the Proposed Strategic Approach is to examine the relationship of the existing regulations to the policy directions of the recently adopted Comprehensive Plan, as well as the practices and preferences of the community and its leadership. As such, the Proposed Strategic Approach will narrow the gap between the City's policies and practices, and seek to achieve its objectives and preferred development and procedural outcomes. The document will help to make strategic decisions as to the approach to the new zoning and subdivision regulations. Phase 3, *Zoning and Subdivision Regulation Drafting*, will rely on the Proposed Strategic Approach, meaning that it will guide the work in the subsequent phases. Generally, the strategic document will set out:

- A strategic approach for writing any new zoning and subdivision regulations and revising the existing regulations. The approach will analyze the applicability of different regulatory approaches, including conventional zoning, character-based and form-based codes, performance standards, or a hybrid approach.
- Means for simplifying and streamlining development procedures (at a strategic level).
- Issues concerning the mapping of zoning districts, potential coding problems, and key legal concerns and considerations.
- Issues of compliance with state and federal law (e.g., Telecommunications Act; RLUIPA; PRB-1; Fair Housing Act, and so forth), and opportunities that may be provided by the City's Charter Ordinances and Kansas State Statutes.
- A brief assessment of the recently adopted Comprehensive Plan as to its policy framework and consistencies (or inconsistencies) with the zoning and subdivision regulations, as well as areas of silence or deficiency.

Meeting(s):

- Informal discussion WebEx teleconference meetings with City staff, as requested by KKC.

Deliverable(s):

- Proposed Strategic Approach, delivered via email in Adobe PDF format for electronic distribution and (OPTIONAL) posting on the project web site (Note: the Proposed Strategic Approach and the Annotated Outline will be combined into a single document).

**TASK 11 – Annotated Outline**

An annotated outline will provide a table of contents showing proposed content and organization of the new zoning and subdivision regulations. Minor changes to the order of sections within the code may occur as the code drafting progresses. Major changes, however, may require an amendment if they materially add to the content of the code or constitute a substantive change to its structure.

Subsequent code development will depend upon this Proposed Strategic Approach and Annotated Outline. Therefore, Phase 3, *Zoning and Subdivision Regulation Drafting*, will not commence until the Proposed Strategic Approach and Annotated Outline are accepted by the Hays Areas Planning Commission and City Commission at a joint meeting (see Task 12, regarding building consensus).

Meeting(s):

- Informal discussion WebEx teleconference meetings with City staff, as requested by KKC.

Deliverable(s):

- Annotated Outline of each section of the new regulatory provisions, delivered via email in Adobe PDF format for electronic distribution and (OPTIONAL) posting on the project web site (Note: the Proposed Strategic Approach and the Annotated Outline will be combined into a single document).

**TASK 12 – Build Consensus Regarding the Proposed Strategic Approach and Annotated Outline of the Zoning and Subdivision Regulations**

Following the completion of the Proposed Strategic Approach and Annotated Outline, KKC will facilitate a joint meeting with the Hays Area Planning Commission, Hays Area Board of Zoning Appeals, and City Commission to obtain essential feedback and build consensus on the strategic directions of the project before proceeding with any Phase 3 work (i.e., the regulatory drafting). In areas where such consensus is not yet attained in the document, as a reflection of the early public and leadership discussions, KKC will make one round of appropriate changes to the document to reflect further direction from the Hays Area Planning Commission to guide Phase 3 activities.

As part of this task, project budget considerations must also be taken into account in case the regulatory assessment and stakeholder input indicates a larger array – or complexity – of issues on the agenda than can be addressed with the available budget. If so, then KKC will coordinate with the Hays Area Planning Commission and staff to prioritize the needed amendments and determine how to proceed.

Meeting(s): (TRIP No. 2)

- Joint meeting with the Hays Planning Commission and City Commission to make an initial presentation of the Proposed Strategic Approach and Annotated Outline and to obtain agreement for drafting the regulations.
- A follow-up meeting with City staff.

Deliverable(s):

- Presentation materials for joint meeting with the Hayes Area Planning Commission, Hays Area Board of Zoning Appeals, and the City Commission.
- Final Proposed Strategic Approach and Annotated Outline.

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**PHASE 3: ZONING AND SUBDIVISION REGULATION DRAFTING**

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**TASK 13 – Draft and Deliver Code Modules**

The zoning and subdivision regulations will be drafted, presented, and discussed in three code modules. The modules approach helps to facilitate discussion with the Hays Area Planning Commission and staff in an iterative fashion. The number, content and order of the modules will be outlined in the Proposed Strategic Approach and Annotated Outline based on the issues and existing regulatory provisions identified as needing attention – and with the intent of breaking down the new and amended regulatory provisions into manageable pieces for ease of review and discussion. KKC represents that it is competent to prepare the finished product in the drafting stage. It will do all necessary research regarding land use regulation and do all acts necessary to draft all regulations in ordinance form from start to finish, subject to editing and proofreading by the City. KKC will be allowed to rely on the City to review the proposed regulations and ordinances when submitted in final draft form and rely upon the City to ensure through that review that the proposed ordinances and regulations comply with legal requirements in Kansas.

KKC personnel will complete the drafting and revision work through the enCode-90™ online interface. The site design will be consistent with City branding. This will also enable KKC to accept, address and catalog staff review comments throughout the process (username and password issued to City staff for site access). The site framework will include the standard features available in enCode-90™, and will allow for incorporation of the added features and functionality that are available through the enCode-180™ and enCode-360™ upgrade options should the City choose to authorize these.

KKC will develop regulatory language for the zoning and subdivision regulations based on the agreed to Proposed Strategic Approach and Annotated Outline, input received at the Hays Area Planning Commission work sessions, and through close coordination with the City’s Project Director and other members of City staff, as applicable. All deliverables will be provided by City staff to the Hays Area Board of Zoning Appeals and the City Commission, who will be invited to attend and observe the Hays Area Planning Commission work sessions. Alternatively, a representative could be selected by the City so that one person is responsible for regularly communicating with their respective boards and representing their interests at the Hays Area Planning Commission work sessions. Staff will be responsible for

regularly reporting to each board on the status of the project and providing a forum to receive their input. Substantive input received by staff will be provided to KKC in written form.

Another core objective for this task is to determine the “comfort level” with varying potential degrees of regulation, and where to “set the bar” on various types of zoning and subdivision regulations. This will include frank and constructive discussion of whether the potential regulatory framework will truly align with and advance expressed community planning goals and priorities.

Meeting(s): (TRIP Nos. 3, 4, and 5)

- Interim WebEx teleconference meetings with City staff, as needed/requested by KKC, to discuss regulatory strategies, the relationships to existing standards and procedures, and other administrative matters.
- For each code module, the following meetings will be held:
  - › A meeting with City staff held on the afternoon prior to or the morning following the scheduled Hays Area Planning Commission work session.
  - › One evening meeting/work session with the Hays Area Planning Commission to discuss the respective code module, which will be open to the public.
  - › Up to two, one-hour meetings with City identified key interest groups to discuss the directions of the regulatory provisions and to seek input and consensus.
- One midpoint briefing of the City Commission on a regularly scheduled meeting date to present a project status report covering the work completed to date and key issues and consensus points. This meeting will be coordinated with other scope activities to occur on Trip No. 4.

Deliverable(s):

- Three draft modules with the proposed new and amended zoning and subdivision regulations, and with associated illustrations in a quantity that is feasible to produce within the available project budget will be delivered to the City in enCode-90™ for staff review and comment, and also in an Adobe PDF format emailed to City’s Project Director for further distribution to the Hays Area Planning Commission, and (OPTIONAL) posting on the project web site.

An accompanying memorandum with each draft module (Adobe PDF file emailed to City’s Project Director for further internal distribution) that, as applicable:

- › Provides supporting commentary, especially regarding the nature of and rationale for proposed changes from or additions to existing regulatory provisions;
  - › Points out key policy issues and decision items;
  - › Highlights links to and/or implications for other sections of the existing overall zoning ordinance, or other City Code chapters; and
- Revised draft modules assembled into a Discussion Draft Zoning and Subdivision Regulations for electronic distribution and (OPTIONAL) posting on the project web site.

#### **TASK 14 – Prepare Draft Citywide Zoning Map**

KKC will provide strategic directions regarding the mapping of the proposed zoning districts by describing the circumstances in which each zone is applied, and by providing a general framework through KKC’s analysis of existing development character (see Task 9, *Conduct Field Reconnaissance*). City staff will use the strategic materials and general framework to revise and refine the zoning map, which will be considered concurrently with Task 13, *Draft and Deliver Code Modules*. Development of this map will be based on the adopted future land use plan (which may warrant amendment by the City or KKC on a Supplemental Services basis) and the established zoning districts. Generally, the zoning map will align three primary influences:

- The existing nature of development in terms of use and physical character;
- The desired pattern, character, and use of future development as identified in adopted policy documents; and
- The specific regulations and allowances for the various zoning districts drafted in Task 13, *Draft and Deliver Code Modules*.

Development of the draft zoning map will require the following work activities:

- Complete GIS and aerial photography review, which will be done by KKC in the development of the existing development character working map;
- Analyze the closeness of fit between the zoning districts and the existing land use and character, which will be done by KKC in developing the strategic direction for mapping the proposed districts; and
- Develop the draft zoning map, which will be completed by the City’s Planning, Inspection, and Enforcement (PIE) Division using its GIS map data such that the City’s conventions and standards are maintained and consistently applied for ongoing code and zoning map administration.

Meeting(s): (TRIP Nos. 4 and 5)

- Hays Area Planning Commission work session to present and discuss the Draft Citywide Zoning Map. These discussions will occur during the same meetings as the discussion of the regulatory provisions per each code module.

Deliverable(s):

- A memorandum outlining strategic direction for mapping the proposed zoning districts. The draft zoning map will be scheduled for completion concurrent with Module No. 2, which will allow review and discussion during Trip Nos. 4 and 5. The draft Citywide Zoning Map will be submitted electronically (ArcMap shapefile format) for electronic distribution and (OPTIONAL) posting on the project web site.

#### **TASK 15 – Publish Code Modules and Public Hearing Draft of Zoning and Subdivision Regulations and Zoning Map**

KKC will refine the Draft Zoning and Subdivision Regulations and Citywide Zoning Map based on the feedback received during Tasks 13 and 14. Documentation of the requested revisions by the City’s Project

Director in enCode-90™ on a section by section basis will help ensure accuracy of the changes, efficient use of the City's budget, and a historical record of the changes made. Alternately, a memorandum of recommended revisions prepared by the City's Project Director and provided to KKC will prompt the revisions to the regulatory provisions.

KKC will evaluate the nature and significance of the requested revisions relative to the project scope and the strategic directions of the project to this point. The requested changes that are consistent with the project scope and strategic directions of the project are included in the revisions to assemble the public hearing draft. Major revisions or shifts in the strategic or policy directions, however, may require an amendment if they materially add to the content of the code or constitute a substantive change to its structure. All revisions will be first documented as red-lined edits in enCode-90™, followed by a clean public hearing draft, inclusive of all tables, graphics, illustrations, definitions and appendices, as applicable.

Meeting(s):

- Up to two WebEx teleconferences with City staff to discuss the on-going development of the revisions to the code modules.

Deliverable(s):

- Public Hearing Draft Zoning and Subdivision Regulations and Citywide Zoning Map from assembly of the refined modules into a consolidated package, and reflecting further adjustments made by the Hays Area Planning Commission during this task (in enCode-90™ for staff review and comment, and also in an Adobe PDF file emailed to City's Project Director for further distribution and web site posting by staff).

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#### **PHASE 4: ADOPTION, DELIVERY, AND ELECTRONIC PUBLICATION**

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##### **TASK 16 – Conduct Adoption Hearings**

KKC will coordinate with City staff in preparation for a joint public hearing, to assist in documenting further revisions recommended by the Hays Area Planning Commission in making its final report to the City Commission, and to complete final project activities leading up to and after the City Commission adoption.

Meeting(s): (TRIP No. 6)

- A joint public hearing of the Hays Area Planning Commission (TRIP No. 6) and City Commission to present the Final Zoning and Subdivision Regulations and Citywide Zoning Map at which time public comments will be accepted and a recommendation will be given by the Hays Area Planning Commission.
- An independent meeting with the City Commission (TRIP No. 6) will be held after the public hearing to discuss the comments received and to determine the necessary and advisable changes to the Final Zoning and Subdivision Regulations or Citywide Zoning Map. This meeting will also be for the purpose of facilitating a question/answer session with the City Commission prior to their consideration of the code and map for adoption.

- KKC will be available to attend the separate public hearing by the City Commission to present the Final Zoning and Subdivision Regulations for consideration of adoption on a Supplemental Services basis (see Optional Task 22).

Deliverable(s):

- Overview presentation for public hearing (PowerPoint file forwarded to City's Project Director prior to hearing).
- Final Zoning and Subdivision Regulations inclusive of all tables, graphics, illustrations, definitions and appendices, as applicable.

Note: Staff training workshops may be handled as an optional service as part of Optional Task 18, regarding training, outlined below.

### **TASK 17 – Publish the Zoning and Subdivision Regulations Electronically**

Following adoption, including any further adjustments made through final City Commission review and deliberation, KKC will deliver a final clean version of the as-adopted zoning and subdivision regulations, and work with enCode-360, LLC (our subconsultant) to publish them online via enCode-90™. The username and password provided earlier in the project will enable City staff to maintain the online version beyond the project conclusion.

Meeting(s): No meetings are required for this task.

Deliverable(s):

- Electronic files in Microsoft Word and Adobe PDF;
- One reproducible hard-copy color print of the final adopted regulatory provisions, including all tables, illustrations and any related attachments;
- Web-based access in enCode-90™.

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### **APPROACH TO DELIVERABLES**

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It will be the responsibility of the City's Project Director to coordinate and compile in a consolidated manner all review comments on and requested/suggested revisions to each interim deliverable, beyond those comments provided directly to KKC personnel during project meetings. City staff will assemble and enter the comments and requested revisions into enCode-90™.

KKC will be responsible for one unified round of revisions after submitting each major deliverable and receiving comments and direction from the City as described above. This includes revisions to the Proposed Strategic Approach and Annotated Outline under Tasks 10, 11, and 12; the draft modules under Tasks 13 and 14, resulting in the Public Hearing Draft under Task 15; and further refinement of the Public Hearing Draft through the joint hearing and official consideration steps, leading to the as-adopted final ordinance version under Tasks 16 and 17.

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## ENCODE-90™ SET UP

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### Initial Set Up:

KKC will coordinate with enCode-360, LLC and the City to discuss the project logistics and schedule, as well as to determine project specifications. enCode-360, LLC staff will build and set up the web site for the City, including a “home page” with a standardized structure in which graphics, text styles, text copy, and colors are selected by the City.

The City will identify a Project Administrator who will be responsible for coordinating the work of enCode-360, LLC staff, providing any necessary information with respect to the project specifications, and for reviewing, monitoring, and approving the work of enCode-360, LLC.

enCode-360, LLC staff will launch the enCode-90™ (or as upgraded to enCode-180° or 360°) and, if applicable, optional features (e.g., calculators) selected by the City. The Build Fees and the first-year only Annual License Fee (but not the Annual License Fees for subsequent years) for the enCode-90™ version are included as part of this code project.

Upon completion of the initial setup, KKC will draft the three code modules in enCode-90™ so that it can be accessed via the enCode-90™ online User Module (public access) and Maintenance Module (password-protected editor access).

During the drafting of code modules, KKC staff will “tag” appropriately formatted cross-references for the purpose of internal and/or external hyperlinking.

Upon completion, enCode-360, LLC staff will conduct a quality-control review of the newly formatted zoning and subdivision regulations to ensure that all hyperlinks and pop-up definitions are functional and appropriately directed and that all graphics and tables are properly formatted, readable, and highly presentable.

Upon completion, enCode-360, LLC staff will publish the newly adopted zoning and subdivision regulations, which will be available only to the Project Administrator and other authorized City personnel.

Training on enCode-90™ Maintenance Module will be provided to the Project Administrator and other authorized City personnel so that amendments can be drafted in enCode-90™ and the City can self-codify in the future.

An in-depth User Guide is integrated into enCode-90™ to cover all aspects of drafting and updating regulations in the enCode-90™ software system.

### **III. SUPPLEMENTAL SERVICES**

During the course or at the conclusion of the project, the City may deem it necessary to schedule more meetings, request further issues research, or otherwise engage KKC personnel in additional work efforts not anticipated at project initiation and not included in this Scope of Services. Any such supplemental services shall be specifically authorized by the City Manager or City Commission, as appropriate, and documented through a written amendment to the Scope of Services and approval of a corresponding

increase in the maximum not-to-exceed amount—and, if necessary, the time of performance—of the original professional services agreement.

Potential supplemental services or follow-on work phases could include, but not be limited to:

- Facilitated Training on the new Zoning and Subdivision Regulations (Optional Task 18);
- Produce and Provide a Development Guidebook (Optional Task 19);
- Project web site (Optional Task 20 and highlighted in Task 7);
- Unified Development Code (Optional Task 21);
- Additional Trips / Meetings (Optional Task 22); and
- On-Line Publication of the Official Zoning Map (Optional Task 23).

#### **OPTIONAL TASK 18 – Facilitate Training on the new Zoning and Subdivision Regulations**

On a supplemental services basis, KKC will provide on-site training for members of the Planning, Inspection, and Enforcement (P.I.E.) Department and the staff of other departments who together, are responsible for application receipt, plan review, inspection, and enforcement, as well as zoning administration, and members of the Hays Area Planning Commission, Hays Area Board of Zoning Appeals, and City Commission meetings. The training will include:

- A detailed overview of the code, including its general principles, relationship to the Comprehensive Plan, and the specific provisions that are the responsibility of different staff and departments.
- A “how to” work session on the use the code for the review of applications.
- Mock review of different application types.
- An overview of the procedures and processes.

In addition, the training will cover:

- Application completeness review.
- Scheduling and managing pre-application conferences.
- Responsibilities of an intra-departmental review team.
- Preparation of staff reports to the Hays Area Planning Commission, Hays Area Board of Adjustment, and the City Commission.

#### **OPTIONAL TASK 19 – Produce and Provide a Development Guidebook**

Since the Zoning and Subdivision standards will include new provisions of approval, as well as permits and processes, KKC will produce a Development Guidebook that outlines the application processes for prospective applicants. The guidebook will include a summary of processes and procedures for each type

of approval or permit covered by the new regulations, and flowcharts and schedules for the development application and approval processes.

The Development Guidebook will include an appendix of application forms and checklists for the approvals and permits that are covered by the new regulations, as well as model staff report forms. The forms and checklists are intended to ensure that all information that is needed to properly process an application is provided. The forms will be developed in electronic “fill-in” format so that applicants can easily fill them in from their computers, and readily understand the information they are to provide.

The guidebook will be posted on the City’s enCode-90™ website for easy download.

#### **OPTIONAL TASK 20 – Create and Maintain a Dedicated Project Web Site**

As part of this supplemental service, KKC will build the framework for a project web site which will be regularly updated during the project, and which will include general information, project news and updates, participation information and opportunities, and project documents, such as schedules, presentations, and the draft regulations as they are developed. The web site will be updated in advance of each meeting and within 48 hours of any major meeting or project milestone with photos, documents, and other relevant information.

#### **OPTIONAL TASK 21 – Incorporate Additional Provisions to Produce a UDC**

Over the past two decades, cities across the country have migrated toward unified development codes (UDC’s) to achieve a more coordinated set of development regulations, standards, and procedures. A UDC yields the following benefits:

- Consolidates all development-related ordinances into a single unified document. This helps to ensure consistency among the different components and promotes a more holistic evaluation of development requirements and standards by both applicants and the City.
- Makes the regulatory specifics easier to navigate and comprehend (e.g., more “user friendly”) for the development, real estate and consultant communities. A single consolidated index and better cross-referencing across code sections helps to ensure that all relevant provisions are taken into account pertaining to any particular development issue or proposal.
- Condenses into one code section all administrative procedures and considerations, helping to streamline and make clearer the roles and responsibilities of each official and decision-making body.
- Offers a consolidated list of definitions, which helps to prevent inconsistencies and questions of interpretation between ordinances.
- Greatly improves the City’s ability to track the total development process because various components are organized by functional topic and coordinated in a logical, sequential order.

- Simplifies and streamlines the process for future ordinance amendments and enhancements.

Upon request, KKC will be available to amend the Scope of Services to undertake and more comprehensive review and rewrite of all the development regulations so that they can be consolidated into a UDC to create a more usable and development-friendly set of regulations. Generally, this can include an expanded Scope of Services to incorporate the following additional regulations from the City Code of Ordinances:

- Chapter 2, Article VI, Division 2, *Planning Commission and Board of Zoning Appeals*;
- Chapter 11, Article X, *Uniform Addressing System*;
- Chapter 14, Article VI, *Adult Entertainment Businesses*;
- Chapter 35, *Floods*;
- Chapter 53, *Stormwater Management* (portions related to development design).

**OPTIONAL TASK 22 – Additional Committee, Public Information, or Hays Area Planning Commission/City Commission Meetings**

KKC will be available to attend additional meetings through the course of the rewrite process. Additional meetings that occur within the established project schedule (i.e., while KKC is already on-site for a meeting spelled out in this Scope of Services) will be at no additional charge. Those that require additional time to be spent on-site will be billed for that time and those that require a separate, additional trip will be billed for the corresponding time and expenses.

Other additional on-site meetings will be invoiced separately as provided in the table below. This fee schedule accounts for on-site time and time for pre-meeting preparation and post-meeting follow-up, plus direct expenses.

Additional Meeting Fee Schedule <sup>1</sup>		
Title	One overnight stay	Two overnight stay
Principal	\$3,800	\$5,200
Senior Associate	\$3,400	\$4,650
Associate	\$3,100	\$4,225

**OPTIONAL TASK 23 – On-Line Publication of the Official Zoning Map in enCode-180° or 360° and Hosted by ESRI ArcGIS Online**

As part of this supplemental service, KKC would publish the Official Zoning Map through the enCode-180° or enCode-360° software versions,<sup>2</sup> allowing users the ability to view, zoom in/out, and pan around the map, as well as to select an individual parcel or zoning district to navigate to the relevant section of the code. The options include:

<sup>1</sup> Assumes 21 day advance notice; subject to change relative to increases in travel costs.

<sup>2</sup> Requires the upgrade of the enCode-90™ software to the 180° or 360° software versions.

- **Option 1 – GIS Static Map (enCode-360TM hosted):** This feature includes an online mapping system hosted on the enCode-360TM server, which displays a static zoning map (in Adobe PDF) with hyperlinks to display a description about each of the districts and a live link established through enCode-180° or enCode-360° software to the corresponding district standards. This option will require regular updating, reposting, and re-establishing of the links to the district standards.
- **Option 2 – ESRI Hosted ArcGIS Online:** This feature includes an ESRI hosted ArcGIS online mapping system that is licensed to and managed by the City. The online map would display the zoning layer (and other layers, as available), together with a description about a user-selected district (or parcel, as applicable) and a live link established through the enCode-180° or enCode-360° software to the corresponding district standards. The client would maintain and update the map through its ESRI licenses. KKC (in association with enCode-360, LLC staff) is available on an hourly rate basis to act as the administrator, on behalf of the client, to set-up the online map and its user interface, and to add the functionality to link the individual zoning districts with their corresponding standards.

**EXHIBIT "B"**  
**ZONING AND SUBDIVISION REGULATIONS**  
**HAYS, KANSAS**

**SUPPORT SERVICES OF CITY**

The City of Hays, Kansas will provide administrative and technical support services to assist the CONSULTANT in performing the Scope of Services described in Exhibit "A." The support services to be provided by the City will include the following types of general services and specific tasks for the work program:

- Identify a single individual as the City's Project Director, who will serve as a primary point of contact and source of day-to-day work program direction for this collaborative planning effort involving both City and CONSULTANT personnel, resources and capabilities.
- Provide all relevant background information, City documents and other materials that are available to the City in digital or printed format and are pertinent and necessary for successful completion of the work program. *Prompt compilation and delivery of such resource materials to the CONSULTANT is an essential prerequisite for initiation of work and timely progress on various initial study tasks.* Wherever possible, the City will reproduce the materials such that they will not require return upon project completion.
- Ensure that key City personnel, appointed board/commission members and elected officials will participate as needed in the process and be available, upon request through arrangements made by the City's Project Director, to provide information and referrals and offer opinions, insights and suggestions as input to the work program. This will include potential formal or informal meetings and briefings with the City Commission as specified in Exhibit "A," Scope of Services. This will also include necessary coordination with other consultants and professional services providers engaged by the City in areas relevant to the work program (e.g., engineering, legal). In particular, the City Attorney will provide all legal review and support on behalf of the City, subject to the provisions of Exhibit A, Scope of Services of Consultant. The City Attorney or designee, if KKC requests, will attend, when needed for legal consultation, on behalf of the City, joint workshops and public hearings, or regularly scheduled Hays Area Planning Commission and City Commission meetings where final deliberations on new or amended regulatory provisions are expected.
- Assist the CONSULTANT in establishing contacts with other agencies and organizations, as needed, for information gathering and coordination purposes, except where the CONSULTANT is already known to and has communicated with an agency or organization through previous projects. Based on our experience, it is helpful for City staff to make such entities aware of the project and provide a "heads up" in advance of potential CONSULTANT contacts so the agency or organization recognizes that the CONSULTANT is engaged in a City-sponsored project that will benefit from their input and support.
- Arrange for coordination between the City's Project Director, representative(s) from the appropriate City department(s) and/or other consultants, and the CONSULTANT to transfer any relevant spatial data and mapping that the City can make available for the project, including Geographic Information System (GIS) data sets and coverages

(or AutoCAD layers, as useful and appropriate) already developed/maintained by the City for its entire planning area or readily available to the City from other sources.

- Reproduce and forward each draft project deliverable submitted by the CONSULTANT (via email) to the Hays Area Planning Commission, key City staff members, and other project participants as appropriate. In addition, each draft deliverable should also be provided to the City Commission for courtesy review and discussion as the project proceeds. City staff will be responsible for providing status reports and briefings to the City Commission at regular intervals throughout the process, in addition to any CONSULTANT briefings specified in Exhibit "A," Scope of Services.
- Conduct public information activities in conjunction with major public meetings/hearings and other fitting project milestones. The City will be responsible for news media contacts, preparation and distribution of news releases and any other public information materials, and posting of meeting notices and project information and updates on the City's website. The City will also be responsible for inviting members of relevant City boards and commissions and representatives of other key agencies and community organizations to attend public meetings as appropriate.
- Provide administrative support for meetings with the Hays Area Planning Commission and/or City Commission. The City's support services will include reproducing any handouts prepared by the CONSULTANT and providing adequate setup for presentations (PowerPoint projector, screen or white wall, extension cords and power strips for three-prong plugs, reduced lighting, sound system, easels, flip pad and markers, etc.).
- Arrange and provide use of public meeting facilities for each scheduled public involvement event/activity identified in Exhibit "A," Scope of Services. This will include providing adequate setup for presentations (PowerPoint projector, screen or white wall, extension cords and power strips for three-prong plugs, reduced lighting, sound system, easels, flip pad and markers, etc.); providing public and news media notification of public meetings; reproducing agendas and other handout materials prepared by the CONSULTANT; providing sign-in sheets so meeting attendance can be documented; and providing refreshments as needed. The CONSULTANT will be responsible for presentations and preparation of necessary graphic aids for all meetings to be facilitated by the CONSULTANT. The City will also be responsible for inviting members of relevant City boards and commissions and representatives of other key agencies and community organizations to attend public meetings as appropriate.
- Consider and act on all deliverables and other interim work items submitted by the CONSULTANT that require City review, comments or approval within a reasonable period of time so as to enable the CONSULTANT to complete the work on schedule. Specific timeframes for such City response will be incorporated into the detailed project schedule cited in Exhibit "A," Scope of Services. *Any delays encountered by the CONSULTANT during the project, which are beyond the CONSULTANT's control, will be documented in the monthly progress reports and may delay the delivery of work products and/or the original anticipated completion date of the project.*
- Provide the CONSULTANT written summaries, and copies of any handouts/materials, from all City meetings that are relevant to the project but not attended by the CONSULTANT.



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**enCode-90  
Software License**

**LICENSEE: HAYS, KANSAS**

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This Software License (“Agreement” or “License”) is made as of the date of the last signature below, between enCode-360, LLC, a Texas Limited Liability Company (“Licensor”), and the City of Hays, Kansas, a municipality of the State of Kansas (“Licensee”), by and through Toby Dougherty, City Manager.

1. **License Grant.** This is an Agreement between Licensor and Licensee, with a term as set out in Paragraph 4, below. Licensor grants licensee a non-transferable, non-exclusive, limited, non-assignable license with no right to sublicense, to use the software covered by this Agreement pursuant to the terms of this Agreement including payment of all applicable License Fees. This License gives only certain rights to Licensee. All other rights are reserved to Licensor.
2. **Software Covered by this License.** The terms of this Agreement apply to Licensee’s use of the following software: enCode-90.
3. **Exclusions.** The enCode-90 feature set excludes the upgrade features available for the enCode-180 and 360 software versions. Such features may be added at any time for the then current price.
4. **Term of License.**
  - a. The term of this Agreement is the period from the effective date until the expiration of time as set out in Article V, Time of Performance, Paragraph 5.2, of the separately executed Professional Services Agreement for the Review and Re-write of the Zoning and Subdivision Regulations, and is automatically renewable annually thereafter, unless terminated as provided in Paragraph 4.b. or 4.c., below.
  - b. Either party may terminate this License by providing the other party with written notice of termination delivered at least 30 days prior to the date of termination. Upon receipt of any notice by the Licensee to terminate this Agreement, fees for such maintenance and support paid in advance, if any, shall be returned to the Licensee on a pro rata basis.
  - c. Either party may terminate this license in the event of a material breach by the other party by giving notice of termination to the breaching party at least 30 days prior to the effective date of the termination, provided, however, no such termination shall become effective if the breaching party cures the breach within 30 days of the termination notice or, if it is not possible to fully cure the breach within said time period, commences cure and diligently pursues the same to conclusion.
  - d. Licensor may terminate this License if, in Licensor’s sole discretion, changes in Internet technologies (including software platforms, web browsers, and other technologies that allow the Software to operate) make Licensor’s performance of this Agreement technically infeasible.

- e. Upon termination of this Agreement, Licensor is not obligated to return Licensee's enCode-90 content to Licensee. Licensee has full, unlimited access to the enCode-90 content through its password-protected maintenance module. This access allows the City to export the content to Microsoft Word and Adobe PDF. Also, as set out in Paragraph 14, Security and Backup, the Licensee may save the document at any time in HTML format or as a web archive file. For an additional fee based on Licensor's then-current technical support rates, Licensor may offer export services to convert the content into other file formats and deliver them to Licensee electronically or on optical or other solid-state media.
5. **Build Fees.** The fee to build, deliver, and train the City on the maintenance module is included as part of the fee set out in Article VI, Compensation to Consultant, Paragraph 6.1, of the separately executed Professional Services Agreement for the Review and Re-write of the Zoning and Subdivision Regulations.
6. **License Fees.** The annual license and software escrow fees, payable upon execution of this License, are as follows:
  - a. **Year 1:** The amount of \$5,075 (including the 14-month prorated license fee of \$4,075, a \$750 software escrow fee, and \$250 software escrow initiation fee) is included as part of the fee set out in Article VI, Compensation to Consultant, Paragraph 6.1, of the separately executed Professional Services Agreement for the Review and Re-write of the Zoning and Subdivision Regulations.
  - b. **Subsequent years:** Upon the termination of time set out in Paragraph 4.a., Term and License, the annual license fee for subsequent years will be the standard license fee that enCode-360, LLC charges for comparable enCode-90 implementations. EnCode-360, LLC will notify the City 30 days in advance regarding the amount of the annual license fee for subsequent license years.
  - c. In the event this Agreement is terminated by Licensee with six (6) months or more remaining on the current term, Licensee shall receive a pro-rated refund of the remaining fee. In the event Licensee terminates the Agreement with less than six (6) months remaining on the term of the License, Licensee shall not receive any refund of any fees.
  - d. The annual escrow fee payment set forth in Paragraph 17 is due and payable with the annual license fee.
7. **Scope of License / Use of Software.** The Software is an Internet-based information processing and publication service that uses content created by Licensee, or by Licensor under separate agreement with Licensee. Licensor will provide Licensee access to the Internet-based interfaces, including password-protected access to maintenance features, as may be applicable to the enCode-90 Software. Licensee may use the Software through its Internet-based interfaces as follows:
  - a. EnCode-90 may be used to develop, view, access, use, print, copy, edit, publish, utilize, administer, amend, repeal, and solicit, and process comments on the zoning and subdivision regulations; and

- b. Other uses as prescribed by this or subsequent agreements between Licensor and Licensee.
8. **Limitations on Use of Software.** Licensee **must not:**
- a. Reverse engineer, reverse assemble, decompile or disassemble the Software, or otherwise attempt to derive source code from the Software or any component thereof;
  - b. Publish or distribute materials for which Licensee does not have intellectual property rights, or which are outside of the scope of this License;
  - c. Access the server-side programs and source code upon which the Software is based, except to use the Internet-based interfaces provided by Licensor, and except for the HTML and browser-based script code that the server-side programs generate and deliver to end-users;
  - d. Alter the functionality of the software including by composition or injection of unapproved software or services;
  - e. Copy, reproduce, modify, sell, lease, sub-license, market, or commercially exploit in any way the Software or any component thereof (including the further distribution or blank forms or templates) other than as expressly agreed to in this Agreement; and
  - f. Use, or permit the use of, the Software except within the scope set out in Paragraph 7, above. Licensee agrees that it shall not provide access to or perform services for third parties using the Software including, but not limited to, any service bureau, time-sharing, lease, distribution or re-sale, rental, application service provider arrangement, or any other arrangement.
9. **Warranty Against Infringement.** Licensor warrants that the copyright in and to the Software is owned by Licensor or is distributed by Licensor under a valid current license, that it has the right to license the Software, and that there are no pending liens, claims, or encumbrances against the Software or Licensor pertaining to the Software. Licensor agrees to notify Licensee of any actual or anticipated claims made against it or its customers for patent or copyright infringement in the use of the Software. Licensor agrees to indemnify, hold harmless, and defend Licensee against any and all patent or copyright infringement claims that may be brought against Licensee as the result of its use of the Software as authorized by this License. Licensee shall have the right to participate in the defense of any such claims for patent or copyright infringement at Licensee's cost and expense. In the event that it is determined that the Software infringes on any patent or copyright, Licensor may (a) procure for the Licensee the right to continue using the Software; (b) modify the Software so that it becomes non-infringing but continues to provide the same functionality as the original Software; (c) replace the software with non-infringing software that continues to provide the same functionality as the original Software; or (d) if modification or replacement cannot be accomplished in a manner that continues to provide the same functionality, Licensor may terminate this License and refund to Licensee its pro-rated license fee for the balance of the year in which the infringement was determined.

10. **Limitations of Software.** The Software is provided to facilitate access to information via the Internet. The Software is not a substitute for human judgment, which is necessary for administration of ordinances and administrative rules.

11. **Technical Support.**

- a. Licensor will provide technical support and customization services at a rate of \$135 per hour until the termination of time set out in Paragraph 4.a., Term and License. For the license year commencing the day after the termination of time set out in Paragraph 4.a., Term and License, technical support and customization fees are subject to annual adjustment, and will be based on the standard schedule of professional fees for the year in which the support occurs.
- b. Licensor agrees to provide telephone or web-based technical support regarding the use of enCode-90 service to Licensee within four hours of initial telephone contact by Licensee during Licensor's business hours, or at a mutually agreeable time. Duration to resolution is not bound and licensor may deem a request as unresolvable.
- c. With respect to addressing errors which may arise in the enCode-90 software, Licensor agrees to commence its best efforts to resolve such errors as soon as reasonably possible after notice by Licensee. Generally, Licensor will commence error resolution on the same day as the notice, and if reasonably practicable, will provide Licensee with Licensor's best good-faith estimate of the time which will be required to resolve the error. Licensee shall not be charged any technical support fee or other charge for addressing or correcting errors in the enCode-90 software itself.
- d. Failure of Licensor to achieve the technical support response times set out in Paragraphs 11.b. and 11.c. shall not constitute a material breach of this Agreement.

12. **Annual License Fee Discounts for Major Service Interruptions Due to Changes by Licensor.**

- a. There will be reductions in the annual license fee if there is a complete inability to use both the user module and the maintenance module (hereinafter "major service interruption") of the Software as a result of changes to the Software made by Licensor, as follows:
  - If a major service interruption lasts more than two, but less than five consecutive days, the annual license fee for the following license year will be reduced by 10 percent.
  - If a major service interruption lasts more than five days, but less than 14 consecutive days, the annual license fee for the following license year will be reduced by 25 percent.
  - If a major service interruption lasts more than 14 days, but less than 30 consecutive days, the annual license fee for the following license year will be reduced by 50 percent.
- b. If a major service interruption lasts more than 30 consecutive days, the annual license fee for the following license year shall be waived.

- c. The reductions of license fees that are provided by this Paragraph are not cumulative. If more than one service interruption occurs during a license year, then only the discount that applies to the longest of the service interruptions shall be applied.
- d. This Paragraph does not apply to outages that are attributable to failures of a third-party Internet Service Provider that hosts the Software.
- e. If a failure by a third-party Internet Service Provider impacts the use of the Software for more than five consecutive days, Licensor will seek another Internet Service Provider to host the Software. The selection of a new Internet Service Provider will be in Licensor's sole discretion, however, Licensor will seek quality providers with secure data centers, geographic redundancy, the ability to bring up new instances in a short time frame, and excluding planned downtime, either 99.9 percent or greater guarantee for storage uptime or a strong track-record of service reliability.

### 13. Updates and Upgrades.

- a. Licensor will keep the Software in operational condition on a server hosted by Licensor or a third-party Internet Service Provider. Although Licensor selects its Internet Service Providers based on their reputation for reliability and service, Licensor does not guarantee 100 percent uptime. Licensor will promptly notify the Licensor's contact listed in Paragraph 24 by electronic mail if it's Internet Service Provider or third-party hosting service experiences an outage that prevents or severely limits access to the Software for a period in excess of 15 minutes per day or cumulative period in excess of 15 minutes per day.
- b. Licensor may, at its sole option, apply minor updates from time to time and will provide notice to Licensee within two business days of applying minor updates. Generally, minor updates are those updates which ensure compatibility with server or browser technologies or provide additional data security or enhance system stability or operability of the software.
- c. Licensor may develop major upgrades to the functionality or interfaces of the software from time to time and will provide notice to Licensee within two business days before applying major upgrades. Such major upgrades that affect data security, system compatibility or stability, or operability will be offered at no additional cost during the term of this Agreement. Major upgrades that include functional changes, such as new or customized features, may be offered to Licensee for an additional fee (which may include an additional annual license fee) to be determined by Licensor when they are released. The Licensee may choose to accept or deny major upgrades that involve new or customized features requiring an additional fee. If Licensee declines new or customized features of a major upgrade, Licensee's software version will be maintained intact through the license term.
- d. The Software requires the use of an Internet browser. As of the effective date of this Software License, the Software is fully operable using Microsoft Internet Explorer (IE) 10 and 11. The browser version is supported by the current and one previous major version. On an additional fee basis, Licensee may

include a rider to this Agreement to maintain the operability of previous versions other than those provided for in this Agreement. Other browsers supported by enCode-90 for desktop editions include FireFox, Chrome, and Safari. Licensor does not guarantee full operability in all browsers, because browser technology changes from time to time.

- e. Licensor may from time to time, in its sole discretion, change some or all of the functionality or any component of the Software or make any modification for the purpose of improving the performance, service quality, error correction or to maintain the responsiveness of the Software. Such changes shall not negatively impair the overall functionality of the Software.

#### **14. Security and Backup.**

- a. Licensor provides password-level security to the maintenance module of the Software, which allows Licensee to add, format, edit, or delete text, upload and link to graphics and multimedia components, create usernames and passwords for Licensee's staff, and review and respond to public comments. Licensee is responsible for the securing of passwords and preventing their unauthorized use. Licensee may not select a username which is identical to that used by another person or use a username which is in the sole opinion of Licensor offensive or inappropriate. Licensee shall be solely responsible for maintaining the confidentiality of their passwords. Licensee is solely responsible for all usage or activity on Licensee's account, including but not limited to use of Licensee's account, Licensee's user names, and Licensee's passwords by any third party. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of Licensee's account, in Licensor's sole discretion, and Licensor may refer Licensee to appropriate law enforcement agencies.
- b. Licensee is advised to maintain a current off-line backup of the data stored in the Software. A complete version of the published code document is available at: <http://www.online.enCode-360.com/regs/hays/maintain/allcodepub.asp>. This document may be saved as an HTML or a web archive file.

#### **15. Ownership of Content.**

- a. Licensee is the sole owner of all documents and information provided by Licensee that will be accessed by Licensee and others through use of the Software. Nothing in this License grants Licensor any interest in said documents and information and the Licensee has the sole rights to use and to authorize others to use the documents and information regardless of whether this License remains in effect.
- b. Licensor may post "terms of service" on web pages that are used to access the Software, which may disclaim: (1) any interest of Licensor in Licensee's contents; (2) any liability for use of Licensor's contents; and (3) any damages that may occur due to malware, viruses, or other malicious code that may be accessible through Licensee's content.

- c. Licensor will not charge for public access to Licensee's content. However, Licensor may develop fee-based services, such as automatic notification of code updates. If Licensor develops such services, they will be considered a "major upgrade," and Licensor will negotiate with Licensee with respect to pricing and distribution of proceeds.
16. **Intellectual Property Rights.** Licensor shall retain all ownership, title, copyright, patent, trademark, and other proprietary rights in and to the Software and any component thereof, and all content, features, and functionalities of the Software. Licensee does not acquire any rights, express or implied, in the Software, other than those specified in this Agreement.
17. **Software Escrow.** Licensor has placed all source code constituting and relating to the Software into an escrow account pursuant to the terms of an escrow agreement (the "Escrow Agreement") entered into between Licensor and Lincoln-Parry SoftEscrow, Inc. (the "Escrow Agent") to which Licensee shall be added as a beneficiary upon execution of this Agreement; provided, however, that the Escrow Agreement shall contain substantially the following conditions with respect to release of escrow to Licensee: (i) Licensor is adjudged bankrupt, and/or (ii) in the event of a catastrophic loss which terminates Licensor's operations, then Licensee shall have a non-exclusive, royalty-free, perpetual, worldwide license to use the source code released from the escrow in its sole discretion, solely for its own business use and not for any resell, license, or sub-license. **In consideration of Licensor placing the source code in escrow, Licensee will pay an annual escrow fee of \$750, subject to fee increases by the Escrow Agent.** All charges for additional services which may be required from the escrow company by Licensee as a beneficiary to the escrow agreement shall be payable by Licensee.
18. **WARRANTY DISCLAIMER.** TO THE EXTENT ALLOWED BY LAW, LICENSOR HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
19. **EXCLUSIVE REMEDY.** LICENSEE'S EXCLUSIVE REMEDY FOR A BREACH OF WARRANTY SHALL BE FOR LICENSOR TO REPAIR OR REPLACE THE DEFECTIVE PORTION OF THE SYSTEM OR AT LICENSOR'S ELECTION, TO REFUND THE LICENSE FEES PAID FOR THE DEFECTIVE PORTION OF THE SOFTWARE, FROM THE DATE THE DEFECT IS IDENTIFIED TO THE END OF THE CURRENT LICENSE YEAR.
20. **LIMITATION OF DAMAGES.** EXCEPT FOR CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION UNDER THIS AGREEMENT, NEITHER LICENSOR NOR LICENSEE SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES FOR ANY LOSS OR CLAIM BY EITHER PARTY.
21. **LIMITATION OF LIABILITY.** EXCEPT AS PROVIDED IN PARAGRAPHS 7, 8, AND 9, and EXCEPT FOR BODILY INJURY OR VIOLATIONS OF PARAGRAPH 22, CONFIDENTIAL INFORMATION, IT IS UNDERSTOOD AND AGREED THAT NEITHER PARTY'S LIABILITY, WHETHER IN CONTRACT, IN TORT, IN NEGLIGENCE OR OTHERWISE, SHALL EXCEED THE AMOUNT RECEIVED BY LICENSOR

FROM THE LICENSEE FOR THE LICENSE YEAR IN WHICH THE CAUSE OF ACTION AROSE. THE PRICE STATED HEREUNDER IS A CONSIDERATION IN LIMITING EACH PARTY'S LIABILITY.

**22. Confidential Information.**

- a. Each party acknowledges that confidential information (including trade secrets, software functions and capabilities of the password-protected maintenance module accessible to Licensee, support services, technical user guide and training materials, one-time build fee structures, the contents of any negotiations of such confidential information between the parties to this Agreement, and confidential technical, financial, and business information clearly marked and identified as "confidential") (collectively, "Confidential Information") may be exchanged between the parties pursuant to this Agreement. Each party shall use no less than the same means it uses to protect its similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of the other party. Each party agrees that it will not disclose or use the Confidential Information of the other party except for the purposes of this Agreement or as may be required under the Kansas Open Records Act. Licensee will promptly report to Licensor any disclosure of Licensor's Confidential Information that the Licensee becomes aware of and provide reasonable assistance to Licensor in the investigation and prosecution of any such unauthorized use or disclosure.
- b. Notwithstanding the foregoing, the recipient of Confidential Information may use or disclose the Confidential Information to the extent that such Confidential Information is: (i) already known by the recipient without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient, (iii) rightfully received from a third party without any obligation of confidentiality, (iv) independently developed by the recipient without use of the Confidential Information of the disclosing party, (v) approved by the disclosing party for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient provides the disclosing party with notice of such requirement prior to any such disclosure and takes reasonable steps available to maintain the information in confidence, including allowing the disclosing party to participate in proceedings to defend the confidentiality of the Confidential Information should the Licensee decide to do so in its discretion.
- c. Licensor acknowledges that Licensee is a public entity subject to the requirements of the Kansas Open Records Act and that Licensee shall endeavor to maintain the confidentiality of the Confidential Information of Licensor subject to the requirements of the Kansas Open Records Act and except to the extent, Licensee's employees, contractors, and consultants have a need to access such Licensor Confidential Information in order to enable the Licensee to exercise its rights under this Agreement.
- d. Licensee agrees not to use, or allow its employees or independent contractors to use, the Software and / or Licensor's Confidential Information to create any computer software or documentation that is substantially similar to the Software or its related documentation.

23. **Return of Confidential Information.** Upon the termination of this Agreement for any reason whatsoever, each party may request of the other that all documents, information, data, and/or software however recorded, which contain any of the other’s Confidential Information be returned, provided that the party shall be entitled to charge a reasonable fees and materials charge for doing so. If no request is received for the return of Confidential Information within thirty (30) days of the termination of this Agreement, the Confidential Information shall be destroyed within a reasonable time thereafter and shall not be used for any purpose whatsoever.

24. **Notices.**

a. *Generally.* Except as provided in Paragraph 24.b., notices delivered pursuant to this Agreement shall be sent to the people and addresses shown in this Paragraph. Generally, notices shall be delivered by First Class Mail or courier service. Such notice shall be deemed to have been given when deposited in the United States Mail or courier service properly addressed to the intended recipient.

To Licensor	To Licensee
<p>Bret C. Keast, AICP, President enCode-360, LLC 1415 Highway 6, Suite A-300 Sugar Land, TX 77478 Tel: (281) 242-2960 Email: bret@enCode-360.com</p> <p><i>With copy to:</i> William G. Harger, Attorney at Law William G. Harger &amp; Associates, PLLC 4800 Sugar Grove Blvd., Suite 610 Stafford, Texas 77477 Tel: (281) 325-8009 Fax: (281) 715-4343 fax Email: harger@hargerlaw.com</p>	<p>Toby Dougherty, City Manager City of Hays PO Box 490 Hays, KS 67601 Tel: (785) 628-7320 Email: tdougherty@haysusa.com</p> <p><i>With a copy to:</i> John T. Bird Glassman, Bird, Schwartz, &amp; Park L.L.P. PO Box 727 / 200 West 13th St. Hays, Kansas 67601-0727 Tel: (785) 625-6919 Fax: (785) 625-2473 Email: jtbird@haysamerica.com</p>

b. *Upgrades, Maintenance, Service Interruptions, and Planned Outages.* Notices regarding upgrades, maintenance, service interruptions, and planned outages shall be delivered by electronic mail to the following individuals:

- Superintendent of the Planning, Inspection, and Enforcement Division; and
- City Manager or designee.

Licensee may change the individuals who receive notice pursuant to this Paragraph by electronic mail notice to Licensor.

25. **Assignment.** Licensor may not assign its rights and obligations under this Agreement without prior written notice to Licensee no less than 30 days prior to assignment. Licensee may thereafter continue with the terms of this Agreement attempt to renegotiate with the assignee, or terminate this license pursuant to the provisions of Paragraph 4, Term of License.
26. **Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
27. **No Waiver.** The failure of either party to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.
28. **Effective Date.** The effective date shall be the date on which the Licensee executes this Agreement, or such other date as may be agreed to by the parties and indicated as "Effective Date" below.
29. **Dispute Resolution; Choice of Law and Forum.** Licensor and Licensee agree that this Agreement shall be construed in accordance with the laws of the State of Kansas. Any legal dispute between the parties shall be resolved in the following manner:
  - a. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiation between senior executives of the parties who have the authority to settle the controversy.
  - b. The disputing party shall give the other party written notice of the dispute. The other party shall respond in writing within 10 days after receipt of said notice. The notice and response shall include: (1) a statement of the party's position and a summary of the facts and arguments supporting its position; and (2) the name and title of the executive who will represent the party. The executives shall meet at a mutually acceptable time and place within 20 days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.
  - c. If the controversy or claim has not been resolved within 30 days of the first meeting of the senior executives, the parties shall endeavor to settle the dispute by non-binding mediation.
  - d. If the matter has not been resolved pursuant to the aforesaid non-binding mediation procedures within 90 days of the commencement of such procedure, parties may bring their claim in a court of law. Venue for all actions brought pursuant to this agreement is in Ellis County, Kansas; and all parties consent to Ellis County, Kansas, being the exclusive jurisdiction to resolve said claims or controversies arising pursuant to this agreement.
30. **Integration.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.

31. **Force Majeure.** Licensor shall not be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, or act of government provided that Licensor gives Licensee written notice thereof promptly upon discovery thereof and uses its best efforts to cure the delay.
32. **Amendments and Modifications.** No amendment, modification, or supplement to this Agreement shall be binding on any of the parties unless it is in writing and signed by the parties.
33. **General Interpretation.** The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.
34. **Further Assurances.** Each of the parties agrees to take such further action to execute and deliver such additional documents as may be reasonably required to them to effectuate the purpose and intent of this Agreement.
35. **Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Paragraph, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.
36. **Indemnity.** Each Party (each, an "Indemnitor") shall defend, indemnify and hold the other Party (the "Indemnatee"), its parent, subsidiaries, affiliates, and their respective directors, officers, agents, representatives, contractors, employees, successors and assigns, harmless from and against any and all costs, expenses, damages, claims, suits, actions, liabilities, losses and judgments, including, without limitation, attorneys' fees and legal expenses, based upon personal injury and/or death, property damage, and breaches of confidentiality arising exclusively out of Indemnitor's performance of this Agreement, or otherwise exclusively arising in connection with the acts or omissions of Indemnitor, its employees, agents or contractors. This obligation shall extend beyond the termination or expiration of this Agreement.



\_\_\_\_\_, 2014

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
City of Hays

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
enCode-360, LLC

\_\_\_\_\_  
Licensor

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Authorized Agent (Typed)

\_\_\_\_\_  
Bret C. Keast, President

\_\_\_\_\_  
Authorized Agent (Typed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# KENDIG KEAST

COLLABORATIVE

# POLICY TO PRACTICE

**Review and Re-write of  
Zoning and Subdivision Regulations  
City of Hays, Kansas**

January 10, 2014

IN ASSOCIATION WITH  
ENCODE-360, LLC

## ABOUT THE KKC TEAM

- ♦ Multi-disciplined team of community and environmental planners and land and urban designers
- ♦ Not just code writers — plan implementers
- ♦ Methodical problem solvers with multiple perspectives
- ♦ In-the-trenches experience with local government
- ♦ Leading innovators in the field
- ♦ Professional facilitators and consensus-builders
- ♦ Accustomed to working in rural, small - town environments



Solving regulatory “puzzles” requires a team that can see the issues – and their interdependencies – from all sides.



## KENDIG KEAST COLLABORATIVE

- ♦ **Policy-to-practice implementation expertise**
  - » 100+ strategic assessments, amendments, and complete rewrites
  - » Regulatory programs based on informed community decisions about likely costs and potential trade-offs of plan policies
- ♦ **Leading innovators / educators**
  - » Character-based districts and standards; housing palette; site capacity / resource protection; neighborhood conservation; performance standards
  - » Multiple pathways to “yes” for responsible / “sustainable” development that support community values and objectives
  - » Authors of *A GUIDE TO PLANNING FOR COMMUNITY CHARACTER*; *COMMUNITY CHARACTER: PRINCIPLES FOR DESIGN AND PLANNING*; & *PERFORMANCE ZONING*
- ♦ **Multiple disciplines and broad perspectives**
- ♦ **Creators of enCode360™ — the most feature-rich, Internet-based code publishing software on the market**

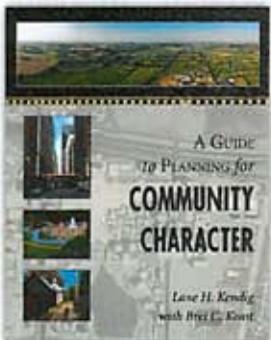
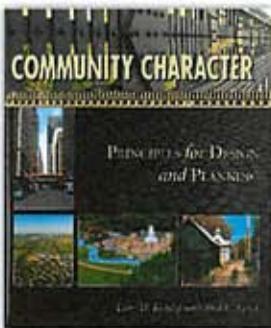
**New development should be distributed in ways that maximize benefit and minimize unnecessary costs to the entire community. It should use land efficiently, be environmentally and economically sustainable, and reinforce the quality and character of Hays.**

*- City of Hays Comprehensive Plan (Chapter 5, The Development Vision)*

## KKC'S PROBLEM-SOLVING

- ♦ **We understand how to:**
  - » Develop and calibrate districts that are based on character, which account for both use and form, including mixed uses
  - » Draft and apply performance and place-based standards to improve the quality and appearance of the City over time
  - » Achieve sustainable development outcomes through resource protection standards and incentives, together with site capacity provisions (design with nature)
  - » Provide increased flexibility through administrative approvals and procedural streamlining
  - » Provide a flexible and broad palette of quality, affordable housing options and choices of living

The use of Community Character ensures development outcomes that are deliberate, predictable, and consistent with community objectives



*KKC specializes in small and medium sized communities in rural, freestanding environments.*



PLAN IMPLEMENTATION EXPERIENCE IN  
**MORE THAN 100**  
COMMUNITIES ACROSS THE COUNTRY

### COMPARABLE PROJECTS

- ◆ Altus, OK
- ◆ Centennial, CO
- ◆ Edinburg, TX
- ◆ Fremont, NE
- ◆ Olathe, KS
- ◆ Seguin, TX
- ◆ Sioux City, IA
- ◆ Valparaiso, IN
- ◆ Zachary, LA

### RECENT APA AWARDS

- ◆ Centennial, CO
- ◆ Edinburg, TX
- ◆ Tangipahoa Parish, LA
- ◆ Valparaiso, IN
- ◆ Zachary, LA

### RECENT CODE PROJECTS

- ◆ Altus, OK
- ◆ Bainbridge Township, OH
- ◆ Bellaire, TX
- ◆ Cuero, TX
- ◆ Durango, CO
- ◆ Edinburg, TX\*
- ◆ Florence, SC\*
- ◆ Fremont, NE\*
- ◆ Galveston, TX
- ◆ Kerrville, TX\*
- ◆ Nassau Bay, TX
- ◆ Pflugerville, TX
- ◆ Sioux City, IA
- ◆ Slidell, LA
- ◆ Jersey Village, TX
- ◆ Seguin, TX
- ◆ McAllen, TX
- ◆ Valparaiso, IN\*

\* DENOTES COLLEGE TOWN EXP.

## Plan Implementation



The primary focus is to review and re-write the City's zoning and subdivision regulations to implement the 2012 Comprehensive Plan.

## Neighborhood Conservation



Neighborhood conservation districts are for the purpose of enabling infill and redevelopment, promoting reinvestment, preserving neighborhood character and integrity, and doing so without requiring variances.

## Improved Readability



Permitted uses in R-3N district



Permitted use table in enCode-360™



## IMPLEMENTATION OBJECTIVES

- ◆ Better allowances for human-scaled, mixed-use development in appropriate areas
- ◆ Better housing choice, affordability, and diversity
- ◆ Protection of natural resources
- ◆ Increased multi-modal transportation options
- ◆ Gateway and corridor enhancement
- ◆ Fiscally-sound development policy and cost efficient urban services

## COMPREHENSIVE PLAN OBSERVATIONS

- ◆ Improved standards are needed to address stormwater management, low impact development, and open space protection
- ◆ Revised standards are needed to consolidate districts that do not result in areas of differing character (e.g., urban vs. suburban)
- ◆ Existing neighborhoods warrant protection through conservation districts and standards
- ◆ Minimum design standards for single family attached and multi-family housing is needed
- ◆ Improved landscaping and “protective appearance” standards will be needed to improve corridor appearance and community livability
- ◆ Improvements will be needed in the subdivision regulations to implement Complete Streets objectives

## EXISTING REGULATIONS OBSERVATIONS

- ◆ The land use tables will need to be streamlined for improved readability and usability
- ◆ The districts may be simplified and reduced in number by defining them according to their character rather than their land use
- ◆ Improved clarity and specificity of standards will achieve a more certain and fair process with predictable outcomes



To improve corridor appearance and walkability, different standards are needed in differing areas of character. For example, more auto-oriented areas of Hays (top photo) will need greater landscape standards than the more walkable, pedestrian areas in downtown (bottom photo).



"Our landscape can accommodate cars and large-format retail without being dominated by parking lots, traffic noise, and separated by buildings that do not relate to each other."

"City environments should provide choice - places that offer both walkable scale and greater space."



## IMPLEMENT PLANS

- ◆ Plans provide the basis for code:
  - » 2012 Comprehensive Plan
  - » Small City and Rural Smart Growth Priority Fixes
  - » The Bike Hays Master Plan
  - » Neighborhood Revitalization Downtown Development Plan
  - » Development Policy

## BE AS SIMPLE AS POSSIBLE

- ◆ Use plain language and illustrative graphics
- ◆ Clearly separate rules, procedures, and definitions
- ◆ Carefully consider mandatory / permissive vocabulary, particularly with reference to design guidelines
- ◆ Create added flexibility and multiple paths to "yes"

## USE THE MARKET TO ACHIEVE OBJECTIVES

- ◆ Create standards and processes such that *good development* is the rule rather than the exception
- ◆ Streamline approvals so as to eliminate unnecessary process, reduce time, and avoid costly submittal requirements

## CREATE VALUE

- ◆ Enhance community character with performance, form, and / or design standards
- ◆ Incorporate up-to-date best practices for responsible / "sustainable" development
- ◆ Conserve the character and quality of existing neighborhoods

## ONE SIZE DOES NOT FIT ALL

- ◆ No "magic bullet" approach will solve all of the land use challenges of a City — we never start with the solution and then work backwards to the problem
- ◆ Regulations should support the things the community values — what makes the place unique

## KENDIG KEAST COLLABORATIVE



**BRET KEAST, AICP**  
PRESIDENT



**GARY MITCHELL, AICP**  
VICE PRESIDENT



**MATT BUCCHIN, AICP, LEED GREEN ASSOCIATE**  
SENIOR ASSOCIATE



**AARON TULEY, AICP**  
SENIOR ASSOCIATE



**JESSICA DUET**  
ASSOCIATE PLANNER



**FRANCES KELLERMAN, LEED-GA**  
ASSOCIATE PLANNER



**MICHELLE QUEEN**  
ASSOCIATE PLANNER / URBAN DESIGNER

## ENCODE-360, LLC



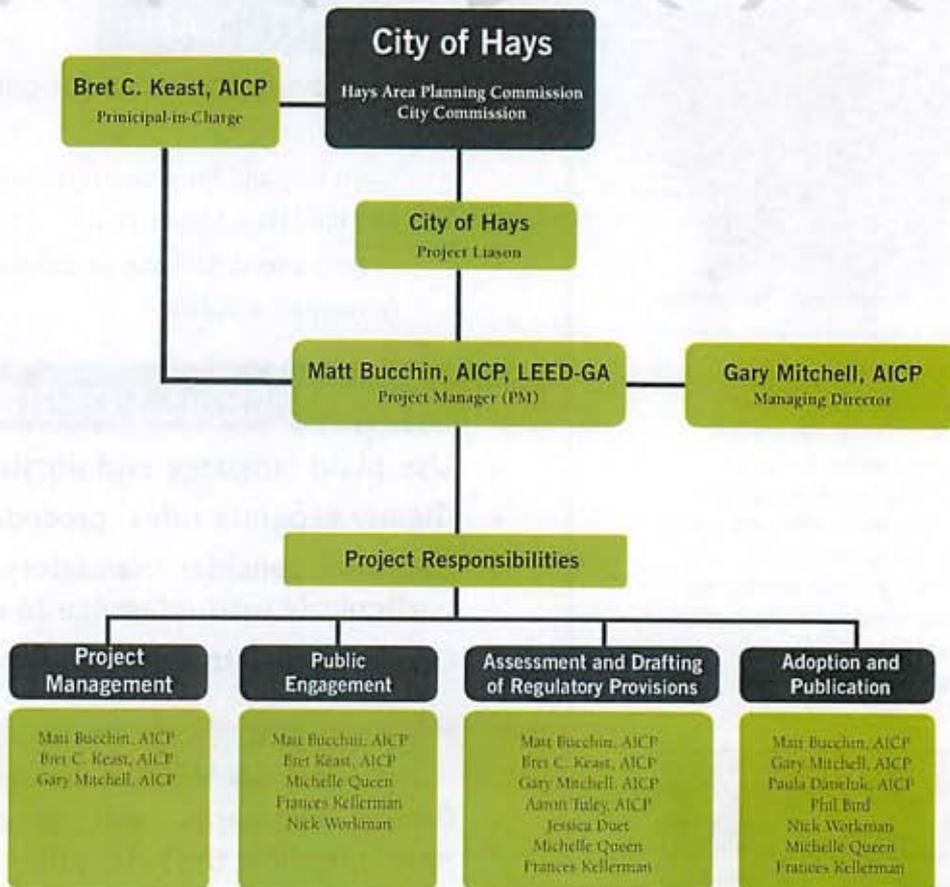
**PAULA DANELUK, AICP**  
BUSINESS DEVELOPMENT MANAGER



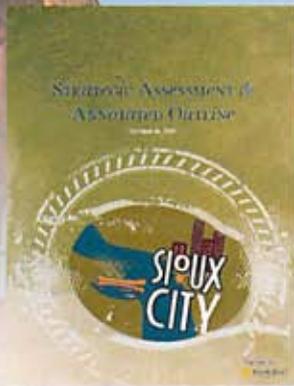
**PHIL BIRD**  
SOFTWARE ARCHITECT AND TECHNICAL SUPPORT



**NICK WORKMAN**  
BUILD TECHNICIAN



- ◆ Multi-disciplined team with the requisite skills and availability to complete the work, including community planners, land planners, zoning administrators, modelers, landscape architects, urban designers, economists, demographers, illustrators, graphic artists, and trained facilitators
- ◆ State and Midwest local government and private consulting experience
- ◆ Perspectives and insights brought to local projects from a national practice
- ◆ Reputation for innovation and repeated success in solving complex and sometimes unpopular problems
- ◆ Strategic partnership with enCode-360™



The top image is the cover of the Strategic Assessment and Annotated Outline written for Sioux City.

Public engagement in Centennial, Colorado during the drafting of their first land development code.



## ACTIVITY 1: PUBLIC PARTICIPATION

- ◆ Project website (optional)
- ◆ Hays Area Planning Commission Work Sessions
- ◆ Joint Hays Area Planning Commission and City Commission Meetings
- ◆ Open door interest group meetings
- ◆ Developers forum

## ACTIVITY 2: ANALYTIC AND STRATEGIC FRAMEWORK

- ◆ Policy and statutory review, regulatory critique, and observation of development outcomes
- ◆ Interviews of "power" and "casual" users
- ◆ Proposed strategic approach and annotated outline of ordinance content and organization
- ◆ Build consensus and solicit support for the proposed approach

## DECISION POINT

- ◆ Joint Hays Area Planning Commission and City Commission Meeting

## ACTIVITY 3: ZONING AND SUBDIVISION REGULATION DRAFTING

- ◆ Draft and deliver three code modules using enCode-360™
- ◆ Presentation, discussion, and feedback from the Hays Area Planning Commission on regulatory provisions and zoning map
- ◆ Review and preparation of public hearing draft
- ◆ Concurrent update to the Development Procedures Policy document

## ACTIVITY 4: ADOPTION AND DELIVERY

- ◆ Public hearing and final adoption
- ◆ Publication in enCode-360™

## ACTIVITY 5: SUPPLEMENTAL SERVICES

- ◆ Training of staff and public officials on the administration and enforcement of the new ordinances (or UDC)
- ◆ Development guidebook including application requirements, forms, and flow diagrams
- ◆ Preparation of a Unified Development Code in lieu of independent ordinances



Project website example from Bay City, Texas

## PROJECT START-UP

- ◆ Project schedule
- ◆ Input to stakeholder groups

## PROJECT WEBSITE (OPTIONAL)

- ◆ Upcoming public involvement activities
- ◆ Meeting agendas and summaries
- ◆ Public draft deliverables

## PROPOSED STRATEGIC APPROACH AND ANNOTATED OUTLINE

- ◆ Strategic approach for rewrite of regulations
- ◆ Outline of content and organization of the new regulations

## THREE MODULE DRAFTS AND REVISIONS

- ◆ Illustrative presentations
- ◆ Draft ordinances in enCode-90°, MS Word / Adobe PDF
- ◆ Revised and final draft regulations

## DRAFT CITYWIDE ZONING MAP

- ◆ Memorandum of strategic direction regarding map amendments
- ◆ GIS map provided in GIS online and electronic file formats

## FINAL ADOPTED REGULATIONS AND ZONING MAP

- ◆ Published online in enCode-90°
- ◆ MS Word and Adobe PDF export

## STAFF TRAINING ON ENCODE-360™

- ◆ User Guide
- ◆ Facilitated online training for in-house use of enCode-90° Maintenance Module



Zoning map amendments are oftentimes necessary as part of a rewrite process.

## BENEFITS

- ◆ Savings of time and streamlined processes
- ◆ Reduced costs
- ◆ Less demand on staff time
- ◆ Customer satisfaction
- ◆ Increased transparency
- ◆ Improved navigability
- ◆ Value added features
- ◆ User - friendly web interface

“I remain quite impressed by your product.”

- Mitchell Silver, AICP,  
President, American  
Planning Association

“We have been using this system for over 10 years to host our complete County Code. Its speed, reliability, and ease in use has lightened our department’s workload. And our citizens are very pleased with the Code’s accessibility.”

- Assistant County Attorney,  
Carroll County, Maryland

## ENCODE-90° STANDARD FEATURES

- ◆ Adobe PDF and MS Word generators
- ◆ At-a-glance, pop-up definitions
- ◆ Mobile device access
- ◆ In-line illustrations, graphics, and tables
- ◆ Public commenting on pending amendments
- ◆ Social media integration
- ◆ Video animation
- ◆ Internal and external hyperlinking

## ENCODE-180° UPGRADE FEATURES

- ◆ Custom site branding
- ◆ e-Reader styled viewer and printer
- ◆ Embedded landscaping, parking, bufferyard calculators
- ◆ GIS interactive maps

## ENCODE-360° UPGRADE FEATURES

- ◆ Agenda, minutes, and application download
- ◆ Forward and retroactive archiving
- ◆ MLS lease / sale mapping
- ◆ Ordinance library
- ◆ Permit system integration
- ◆ Sponsor / advertiser weblinks
- ◆ User - subscription / notification

enCode-90° will provide the City with a robust, web-enabled code; offering a \$15,000 value at no extra cost.

In-line graphics and tables



Online Commenting



Custom Site Branding



Calculators

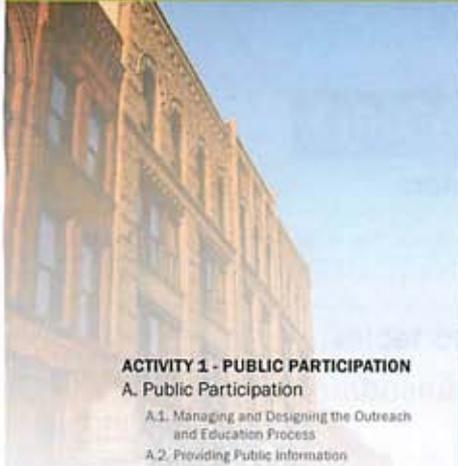


Interactive Maps



Archiving





## ACTIVITY 1 - PUBLIC PARTICIPATION

### A. Public Participation

- A.1. Managing and Designing the Outreach and Education Process
- A.2. Providing Public Information
- A.3. Engaging the Public

## ACTIVITY 2 - ANALYTIC AND STRATEGIC FRAMEWORK

### B. Project Orientation

- B.1. Logistics and Preliminaries
- B.2. Review and Incorporate Existing Documents
- B.3. Introduction to Hays Area Planning Commission and City Commission
- B.4. (OPTIONAL) Project Web Site
- B.5. Interview Stakeholders
- B.6. Conduct Field Reconnaissance

### C. Regulation Analysis/Evaluation

- C.1. Proposed Strategic Approach

### D. Annotated Outline

- D.1. Annotated Outline
- D.2. Build Consensus for the Approach and Outline

## ACTIVITY 3 - REGULATION DRAFTING

### E. Discussion Draft Regulations

- E.1. Draft and Deliver Code Modules

### F. Discussion Draft Citywide Zoning Map

- F.1. Prepare Draft Citywide Zoning Map

### G. Public Hearing Draft Regulations and Citywide Zoning Map

- G.1. Publish Code Modules and Public Hearing Draft Zoning and Subdivision Regs / Map

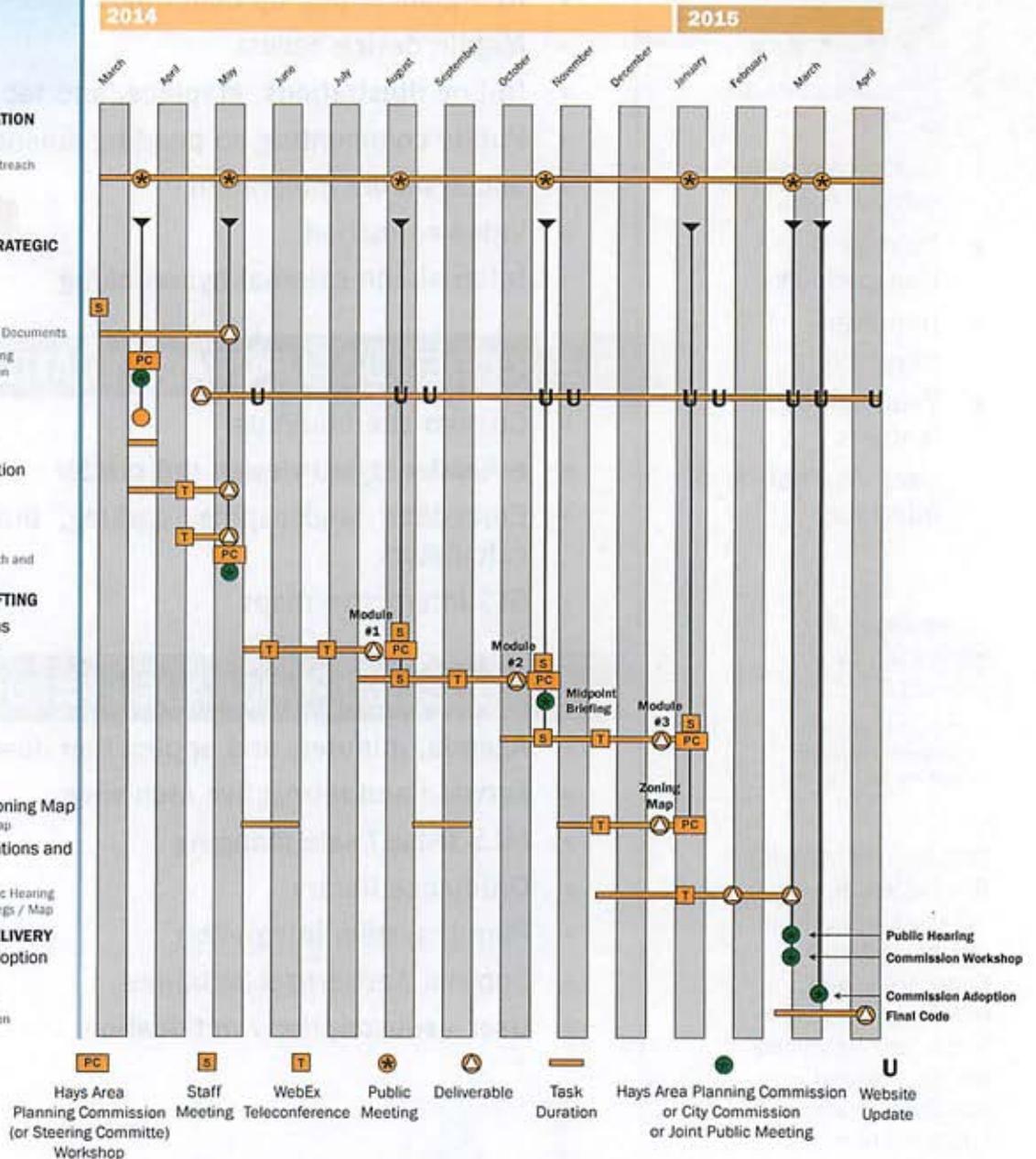
## ACTIVITY 4 - ADOPTION AND DELIVERY

### H. Public Hearing and Final Adoption

- H.1. Conduct Adoption Hearings

### I. Regulation Implementation

- I.1. Publish the Zoning and Subdivision Regulations Electronically



“...brilliance, imagination, skill and deep experience...a crackerjack consultant ...”

“KKC’s innovative use of GIS and 3D technologies to visually depict the potential impacts [of] . . . the proposed zoning changes . . . was invaluable to the process.”

“... a fantastic job making sense of the information and answering questions.”

## UNDERSTANDING

- ◆ KKC brings state, Midwest and national experience, but we understand and appreciate the uniqueness of Hays and its development issues and objectives
- ◆ KKC respects project participants, meets them “where they are,” and builds understanding, trust, and meaningful participation
- ◆ Immersive approach with each of our clients

## PERSPECTIVE

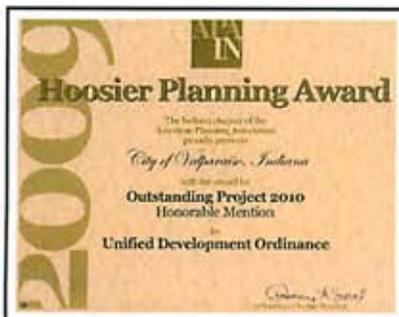
- ◆ KKC’s staff speaks the relevant “languages”
- ◆ KKC provides a multi-faceted analysis

## BROAD AND DEEP EXPERIENCE

- ◆ 100+ zoning and land development codes for communities of similar size, context, and development characteristics
- ◆ Authors and nationally recognized leaders:
  - » Community character
  - » Neighborhood conservation
  - » Affordable housing
  - » Resource protection
  - » Sustainability
- ◆ APA meritorious awards for last four code projects
- ◆ Municipal planning backgrounds of our staff
- ◆ “Policy to Practice” experience and perspective

## CLIENT SERVICE

- ◆ Timely service, with flexibility to adapt to new issues and client requests
- ◆ Thorough analysis and quality writing
- ◆ Adaptive, appropriate technologies





# Commission Work Session Agenda

## Memo

**From:** I.D. Creech, Director-Public Works

**Work Session:** April 3, 2014

**Subject:** Airport Terminal Improvements

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

### Summary

This is an information item to the City Commission on the status of the Airport Terminal Improvement Project to be funded with assistance from the Federal Aviation Administration (FAA) Airport Improvement Program (AIP). An FAA AIP design grant was awarded in June, 2013 for the design of terminal improvements. Through negotiations with FAA for eligibility and design elements and input from citizens, airport operational stakeholders and the Airport Advisory Board, biddable documents are ready to be let for this project.

The proposed time schedule to receive such bids is April 30<sup>th</sup> with consideration by the City Commission at the May 15<sup>th</sup> Work Session with action to be requested at the May 22<sup>nd</sup> meeting. The time between bid receipt and presentation will allow the City engineers and the FAA to review all bids for accuracy and compliance and prepare recommendation for funding.

### Background

At the meeting of May 16, 2013, the Governing Body gave authorization to seek a Federal Aviation Administration (FAA) Grant for engineering/design services for Airport Terminal Improvements. The Grant was awarded through the FAA Airport Improvement Program (AIP) funding for total contract of \$241,029 including the City's assigned match share of \$82,953. Burns and McDonnell Engineering was awarded the contract for these services.

An initial consultation and information gathering meeting was held October 2, 2013 with follow up meetings October 8th. Discussion of the project with the Airport Advisory Board October 7 and December 2 included the design engineer and other items in the Airport Master Plan. From those meetings, several options were created for review both in-house and open public meetings.

Input was solicited from the Transportation Safety Administration (TSA), our current commercial operators in the terminal – Hays Aircraft and Great Lakes Airlines, and Staff. Space allocations/improvements and building construction and equipment were identified and provisions made to address each in the preparation of biddable documents.

On January 6, the Airport Advisory Board preferred the pursuit of the option identified as A-11 which is included in this packet. That plan was forwarded to the FAA for their review and determination of funding eligibility under the Airport Improvement Program and the cost share of participation. The FAA assigned participation costs to each of the areas identified.

- |  |              |
|--|--------------|
| • Hold Area – New Construction           | • 90/10      |
| • Hold Area Rest Rooms –New Construction | • 90/10      |
| • Lobby                                  | • 90/10      |
| • Lobby Rest Rooms                       | • Partial    |
| • Roof                                   | • Partial    |
| • HVAC                                   | • Partial    |
| • Mechanical Upgrade                     | • Ineligible |
| • TSA Baggage Check                      | • Ineligible |
| • TSA Office/Meeting                     | • Ineligible |
| • Commercial Ticket/Office               | • Ineligible |
| • Baggage Claim                          | • Ineligible |
| • Rental Booths                          | • Ineligible |
| • Conference Room                        | • Ineligible |
| • Terminal Office Area                   | • Ineligible |



The existing terminal building was constructed in 1991 and requires multiple updates to attain compliance with current code requirements. The numbers of leaks in the roofing system are beginning to mount and the heating and air conditioning units are adaptations of the initial installation of 1991. Major expenses are projected for 2014 and 2015 to provide much needed maintenance to these systems. Upgrades to the mechanical/electrical utility and incorporating Americans with Disabilities Act (ADA) requirements to existing lavatory facilities are also included. Many of these improvements will also result in less energy consumption and lower utility and maintenance costs.

The Airport actively sought a commercial air service provider using aircraft with seating capacity over the current nineteen (19). The existing secured passenger area will not hold the flight capacity of a service provider with seating capacity in excess of nineteen (19). Staged security clearance and boardings would have to be incorporated or a larger portion of the current lobby area would have to become part of the secure area to accommodate rapid boarding procedures. Staged boarding would inhibit the operation of a carrier by lengthening the amount of time on the ground with each flight. The proposed improvement provides a capacity of fifty (50) passengers with a flex room that could add an additional thirty (30) to a TSA approved secure holding area.

Another improvement proposed is expansion of the baggage inspection area under the control of TSA to accommodate the anticipation of additional baggage. A larger screening area to accommodate additional passenger screening equipment is also included in the presented design.

Rest room facilities in the Terminal building are limited and once a passenger enters the current secured area, no facilities are available until the aircraft disembarks in Denver. An upgrade to existing lobby facilities to the latest ADA guidelines and construction of additional facilities in the secure area are considered very important to future airport use.

### **Legal Consideration**

Because this is an informational item, there is no need for any legal advice at this point. At the stage where action is recommended by City Staff, the City Attorney will comment.

### **Financial Consideration**

Bidding documents are scheduled to be distributed April 7<sup>th</sup> with a project bid date of April 30<sup>th</sup>.

The engineer's estimate for this proposed terminal improvement project is \$1,372,110 compiled as:

Design costs:	241,029
Construction costs:	969,641
Construction services:	<u>116,594</u>
Base Bid	\$1,327,264

Alternate Roof insulation: 23,912  
(note the Fire Alarm is no longer included, but will need some \$\$ for temp hold room expansion).  
Bid with Alternate \$1,372,110

## FUNDING SUMMARY

The proposal for the local match is threefold: use of some of the accumulated Airport Improvement fund; use of the 2014 Airport Operating Budget; and, an allocation from the Commission Financial Policies' Fund.

Based on the engineer's estimated total costs: \$445,496

Airport Improvement Fund	182,500
Airport Operating Fund	60,800
City Commission Financial Policies' Fund	202,196
<b>City's Engineer Estimated Match</b>	<b>\$445,496</b>

Future FAA project match shall be derived from the Airport Improvement Fund. A new revenue source to that fund would be a Passenger Facilitation Charge on each commercial airline ticket sold for departure from the Hays Regional Airport. The Passenger Facility Charge (PFC) Program allows the collection of PFC fees up to \$4.50 by the commercial carrier for every boarded passenger at commercial airports controlled by public agencies. Airports use these fees to fund FAA approved projects that enhance safety, security, or capacity; reduce noise; or increase air carrier competition.

As an example, under the proposal for EAS service approved by the Department of Transportation, Sky West calculated 13,000 Hays boardings per year. Using that number, the PFC would generate \$58,500 annually. Added to the adjusted estimated unencumbered balance of \$100,043 for the Airport Improvement Fund including the encumbrance for the Terminal project's design engineering, FAA project match projects out through 2021.

An annual allocation from the Airport Operating Budget would also be made into the Airport Improvement Fund for use in funding non AIP eligible projects such as a fueling station.

### **Options**

- Authorize Staff to approve the funding plan and authorize Staff to bid the project;
- Do not approve the project funding or bid;
- Do Nothing

### **Recommendation**

Staff recommends approval of the funding plan and authorization to bid the project.

### **Action Requested**

Request the Commission approve Staff proposed funding and authorize Staff to bid for proposals.

## **Supporting Documentation**

Space and Funding Allocation Information  
Estimated Project Schedule

## SPACE AND FUNDING ALLOCATION

Our review with FAA Regional engineers finds that parts of a major remodel and update project are eligible for the 90/10 funding match for the allocation money earned by the Airport's commercial boardings – that magic 10,000 number. Areas that are not eligible would require full local funding. Staff will recommend that those areas be recoverable from rental fees assessed to occupants of the space where possible.



The space allocation chart, as agreed by FAA, is attached. The color coding demonstrates each area's designation – eligible, prorated or ineligible. The allocations contain all the square footage measurements of space for calculation of percentage participation.

As you review the chart:

- 5,754 square feet are eligible for the 90-10% FAA funding
- 2,917 square feet are ineligible for FAA funding
- 774 square feet are partially eligible for 90-10% FAA funding

AIP Eligibility Ratio Calculation:

Total square footage:	9445
Less Non-Usable Space:	<u>774</u>
Total Usable Space:	8671
AIP Eligible Space:	5754
As percentage of total usable space:	<u>8671</u>
AIP Eligibility Ratio:	66% for total project



ROOM AREA SCHEDULE					
NUMBER	NAME	AREA SF	ELIGIBLE SF	PRORATED (SF)	INELIGIBLE (SF)
101	VESTIBULE	195	195		
102	LOBBY/WAITING	1467	1467		
103	CONFERENCE	329			329
104	CHAIR STORAGE	11			11
106	WOMENS	221	221		
108	MENS	242	242		
109	MECHANICAL	215		215	
110	TOILET	22	22		
111	PILOT'S LOUNGE	202	202		
112	TSA SCREENING	560	560		
112A	CORRIDOR	78	78		
113	LOUNGE/ FLEX HOLDROOM	525	525		
113A	CORRIDOR	78	78		
113B	CORRIDOR	74	74		
114	CAR RENTAL	48			48
114A	STORAGE	60			60
115	CAR RENTAL	48			48
115A	STORAGE	60			60
116	STORAGE	107		107	
117	TICKET QUEUE	474	474		
118	TICKETING	120			120
119	OFFICE	76			76
121	TOILET	26			26
123	OPERATIONS	275			275
124	BREAKROOM	261	261		
126	BAGGAGE CLAIM	251			251
127	SUPPLIES	11		11	
128	MECHANICAL EQUIPMENT	155		155	
129	JANITOR/STORAGE	85		85	
130	PROCESSING	288			288
130A	TSA BAGGAGE CHECK	217			217
132	MEETING ROOMS	626			626
133	CORRIDOR	266	266		
134	CORRIDOR	103			103
137	FILE ROOM	127			127
138	STORAGE	122		122	
139	AIRPORT MANAGER'S OFFICE	120			120
140	RECEPTION	132			132
150	SECURE HOLD ROOM	964	964		
151	HOLDROOM TOILET - WOMEN	79	79		
152	HOLDROOM TOILET - MEN	46	46		
153	MECHANICAL	79		79	
		9445	5754	774	2917

## Estimated Schedule

- Bids Out
- Sealed Bids Due
- Consultant Evaluation
  - FAA Evaluation
- Bid Recommendation
  - Bid Acceptance
  - Grant Application
  - Grant Acceptance
  - Notice to Proceed
- Construction Completion
- April 7
- April 30
- April 30-May 15
- April 30-May 15
- May 15 Work Session
- May 22 GovBody Meeting
- May 22 GovBody Meeting
- June 12 GovBody Meeting
- June 12 GovBody Meeting
- January 2015



# Commission Work Session Agenda

## Memo

**From:** Toby Dougherty, City Manager

**Work Session:** April 3, 2014

**Subject:** EPA Fine for Exceeding Permit Limitations  
at Wastewater Treatment Facility

**Person(s) Responsible:** Toby Dougherty, City Manager  
John Bird, City Attorney

### Summary

In 2012, discharge at the City of Hays wastewater treatment facility was out of compliance with the permit issued by the Kansas Department of Health and Environment. KDHE was notified immediately and staff worked to correct the compliance issue ASAP. In 2013, the Environmental Protection Agency inspected the wastewater facility and noted the permit violation. The EPA determined a fine was in order and initially proposed a fine of \$29,000, but after negotiation, has issued a fine of \$18,000.

### Background

The City of Hays wastewater treatment facility is an older mechanical facility. Numerous modifications have been made to the facility in the past 40 years. The facility operates under a permit issued by KDHE. Over the years, permit discharge requirements for nitrates, ammonia, and phosphates, have become more and more stringent. Given the age and limitations of the treatment facility, it has become more and more difficult to meet the ever-tightening standards.

In 2009, the City of Hays agreed to work with KDHE in order to test various processes and techniques to lower nitrates, ammonia, and phosphates while still working in the same framework. The goal was to determine what methods were successful in hopes of identifying a few best practice examples that could be utilized in older mechanical facilities throughout the state of Kansas. If successful, it could mean that the Hays treatment facility, as well as many others throughout the state, could remain viable and effective without an expensive replacement.

### Discussion

In 2012, City staff was implementing one of the test processes mentioned above. The process was not successful and ammonia limitations were exceeded for a period of several days. KDHE was immediately notified and staff worked to correct the problem ASAP. In 2013, the EPA decided to inspect the facility. EPA staff spent several days going through records and interviewing staff. While the impetus for the inspection was the ammonia issue, they did find a few small non-compliance issues as well such as

chlorine residual levels that were too low and BOD5's that were out of compliance. These are things that staff was aware of and had already corrected as well as implemented preventative measures to present in the future. This fact did not matter to EPA staff and the occurrences were included in the fine justification.

After the investigation, the EPA initially decided to issue a fine of \$29,000, but after negotiations reduced it to \$18,000 for being out of compliance with the terms of the Clean Water Act. Staff cannot dispute their findings and they do have the ability to administer fines. The potential fine is much higher and it is not likely that if the City contested the matter that it would have a better result than has been negotiated.

As previously mentioned, the wastewater treatment facility is quite old and complicated in nature. It was designed for a time when discharge requirements were not nearly as stringent as they are today. Staff has been working to keep the facility as viable as possible in order to avoid a complete replacement which could cost \$35 million. However, due to the complicated processes involved, and the experimentation that has taken place, we have been out of compliance with our permit limitations. That being said, staff was worked diligently to improve processes and upgrade the facility to help prevent occurrences of this nature in the future. This includes a significant upgrade to the SCADA system.

Going forward we will be much more cautious in how we work with KDHE to test new processes. In fact, we may stop altogether as we want to avoid another situation where a fine could result.

### **Legal Consideration**

This matter has been negotiated to the lowest level achievable without litigation and there are no known legal obstacles to proceeding as recommended by City Staff.

### **Financial Consideration**

The \$18,000 fine will be paid for out of Water/Sewer Contingency.

### **Options**

The City Commission has the following options:

- Authorize paying the fine.
- Challenge the fine in court.

### **Recommendation**

City staff recommends paying the \$18,000 fine.

### **Action Requested**

Approve the payment of the \$18,000 fine to the EPA to be paid out of Water/Sewer contingency.

### **Supporting Documentation**

EPA Order



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

FEB 12 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John Bird, Esq.  
Glassman, Bird, Schwartz & Park, LLP  
200 West 13<sup>th</sup> Street  
Hays, Kansas 67601

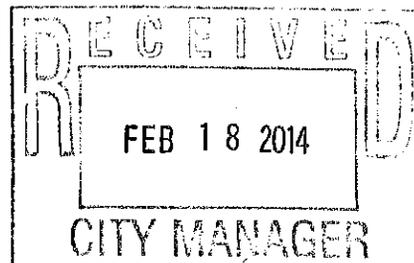
Mr. Toby Dougherty  
City Manager  
P.O. Box 490  
1507 Main Street  
Hays, Kansas 67601

Re: City of Hays, Kansas  
Complaint and Consent Agreement/Final Order

Dear Sirs:

Please find the enclosed Complaint and Consent Agreement/Final Order. Please note the document sets forth in paragraph 1 of the Final Order, page 7, that Respondent will agree to pay a mitigated civil penalty of Eighteen Thousand Dollars (\$18,000) pursuant to the payment schedule set forth within but no later than thirty days (30) days of the effective date of the Final Order. Please sign on page 10, and return the original to the following:

Melissa Bagley  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219



Please contact me at (913) 551-7522 or via email at [bagley.melissa@epa.gov](mailto:bagley.melissa@epa.gov) if you have any questions regarding this process and/or the settlement document. Thank you for your attention to this matter.

Sincerely,



Melissa A.C. Bagley  
Assistant Regional Counsel  
Office of Regional Counsel

003 01 007

Enclosure



4. Respondent is the City of Hays, Kansas (hereafter “Respondent” or “the City”), a political subdivision of the State of Kansas and a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works (POTW) that treats domestic, commercial, and industrial wastewater.

#### Statutory and Regulatory Framework

5. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial and municipal waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters,” in part, as the “waters of the United States,” which are defined at 40 C.F.R. § 122.2, and which include tributaries to waters of the United States.

11. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

12. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

13. The Kansas Department of Health and Environment (KDHE) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and KDHE dated May 23, 1973, as amended. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

15. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. At all relevant times, Respondent has owned and operated the wastewater treatment facility and its associated sewer collection and transmission systems, which receive and treat wastewater from residential, commercial, and industrial connections within the City of Hays, Kansas.

17. Respondent’s wastewater treatment facility described in Paragraph 16 is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

18. Respondent’s wastewater treatment facility causes the “discharge of pollutants” as defined by the CWA Section 502(12), 33 U.S.C. § 1362(12).

19. Respondent’s wastewater treatment facility discharges pollutants via an outfall into Big Creek via Chetolah Creek, each of which is a “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

20. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, and as such Respondent’s discharge of pollutants requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. KDHE issued NPDES Permit No. KS0036684 to Respondent for discharges from its wastewater outfall into Big Creek via Chetolah Creek. The permit became effective October 1, 2010, and will expire February 28, 2014.

22. Section A, the Effluent Limitations and Monitoring Requirements section of Respondent’s NPDES permit, authorizes discharges from the specified outfalls as limited by the listed effluent limitations, including the following:

a. Ammonia as Nitrogen

- i. effluent limitations for Outfall 001A1 - a monthly average concentration limitation ranging from 4.1 to 12.6 milligrams per Liter (mg/L), depending on the month
- ii. monitoring frequency - twice monthly

- b. 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>)
  - i. effluent limitations for Outfall 001A1 - for November through March, a weekly average concentration limitation of 40 mg/L and a monthly average concentration limitation of 25 mg/L; for April through October, a weekly average concentration limitation of 30 mg/L and a monthly average concentration limitation of 20 mg/L
  - ii. monitoring frequency - twice monthly
- c. Total Suspended Solids (TSS)
  - i. effluent limitations for Outfall 001A1 - a weekly average concentration limitation of 45 mg/L, and a monthly average concentration limitation of 30 mg/L
  - ii. monitoring frequency - twice monthly
- d. *Escherichia coli* (*E. coli*)
  - i. effluent limitations for Outfall 001A1 - for April through October, a monthly geometric average of 262 colonies/100 milliliters (ml); for November through March, a monthly geometric average of 2,358 colonies/100 ml
  - ii. monitoring frequency - twice monthly.

23. Section C, the Supplemental Conditions for Golf Course, Park and Ballfield Irrigation section of Respondent's NPDES permit, specifies certain management and monitoring requirements for treated water from wastewater treatment facility that will be utilized for irrigation purposes. Paragraph 1 of this section specifies a minimum daily average concentration limit for total residual chlorine in the irrigation water of 2.5 mg/L, and a minimum allowable concentration limit for total residual chlorine of 1.0 mg/L.

24. On April 15-18, 2013, an EPA representative performed a Compliance Sampling Inspection (hereafter "the EPA inspection") of Respondent's facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its NPDES permit and the CWA. During the EPA inspection, the inspector collected wastewater samples from Outfall 001A1, observed the wastewater treatment facility, and reviewed Respondent's self-monitoring records. The inspector issued a Notice of Potential NPDES Permit Violations at the end of the inspection, and EPA sent the report documenting the findings of the inspection to Respondent on or about August 5, 2013.

### ALLEGATIONS

25. The facts stated in Paragraphs 15 through 24, above, are herein incorporated.

26. Based on observations documented during the EPA inspection and review of available information, EPA alleges that Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by violating the terms and conditions of its NPDES permit, in at least the following ways:

#### Count I - Failure to Comply with Effluent Limitations

27. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its NPDES permit, by exceeding the ammonia monthly average concentration limit during the months of June, July, August, September, and December 2011; and January, February, March, and June 2012.

28. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its NPDES permit, by exceeding the BOD<sub>5</sub> weekly average during the months of June 2011, January 2012 and June 2012; and by exceeding the monthly average concentration limit during the months of June and July 2011, and January and June 2012.

29. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its NPDES permit, by exceeding the TSS weekly and monthly average concentration limits during the month of June 2011.

30. Respondent violated Section A, the Effluent Limitations and Monitoring Requirements section of its NPDES permit, by exceeding the applicable *E. coli* limit during the months of August 2011 and January, April and May 2012.

#### Count II - Failure to Comply with Irrigation Disinfection Limits

31. Respondent violated Section C of its NPDES permit, titled "Supplemental Conditions for Golf Course, Park and Ballfield Irrigation," by failing to meet the minimum total residual chlorine concentration in the Reclaimed Water Basin to be used for irrigation of public use areas during the months of September 2010, February 2011, and September 2011.

32. Respondent's violations of the terms and conditions of its NPDES permit, as described in Paragraphs 27 through 31, above, are violations of Section 301(a), 33 U.S.C. § 1311(a), and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

33. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 43 below.

**CONSENT AGREEMENT**

34. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order.

35. Respondent admits the jurisdictional allegations set forth in this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

36. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

37. Respondent waives any right to contest the allegations set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.

38. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

39. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

40. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

41. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent is in compliance with all requirements of the CWA and its NPDES permit.

42. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 41 of this Consent Agreement/Final Order.

43. Respondent consents to the issuance of the Final Order hereinafter recited and agrees to pay a mitigated civil penalty in the amount of \$18,000.

44. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Allegations.

Reservation of Rights

45. EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

46. With respect to matters not addressed in this Consent Agreement/Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Eighteen Thousand dollars (\$18,000) within thirty calendar days of the effective date of this Final Order. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2014-0025 to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to:

Erin Weekley  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

2. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

3. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. This Final Order shall apply to and be binding upon Respondent, his agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein, comply with the terms of this Consent Agreement/Final Order.

6. This Final Order shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

7. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Erin Weekley  
Assistant Regional Counsel

\_\_\_\_\_  
Date

RESPONDENT:  
CITY OF HAYS, KANSAS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 7

**CERTIFICATE OF SERVICE**

I certify that on the date below, I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

The Honorable Kent Steward  
Mayor of Hays  
P.O. Box 490  
Hays, Kansas 67601.

In addition, I certify that I sent by first class mail a true and correct copy of the original Complaint and Consent Agreement/Final Order to:

Michael B. Tate  
Director, Bureau of Water  
Kansas Department of Health and Environment  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name

**KACM Question about snow removal**

<u>City</u>	<u>Ordinance</u>	<u>Enforced</u>
Mulvane	yes	no
Baldwin	yes	no
Ellsworth	yes	rarely
DeSoto	yes	rarely
Salina	yes	rarely
Tonganoxie	yes	rarely
Seneca	yes	no
Goddard	yes	no
Bonner Springs	yes	yes
WaKeeney	no	
Marysville	yes	complaint basis
Lindsborg	yes	rarely/complaint
Edwardsville	yes	no
Iola	yes	no
Lawrence	yes	minimally
Junction City	yes	no
Great Bend	yes	rarely



RESOLUTION NO. 2013-010

A RESOLUTION ADOPTING BY REFERENCE THE CITY OF HAYS CITY COMMISSION RULES OF PROCEDURE AND REPEALING ALL PREVIOUS RESOLUTIONS, MOTIONS OR ACTIONS IN CONFLICT THEREWITH.

WHEREAS, the *City of Hays City Commission Rules of Procedure* contains a full and complete set of rules, regulations, standards, and procedures which govern the proceedings of the Commission; and,

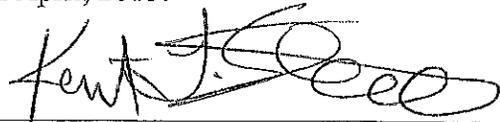
WHEREAS, it is the desire of the governing body of the City of Hays to adopt the provisions of the *City of Hays City Commission Rules of Procedure*, to apply in all of its affairs;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS:

- A. That the *City of Hays City Commission Rules of Procedure*, as attached hereto and as may be amended from time to time, is hereby adopted by the City of Hays, Kansas.
- B. That it shall be the policy of the City of Hays, Kansas, to abide by and conform to in all respects the provisions of the aforesaid *City of Hays City Commission Rules of Procedure*.
- C. That the City Clerk of the City of Hays, Kansas, shall maintain a copy of the *City of Hays City Commission Rules of Procedure*, and of this Resolution in the Office of the City Clerk, and shall make same available to any interested citizen.
- D. That all previous resolutions, motions or actions in conflict with the *City of Hays City Commission Rules of Procedure* are hereby repealed.

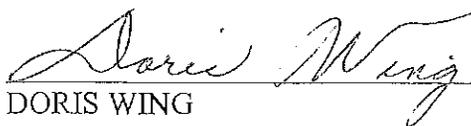
This resolution shall be effective upon its approval by the City Commission of the City of Hays, Kansas.

Adopted by the Commission on the 25<sup>th</sup> day of April, 2013.



KENT STEWARD  
Mayor

ATTEST:



DORIS WING  
City Clerk

(SEAL)



**CITY OF HAYS**  
**CITY COMMISSION**  
**RULES OF PROCEDURE**

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Adopted this 25<sup>th</sup> day of April, 2013, by the City Commission at a regular meeting, by a majority vote of the members attending.

1. Rules of Procedure - Generally

1.1. Authority: The Code of Ordinances of the City of Hays provides that the City Commission shall determine its own rules of procedure.

1.2. Adoption of Rules: The following set of Rules of Procedure shall be in effect upon their adoption by the Commission.

1.3. Rules - New Commission: Each year, at the first regular meeting of the City Commission in April, or at the first meeting following the canvassing and certification of the election votes by the Ellis County Clerk and Ellis County Commission, the Commission shall immediately, following the election of the Chairperson and Vice-Chairperson of Commission, as provided in Sec. 4.1, adopt Rules of Procedure, either by adopting the prior Commission's Rules (with or without amendments) or by adopting new rules.

1.4. Rules of Order: These Rules of Procedure shall govern the proceedings of the Commission, and "Robert's Rules of Order Revised" shall govern those matters that these Rules of Procedure do not govern.

2. Meetings, Quorum, Attendance, Rules of Order:

2.1. Meetings to be Public: All meetings of the Commission shall be open to the public as per the Kansas Open Records Act, subject to the exemptions therein.

2.2. Quorum: A majority of the members of Commission, three (3), shall constitute a quorum. If a quorum is not present, those in attendance shall be listed and they shall adjourn to a later time.

2.3. Business Vote: All ordinances shall require the affirmative vote of the majority of the five (5) commission members.

2.4. Compelling Attendance: The Commission may adjourn from day to day to compel the attendance of absent members.

2.5. Right of Floor: Any member desiring to speak shall be recognized by the chair, and shall confine his/her remarks to one subject under consideration or to be considered.

### 3. Types of Meetings

3.1. Regular Meetings: The Commission shall meet in the Commission Chambers of City Hall on the second and fourth Thursdays of each month at a time specified by resolution. Should the regular meeting date be a holiday, the Board of Commissioners shall meet on the Tuesday preceding the holiday at the regular hour. Calls for regular meetings other than as provided above herein shall be in accord with Hays City Code Sec. 2.04.120.

3.2. Special Meetings: Special meetings shall be called and held pursuant to Hays City Code Sec. 2.04.130.

3.3. Work Sessions: The Commission may meet informally in work sessions (open to the public), generally to be held on the first and third Thursday at a time to be announced at the meeting preceding each meeting in the Commission Chambers to review forthcoming programs of the City, receive progress reports on current programs or projects, or receive other similar information from the City Manager and staff, provided that all discussions thereon shall be informal and no formal action shall be taken at any such session.

3.4. Regular and Special Meetings and Work Sessions: Notices of all meetings and work sessions shall be posted at City Hall, showing place, date and time of meeting or session, as well as an agenda for such meeting or session, and further disseminated according to the requirements of the Kansas Open Meetings Act.

3.5. Executive Sessions: Executive Sessions or closed meetings may be held in accordance with the provisions of the Kansas Open Meetings Act.

3.6. Adjourned Meetings: Any meeting of the Commission may be adjourned to a later date and time, provided that no adjournment shall be for a longer period than until the next regular meeting.

3.7. Emergency Meetings: Emergency meetings, necessitated by national, statewide or local catastrophe, riot, or insurrection, requiring immediate action for which the Commission may need to act immediately, shall be called by available Commission members, who may act by emergency declaration, with or without a quorum, and by the majority of as many Commission members as are present, to take only such actions as are necessary to restore the public welfare and peace to its more normal state. This rule shall prevail only until such time as Commission passes an ordinance to deal with such extraordinary circumstances. As a part of the emergency declaration, such Commission members as are present may by majority vote of those present suspend all or any portion of the within rules for such emergency meeting.

4. Mayor and Duties

4.1. Election of Mayor and Mayor Pro Tem: At the first regular meeting of the City Commission in April of each year, or at the first meeting following the canvassing and certification of the election votes by the Ellis County Clerk and Ellis County Commission, a Chairperson and Vice-Chairperson shall be elected. The Chairperson shall have the title of Mayor. The Vice-Chairperson shall have the title of Vice-Mayor. The meeting shall be called to order by the Mayor who shall accept nominations for the offices of Mayor and Vice-Mayor. The election shall be by roll call vote or by open ballot in a contested election and it shall require a majority vote by the members of the Commission.

4.2. Chairperson / Mayor: The Chairperson shall preside at all meetings of the Commission. In the absence of the Chairperson, the Vice-Chairperson shall preside. In the absence of both the Chairperson and Vice-Chairperson, the City Manager shall call the Commission to order, whereupon the members of the Commission present shall elect a temporary chairman.

4.3. Call to Order: The person presiding shall take the chair precisely at the hour appointed for the meeting and shall immediately call the Commission to order. A temporary chairman shall serve as presiding officer of the Commission until the arrival of the Chairperson or Vice-Chairperson, at which time the temporary chairman shall immediately relinquish the chair upon the conclusion of the business immediately before the Commission.

4.4. Preservation of Order: While the Commission is in session, the members must preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the

Commission nor disturb any member while speaking or refuse to obey the orders of the Commission or its presiding officer. Media coverage may be provided so long as said coverage does not interfere with the orderly conduct of Commission meetings. Any person making personal, impertinent or slanderous remarks, or who shall become boisterous, while addressing the Commission may be requested to leave the meeting and may be forthwith, by the presiding officer, barred from further audience before the Commission.

4.5. Points of Order: The person presiding shall determine all points of order, subject to the right of any member to appeal to the Commission. If any appeal is taken, the question shall be, "Shall the decision of the presiding officer be sustained?"

4.6. Questions to be Stated: The person presiding shall cause all questions to be stated, submitted to vote and announce all results. A roll call vote shall be taken upon the request of any member in the manner provided in these rules.

4.7. Appointment of Board, Commission, Committee and Authority Positions: Prior to appointment of any board member, commission or committee member or authority member, the term for which or vacancy of which will occur before the expiration of the then-Mayor's term, copies of any applications, letters of intent, or other indication of interest shall be provided to the Commission for review. At the regular meeting of the Commission preceding the meeting at which the appointment will be made, the Mayor shall make a recommendation for the Commission's consideration. At the next regular meeting, the Mayor shall make the appointment, subject to formal approval by the Commission. If the appointee does

not receive a majority vote of Commission, then any member of Commission may make a nomination for the position, subject to formal approval by the Commission. Such nomination shall be made from the applications, letters of intent or other indication of interest previously provided to the Commission. The Commission by unanimous consent may waive the time limits for this procedure.

5. Order of Business and Agenda:

5.1. Order of Business: All meetings of Commission, except executive sessions as outlined, shall be open to the public. At the hour appointed for meeting, the Commission shall be called together by the Chairperson, and in his/her absence by the Vice-chairperson. It shall be determined whether a quorum is present. Upon the appearance of a quorum the board of commissioners shall proceed to business, which shall be conducted in the following order:

1. Reading of the minutes of the last regular meeting and intervening special meetings, which, if no corrections are offered, shall stand approved;
2. Presentation of financial statements;
3. Citizen comments;
4. Consent agenda;
5. Unfinished business;
6. New business;
7. Report of city manager;
8. Commission inquiries and comments;

9. Executive session (if required);
10. Adjournment.

The foregoing order of business shall not, however, prohibit the introduction of any germane material or resolution by any member of the Commission under any appropriate heading of business hereinabove stated. For good reason, the person presiding may alter the order of the agenda unless decided otherwise by majority vote of Commission quorum present.

5.2. Presentation by Members of Commission: The agenda shall provide a time when the Chairperson or any Commission member may bring before the Commission any business that he/she feels should be deliberated upon by the Commission. These matters need not be specifically listed on the agenda, but formal action on such matters shall be deferred until a subsequent Commission meeting, when they can appear on the agenda, except that immediate action may be taken upon a vote of two-thirds of all members of the Commission.

5.3. Reading of Minutes: Unless a reading of the minutes of a Commission meeting is requested by a member of the Commission, such minutes may be approved without reading, if each member has been previously furnished with a copy of the minutes.

5.4. Rules of Debate:

(a) Presiding officer. The person presiding may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges of a Commission member by reason of his/her acting as the person presiding.

(b) Getting the floor. Every member desiring to speak shall address the chair, and upon recognition by the presiding officer, shall confine himself/herself to the question under debate, avoiding all personalities and indecorous language.

(c) Interruptions. A member, once recognized, shall not be interrupted when speaking unless it be to call him/her to order, or as herein otherwise provided. If a member, while speaking, be called to order, he/she shall cease speaking until the question of order be determined, and if in order, he/she shall be permitted to proceed.

(d) Introduction of ordinances and resolutions. Each ordinance or resolution shall be introduced and moved to be adopted as follows: "I move the introduction and adoption of Ordinance No. \_\_\_\_ (or Resolution No. \_\_\_\_)."

(e) Debate. The Commission member moving the adoption of an ordinance or resolution shall have the privilege of opening debate after the motion for adoption of the ordinance or resolution, but shall not speak against same. Such Commission member shall have the privilege of closing debate, by being invited by the presiding officer to speak last before vote is taken.

(f) Remarks entered in minutes. A Commission member may request, through the presiding officer, the privilege of having an abstract of his/her statement on any subject under consideration by the Commission entered in the minutes.

6. Ordinances, Resolutions, and Motions

6.1. Form: Ordinances and resolutions shall be presented to the Commission only in printed or typewritten form.

6.2. Voting: Voting decides all questions ultimately. Yes or no vote shall be taken from each Commission member upon the consideration of passage of all motions, ordinances and resolutions and shall be entered upon the official record of the Commission.

6.3. Tie Vote: In the event of a tie in votes on any motion, the motion shall be considered failed.

7. Citizens' Rights

7.1. Addressing the Commission: Any person desiring to address the Commission by oral communication shall first secure the permission of the presiding officer, provided, however, that preference will be given to those persons who have notified the City Manager by noon of the Friday immediately preceding the Thursday Commission meeting of their desire to speak in order that their name may be placed on the agenda and they will be recognized by the presiding officer without further action.

7.2. Manner of Addressing the Commission: Each person addressing the Commission shall step up to the microphone, shall give his/her name and address in an audible tone of voice for the record and, by prior determination, and, on a case-by-case basis, time limits may be imposed by the presiding officer. All remarks shall be addressed to the Commission as a body, and not to any member thereof. No person,

other than members of the Commission and the person having the floor, shall be permitted to enter into any discussion, except by the authority of the presiding officer.

7.3. Courtesy Requirements: As a courtesy to all who use the City Commission Chambers, the City Commission shall require that everyone:

1. Remove hats, caps and sunglasses.
2. Refrain from chewing gum or tobacco and eating.
3. Refrain from smoking.
4. Turn off all cell phones and pagers.

8. Suspension and Amendment of these Rules

8.1. Suspension of these Rules: Any provision of these rules not governed by the City Code of Ordinances, City Code, state statutes or general state law may be temporarily suspended by a vote of a majority of the Commission. The vote on any such suspension shall be taken by a roll call vote and entered upon the record.

8.2. Amendment of these Rules: These rules may be amended, or new rules adopted, by a majority vote of all members of the Commission, provided that the proposed amendments or new rules shall have been placed on the agenda and provided to all Commission members prior to the Commission meeting at which action is taken on the amended or new rules.