

Memo

To: City Commission
From: Jacob Wood, Assistant City Manager
Date: 4-28-16
Re: May 5, 2016 Work Session

Please find the attached agenda and supporting documentation for the May 5, 2016 Work Session.

Item 2 – Downtown Pavilion Project

DHDC has been working with FHSU to develop a plan for a Downtown Pavilion Project. The FHSU students will be presenting the plan to the City Commission. See attached documentation for more information. DHDC does not plan to ask the City Commission to take any action. Here is a list of Pros and Cons for this project:

PROS:

- Provides a feature in the Downtown where nothing similar exists
- Initial cost would not be paid by the City
- Multi-purpose use for events
- The project includes a restroom facility
- Collaborative project between DHDC, FHSU, and the City of Hays

CONS:

- On-going Expenses - \$2,000 lease, \$824 electricity, \$2,000 upkeep, \$400 supplies, Total \$5,224
- Adding additional expense with decreasing revenues
- Many moving parts could result in complications and delayed project timelines
- Stability of elevator could affect the site in the future
- Increased traffic on marginal street could require replacement and/or repair

Item 3 – Economic Development Policy Revisions

Please refer to the attached Commission memorandum from Toby Dougherty, City Manager. The Commission has had several discussions about the Economic Development Policy over the last few months. Suggestions that have been discussed have been incorporated into an updated policy. The Commission will have the opportunity to make further changes and/or approve the policy.

Item 4 – Commission Goals and Objectives for 2017 Budget

Finance Director, Kim Rupp, will provide some information on sales tax performance. The Commission will then have the opportunity to outline budget priorities as it regards to the upcoming budget cycle.

**CITY OF HAYS
CITY COMMISSION WORK SESSION
THURSDAY, MAY 5, 2016 – 6:30 P.M.
AGENDA**

1. **ITEM FOR REVIEW: [April 7, 2016 Work Session Notes \(PAGE 1\)](#)**
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
2. **ITEM FOR REVIEW: [Downtown Pavilion Project \(PAGE 5\)](#)**
PERSON RESPONSIBLE: Sara Bloom, DHDC Executive Director
3. **ITEM FOR REVIEW: [Economic Development Policy Revisions \(PAGE 31\)](#)**
PERSON RESPONSIBLE: Toby Dougherty, City Manager
4. **ITEM FOR REVIEW: Commission Goals and Objectives for 2017 Budget**
PERSON RESPONSIBLE: Toby Dougherty, City Manager
5. **OTHER ITEMS FOR DISCUSSION**
6. **EXECUTIVE SESSION (IF REQUIRED)**
7. **ADJOURNMENT**

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

City of Hays
City Commission
Work Session Notes
Thursday, April 7, 2016 – 6:30 p.m.

Present: Eber Phelps, Shaun Musil, James Meier, Lance Jones, John Bird, Toby Dougherty and Kim Rupp

Absent: Henry Schwaller IV

March 17, 2016 Work Session Notes

There were no corrections or additions to the minutes of the work session held on March 17, 2016; the minutes stand approved as presented.

Alcohol Consumption on City Streets

At the February 18, 2016, Work Session, Commissioner Musil requested additional information about the City's alcohol ordinances. The inquiry was related to the City's ability to allow the sale, possession, and consumption of alcohol on public property for special events.

Assistant City Manager, Jacob Wood, stated that State law dictates that no person shall drink or consume alcoholic drinks on public streets, alleys, roads, or highways unless the local governing body approves an ordinance that exempts them from the provision. The City of Hays exempted its parks from this law in the late 1970's. This exemption allows events like Oktoberfest, Fire on the Frontier, and Wild West Festival to include the sale, possession, and consumption of alcohol.

There has been an increasing demand from the Downtown Hays Development Corp (DHDC) and other groups to find a way to hold events on streets and sidewalks that would include the sale, possession, and consumption of alcohol.

The three options available to the City that would allow alcohol on public property include:

- Approving an ordinance that would exempt specific areas permanently,
- Approving exemption ordinances for special events on a case by case basis; or
- Approving an ordinance that would give the City Manager administrative authority to exempt public property for special events.

Commissioner Musil stated he supported the third option that would enable the City Manager to grant exemptions for alcohol consumption on city streets and sidewalks.

City Manager, Toby Dougherty, stated if the Commission chooses to grant the authority to the City Manager, there still would be an appeal process if Commissioners disagree with the decision made.

It was the consensus of the Commissioners to move this item forward for consideration at the April 14, 2016 Commission meeting. They will be asked to consider approving an ordinance that would give the City Manager administrative authority to exempt public property for special events.

Sandy Jacobs, President of the Downtown Hays Development Corporation, thanked Police Chief Don Scheibler and City staff for their assistance in making these events work and work within the law.

Chairperson Phelps recognized Police Chief Don Scheibler's leadership and his efforts to be involved in the Community.

Purchase of Front-end Loader for Public Works Service Division

Greg Sund, Director of Public Works, reported that the fleet replacement schedule for 2016 includes replacement of a front-end loader for the Public Works Service Division. This purchase will replace a 1996 Case 621B front-end loader that has reached its programmed life of 20 years. The 2016 budget includes \$180,000 from the New Equipment Reserve fund for this purchase.

The Public Works Department advertised for bids in February and received five responsive bids. The low bid was from Sellers Equipment for a Doosan DL220-5 front-end loader in the amount of \$127,150.

At the April 14, 2016 Commission meeting, Commissioners will be asked to award the bid for purchase of a Doosan Model DL220-5 front-end loader for the Public Works Service Division to Sellers Equipment in the amount of \$127,150, including trade-in.

Purchase of Backhoe/Loader for Public Works Service Division

The Fleet Replacement Schedule for 2016 also includes a new backhoe/loader for the Public Works Service Division. The current backhoe/loader, a 1997 Case 580 SL, has been in service for 19 years. This purchase will take place a year earlier than the regularly planned 20 year replacement. The Public Works Service Division has determined that it would function more efficiently if it had two backhoes in service. Purchasing a new backhoe/loader this year will allow the current unit to remain in service and extend its useful life.

The Public Works Department advertised for bids in February and received five responsive bids. The low bid was from Sellers Equipment for a JCB 3CX-14 Super backhoe/loader in the amount of \$88,500.

At the April 14, 2016 Commission meeting, Commissioners will be asked to award the bid for the purchase of a 2016 JCB Model 3CX-14 Super backhoe/loader for the Public Works Service Division to Sellers Equipment in the amount of \$88,500.

Other Items for Discussion

Commissioner Meier commented that Hays Medical Center is celebrating its 25th anniversary and that we are very lucky to have the medical center in our community.

The work session was adjourned at 7:01 p.m.

Submitted by: _____

Brenda Kitchen – City Clerk

THE BRICKS



IN DOWNTOWN HAYS

May 5, 2016

City of Hays Commissioners
1507 Main Street
Hays, KS 67601

Honorable City Commissioners,

It is the intention of Downtown Hays Development Corporation (DHDC) to present jointly with Fort Hays State University on the Downtown Pavilion Project.

It is not our intention to ask for any action on the part of the City Commission.

The students who will be presenting this project have worked diligently throughout their spring semester to create an impressive addition to Downtown Hays. We feel we owe the class a venue at which to share their accomplishments. Having said that, we also realize the fiscal/budgetary challenges the city will face as they look to 2017.

With this in mind DHDC requests you enjoy the presentation and interact with the students in anyway you see fit but we are not asking you to take any action on the project or the fiscal notes that accompany it. This year may not be the right time for a project of this scale but that does not mean it has no future. We at DHDC feel strongly we need this facility, along with public restrooms, in Downtown Hays but we also know everything has its time. Should the commission determine the time is now or in the near future, we continue our commitment to collaboration and to fully funding the project.

Thank you for welcoming DHDC and FHSU to the May 5th work session. We all look forward to showing you a terrific project that could someday really benefit Downtown Hays.

Thank you in advance for your understanding of this request.

Downtown Hays Development Corporation

Sara Bloom
Executive Director

Sandy Jacobs
Board President

DOWNTOWN HAYS
DEVELOPMENT
CORP.

109 E 11th Street | Hays, KS 67601
785.621-4171 | DHDC@DowntownHays.com
www.DowntownHays.com



October 23, 2014
Folder: 2901-15

CITY OF HAYS
PO BOX 490
HAYS KS 67601

RE: Lease Covering Use of Railroad Property at Hays, Kansas

Dear Mr. White:

Pursuant to your request, enclosed are two (2) originals of the above-referenced Lease for your execution.

In the enclosed envelope, please return the following:

1. **ALL ORIGINALS** of the Lease signed by the appropriate party. If approved by the Railroad Company, a fully-executed original will be returned to you for your records.
2. **COMPLETED** Real Estate Environmental Lessee Questionnaire.
3. **CHECK**, with Folder No. 2901-15 written on the front, in the amount of Two Thousand Dollars (\$2,000.00) covering the rental and administrative fees, if any. Future rental will be billed and payment should be directed to the address on the invoice.

Both copies of the above-mentioned lease document, plus the questionnaire, and the check must be received by this office within 30 days of the date of this letter for consideration by Railroad Company management. You are not authorized to enter the premises until you are in possession of a fully executed copy of this Lease.

NOTHING IN THIS CORRESPONDENCE SHOULD BE CONSTRUED AS A COMMITMENT TO LEASE REAL PROPERTY AS SUCH A COMMITMENT REQUIRES FORMAL RAILROAD MANAGEMENT APPROVAL. IF SUCH APPROVAL IS RECEIVED, A FULLY EXECUTED COPY OF THE LEASE WILL BE RETURNED TO YOU.

If you have any questions regarding this Lease, please contact me at (402) 544-8554 or JDMATTER@up.com.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey D. Matter".

Jeffrey D. Matter
Manager - Real Estate

LEASE OF PROPERTY
(INDUSTRIAL LEASE - UNIMPROVED - YEAR TO YEAR)

THIS LEASE ("Lease") is entered into on _____, 20____, between **UNION PACIFIC RAILROAD COMPANY** ("Lessor") and **CITY OF HAYS**, a Kansas municipal corporation, whose address is Po Box 490 , Hays, Kansas 67601 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article 1. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Hays, Kansas, shown on the print dated October 21, 2014, marked **Exhibit A**, hereto attached and made a part hereof, subject to the provisions of this Lease and of **Exhibit B** attached hereto and made a part hereof. The Premises may be used for public pavilion, beautification, and purposes incidental thereto, only, and for no other purpose.

Article 2. TERM.

The term of this Lease shall commence November 1, 2014, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article 3. FIXED RENT.

A. Lessee shall pay to Lessor, in advance, fixed rent of Two Thousand Dollars (\$2,000.00) annually. The rent shall be automatically increased by Three percent (3%) annually, cumulative and compounded.

B. Not more than once every threc (3) years, Lessor may redetermine the fixed rent. If Lessor redetermines the rent, Lessor shall notify Lessee of such change.

Article 4. INSURANCE.

A. Throughout the entire term of this Lease, Lessee shall maintain the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Lessor, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C**.

D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 2901-15.

Article 5. SPECIAL PROVISION – FENCE/BARRICADE.

Lessee, at Lessee's sole cost and expense, shall construct and maintain, at all times during the term of this Lease, a fence/barricade of a design satisfactory to Lessor, in the location shown on the attached Exhibit A.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

Lessor:
UNION PACIFIC RAILROAD COMPANY

Lessee:
CITY OF HAYS

By: _____
Manager - Real Estate

By: _____
Title: _____

NOTE:



LEGEND:

- LEASE AREA 
- FENCE 
- AREA = 10,880 SQ. FT. +/-
- UPRRCO. R/W OUTLINED 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

HAYS, ELLIS COUNTY, KANSAS

M.P. 289.7 - SHARON SPRINGS SUB.

TO ACCOMPANY AGREEMENT WITH
CITY OF HAYS, KS

MAP UP V-3 / ST-39A

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 10-21-2014

PJB FILE: 0290115

CADD
FILENAME 0290115

SCAN
FILENAME KS3ST39A-290115.TIF

**EXHIBIT B
TO
INDUSTRIAL LEASE (UNIMPROVED YEAR TO YEAR)**

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS, TITLE AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

Section 3. PAYMENT OF RENT.

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to

any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, *et seq.*, as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Notwithstanding the terms of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) day's written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A, at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance. **Notwithstanding anything to the contrary in this Lease, if Lessee has not complied with the requirements of Section 15 A, this Lease, together with all terms contained herein (including payment of rent) will remain in effect until the requirements of Section 15A are met, unless Lessor, in its sole discretion, elects to terminate this Lease.**

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, including all personal property and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by facsimile to (402) 501-0340, by email or by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: AVP - Real Estate, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under

federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

Section 22. MODIFICATION, WAIVER OF DEFAULT, ENTIRE AGREEMENT.

No waiver, modification or amendment to this Lease, including specifically but not limited to, any indemnity and/or insurance requirement herein, shall be of any force or effect unless made in writing, signed by Lessor and Lessee and specifying with particularity the nature and extent of such waiver, modification or amendment. This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease.

EXHIBIT C
Union Pacific Railroad
Contract Insurance Requirements

Lease of Land

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against Lessor by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other **employee benefits acts**.

D. Pollution Liability insurance. If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

E. **Umbrella or Excess** insurance. If Lessee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include Lessor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

G. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

I. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

J. The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.



*Partners: Robert F. Glassman (1922-2005)
John T. Bird, J. Curtis Brown, Todd D. Powell*

March 11, 2016

Copy sent via email to: sara@downtownhays.com

Sarah Bloom
Executive Director
Downtown Hays Development Corp.
2700 Vine
Hays KS 67601

RE: CITY OF HAYS – LEASE COVERING UNION PACIFIC PROPERTY

Dear Sarah:

I was provided a copy of the proposed Lease forwarded by Jeffrey D. Matt, Manager-Real Estate at Union Pacific Railroad. It is my understanding that Downtown Hays Development Corp. has been dealing with Union Pacific regarding a possible lease for the proposed Pavilion Project. I am required to approve any lease, as it would involve the City as Lessee. I cannot approve the Lease presented by Union Pacific for many reasons. For example:

1. The conditions placed on the City, as Lessee, are onerous and the lease is, essentially, a 30-day termination lease, with the improvements remaining ours (See Section 13, Termination, ¶ B. regarding termination without cause.) What good would that be?
2. The Lease requires unrealistic insurance in light of the City's immunity. (See Exhibit C – Contract Insurance Requirements.)
3. The Lease provides that no alterations or improvements or installations may be made on the Premises without the prior consent of Lessor, while Article 1 of the document titled Lease Property, acknowledges the pavilion. The pavilion and everything incidental to it should be acknowledged and approved in the lease. (See Section 10, ¶ A.)
4. The Release and Indemnity provisions in Section 12 of the Lease are not in accord with City Ordinances. (See copy of Hays Municipal Code, Article XI. – City Contracts enclosed.)
5. In Section 2, ¶ B., Union Pacific reserves the right not only to permit a third-party to place advertising signs on the piece of ground, but also to grant to others the right to construct new or existing facilities on this tract. There are more conditions limiting what can and cannot be done on the property. It appears that Union Pacific could, in effect, thwart the City's use of the property by allowing others the right to intrude.

Page 2

It is my recommendation that if Downtown Hays Development Corp. feels that it can negotiate a better lease and wants to re-approach Union Pacific, that the proposed lease be for a term long enough to recoup the cost of the building and other improvements, that the lease not have provisions which are clearly prohibited by our ordinances regarding contract, and the it be for a reasonable annual rent.

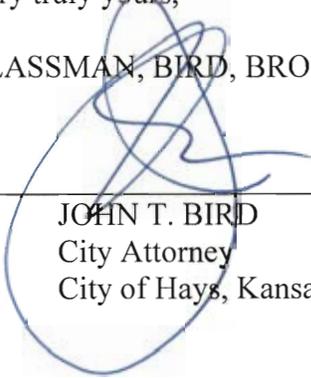
I would also recommend that DHDC do an investigation of the title and the boundaries, as it is possible that Union Pacific does not own the property, as was discovered in earlier situations where the City had been paying rent and there had been a reversion because of street abandonments. Of course you should not convey that information to Union Pacific as it thinks it owns all the land ever granted to it by the United States of America in the 1800's.

If I can be of any further assistance, please let me know.

Very truly yours,

GLASSMAN, BIRD, BROWN & POWELL, L.L.P.

By



JOHN T. BIRD
City Attorney
City of Hays, Kansas

JTB/cam

Enclosures

c: Toby Dougherty
Jacob Wood

ARTICLE XI. - CITY CONTRACTS^[12]

Footnotes:

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Editor's note—Sections 1—5 of Ord. No. 3823, adopted Oct. 14, 2010, added provisions to the Code, but did not specify manner of inclusion. Therefore, at the discretion of the editor, said provisions have been included as Art. XI, §§ 2-576—2-580.

Sec. 2-576. - Required contractual provisions.

Unless specifically waived in its request for bids or request for proposals, or included as alternate provisions to be bid or proposed, the City of Hays, Kansas, shall not award contracts nor let bids to individuals or entities unless the vendor, contractor or individual agrees to indemnify and hold the City of Hays, Kansas, harmless 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 the contract.

(Ord. No. 3823, § 1, 10-14-2010)

Sec. 2-577. - Prohibited contractual provisions.

Unless specifically waived in its request for bids or request for proposals, or included as alternate provisions to be bid or proposed, the City of Hays, Kansas, shall not award contracts nor let bids to individuals or entities which attempt to do any of the following or include any of the following in the proposed contract:

- (1) Any diminishment of the common law or statutory standard of care, limitation of liability, or other attempt to reduce responsibility for mistake, error, or negligence of any type on the part of the vendor, contractor or individual.
- (2) Attempts to limit liability for breach of contract or negligent performance to the amount of the payment to the contractor by the city.
- (3) Attempt to claim ownership of intellectual property created during the performance of the contract with the city.
- (4) Arbitration agreements.
- (5) Provision for damages for breach by owner contrary to common law or statute including, but not limited to, any attempt to provide for attorney fees as part of recoverable damages.
- (6) Attempt to designate any forum or venue for resolution of disputes other than Ellis County District Court, Kansas.
- (7) Any other attempted reallocation of risk contrary to common law or statute.
- (8) Any attempt to eliminate the city's ability to collect consequential, exemplary or punitive damages, or any other measure of damages permitted by law, in an action against the vendor, contractor or individual for breach of contract.

(Ord. No. 3823, § 2, 10-14-2010)

Sec. 2-578. - Prohibited acts.

Unless specifically permitted to do so by the request for bids or request for proposals, no vendor, contractor or individual submitting proposals or bids to the City of Hays, Kansas, shall attempt to insert any of the contractual provisions prohibited by Section 2-577 into any contracts or agreements proposed to the City of Hays, Kansas.

(Ord. No. 3823, § 3, 10-14-2010)

Sec. 2-579. - Penalty for violation of article.

Any vendor, contractor or individual who, without the express permission of the City Manager of the City of Hays, Kansas, proposes to enter into or enters into a contract with the City of Hays, Kansas, which omits any of the contract provisions required by Section 2-576 of this article or contains any of the contract provisions barred by Section 2-577 of this article, may be found by the City Manager of the City of Hays, Kansas, to be in violation of this article and vendors, contractors or individuals found to be in violation of this article may be barred from bidding on future contracts with the City of Hays, Kansas.

(Ord. No. 3823, § 4, 10-14-2010)

Sec. 2-580. - Conflict between article and contract.

To the extent any contract entered into by or on behalf of the City of Hays, Kansas omits any of the contract provisions required by Section 2-576 of this article, the article will prevail and the required contract provisions will be read into the contract. To the extent any contract entered into by or on behalf of the City of Hays, Kansas contains any of the contract provisions barred by Section 2-577 of this article, the article will prevail and the offending provisions shall be null and void and shall be unenforceable as to the City of Hays, Kansas.

(Ord. No. 3823, § 5, 10-14-2010)

THE BRICKS



IN DOWNTOWN HAYS

April 11, 2016

Toby Dougherty
City of Hays
PO Box 490
Hays, KS 67601

RE: Lease between the Union Pacific Railroad and the City of Hays

Dear Mr. Dougherty,

We are writing with reference to the letter we received from the City Attorney's office regarding the proposed lease between the City of Hays and Union Pacific Railroad of property we will refer to as the "pavilion property". We acknowledge and understand the concerns that were brought forth but would appreciate the opportunity to address the concerns that were highlighted.

1. In the unlikely situation that Union Pacific Railroad would demand the structure be torn down, Downtown Hays Development Corporation (DHDC) would assume the liability for deconstruction and removal of the Pavilion. The area in question is a small parcel of land with limited possibilities. It is unlikely Union Pacific Railroad would decide it could utilize this piece of land. With that in mind DHDC has mitigated the risk and is comfortable.
2. Given the City of Hays leases other land sections along the rail corridor, it is our hope this issue has already been addressed in other instances. DHDC requests a copy of a lease between the City of Hays and Union Pacific Railroad so the wording can be duplicated.
3. Per discussions between Aaron White, Ellis County Coalition for Economic Development Executive Director, and Union Pacific Railroad, the type of structure we are proposing will not be an issue. The original blueprints and Pavilion designs were presented to Union Pacific Railroad at the time of the request. Since the structure is more akin to a park shelter than it is to a commercial building they found no need to address the structure further. As such they provided a minimum lease for a site with improvements. Should changes in the design occur in the future and the building would become an enclosed, climate controlled, fully wired structure the lease would need to be reviewed and approval granted from Union Pacific Railroad. However, since the concept has not changed and we are still proposing an open structure, we do not anticipate any issues.
4. Please see section 2.
5. The 6 foot safety fence proposed in our design will extend from the railway north to 10th street isolating and screening the Pavilion from the rest of the property. With that design anything Union Pacific would authorize for use to the east has no impact to the Pavilion. Neither the City of Hays nor DHDC has any plans or designs for that property. Currently the ground is home to three grain elevators. The fact that they have been unused for so long renders them unavailable for use as such. Due to the size, location and zoning of this property alternative uses are limited. It is our opinion that this third party element in this lease section was included to allow Union Pacific Railroad the potential to address the three grain elevators. We are aware that Union Pacific Railroad is investigating the cost to raze the structures.

Thank you for allowing us the opportunity to address your concerns. DHDC is appreciative of the time that has been committed to this project.

Sincerely,

Sara Bloom
Executive Director, DHDC

Sandy Jacobs
Board President, DHDC

DOWNTOWN HAYS
DEVELOPMENT
CORP.

109 E 11th Street | Hays, KS 67601
785.621-4171 | DHDC@DowntownHays.com
www.DowntownHays.com

DOWNTOWN PAVILION PROJECT

Presented May 5, 2016
City Commission Meeting

Presented By:
Downtown Hays Development Corporation
and
Fort Hays State University

DOWNTOWN HAYS
DEVELOPMENT
CORP.

109 E 11th Street | Hays, KS 67601
785.621-4171 | DHDC@DowntownHays.com
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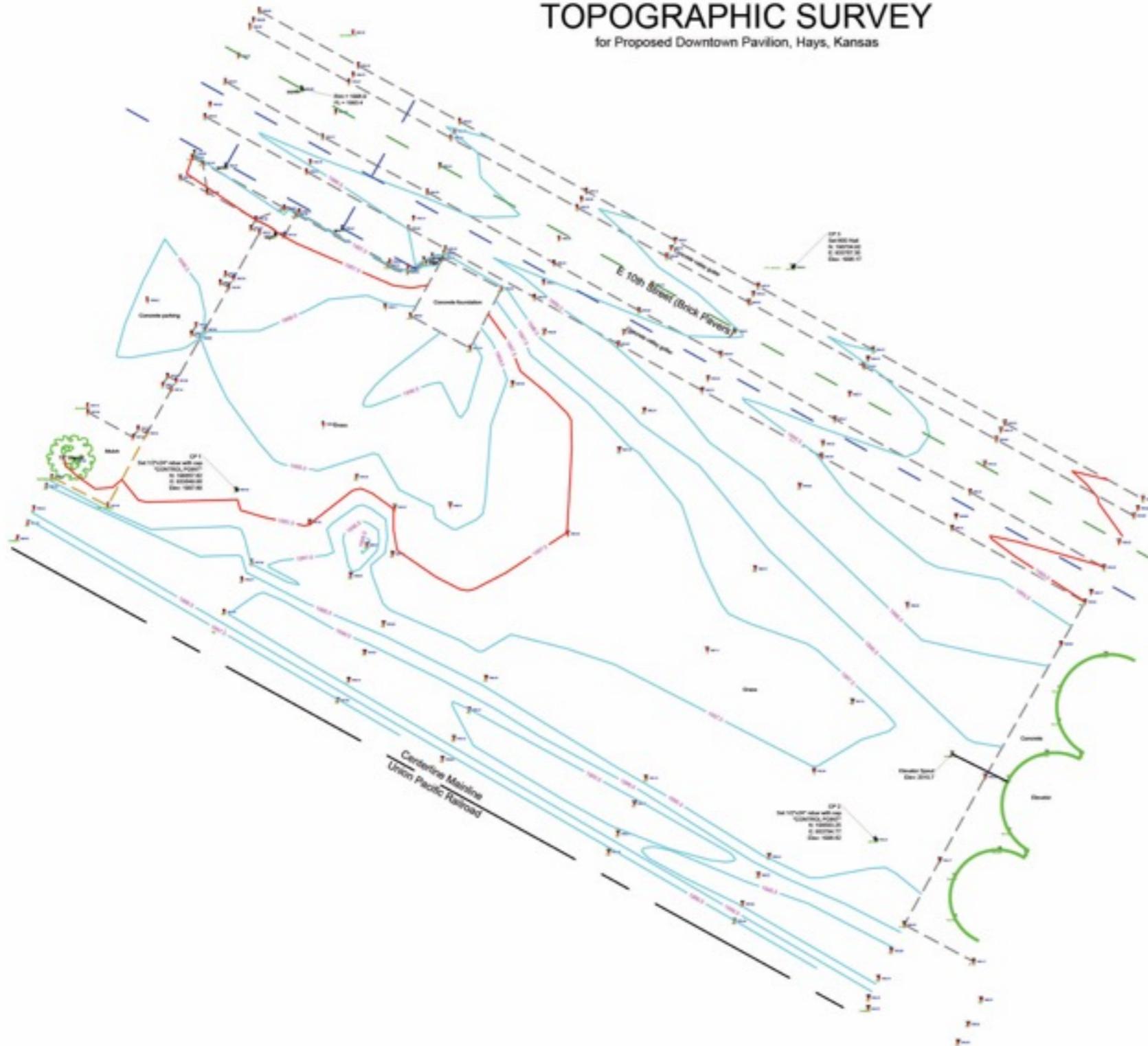
PROJECT SITE



10th Street Grassy Area (in between elevators and Union Pacific Park)

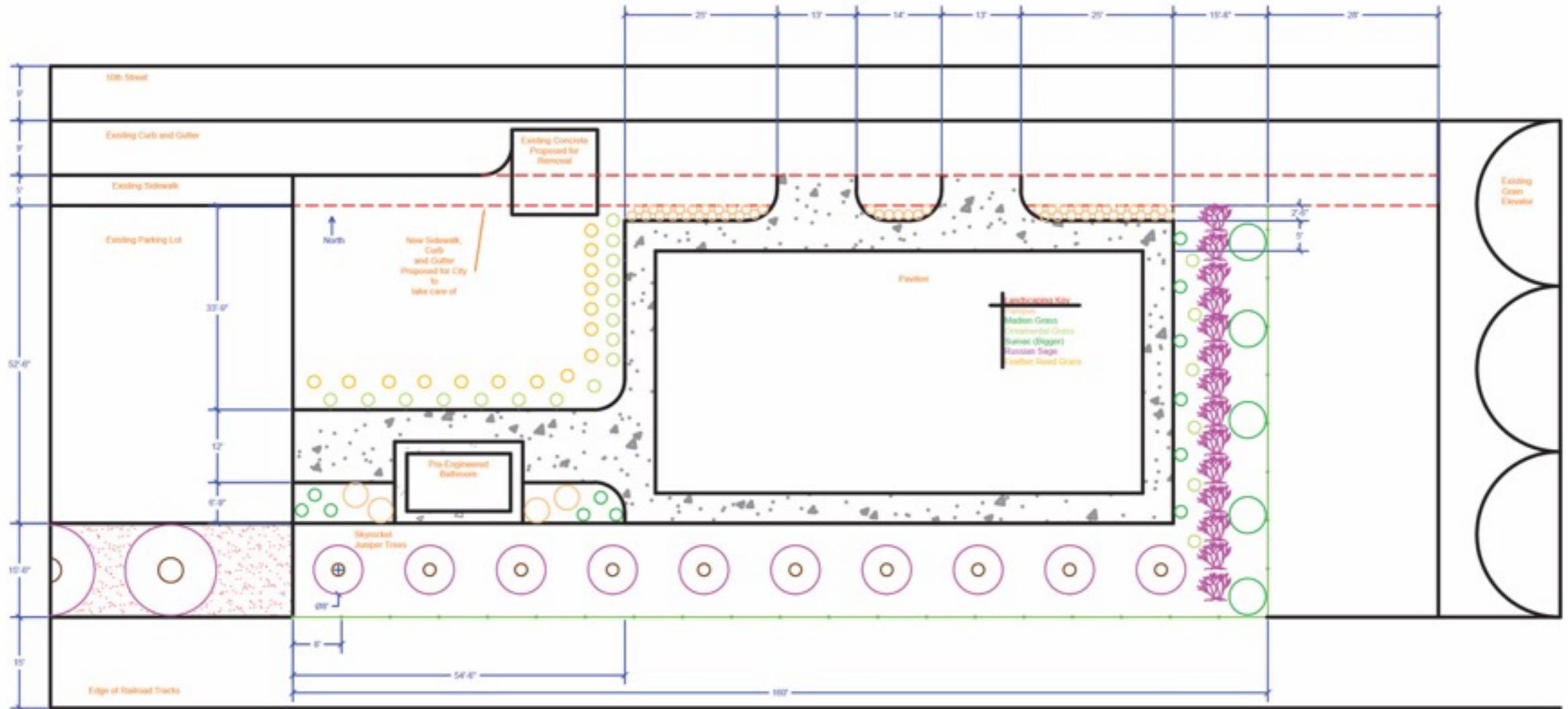
SITE SURVEY

TOPOGRAPHIC SURVEY for Proposed Downtown Pavilion, Hays, Kansas



- LEGEND**
- CP 1 Control Point
 - W 1/2 Water Meter
 - W 1/4 Water Meter
 - W 3/4 Water Meter
 - W 1/8 Water Meter
 - W 1/16 Water Meter
 - W 1/32 Water Meter
 - W 1/64 Water Meter
 - W 1/128 Water Meter
 - W 1/256 Water Meter
 - W 1/512 Water Meter
 - W 1/1024 Water Meter
 - W 1/2048 Water Meter
 - W 1/4096 Water Meter
 - W 1/8192 Water Meter
 - W 1/16384 Water Meter
 - W 1/32768 Water Meter
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SITE PLAN



Complete presentation will be
provided on May 5th

Commission Work Session Agenda

Memo

From: Toby Dougherty, City Manager

Work Session: May 5, 2016

Subject: Economic Development Policy Revisions

Person(s) Responsible: Toby Dougherty, City Manager

Summary

The Commission last discussed the Economic Development Policy at the January 7, 2016 Work Session. At that work session, a few suggestions were discussed to be incorporated into the document. The most notable changes to the policy at this time are the new Section 2 “Statement of Process” and the possible removal of the big box requirements for retail applicants.

Background

At the January 7, 2016 City Commission Work Session, the City Commission discussed several potential revisions to the Economic Development Policy as well as a few questions about the policy posed by City staff and Aaron White, Executive Director of the Ellis County Coalition for Economic Development. City staff took the comments and direction by the Commission at this work session, as well as comments made during subsequent discussion, and have incorporated them into the policy. The suggested changes have been vetted through the Ellis County Coalition for Economic Development Board which is in support of them.

Discussion

The primary changes to the policy are as follows.

- Language has been added that reinforces the reliance/importance of sales tax revenues. Given that sales tax revenues represent the majority of revenues for the General Fund, it is important that the Economic Development Policy facilitate and encourage retail development which helps maintain and increase the sales tax base.
- There is a new Section 2 “Statement of Process” that will govern the process and interaction among an applicant, the City of Hays, and the Ellis County Coalition for Economic Development. The Statement of Process clearly spells out the process to be followed for any applicant wishing to apply for incentives under the Economic Development Policy. The new process brings bond council into the mix early on to ensure the policy and state laws are being followed. City staff and the Ellis County Coalition for Economic Development feel this Statement of

Process will help streamline requests for economic incentives and ensure that applicants are very clear in what they are asking of the City.

- Within Section 5 “Retail Development”, the “big box” requirements have been removed. These are the requirements that any retail applicant must meet the criteria of 50,000 square feet, \$10,000,000/yr. in retail sales, and employ twenty-five or more employees. The reasoning behind this is that there may be valid utilizations of retail incentives that do not meet the requirements.
- The application/business plan section has been strengthened to provide adequate information so the Commission can make an informed decision on whether or not the incentives are necessary for the success of the applicant.
- There are several other small changes to the documents to be considered, but most are not structural.
- Lastly, City staff still questions the relevance of the Job Bounty Program. It has been many years since an applicant has applied to utilize the Job Bounty Program. If the City Commission does feel the Job Bounty Program is relevant, City staff suggests that the hourly wage requirements be increased to reflect inflation.

Legal Consideration

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

Financial Consideration

There are no immediate financial considerations with modifying the policy as all financial considerations are determined upon utilization of the policy.

Options

The City Commission has the following options:

- Do nothing.
- Adopt some or all of the suggested changes to the policy.
- Provide alternative direction to City staff.

Recommendation

City staff recommends approval of the suggested changes to the Economic Development Policy.

Action Requested

City staff requests the City Commission adopt the suggested changes to the Economic Development Policy.

Supporting Documentation

Redlined Copy of Economic Development Policy

SUBJECT	ISSUED BY	LAST REVISION DATE	CURRENT EFFECTIVE DATE
ECONOMIC DEVELOPMENT POLICY	City Commission	7-11-13	2-26-15

SECTION 1. INTRODUCTION

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

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

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

Section 2. STATEMENT OF PROCESS

Review by the Ellis County Coalition for Economic Development

With the exception of Job Bounty applications and applications for incentives involving non mixed-use housing, it is the expectation of the Hays Commission that all applications under this policy are to be vetted for accuracy, clarity, and compliance to the City of Hays Economic Development Policy requirements, by the Ellis County Coalition for Economic Development.

Term Sheet to be prepared before Commission considers a proposal

For applications wishing to utilize a TIF, TDD, CID, IRB or STAR bonds, as allowed under this policy, it is necessary that the applicant work with the Ellis County Coalition for Economic Development prior to formally approaching the Commission. The Ellis County Coalition for Economic Development will enter into a funding agreement with the applicant in order to ensure all requests for incentives are clarified and reviewed by the City's bond counsel. The City's bond counsel will then draft a Term Sheet that will be presented to the Commission in conjunction with the applicant's proposal. The Term Sheet will contain a concise summary of the incentives being proposed, a detailed outline of the process involved to enact the incentives, and the obligations of the applicant and City in the matter. A sample Term Sheet is included in the Application for Economic Incentives.

Applicant requirements for Term Sheet Development

- Clear request of desired incentives
- Preliminary site plan
- Infrastructure needs/requirement estimate
- Total project costs
- Estimated annual revenues
- Estimated property values pre/post development
- Estimated annual sales
- Estimated number of jobs created by development and average wage per job

Unless the Commission directs otherwise, any applicant under this section will be granted one work session to present their concept and term sheet to the Commission for feedback. Any further request will need to be formalized and in complete compliance and conformity with this policy and all applicable state statutes.

SECTION 23. DEFINITIONS

"City" means the City of Hays, Kansas.

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

- A. is or will be primarily engaged in any one or more of the Kansas basic industries; or
- B. is or will be primarily engaged in the development or production of goods or the provision of services for out-of-state sale; or
- C. is or will be primarily engaged in the production of raw materials, ingredients or components for other enterprises which export the majority of their products; or
- D. is a national or regional enterprise which is primarily engaged in interstate commerce; or
- E. is or will be primarily engaged in the production of goods or the provision of services which will supplant goods or services which would be imported into the city; or
- F. is the corporate or regional headquarters of an enterprise, which is primarily engaged in out-of-state business activities.

"Environmentally friendly businesses" shall mean:

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

environmental damage.

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

“Kansas basic industry” shall mean:

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

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

SECTION 34. INDUSTRIAL ECONOMIC DEVELOPMENT

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

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

Examples of available incentives that may be available to industrial businesses may include; Property Tax Abatement, Industrial Revenue Bonds, Job Bounty Program, Tax Increment

Financing (TIF), Transportation Development Districts (TDD), Community Improvement District (CID), or other available programs as approved by the Kansas Legislature.

SECTION 45. RETAIL DEVELOPMENT

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

~~The City of Hays relies heavily on sales taxes to support the provision of general services to its residents and visitors.~~ The primary objectives of the City in granting incentives to retail businesses for development include the expansion of the sales tax base, general enhancement of quality of life, development as the regional hub for goods and services in northwestern Kansas, and the expansion of the property tax base.

~~The City encourages the creation of mixed use developments that contain commercial/retail uses as well as living units as this is a way to maximize available space and is a more efficient use of existing and future infrastructure.~~

Examples of ~~available~~ incentives that may be available to retail businesses may include; Job Bounty Program, Tax Increment Financing (TIF), ~~(Property tax only. Sales taxes are not eligible.)~~, Transportation Development Districts (TDD), Community Improvement District (CID), Sales Tax and Revenue Bonds (STAR Bonds), or other available programs as approved by the Kansas Legislature.

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

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

SECTION 56. ECONOMIC DEVELOPMENT APPLICATION

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

- A. Specific information on incentives being requested
- B. Company profile including longevity of company, principal officers, stockholders and clients
- C. Audited financial statements – last five (5) years or since date of incorporation if company has not been in existence for five (5) years
- D. Completed (attached) *Application for Economic Incentives* and *Supplemental Questionnaire*
- E. Business Plan as it relates to the proposed business to be located in Hays- Business Plan to include:
 - a. Number of employees along with a detailed breakdown of the classification and salary for each employee
 - b. Projected annual operating costs for the proposed development
 - c. Projected annual revenues for the first 10 years.
- F. Cost Benefit Analysis (See Section 15)

G. For applicants wishing to develop a greenfield site, or redevelop property along existing infrastructure, the following items are required:

a. A detailed site development plan

b. Construction estimates for all improvements. If asking for a TIF, TDD, or CID, applicant must provide an itemized breakdown of eligible costs for the incentive program being requested.

c. Estimated water usage and composition of wastewater produced by the site

d. Detailed information regarding traffic patterns to and from the site being developed, including the number of vehicles per day (average and peak times) as well as size and type of vehicle.

e. If the proposed development requires the extension/creation/reconstruction of City of Hays water, sewer, road, or stormwater infrastructure, the applicant must provide detailed cost estimates. City of Hays staff will not provide cost estimates. The applicant will be required to retain the services of a qualified engineer for this purpose.

F.

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The City will not consider the granting of any incentive unless the business submits a full and complete application, and provides additional information as may be requested by the City Commission. The accuracy of the information provided in the application shall be verifiable by the applicant. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any resolution adopted in reliance on said information. Applications will not be considered after the issuance of building permits. Refer to Section 6 for application and renewal fee information.

SECTION 67. FEE SCHEDULE

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

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

SECTION 78. PROPERTY TAX ABATEMENT POLICY

A. Policy.

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

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

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

B. Abatement Amount and Term.

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

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

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

² "Eligible Net New Jobs" means each full-time equivalent job created above the monthly average full-time equivalent employee count for the 12-month period preceding the date of application. In order for a job to qualify as a "Eligible Net New Job," each job must pay wages greater than 100% of the Region 1 wage

average based on the applicant's 4-digit NAICS code. The number of Eligible Net New Jobs must be reported annually pursuant to Section 15, and if the actual number of Eligible Net New Jobs in any year during the abatement term is less than the Eligible Net New Jobs set forth in the application, the abatement level for the remaining abatement term will be reduced in accordance with the table above.

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

C. Procedure.

1. Action by the City. The City shall consider granting a tax exemption pursuant to this Policy after receipt of a complete application from the applicant in a form prescribed by the City together with the application fee and deposit. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's preliminary site plans and building elevations, to prepare a cost benefit analysis, and to contact the county and the unified school district within which the property proposed for exemption is located. The project's site plans and building elevations are subject to final approval to ensure that they are similar to the preliminary plans and elevations submitted.

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

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

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

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

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

D. Payment of PILOTs.

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

SECTION 89. INDUSTRIAL REVENUE BOND POLICY

A. Policy.

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

B. Sales Tax Exemption for Construction Materials.

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

C. Cost Reimbursement/Issuance Fee.

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

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

SECTION 910. COMMUNITY IMPROVEMENT DISTRICT POLICY

A: POLICY STATEMENT

It is the policy of the City to consider the establishment of CIDs for reimbursable expenses in the amount of \$250,000 or greater in order to promote economic development and tourism within the

City. An applicant may petition the City to utilize special assessments or a special sales tax to fund projects eligible under the CID statutes. In considering the establishment of a CID, the Governing Body shall consider whether the proposed CID will achieve the economic development purposes outlined in Section 1 of this Policy.

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

The use of CIDs should not alter the requirements of the City's Economic Development Policy in regard to the development paying for public infrastructure or meeting building codes. When establishing a CID, special consideration will be given to public benefits. These benefits may include, but are not limited to, strengthening economic development and employment opportunities, reducing blight, enhancing tourism and cultural amenities, upgrading older retail real estate and commercial neighborhoods, and promoting sustainability and energy efficiency.

B: CRITERIA

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

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

C: PROJECT ELIGIBILITY

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

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

- a. Public buildings, structures and facilities, and private not-for-profit museums;
- b. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public

- right-of-way, water mains and extensions and other site improvements;
- c. Parking garages;
- d. Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
- e. Parks, lawns, trees and other landscape;
- f. Communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks;
- g. Outdoor cultural amenities, including but not limited to, sculptures and fountains;
- h. Private buildings, structures and facilities;

- i. To produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, decoration of any public place in the district, promotion of such activity and special events;
- j. To support business activity and economic development, including, but not limited to, development, retention, and the recruitment of developers and businesses;
- k. To provide or support training programs for employees of businesses.

2. Generally, projects not listed in the foregoing eligibility section shall not be eligible for reimbursement out of the proceeds of a Community Improvement District sales tax. Additionally, the following projects within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend shall be ineligible for reimbursement out of the proceeds of a community improvement district sales tax:

- a. Airports, railroads, light rail and other mass transit facilities;
- b. Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.
- c. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons for public property, buildings and outdoor spaces.
- d. To provide or contract for cleaning, maintenance and other services to public property, buildings and outdoor spaces;
- e. To contract for or conduct economic impact, planning, marketing or other studies related to the district.
- f. Indoor cultural amenities, including but not limited to, paintings, murals and display cases, which are not located in a private not-for-profit museum;
- g. To operate or to contract for the provision of music, news, child-care, or parking lots or garages, and buses, minibuses or other modes of transportation;
- h. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons inside private buildings;
- i. To provide or contract for cleaning, maintenance and other services to private property;
- j. The purchase of inventory and/or supplies for use or resale.
- k. To purchase interior furnishings.
- l. To purchase advertising or participation and any promotional expenses.
- m. Any other projects not permitted by state statute, as amended from time to time.

D: METHOD OF FINANCING

The governing body will consider creation of a CID where (1) the costs of CID improvements will be financed on a pay-as-you-go basis from CID sales tax revenues or (2) the costs of CID improvements consisting only of public infrastructure improvements will be financed from CID special assessments. In the instance where public infrastructure CID improvements will be

financed from CID special assessments, the City will consider the issuance of special obligation CID special assessment bonds. The City will not issue special obligation or general obligation bonds for CID improvements, other than the limited circumstances set forth in this section. The proposed method of financing will be clearly shown in the petition.

E: PROCESS

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

1. *Petition and Supplemental Information.* An applicant requesting that the City create a CID shall first submit a petition to the City. Such petition shall contain all of the information required by K.S.A. 12-6a26 *et seq.* and shall contain all of the required signatures of property owners as set forth in the Community Improvement District Act. Such petition shall also contain an agreement by the applicant to pay all out of pocket costs incurred by the City related to the City's review of the petition, including but not limited to the City's cost of legal counsel and financial advisors necessary to evaluate the petition. In addition to the information required by K.S.A. 12-6a26 *et seq.*, applicants must file (a) an Application for Economic Incentives and Supplemental Questionnaire, as provided by the City's Economic Development Policy, (b) a site plan for all public and private improvements to be located within the proposed CID, and (c) a business plan evidencing that the applicant has the financial ability to complete the proposed project in a timely manner and operate the project for the term of the proposed CID. The applicant shall furnish such additional information as requested by the City in order to clarify the petition or to assist staff or the Governing Body with the evaluation of the petition.
2. *Application Fee and Deposit.* The application fee and deposit, as well as any costs and expenses required to be paid by the applicant pursuant to Section 6 may be deemed costs of the improvements, and may be reimbursable to the extent permitted by the Community Improvement District Act and as authorized by the Governing Body.
3. *Timing of Submissions.* The petition and all additional information required by this Policy must be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's site plans, and to analyze the merits of the proposed CID in the context of existing economic development and infrastructure projects.
4. *Public Hearing.* Upon receipt of the petition and all additional information required by this Policy, the Governing Body may order a public hearing on the creation of a CID and the imposition of a CID sales tax. The Governing Body shall give public notice and hold such hearing in the manner required by the Community Improvement District Act.
5. *Governing Body Findings; Development Agreement Required.* After the public hearing is conducted, the Governing Body shall determine the advisability of creating a CID pursuant to the Community Improvement District Act. If advisable, the Governing Body may create a CID by adopting an ordinance. Contemporaneously with the adoption of an ordinance creating a CID, the Governing Body shall consider a Development Agreement between the City and the applicant setting forth the specific terms and conditions under which the City will reimburse the applicant on a pay-as-you-go basis for the costs of certain CID Improvements.

F: APPLICANT REQUIREMENTS

1. The applicant shall provide a tax clearance letter from the State of Kansas Department of Revenue to determine and ensure the applicant is compliant with all primary Kansas Tax Laws. An annual submission of the tax clearance from the State of Kansas Department of Revenue is required.
2. If a CID is created, the applicant must complete an annual report by March 1 of each year covering the previous calendar year.
3. If a CID is created, the applicant must agree in the Development Agreement to pay to the City an annual administrative fee equal to 0.5% of the annual CID revenue generated within the CID, to cover the administration and other City costs related to the CID. This fee is in lieu of the annual renewal fee of \$100.00 set forth in the City's Economic Development Policy for other economic development incentives.

G: PAYMENT OF CERTAIN COSTS

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

H: FINANCIAL AND FISCAL IMPACT

The applicant must detail the proposed method and amount of financing, including any public financial participation requested. The applicant must financially participate in the project in an amount that is at least 25 percent of the total project cost.

I: AUTHORITY OF GOVERNING BODY

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

SECTION 1011. RURAL HOUSING IMPROVEMENT DISTRICT POLICY

A: POLICY STATEMENT

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

B. CRITERIA

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

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

The Development Plan required by statute for each project must determine that the incremental ad valorem property tax revenues generated by the RHID, together with other funds committed by the Developer, will cover the estimated eligible costs of the project. All Development Plans must assume that the initial estimated incremental property tax revenues will remain flat over the term of the RHID (i.e., no plan may assume increasing incremental property tax revenues will be available to cover project costs).

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

C: ELIGIBLE COSTS

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

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

D: METHOD OF FINANCING

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

E: PROCESS

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

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

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

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

Governing Body shall give such notice and hold such hearing in the manner required by the RHID Act.

7. *Governing Body Findings.* After the public hearing is conducted, if advisable, the Governing body may create an RHID district by adopting an ordinance creating the district, adopting the Development Plan, and approving the Development Agreement.

F: PAYMENT OF CERTAIN COSTS

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

G: AUTHORITY OF THE GOVERNING BODY

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

I: REVIEW

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

SECTION 4412. JOB BOUNTY PROGRAM

Comment [TD1]: Is this program still relevant?

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

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

Comment [TD2]: Is this still worthy of a bounty?

1. For each full-time position created paying no less than \$10.00/hr. base salary, not including employee benefits, tips, commissions, bonuses, or other incentives, the City will pay to the employer \$1,000 per job provided that funds shall be paid in 20% increments over a five (5) year period. The employer will be required to provide, at the

end of each year, in order to receive Job Bounty funds for that year, an audited payroll showing those ten (10) or more jobs were filled throughout the one year period.

2. For full-time jobs exceeding \$15.00/hr base salary, not including employee benefits, tips, commissions, or other incentives, the City will pay \$1500 per job on the same basis as noted previously including creation of a minimum of ten (10) jobs per company per agreement.

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

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

SECTION ~~12~~13. MEMORANDUM OF UNDERSTANDING

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

SECTION ~~13~~14. NOTICE AND HEARING

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

SECTION ~~14~~15. PERFORMANCE AGREEMENT

Any incentive granted pursuant to this policy shall be accompanied by a Performance Agreement between the applicant and the City, which shall include provisions governing the situation if an applicant fails to meet the wage, number of jobs, and/or capital investment projections set forth in the original application. Each incentive shall be reviewed annually. The City Commission shall receive the annual review report, and if the City Commission determines that a business or project is not in compliance with the provisions of the Performance Agreement, then the incentive may be

modified pursuant to the Performance Agreement as the City Commission deems appropriate. Modifications to the incentive may include, but are not limited to, termination of the incentive, reduction of any incentive (including but not limited to reductions in tax abatement due to failure to meet requirements as set forth in Section 7) and claw-back of any existing incentive. To the extent necessary, the County Appraiser and the State Court of Tax Appeals shall be notified of appropriate actions to modify any incentive.

SECTION ~~15~~16. COST BENEFIT ANALYSIS

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

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

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

If asking for any financial incentives, such as a TIF, TDD, or tax abatements, the applicant shall be required to provide a detailed monetary breakdown of the program(s) being requested, including but not limited to: the determination of any revenues generated from sales taxes or an incremental increase in property taxes, the direct cost to the city in lost sales or property tax revenue, the number of years required to retire any debt being financed with the above-mentioned programs.

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SECTION ~~16~~17. ANNUAL REVIEW FOR COMPLIANCE

All incentives granted shall be subject to an annual review to ensure that the ownership, use of property, and the economic performance of the business, including the capital investment, employment, and wages, are pursuant to requirements and criteria of this policy, the application, and the conditions of the granting of incentives. The review shall also include a comprehensive review of the entire incentive period for the business (if applicable), including milestones and project phases for the business. The annual review shall provide an opportunity for the company receiving

the incentive to describe their achievements, especially in the areas of environmentally sound practice, community engagement and services, and job training. If the business:

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

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

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

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

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

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

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

SECTION ~~17~~18. TRANSFER OF OWNERSHIP OR USE

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

SECTION ~~18~~19. RETROACTIVE GRANTING OF INCENTIVES; “BUT FOR” PRINCIPLE

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

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

SECTION ~~19~~20. WAIVER OF STATEMENT REQUIREMENTS

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

The Commission will not entertain requests for incentives outside of what is allowed by, or in accordance with, this policy. If any interested party would like the Commission to include an additional incentive to this policy, or modify the criteria for an existing incentive, that party must formally address the Commission and request that this policy be amended.

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SECTION ~~20~~21. AMENDMENTS

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

SECTION ~~21~~22. TAX CLEARANCE CERTIFICATION

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

SECTION ~~22~~23. MANDATORY REVIEW

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