

# Memo

To: City Commission  
From: Toby Dougherty, City Manager  
Date: 8-12-15  
Re: August 20, 2015 Work Session

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Please find the attached agenda and supporting documentation for the August 20, 2015 Work Session.

Item 2 – Request from the Friends of the Hays Dog Park for Two Dog Park Shelters

Please refer to the attached Memorandum from Jeff Boyle, Director of Parks, regarding the Friends of the Hays Dog Park's request to install two shelters at the dog park. This is a pretty straight forward request and is supported by City staff.

Item 3 – Removal of One-way Street Designation for 6<sup>th</sup> and 7<sup>th</sup> Streets

Commissioner Jones asked to discuss the possible removal of the one-way street designation for 6<sup>th</sup> and 7<sup>th</sup> Streets. The matter was discussed briefly at the July 2, 2015 Work Session. At that work session, the City Commission asked for City staff to place it on a future work session agenda with additional public notice encouraging people who may have an opinion on the matter to attend the work session.

Item 4 – Ordinance Regulating Sewer Rates for Private Well Owners

Please refer to the attached memorandum from Kim Rupp, Director of Finance, regarding the sewer rates for private well owners. This was brought up as a result of a resident's concern that she was being charged more for her sewer service than the typical residential customer. The resident in question has a private well and utilizes only the sewer service. The current sewer-only rate was put in place many years ago and has been adjusted a few times in the interim. The rate was developed because without a meter, City personnel have no way of knowing the volume of sewage being discharged into the system. The property owner that raised the question does have the option to put a meter on her private well. This would allow her to be charged based on actual volume. She has chosen not to do this. City staff recommends no change in the charge for customers with private wells.

Item 5 – Annexation of 2225 W. 41<sup>st</sup> Street

Please refer to the attached memorandum from Jesse Rohr, Planning, Inspection and Enforcement Superintendent, regarding the annexation of 2225 W. 41<sup>st</sup> Street. This property is a functional part of the city and is surrounded on three sides by city limits with access from the newly-improved 41<sup>st</sup> Street. The property is currently served by sewer and has a pre-annexation agreement in place. The well serving the property has gone dry, and the property owner has asked to hook up to City water. City staff sees no issue with this annexation and suggests moving forward.

Item 6 – Corps of Engineers' Section 205 Study Agreement

Please refer to the attached memorandum from Steven Walters, Stormwater Specialist, regarding the Corps of Engineers' Section 205 Study Agreement. City staff is recommending the City move forward in conjunction with the Corps of Engineers to design flood mitigation projects in the Lincoln Draw Watershed. The Corps of Engineers will pay half of the cost of the engineering as well as half of the cost of any project the City wishes to undertake.

Item 7 – 2016-2018 Memorandum of Agreement between the City of Hays and Fraternal Order of Police Lodge 48, Inc.

This item is self-explanatory.

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**CITY OF HAYS  
CITY COMMISSION WORK SESSION  
THURSDAY, AUGUST 20, 2015 – 6:30 P.M.  
AGENDA**

1. **ITEM FOR REVIEW: [August 6, 2015 Work Session Notes \(PAGE 1\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
2. **ITEM FOR REVIEW: [Request from the Friends of the Hays Dog Park for two \(2\) Dog Park Shelters \(PAGE 7\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Jeff Boyle, Director of Parks
3. **ITEM FOR REVIEW: [Removal of One-way Street Designation for 6th and 7th Streets \(PAGE 13\)](#)**  
PERSON RESPONSIBLE: Commissioner Jones
4. **ITEM FOR REVIEW: [Ordinance Regulating Sewer Rates for Private Well Owners \(PAGE 17\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
5. **ITEM FOR REVIEW: [Annexation of 2225 W. 41st Street \(PAGE 19\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Greg Sund, Director of Public Works
6. **ITEM FOR REVIEW: [Corps of Engineers' Section 205 Study Agreement \(PAGE 27\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Greg Sund, Director of Public Works
7. **ITEM FOR REVIEW: [2016-2018 Memorandum of Agreement between the City of Hays and Fraternal Order of Police Lodge 48, Inc. \(PAGE 53\)](#)**  
PERSON RESPONSIBLE: Toby Dougherty, City Manager
8. **OTHER ITEMS FOR DISCUSSION**
9. **EXECUTIVE SESSION (IF REQUIRED)**
10. **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, August 6, 2015 – 6:30 p.m.

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

Absent: Henry Schwaller IV

**July 16, 2015 Work Session Notes**

There was one correction to the minutes of the work session held on July 16, 2015. Henry Schwaller's name was omitted from the list of those present; this has now been corrected.

**S & W Alley Pavement – Benefit District Resolution**

Don Bickle, Jr., owner of S & W Supply, contacted City staff about paving the alley between 7<sup>th</sup> and 8<sup>th</sup> Street just west of Allen Street, adjacent to their place of business. Mr. Bickle coordinated with other property owners within the benefit district to gain their support. The Kansas Works Job Center is adjacent to the alley, but not included in the benefit district since that property is owned by the State of Kansas. In November, the City Commissioners passed a resolution authorizing the improvements with the cost to be assessed to property owners within the benefit district based on lineal footage fronting the alley to be paid off in 10 years. Also at that time, an Engineering Service Agreement was entered with Harvey Ruder for engineering services.

Bids were received for alley pavement improvements on June 30, 2015. Bids received exceeded the total project cost included in the original petition submitted by the adjacent property owners. The petitioners feel the project costs are representative of the current market conditions and want to proceed with the project; therefore, they have submitted a new petition with a total project cost that

reflects the higher construction cost. City staff recommends accepting the new petition and passing a new resolution reauthorizing the improvements at the higher total project cost.

At the August 13, 2015 Commission meeting, Commissioners will be requested to approve a resolution authorizing the creation of a special benefit district for construction of alley pavement between 7<sup>th</sup> and 8<sup>th</sup> Street just west of Allen Street to be paid with a special benefit district.

### **S & W Alley Pavement – Award of Bid**

The previous agenda item addressed the resubmission of a petition for improvements to pave the alley between 7<sup>th</sup> and 8<sup>th</sup> Street just west of Allen Street. Even though the lowest bid for construction was higher than the original petition amount, the petitioners, Don Bickle and Dave Van Doren, want to proceed with the project.

City staff recommends awarding a contract to the low bidder, APAC, in the amount of \$61,261.90 for construction of alley pavement to be assessed 100% to the benefit district and paid off in 10 years. There is no City-at-large share for oversizing.

At the August 13, 2015 Commission meeting, Commissioners will be requested to authorize the City Manager to enter into a contract with APAC in the amount of \$61,261.90 for construction of alley pavement between 7<sup>th</sup> and 8<sup>th</sup> Street just west of Allen Street to be paid with a special benefit district.

### **Tallgrass Addition Phase 5 – Inspection**

In February 2015, TG Investments, LLC petitioned the City for street, storm sewer, water, and sanitary sewer improvements to an area containing 33 lots in the Tallgrass Addition within the City of Hays.

In July, the City Commission approved a bid for the construction of Phase 5 of the Tallgrass Addition. City staff solicited proposals for inspection and testing

services, and recommends authorizing the City Manager to enter an agreement with Driggs Design Group in the amount of \$18,936.00.

The project is being financed through the creation of a special benefit district, with the City paying for oversizing of sanitary sewer and street pavement, and the developer paying 30% of the costs.

The \$18,936 cost for inspection and testing is distributed proportionally between the City share for oversizing, the developer's cash payment up front, and the special benefit district.

At the August 13, 2015 Commission meeting, Commissioners will be requested to authorize the City Manager to enter into an agreement with Driggs Design Group in the amount of \$18,936.00 for inspection and testing services for Phase 5 of the Tallgrass Addition to be funded through a special benefit district.

### **Sewer Rate Study/Adjustment**

Environmental restrictions at the City sewer treatment facility, aging infrastructure and lack of funding for annual sewer capital maintenance repairs and rehabilitation and the insufficient user rates to fund such requirements prompted the need for a sewer rate study. Springsted Inc. was contracted to conduct a comprehensive study to determine the rate increases needed to support the above needs. Patty Kettles, Vice President with Springsted Inc. made a presentation at the July 16, 2015 work session outlining the study and its recommendation. Springsted, Inc. recommended the monthly sewer base and volumetric user rates should be increased 17% August 1, 2015, 15.5% annually 2016-2020 and 12.0% in 2021.

The Commission asked that more options be brought forward at a future work session. Based on another round of research, City staff presented four options and is recommending option two with the monthly sewer base and volumetric user rates increasing 15% September 1, 2015, 15% annually 2016-2020 and 12% in 2021.

Finance Director, Kim Rupp presented the following options to the Commission:

Option 1 – Original Springsted Recommendation

17% September 1, 15.5% annually 2016-2020 and 12% in 2021

SRF Loan level debt service with normal 20 year amortization

Total Cumulative rate increase = 269%

Total debt service \$37,744,495

Option 2 – 15% September 1, 15% annually 2016-2020 and 12% in 2021

SRF Loan level debt service with normal 20 year amortization

Total Cumulative rate increase = 259%

Total debt service \$37,744,495

Option 3 – 8.5% September 1, 8.5% annually 2016-2029

SRF Loan debt service delayed until 2025 when the 2009A revenue bond is retired

Total cumulative rate increase = 340%

Total debt service \$39,835,283

Option 4 – 9.5% September 1, 9.5% 2016-2026, then 5% 2027-2029

SRF Loan debt service wrapped around the 2009A revenue bond debt service

The SRF debt service is lowered by the amount of the 2009A payments and then ramped back up to normal amortization when the 2009A issue is retired

Total cumulative rate increase = 344%

Total debt service \$38,000,169

Mr. Rupp assured the Commissioners that review of the sufficiency of the rates on an annual basis concurrent with the development of each year's budget will be conducted based upon actual performance and on the final construction costs of the anticipated capital improvements.

The Commissioners were in agreement to have resolutions prepared for the first two options and presented for consideration at the August 13, 2015 Commission meeting.

## **2016 Budget – Continued Discussion**

City Manager, Toby Dougherty stated that this is the last opportunity for the City Commission to make modifications to the 2016 Budget before it is adopted on August 13, 2015.

The Commissioners discussed allocations for outside agency funding.

It was the consensus of the Commission to fund the agencies at their requested level with the exception of Ellis County Coalition for Economic Development's request.

Commissioner Meier stated he is concerned with the Ellis County Coalition for Economic Development organization and whether they are doing what they should be doing, which is being the economic development arm for the City of Hays. He expressed concerns with how the NWK Investments LLC, Big Creek Travel Plaza proposal was handled. He stated many errors were found in the proposal booklet which had been given to the Commissioners with the work study packet material. He would like to see the Coalition for Economic Development's funding reduced by half.

Commissioner Jones agreed and suggested we pull the money to fund the other agencies requests for additional money from the Coalition for Economic Development's allocation rather than the General Fund.

It was the consensus of the Commission to reduce the amount budgeted for the Ellis County Coalition for Economic Development by \$25,000. The Coalition requested \$87,550, but would receive \$62,550.

Fort Hays State University's Scholarship Program will be budgeted \$25,000 more as requested, for a total of \$125,000.

The Downtown Hays Development Corporation, Hays Sister Cities Advisory Board, and Wild West Festival would receive the same amount as last year, as requested.

Ellis County Historical Society would receive \$12,000, and the Hays Arts Council would receive \$12,000, all as requested.

At the August 13, 2015 Commission meeting, a public hearing will be held and the 2016 Budget will be presented for approval.

**Other Items for Discussion** There were no other items for discussion.

The work session was adjourned at 7:49 p.m.

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

Brenda Kitchen – City Clerk

# Commission Work Session Agenda

## Memo

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

**Work Session:** August 20, 2015

**Subject:** Dog Park Shelters

**Person(s) Responsible:** Jeff Boyle, Director of Parks

### Summary

The Friends of the Hays Dog Park (FHDP) worked to implement a dog park in Hays. Phase 1 and Phase 2 have been completed and they are requesting to begin the third and final phase. All funds for the dog park have come from the FHDP via fundraisers and grants. The FHDP are requesting approval to transfer funds totaling \$18,840.75 from the Friends of the Hays Dog Park to the City of Hays Park Development Fund to cover the costs for the installation of a 16' x 16' and a 20' x 20' shelter from Quality Structures Incorporated (QSI) for a total amount of \$15,000 as well as concrete and supplies for \$3,840.75. The remainder of the items in Phase 3 have minimal costs and can be purchased after the FHDP have obtained adequate funds to cover the costs.

### Background

The FHDP approached the Hays City Commission in 2011 requesting permission to build a dog park in Hays. As things progressed and a location was approved at the Bickle-Schmidt Sports Complex the group requested approval to complete the dog park in three (3) phases. On October 24, 2013 the City Commission approved the items outlined in Phase 1 and Phase 2 with all funding being provided by the FHDP. Phase 1 and 2 included all standard requirements relating to a properly functioning dog park such as fencing, parking lot, staging area, dog water stations, waste stations and signage. All items under Phase 1 and 2 have been completed at this time for a total cost of \$53,342.65. The FHDP are now requesting permission to begin Phase 3 of the Hays Dog Park project with the installation of two shelters.

### Discussion

The FHDP are requesting approval to proceed with Phase 3 with all funding obtained by the FHDP via fundraisers and a Dane G. Hansen Community Grant through the Heartland Community Foundation. As was the case with Phase 1 and 2, the City of Hays will not be required to assist financially with items in Phase 3 with the exception of staff labor to pour the necessary concrete for the shelters and sidewalk. The immediate intent of the group is to seek approval for the installation of two (2) shelters identified in Phase 3 with a total cost of \$18,480.75 including concrete. The small dog park shelter is 16' x 16' feet in size and the large dog park is 20' x 20'. The group viewed a wide variety of shelters located in our city parks and liked the cost effective yet well designed shelter at Ekey

Park which was installed by QSI in 2013. The group contacted QSI and was given a total price of \$15,000 for both shelters. The remaining \$3,480.75 will be used by the city for concrete and materials with City Staff providing labor for pouring the concrete. The price quoted is actually below standard QSI pricing as part of a donation to the FHDP from QSI. Administrative Staff will oversee the entire project from start to finish.

### **Legal Consideration**

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

### **Financial Consideration**

The FHDP will transfer an amount of \$18,480.75 to the City of Hays Park Development Fund. This amount will cover all costs associated with the installation of two (2) shelters as well as concrete and supplies for the sidewalks and shelter pads. The City of Hays will not be required to assist financially with these items except for staff labor to pour the necessary concrete for the shelters and sidewalks.

### **Options**

The City Commission has the following options:

- Accept funds totaling \$18,840.75 from the FHDP for the installation of two (2) shelters from QSI (\$15,000) as well as concrete and supplies for shelter pads and sidewalks (\$3,840.75) which will be formed and poured by City Staff.
- Do nothing at this time

### **Recommendation**

Staff recommends accepting funds from the FHDP totaling \$18,840.75 and approving the request from the FHDP to allow QSI to install a 16' x 16' shelter in the small dog park and a 20' x 20' shelter in the large dog park for a total amount of \$15,000. The remaining funds (\$3,840.75) will be used by staff for concrete and materials for sidewalks and shelter pads. These shelters will provide much needed shade for visitors to the dog park.

### **Action Requested**

Approve the transfer of funds totaling \$18,840.75 from the Friends of the Hays Dog Park to the City of Hays Park Development Fund to cover the costs for the installation of a 16' x 16' and a 20' x 20' shelter from Quality Structures Incorporated for an amount of \$15,000 as well as concrete and supplies for \$3,840.75. The remainder of the items in Phase 3 have minimal costs and may be purchased after the FHDP have obtained adequate funds to cover all costs.

### **Supporting Documentation**

Shelter request letter from the Friends of the Hays Dog Park  
Copy of Phase 3 items for the Hays Dog Park  
Visual of the proposed shelters to be installed  
Visual of shelter locations



P.O. Box 1614  
Hays, KS 67601

Jeff Boyle  
Director of Parks  
P.O. Box 490  
Hays, KS 67601

Dear Jeff,

I am writing to request that the Friend of the Hays Dog Park be allowed to proceed on the purchase and installation of two shelters for the amount of \$15,000 and the associated concrete work for the amount of \$3480.75 to install the shelters. The Friends have looked at the city shelters that were built and installed by QSI and feel that these would be perfect for the park. We contact QSI and were able to get a good price for a 16 x 16 shelter and a 20 X 20 shelter. The Friends have received a Dane G. Hansen Community Grant, through the Heartland Community Foundation, for the amount of \$5,000 to be used on shelters. The remainder of the funds for the project will come from money raised by the Friends. No city funds will be used for the project.

We respectfully asked that we be allowed to move forward with this project.

Sincerely,

Kim Perez  
President, Friends of the Hays Dog Park

## PHASE 3

<u>DESCRIPTION</u>	<u>PROJECTED COST</u>	<u>LABOR BY</u>
Benches (5)	\$ 1,400.00	city
Pet waste stations (3)	\$ 1,065.00	city
Shelter (large dog) [30 x 15]	\$ 20,000.00	contractor
Shelter (small dog)	\$ 4,500.00	city
Shelter (large dog small shelter)	\$ 4,500.00	city
Concrete for 30 x 15 shelter	\$ 550.00	city
Concrete for two small shelters (108)	\$ 216.00	city
Trash cans (3)	\$ 1,455.00	city
<b>Total</b>	<b>\$ 33,686.00</b>	



QSI



# Commission Work Session Agenda

## Memo

**From:** Toby Dougherty, City Manager

**Work Session:** July 2, 2015

**Subject:** One-way Street Designation for 6<sup>th</sup> and 7<sup>th</sup> Streets

**Person(s) Responsible:** Commissioner Jones

### Summary

Commissioner Jones asked that discussion of the removal of one-way designation for 6<sup>th</sup> and 7<sup>th</sup> Streets be placed on the July 2, 2015 Work Session agenda for discussion. City staff conducted a brief inquiry into the matter and sees no significant issues should the Commission choose to convert 7<sup>th</sup> Street from one-way traffic to two-way traffic. City staff does see significant issues with changing 6<sup>th</sup> Street from one-way to two-way traffic.

### Background

6<sup>th</sup> and 7<sup>th</sup> Streets have been designated as one-way streets for well over 50 years. The original thinking of converting the streets to one-way was to increase the carrying capacity of each street into and away from the Fort Hays State University campus. The City Commission last discussed the possibility of removing the one-way designation in 2007, and after two work sessions, it was determined no changes were warranted. Commissioner Jones recently asked City staff to place discussion of the removal of the one-way designation on the work session agenda for the City Commission to discuss.

### Discussion

7<sup>th</sup> Street is a 36 – 44 foot wide street that runs from Vine Street to Park Street on the campus of Fort Hays State University. With the exception of the eastern two blocks, 7<sup>th</sup> Street is one-way, westbound traffic into the FHSU campus. 7<sup>th</sup> Street carries approximately 1,500 cars per day east of Main Street and 1,300 cars per day west of Main Street. Parking is currently allowed on both sides of the street. 6<sup>th</sup> Street is a 26 – 39 foot wide street that also runs from Vine Street to the west to the FHSU campus at Park Street. Like 7<sup>th</sup> Street, 6<sup>th</sup> Street is one-way traffic most of its length carrying traffic eastbound from the Fort Hays State University campus to the Vine Street area. Parking is allowed on both sides of 6<sup>th</sup> Street and is very heavily utilized due to the large number of rental properties along the entire length of the street. 6<sup>th</sup> Street carries an average of 1,200 vehicles per day on the east side of Main Street and 1,500 vehicles per day on the west side of Main Street.

City staff was asked to investigate the possibility of removing the one-way designations for 6<sup>th</sup> and 7<sup>th</sup> Streets. City staff looked at traffic patterns, parking requirements, accident rates and street widths, and spoke with Fort Hays State University to get its input on the

matter. The summary of our investigation is as follows. City staff sees no significant issue with changing the traffic on 7<sup>th</sup> Street from one-way to two-way. 7<sup>th</sup> Street is wide enough its entire length to accommodate two-way traffic as well as parking on both sides. The City's Comprehensive Plan calls for the removal of one-way traffic on 7<sup>th</sup> Street. City staff feels that allowing two-way traffic on 7<sup>th</sup> Street should not result in a noticeable increase in accidents. City staff also discussed the possible changes with Fort Hays State University, and it did not have any issues with modifying the traffic on 7<sup>th</sup> Street to two-way. Lastly, two-way traffic can prove to be a calming device which would prove to slow traffic on a street that is currently one-way. Since the majority of 7<sup>th</sup> Street travels through residential areas, staff feels traffic calming methods are always beneficial.

City staff also looked at the pros and cons of converting 6<sup>th</sup> Street from one-way traffic to two-way traffic. 6<sup>th</sup> Street is a 26 – 39 foot wide street that allows parking on both sides. This configuration is not uncommon with two-way traffic in Hays as there are several examples of similar-sized residential streets that carry two-way traffic. For comparison purposes, 15<sup>th</sup> Street is also a 26 foot wide street that allows two-way traffic and parking on both sides. 15<sup>th</sup> Street carries 200 – 800 VPD. 17<sup>th</sup>, between Allen and Ash, is also a 26 foot street that carries two way traffic. 17<sup>th</sup> carries a similar amount of traffic as 6<sup>th</sup> street, but only allows parking on one side.

The significant difference with 6<sup>th</sup> Street, when compared to most similar sized residential streets, is the volume of traffic it carries as well as the high utilization of on-street parking due to the rental properties along the corridor. In many residential areas, one will encounter streets of similar width with two-way traffic. However, parking is sparsely utilized on these streets. Therefore, when two cars are approaching each other on a comparison street, it is very easy for one car or the other to duck behind a parked car to let the opposing traffic through. Due to the high utilization of parking on 6<sup>th</sup> Street, it would be much more difficult for a vehicle to get out of the way of an oncoming vehicle which could lead to accidents. The way to circumvent this problem is to eliminate parking on one side or the other to better accommodate the two-way traffic. City staff does not feel that this would be a prudent tactic as the parking is very heavily utilized due to the rental properties in the area. It is estimated that 65 parking spots will be lost along the narrowest portion of 6<sup>th</sup> Street by eliminating parking on one side. This could have a significant impact on the availability of parking in the neighborhood.

Fort Hays State was also asked about the possibility of converting 6<sup>th</sup> Street to two-way traffic. Fort Hays State University is less supportive of converting 6<sup>th</sup> Street to two-way traffic than 7<sup>th</sup> Street due to the way 6<sup>th</sup> Street intersects with Park Street on the Fort Hays State University campus. 6<sup>th</sup> Street intersects with Park Street as it makes a sharp curve at the junction of two heavily-traveled pedestrian crosswalks. Fort Hays State University personnel thought that allowing two-way traffic at this intersection could cause problems for vehicles as well as pedestrians that utilize the intersection.

In summary, City staff feels there are not significant issues if the Commission decides to remove the one-way designation on 7<sup>th</sup> Street. City staff would not recommend removing the one-way designation on 6<sup>th</sup> Street.

### **Legal Consideration**

Because there is no request for particular action, and this is a discussion item only, there are no particular legal issues involved. If the Commission decides to change the designation of either or both streets, the appropriate ordinance will be prepared.

### **Financial Consideration**

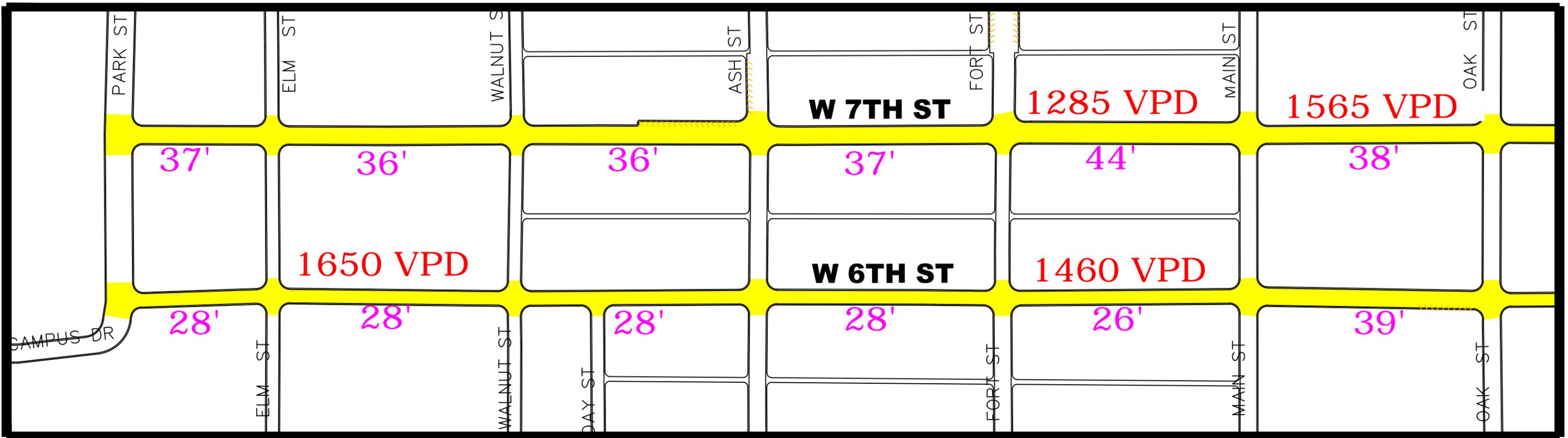
There will be some cost involved in converting a street from one-way to two-way, most of it being labor cost, removing one-way signs and installing stop signs for the opposite traffic. Should the Commission choose to remove the one-way designation on 6<sup>th</sup> Street and remove parking, if there are any parking stalls painted, those would have to be removed with sandblasting equipment, and “No Parking” signs would have to be installed which could increase the cost of the conversion.

### **Action Requested**

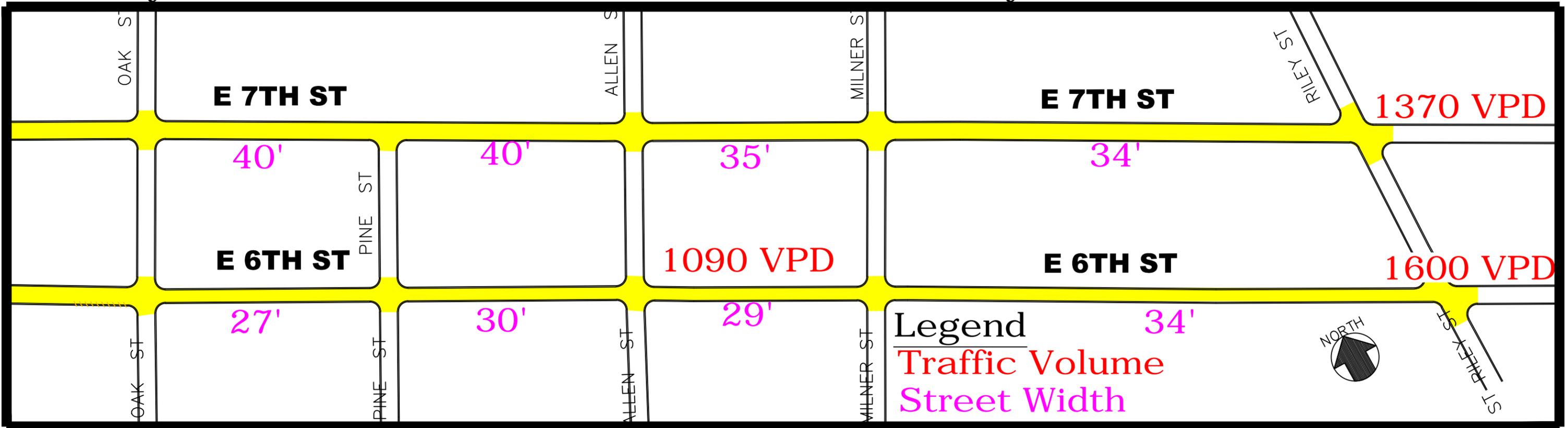
City staff is not requesting the Commission take any action on this subject as it was brought forward for discussion by a Commissioner.

### **Supporting Documentation**

Visual – Traffic Counts/Street Widths



One-Way Street Consideration - 6th and 7th Street, May 2015



# Commission Work Session Agenda

## Memo

**From:** Kim Rupp, Director of Finance

**Work Session:** August 20, 2015

**Subject:** Ordinance Regulating Rates for Private Well Owners

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

### Summary

At the July 16, 2015 work session a resident questioned why she was being charged \$24.65 per month for sewer usage as she is a private water well owner. The commission asked that staff research this issue and report back at a future work session. City staff recommends no change to the current flat sewer rate of \$24.65 for residential customers with no city water service.

### Background

Ordinance #2162 from February 3, 1966 established a flat sewer fee of \$3.50 per month for residential customers with no city water service. Basically all residential customers with no city water service are charged this flat rate as there is no way to meter their sewer usage. There were numerous increases to all customer water and sewer charges including this flat sewer fee over the years. These included the years 1980, 1991, and 1995. Prior to the most recent adoption of the new sewer charges, the schedule beginning in 2008 was a 3% increase of all sewer charges including the flat fee. The current charge, approximately equivalent to an average of 1000 cubic feet is \$24.65.

All current monthly sewer rate charges for residential customers with water service are computed and based upon the average water readings from January through March. All such customers for whom an average cannot be established from usage during January through March, such as a new customer, are billed on the basis of a monthly consumption of 700 cubic feet of water until such time as an average can be established.

### Discussion

The flat sewer fee is used for customers that want to use our sewer system, but are not on city water due to having their own well. If they choose not to have the water usage from their well metered we need a fee to cover the amount of waste they will put into our sewer system. A flat fee is required since we don't know how much water they are using and subsequently being put into our sewer system.

City staff did a search of the City Clerk Listserv concerning this issue and received four responses as listed below.

Potwin - \$20.50  
Westmorland - \$27.00  
Macksville – not allowed – requires all city services  
Wakefield - \$33.20

City staff also called several cities with their responses listed below.

Salina – not allowed – requires all city services  
Junction City – have no instance of this but would charge base of \$28.65 if needed  
Dodge City – uses city average - \$28.39  
Pittsburg – have no instance of this but would charge base cost if needed

### **Legal Consideration**

There is nothing that requires the City to provide free sewer service to any property in the City. As seen from the survey, many cities do not allow non-city water customers to access city sewer. There is no legal obstacle to following the City Staff recommendation that private well owners be permitted to access city sewer at the current rates.

### **Financial Consideration**

There are no financial considerations at this time.

### **Options**

The City Commission has the following options:

- Do nothing
- Provide staff with further direction

### **Recommendation**

City staff recommends leaving the charge in its current form.

### **Action Requested**

No action requested.

### **Supporting Documentation**

N/A

# **Commission Work Session Agenda**

## **Memo**

**From:** Jesse Rohr, PIE Superintendent

**Work Session:** August 20, 2015

**Subject:** Annexation of 2225 W. 41<sup>st</sup> St.

**Person(s) Responsible:** Toby Dougherty, City Manager  
Greg Sund, Director of Public Works

### **Summary**

The owners of 2225 W 41<sup>st</sup> St. have requested annexation of the property into the city limits of Hays. The primary reason for the request is to get City water service since the well serving the property has gone bad. The property is already served by City sanitary sewer. The area proposed to be annexed is located along W. 41<sup>st</sup> St. between Smoky Hill Dr. and Covenant Dr. The property is contiguous (bounded on three sides) with the present City Limits. City Staff recommends adopting the ordinance approving this annexation.

### **Background**

This property contains one residential dwelling and was connected to City sanitary sewer via a preannexation agreement in 1997.

### **Discussion**

The current owners of this property have submitted a signed consent to annex the property under K.S.A. 12-520a and desire the annexation to allow for connection to City water. The land is contiguous with the present City limits. Approval of the annexation will allow the property owner to receive full benefits of City services, including utilities and fire/police protection. No additional infrastructure will be necessary because of this proposed annexation since all City infrastructure and utilities are already in place.

### **Legal Consideration**

Annexation requires the City to extend services to the area annexed within a reasonable time. There are no known legal obstacles to proceeding as recommended by City staff.

### **Financial Consideration**

Annexing this property will increase the property tax base for the City of Hays.

There are no known costs to the City if this property is annexed.

### **Options**

Options include the following:

- Annex the property as requested
- Do not annex the property

### **Recommendation**

Staff recommends annexing this property due to its contiguous nature and the immediate availability of City services necessary to serve this property.

### **Action Requested**

Approve an ordinance annexing 2225 W. 41<sup>st</sup> St. (See full legal description) to the City of Hays.

### **Supporting Documentation**

Map of area being annexed  
Signed Consent to Annex  
Annexation Ordinance





## **CONSENT TO ANNEXATION**

**Scott T. and Lisa D. McGrath** are the owners of the real estate hereinafter described as follows, to-wit:

A tract of land in the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th P.M., Ellis County, Kansas, and more particularly described as follows:

A tract of land beginning at a point 30 feet North and 30 feet West of the Southeast corner of the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th P.M.; thence Northerly on a line parallel to the East line of said Southwest Quarter (SW/4) of Section Twenty (20), a distance of 209.5 feet; thence West at right angles a distance of 209.5 feet; thence Southerly at right angles, a distance of 209.5 feet; thence Easterly at right angles a distance of 209.5 feet to the place of beginning;

**EXCEPT THE FOLLOWING TRACTS DEEDED FOR ROAD PURPOSES:**

A tract of land in the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th P.M. in Ellis County, Kansas and more particularly described as follows:

Commencing at the Southeast corner of the Southwest Quarter (SW/4) of Section 20, Township 13 South, Range 18 West; Thence on an assumed bearing of North 01 degrees 02 minutes 46 seconds East along the East line of said Southwest Quarter (SW/4) a distance of 30.0 feet to the point of beginning; Thence on a bearing of North 89 degrees 58 minutes 07 seconds West a distance of 239.50 feet; Thence on a bearing of North 01 degrees 02 minutes 46 seconds East a distance of 20.00 feet; Thence on a bearing of South 89 degrees 58 minutes 07 seconds East a distance of 239.5 feet to the East line of said Southwest Quarter (SW/4); Thence on a bearing of South 01 degrees 02 minutes 46 seconds West along the East line of Southwest Quarter (SW/4) a distance of 20.00 feet to the point of beginning;

**AND**

A tract of land in the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th P.M. in Ellis County, Kansas, and more particularly described as follows:

Commencing at the Southeast corner of the Southwest Quarter (SW/4) of Section 20, Township 13 South, Range 18 West; Thence on an assumed bearing of North 01 degrees 02 minutes 46 seconds East along the East line of said Southwest Quarter a distance of 50.00 feet to the point of beginning; Thence on a bearing of North 89 degrees 58 minutes 07 seconds West a distance of 30 feet; Thence on a bearing of North 01 degrees 02 minutes 46 seconds East a distance of 189.50 feet; Thence on a bearing of South 89 degrees 58 minutes 07 seconds

East a distance of 30.00 feet to the East line of said Southwest Quarter (SW/4); Thence on a bearing of South 01 degrees 02 minutes 46 seconds West along the East line of said Southwest Quarter (SW/4) a distance of 189.50 feet to the point of beginning;

And hereby consents to the annexation of such land by the City of Hays, Kansas.

Dated: July 22, 2015.

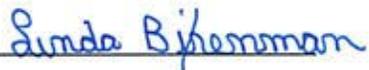
By: 

Scott T. McGrath, Owner

By: 

Lisa D. McGrath, Owner

ATTEST:



**ORDINANCE NO.**

**AN ORDINANCE ANNEXING LAND TO THE CITY OF HAYS,  
KANSAS.**

**WHEREAS**, the following described land adjoins the City of Hays, Kansas,

**WHEREAS**, written consent for annexation of the following described land, signed by all of the owners thereof, has been filed with the City of Hays, Kansas, pursuant to K.S.A. 12-520; and

**WHEREAS**, the governing body of the City of Hays, Kansas finds it advisable to annex such land.

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

**Section 1.** Pursuant to K.S.A. 12-520(a)(7) the following described land is hereby annexed and made part of the City of Hays, Kansas:

That part of the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th Principal Meridian, Ellis County, Kansas, described as follows:

A tract of land beginning at a point 30 feet North and 30 feet West of the Southeast corner of the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th P.M.; thence Northerly on a line parallel to the East line of said Southwest Quarter (SW/4) of Section Twenty (20), a distance of 209.5 feet; thence West at right angles a distance of 209.5 feet; thence Southerly at right angles, a distance of 209.5 feet; thence Easterly at right angles a distance of 209.5 feet to the place of beginning;

**EXCEPT THE FOLLOWING TRACTS DEEDED FOR ROAD PURPOSES:**

A tract of land in the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th P.M. in Ellis County, Kansas and more particularly described as follows:

Commencing at the Southeast corner of the Southwest Quarter (SW/4) of Section 20, Township 13 South, Range 18 West; Thence on an assumed bearing of North 01 degrees 02 minutes 46 seconds East along the East line of said Southwest Quarter (SW/4) a distance of 30.0 feet to the point of beginning; Thence on a bearing of North 89 degrees 58 minutes 07seconds West a distance of 239.50 feet; Thence on a bearing of North 01 degrees 02 minutes 46 seconds East a distance of 20.00 feet; Thence on a bearing of South 89 degrees 58 minutes 07 seconds East a distance of 239.5 feet to the East line of said Southwest Quarter (SW/4); Thence on a bearing of South 01 degrees 02 minutes 46 seconds West along the East line of Southwest Quarter (SW/4) a distance of 20.00 feet to the point of beginning;

**AND**

A tract of land in the Southwest Quarter (SW/4) of Section Twenty (20), Township Thirteen (13) South, Range Eighteen (18) West of the 6th P.M. in Ellis County, Kansas, and more particularly described as follows:

Commencing at the Southeast corner of the Southwest Quarter (SW/4) of Section 20, Township 13 South, Range 18 West; Thence on an assumed bearing of North 01 degrees 02 minutes 46 seconds East along the East line of said Southwest Quarter a distance of 50.00 feet to the point of beginning; Thence on a bearing of North 89 degrees 58 minutes 07 seconds West a distance of 30 feet; Thence on a bearing of North 01 degrees 02 minutes 46 seconds East a distance of 189.50 feet; Thence on a bearing of South 89 degrees 58 minutes 07 seconds East a distance of 30.00 feet to the East line of said Southwest Quarter (SW/4); Thence on a bearing of South 01 degrees 02 minutes 46 seconds West along the East line of said Southwest Quarter (SW/4) a distance of 189.50 feet to the point of beginning;

**Section 2.** This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

**PASSED AND APPROVED** by the Governing Body of the City of Hays, Kansas, this 27<sup>th</sup> day of August, 2015.

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EBER PHELPS  
Mayor

ATTEST:

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BRENDA KITCHEN  
City Clerk

(seal)

# Commission Work Session Agenda

## Memo

**From:** Steven Walters, Stormwater Specialist

**Work Session:** August 20, 2015

**Subject:** Corps of Engineers Section 205 Study Agreement

**Person(s) Responsible:** Toby Dougherty, City Manager  
Greg Sund, Director of Public Works

### Summary

City Staff recommends entering into a 50/50 cost share agreement with the United States Army Corps of Engineers to study the Lincoln Draw watershed. The City of Hays has studied the watershed for many years, but until the Storm Water Utility was established, there was not a funding mechanism to make needed improvements to the watershed. The Lincoln Draw watershed is the next logical flood reduction project to tackle based on the City of Hays Storm Water Master Plan. The proposed study is estimated to cost \$664,000 with the City Share being \$332,000. Based on preliminary cost estimates the construction phase is estimated at \$3.5 million with the City share being \$1.2 million. Preliminary review for the economic justification of the project estimate a \$9 benefit for \$1 spent based on the \$3.5 million construction estimate.

The City of Hays and the USACE have each budgeted \$75,000 for FY 2015. The City of Hays has budgeted \$250,000 for FY 2016. City staff is proposing to meet the \$75,000 FY 2015 obligation through contracting Survey and Geotechnical as in-kind services. The study and subsequent project will provide benefits to the City of Hays including allowing continued development in the Lincoln Draw watershed as well as reducing flood risk in the core of the City.

### Background

The City of Hays has had multiple flood and storm water studies pertaining to the Lincoln Draw Watershed performed in partnership with outside agencies and private consultants. The most recent studies include the 1989 USACE Lincoln Draw Report, 2001 Burns and McDonnell City of Hays Storm Water Master Plan, and the US Army Corps of Engineers (USACE) 2015 Lincoln Draw Watershed. All three reports recognize and detail the need for detention basins within the Lincoln Draw Watershed.

### Discussion

The Lincoln Draw Watershed has been identified in at least 3 separate studies as needing infrastructure in place to reduce flood risk. The Lincoln Draw watershed floods below 19<sup>th</sup> Street from common storm events (average 2-5 year frequency) and is in need of

flood reduction infrastructure. City Staff believes the Lincoln Draw Watershed Detention Project is the next large scale project that the Storm Water Utility needs to address for the benefit of the citizens of Hays. There are currently two options for constructing the detention basins. We can either partner with USACE or do the projects as City only projects.

The estimated cost of the study partnering with the USACE is \$664,082 with the City of Hays portion being \$332,041 in cash or in-kind contributions. The preliminary cost estimate for the construction of the proposed project is \$3.2 million to \$3.6 million with the city share being \$1.1 million to \$1.3 million. A more detailed breakdown can be found below. The detailed cost estimate was based on the originally selected 1989 plan.

Preliminary modeling has shown the anticipated detention pond construction project would result in a 0.7 to 1.8 foot reduction in the flood elevation as detailed on attached Figures 2-5. The project will not eliminate or reduce the 100 or 500 year flood plain as designated by the Federal Emergency Management Agency (FEMA), but rather reduce the flood risk of more frequent flood events.

Furthermore the project will not eliminate the long term liability associated with Lincoln Tunnel. The one mile long, 6' diameter, underground tunnel has a limited life expectancy, and the cost of day-lighting Lincoln Tunnel far exceeds the monetary amount allowed under the Section 205 program which is why USACE does not consider the daylighting project viable at this time. The preliminary estimate for real estate, engineering, administration, and construction for day-lighting the tunnel is approximately \$75 million.

The proposed project will allow the continued development north of I-70 within the Lincoln Draw Watershed. If the project does not happen then more careful consideration of development within the watershed must be examined to avoid increasing the flood risk downstream.

The City of Hays and the USACE each budgeted \$75,000 for fiscal year 2015 for this project. Future appropriations from the USACE are not guaranteed and the City will have the option to terminate or suspend the agreement at any point. The City of Hays is proposing to initially contribute \$75,000 in the form of in-kind services such as survey and geotechnical. City Staff will come back to the commission with engineering agreements plans to recommend contracts for the survey and geotechnical work to the City Commission at a later date if the cost share agreement is approved. City Staff will also come back to the City Commission for future appropriations associated with the project.

### **Legal Consideration**

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

## Financial Consideration

Estimated/Study Project Cost

Project Phase	With USACE (65/35 split after study and Planning)		Without USACE*
	USACE	City of Hays	City of Hays
<b>Study and Planning</b>	\$432,001	\$332,001	\$400,000
<b>Final Engineering</b>	\$173,020	\$93,164	\$266,184
<b>Real Estate</b>	\$199,457	\$107,400	\$306,857
<b>Construction</b>	\$1,572,901	\$846,947	\$2,420,000
<b>Project Administration</b>	\$125,832	\$67,756	\$190,000
<b>Total**</b>	<b>\$2,502,911</b>	<b>\$1,447,268</b>	<b>\$3,583,041</b>

\*Actual cost maybe lower to lack of federal project requirements

\*\*Based on Plan 1A from the 1989 Study

If the City of Hays pursues the detention pond construction project without the partnership of the USACE it will expend approximately \$2.1 million more than it would by partnering with the USACE. The cost of the study has been estimated to cost \$664,002 which is subject to change based on the final scope which will be negotiated between the City and the USACE.

The City of Hays budgeted \$75,000 in Fiscal Year 2015 and \$250,000 in Fiscal Year 2016 for the study. The study will be funded through the Stormwater Reserve Fund.

## Options

Options include the following:

- Approve the Section 205 agreement with USACE to conduct a study to determine the best locations for detention ponds in the Lincoln Draw watershed.
- Provide alternate direction to staff
- Do nothing.

## Recommendation

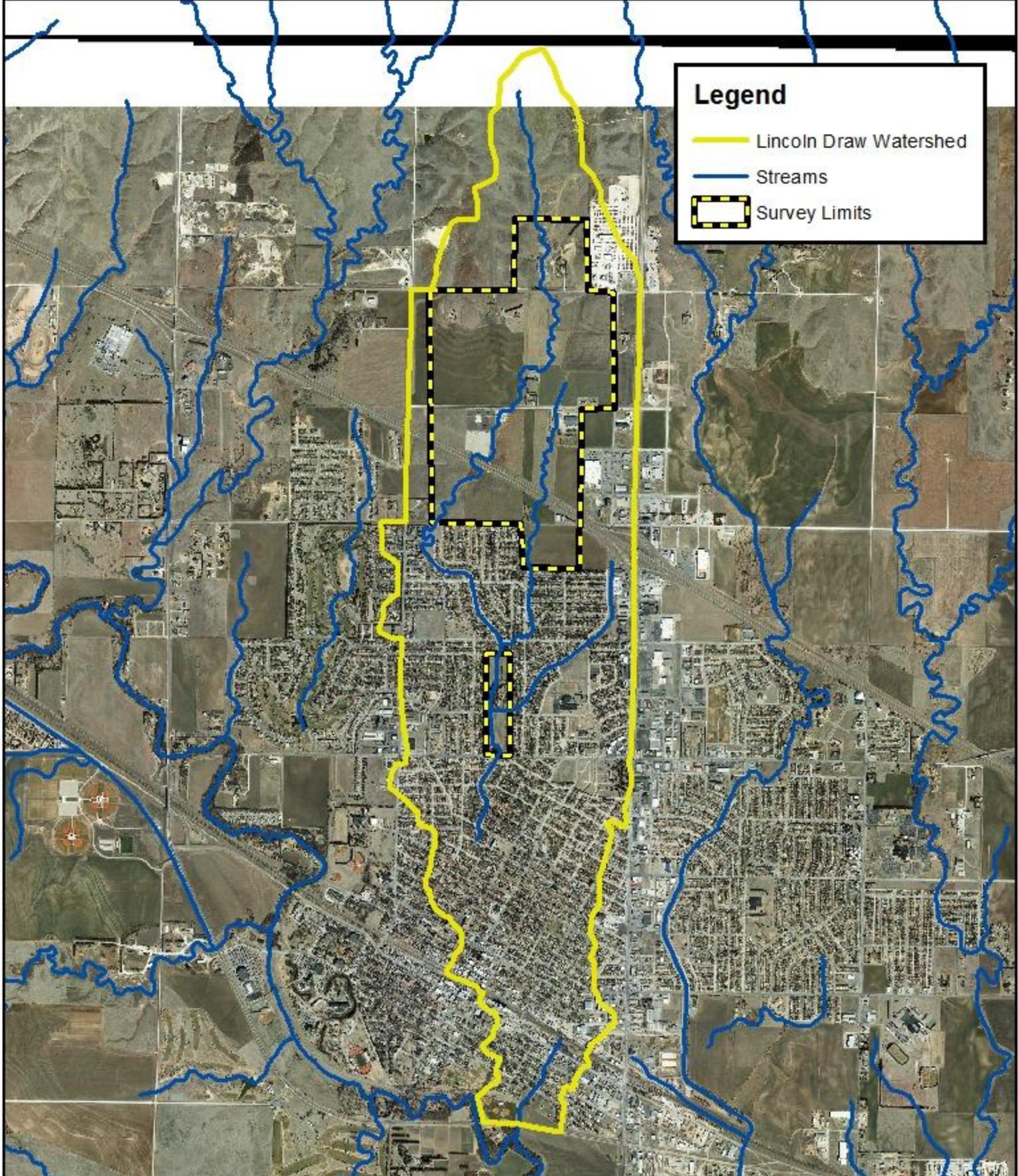
Staff recommends approving the Section 205 study agreement.

## Action Requested

Authorize the City Manager to enter an agreement with U.S. Army Corps of Engineers under the Section 205 program to conduct a study to determine the best locations for detention ponds in the Lincoln Draw watershed.

## Supporting Documentation

Location Map  
 Project Impact Maps  
 Cost Share Agreement

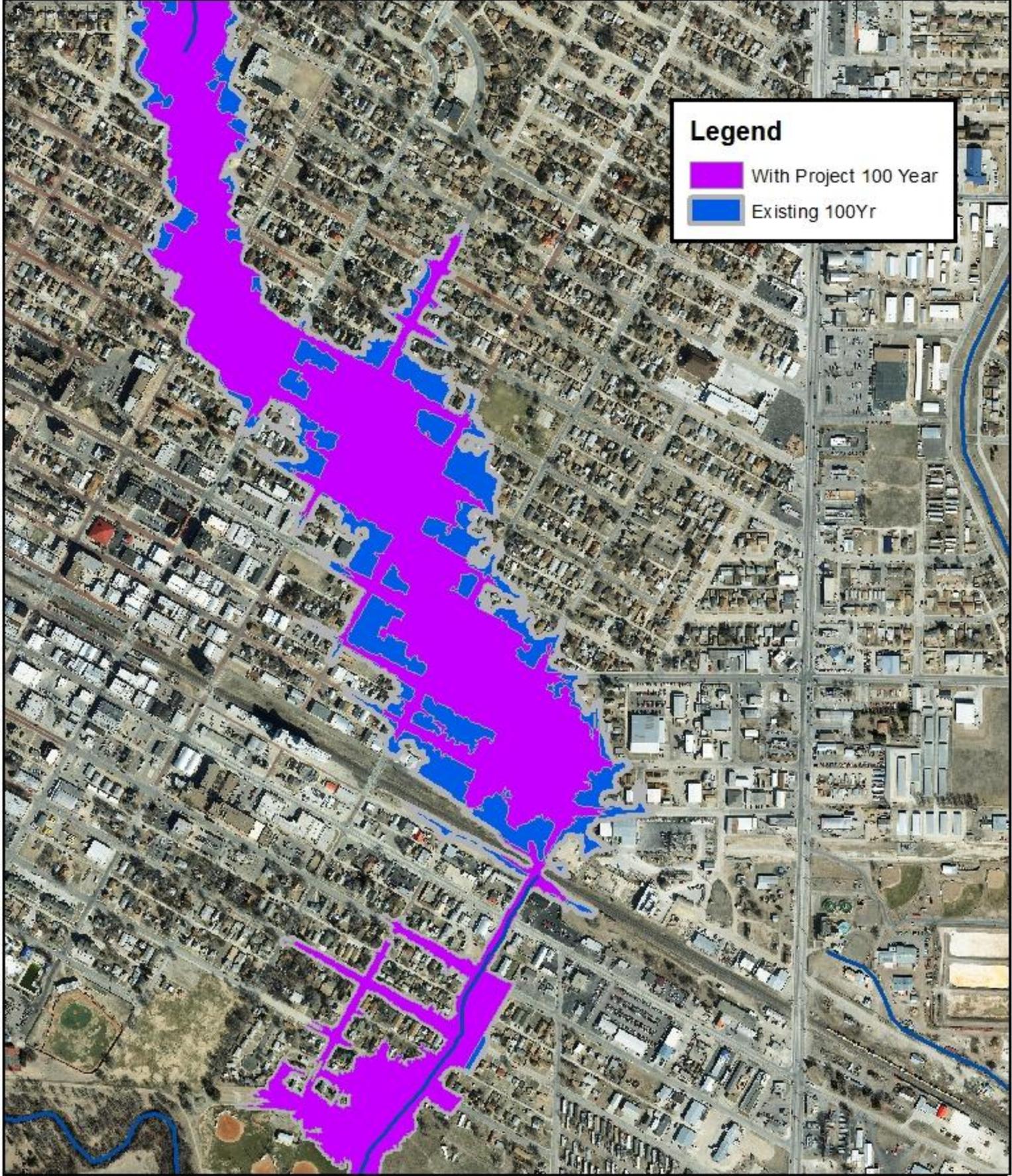


**Legend**

- Lincoln Draw Watershed
- Streams
- Survey Limits



**City of Hays**  
Public Works  
USACE  
Section 205  
Location Map  
Figure 1



**Legend**

-  With Project 100 Year
-  Existing 100Yr



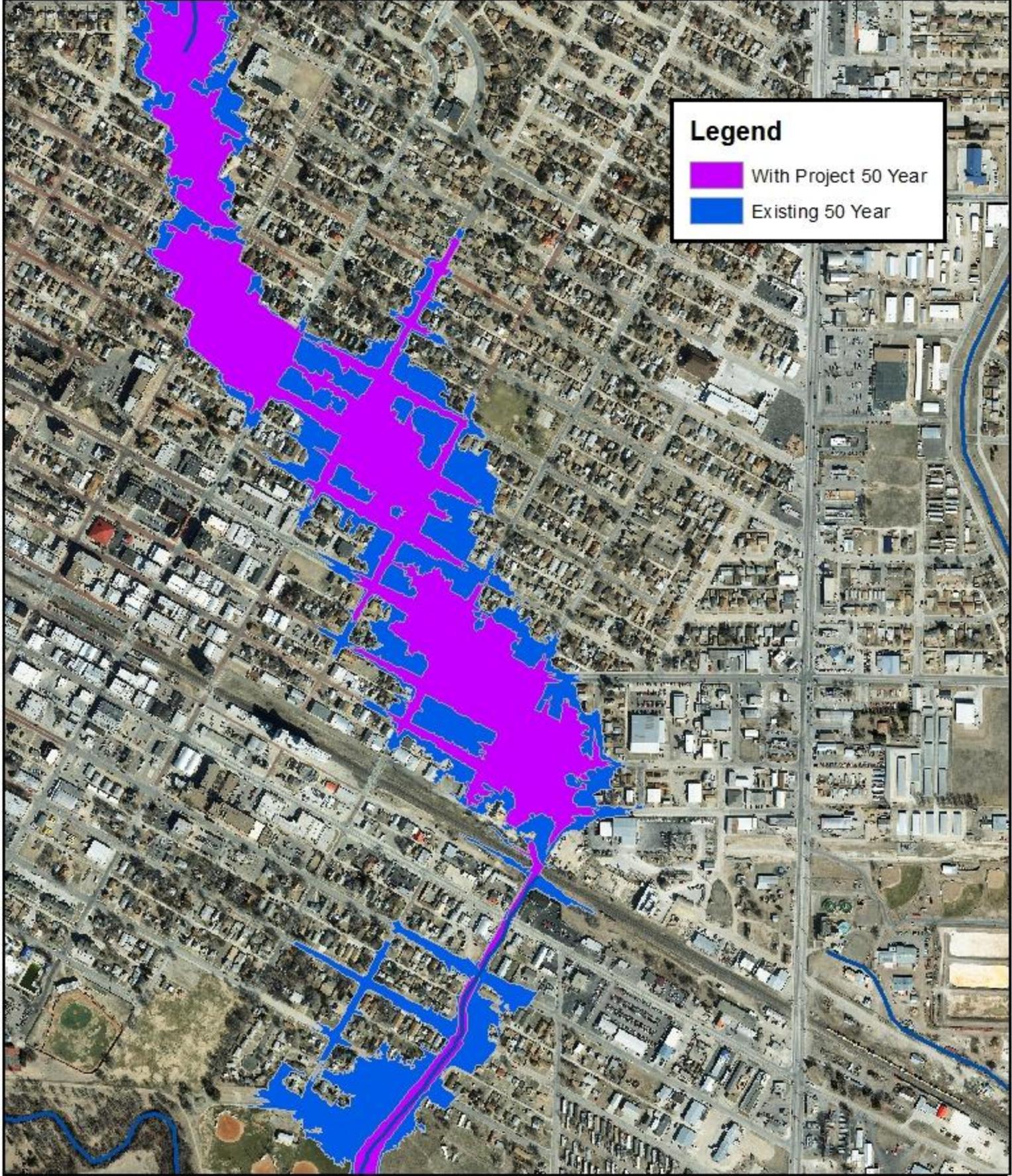
0 0.1 0.2 Miles



31



**City of Hays**  
Public Works  
USACE  
Section 205  
100 Year Event  
Figure 2A



**Legend**

-  With Project 50 Year
-  Existing 50 Year

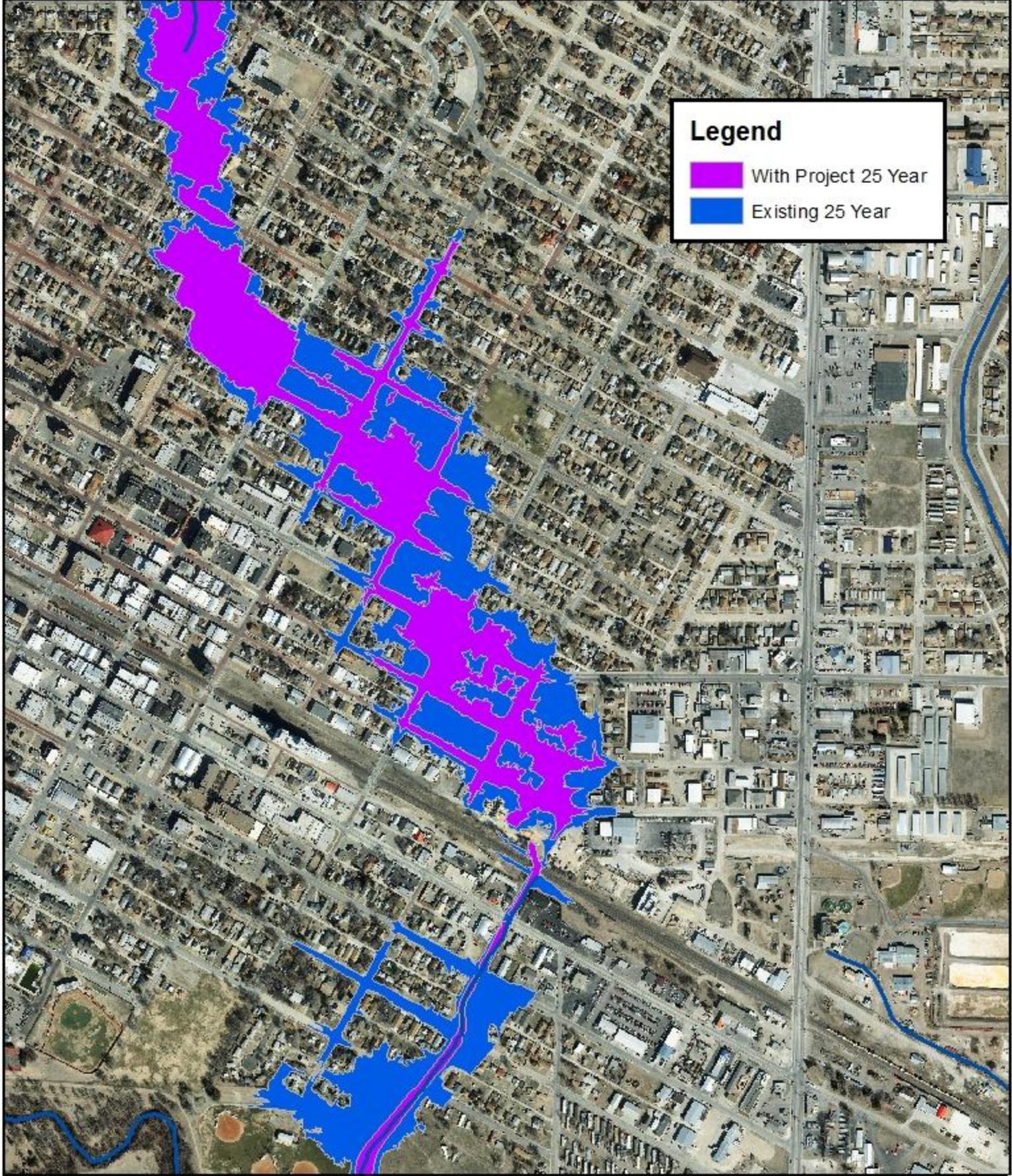


0 0.1 0.2 Miles



32

**City of Hays**  
Public Works  
USACE  
Section 205  
50 Year Event  
Figure 2B

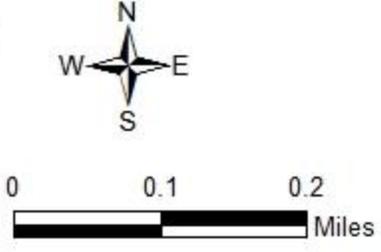


**Legend**

-  With Project 25 Year
-  Existing 25 Year

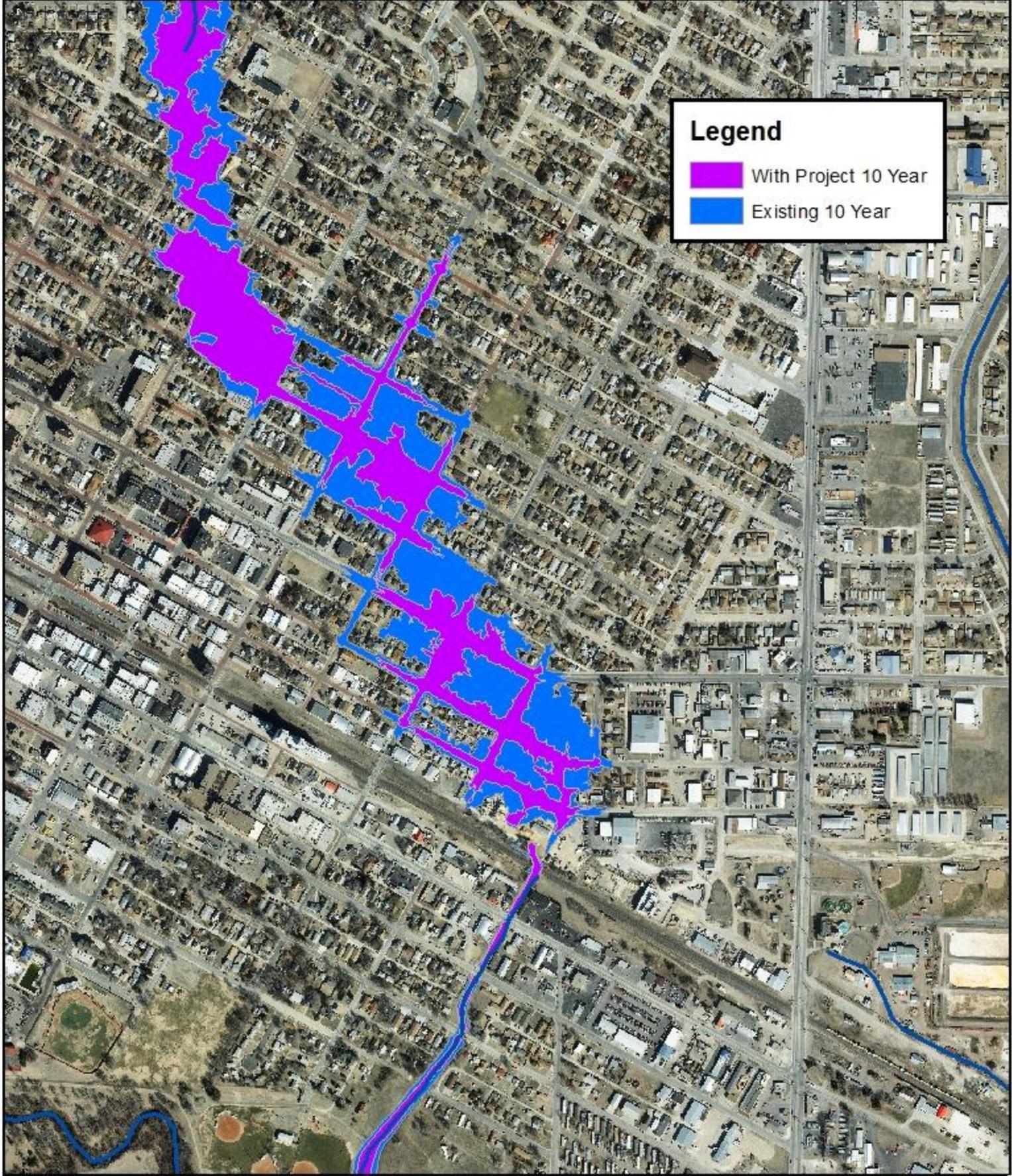


0 0.1 0.2 Miles



33

**City of Hays**  
Public Works  
USACE  
Section 205  
25 Year Event  
Figure 2C

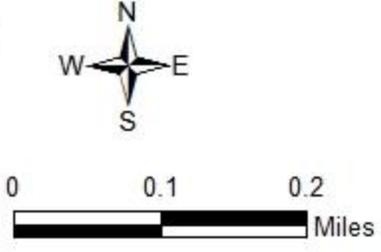


**Legend**

-  With Project 10 Year
-  Existing 10 Year



0 0.1 0.2 Miles



34

**City of Hays**  
Public Works  
USACE  
Section 205  
10 Year Event  
Figure 2D

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CITY OF HAYS, KANSAS  
FOR THE  
SECTION 205 LINCOLN DRAW, HAYS, KANSAS FEASIBILITY STUDY

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Kansas City District and the City of Hays, Kansas (hereinafter the “Non-Federal Sponsor”), represented by the City Manager.

WITNESSETH, THAT:

WHEREAS, the Government received a letter, dated August 23, 2011, from the City of Hays, Kansas in which it stated its desire to participate in a feasibility study for flood risk management at Hays, Ellis County, Kansas, and in which it acknowledged its financial responsibilities for the study and a project, if one is recommended;

WHEREAS, the Secretary of the Army is authorized by Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s; hereinafter “Section 205”) to allot from certain appropriations an amount not to exceed \$55,000,000 per *fiscal year* for the implementation of small structural and nonstructural projects for flood control and related purposes; provided that no more than \$10,000,000 shall be allotted for a project at any single locality;

WHEREAS, the Government initiated a feasibility study, to be initially Federally funded up to \$100,000, and during this Federally funded portion the Government determined that the costs of the feasibility study would exceed \$100,000;

WHEREAS, the Government and the City of Hays, Kansas desire to enter into an agreement (hereinafter the “Agreement”) to complete the feasibility study (hereinafter the “Study” as defined in Article I.A. of this Agreement) and to share equally the costs of the Study that exceed \$100,000;

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the Study;

WHEREAS, the Non-Federal Sponsor desires to provide in-kind contributions (hereinafter the “*in-kind contributions*” as defined in Article I.I. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions toward the amount of its required contribution for the Study;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Study* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful *Study*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

#### ARTICLE I – DEFINITIONS

A. The term “*Study*” shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood risk management along Lincoln Draw, which flows through residential and commercial areas and is prone to flash flooding at Hays, Ellis County, Kansas. The term includes *in-kind contributions* described in paragraph I. of this Article.

B. The term “*total study costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to performance of the *Study* plus the costs of the *Study* incurred by the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government’s costs of preparation of the decision document for the *Study*; the costs of *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the Government’s costs of Agency Technical Review and other review processes required by the Government; the Government’s costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel; **[SEE NOTE - 13:** the Government’s costs of preparation of a floodplain management plan;] the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include the first \$100,000 incurred by the Government for the *Study*; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies or feasibility studies under any other agreement or program; any costs of a contract for an Independent External Peer Review panel; the Non-Federal Sponsor’s costs of negotiating this Agreement; or any costs of negotiating a project partnership agreement for design and construction of a project or separable element thereof.

C. The term “*period of study*” shall mean the time from the effective date of this Agreement to the date that the decision document for the study is duly approved by the Government or the date that this Agreement is terminated in accordance with Article IX of this Agreement.

D. The term “*financial obligations for the study*” shall mean the financial obligations of the Government and the costs for *in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *total study costs*.

E. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *total study costs* for *in-kind contributions*, as determined by the Government, and the Non-Federal Sponsor’s contribution of funds required by Article II.B.1.b. of this Agreement to *financial obligations for the study*, as projected by the Government.

F. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

G. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

H. The term “*PMP*” shall mean the project management plan, and any modifications thereto, developed by the Government, and agreed to by the Non-Federal Sponsor, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study* through the *period of study*.

I. The term “*in-kind contributions*” shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Non-Federal Sponsor after the effective date of this Agreement in accordance with the *PMP* and that are necessary for performance of the *Study*.

J. The term “*Section 205 Annual Program Limit*” shall mean the statutory limitation on the Government’s annual allotment for planning, design, and construction of all projects implemented pursuant to Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s). As of the effective date of this Agreement, such limitation is \$55,000,000.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the *in-kind contributions* in accordance with

applicable Federal laws, regulations, and policies.

1. To the extent possible, the Government and the Non-Federal Sponsor shall conduct the *Study* in accordance with the *PMP*.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of study*. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the final approval of all *Study* products shall be exclusively within the control of the Government.

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for *in-kind contributions*, shall be exclusively within the control of the Government.

4. At the time the U.S. Army Engineer, Kansas City District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

5. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant scopes of work, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor.

6. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for *in-kind contributions*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

B. The Non-Federal Sponsor shall contribute 50 percent of *total study costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions listed in the next sentence will be less than the Non-Federal Sponsor's required share of 50 percent of *total study costs*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share without considering the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph B.4. of this Article. The Government shall determine the amount of funds that would be necessary by subtracting from the Non-Federal Sponsor's required share of 50 percent of *total study costs* the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph B.1.a. of this Article by the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph B.4. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph B.5. of this Article and the *Section 205 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *total study costs* if the Government determines at any time that the collective value of the following has exceeded 50 percent of *total study costs*: (a) the Non-Federal Sponsor's contribution of funds required by paragraph B.1.b. of this Article; (b) the amount of credit to be afforded for *in-kind contributions* pursuant to paragraph B.4. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

3. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *in-kind contributions*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total study costs* for *in-kind contributions*.

a. Acceptance by the Government of *in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and

environmental analyses or other items performed or provided as *in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *in-kind contributions* are necessary for the *Study*.

b. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

c. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* are provided and the time the costs are included in *total study costs*.

d. The Government shall not include in *total study costs* any costs for *in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

e. The Government shall not include in *total study costs* any costs for *in-kind contributions* in excess of the Government's estimate of the costs of the *in-kind contributions* if the services, materials, supplies, and other in-kind services had been provided by the Government. In addition, the Government shall not include in *total study costs* any costs for *in-kind contributions* that were obtained at no cost to the Non-Federal Sponsor.

4. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph B.1.a. of this Article for the costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article. However, the maximum amount of credit that can be afforded for *in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph B.1.a. of this Article; the costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article; or 50 percent of *total study costs*.

5. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article and included in *total study costs* that exceed the amount of credit afforded for *in-kind contributions* determined in accordance with paragraph B.4. of this Article and the Non-Federal Sponsor shall be responsible for 100 percent of all costs of *in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Study* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the

Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

2. If the Government determines that the total amount of Federal funds provided by Congress for all studies and projects implemented pursuant to Section 205 has reached the *Section 205 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Study* within the *Section 205 Annual Program Limit* will not be sufficient to meet the Federal share of *total study costs*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study* within the *Section 205 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

D. Upon conclusion of the *period of study*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

E. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Study* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

F. This Agreement shall not be construed as obligating either party to implement a project. Whether the Government proceeds with implementation of the project depends upon, among other things, the outcome of the *Study* and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration.

### ARTICLE III - STUDY COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Study Coordination Team. Thereafter, the Study Coordination Team shall meet regularly until the end of the *period of study*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Study Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Study Coordination Team informed of the progress of the *Study* and of significant pending issues and actions, and shall seek the views of the Study Coordination Team on matters that the Study Coordination Team generally oversees.

C. Until the end of the *period of study*, the Study Coordination Team shall generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review processes required by the Government; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of, scheduling, and determining the value of *in-kind contributions*; determination of anticipated future requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

D. The Study Coordination Team may make recommendations to the District Engineer on matters related to the *Study* that the Study Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Study Coordination Team. The Government, having the legal authority and responsibility for performance of the *Study* has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VI.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement, and the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$664,000; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement is projected to be \$0; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement is projected to be \$0; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3 of this

Agreement are projected to be \$153,400; the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement is projected to be \$153,400; the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b. of this Agreement is projected to be \$178,600; and the *non-Federal proportionate share* is projected to be fifty (50) percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By 1 January 2016 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*; and the *non-Federal proportionate share*.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B.1.b. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for the study* incurred prior to the commencement of the *period of study*; (b) the projected *non-Federal proportionate share of financial obligations for the study* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations for the study* using the Government's own forces through the first *fiscal year*. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, KANSAS CITY & G5" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the work on the *Study* is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for the study* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make *financial obligations for the study* using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for the study* using the Government's own forces for that *fiscal year*. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsor shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary, when considered with any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations for the study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share of financial obligations for the study* as *financial obligations for the study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations for the current contract or to cover the Non-Federal Sponsor's share of such financial obligations for work performed using the Government's own forces in the current *fiscal year*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *total study costs* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, KANSAS CITY & G5" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total study costs* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds and as limited by Article II.B.5. of this Agreement and the *Section 205 Annual Program Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

#### ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other

evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by OMB Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE VII - FEDERAL AND STATE LAWS

In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

#### ARTICLE VIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

## ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

B. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of performance of the *Study* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Study*.

C. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the *Study* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Study* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the *Study* shall be made available to the parties to the Agreement.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

## ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:  
City of Hays  
ATTN: City Manager  
1507 Main Street  
Hays, KS 67601

If to the Government:  
USACE Kansas City  
ATTN: CENWK-PM-PF/Room 529  
Richard Bolling Federal Building  
601 E. 12<sup>th</sup> Street  
Kansas City, MO 64106

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF HAYS, KANSAS

BY: \_\_\_\_\_  
**ANDREW D. SEXTON**  
Colonel, EN  
District Engineer

BY: \_\_\_\_\_  
**TOBY DOUGHERTY**  
City Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the City of Hays, Kansas, that the City of Hays, Kansas is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Hays, Kansas in connection with the feasibility study for the Section 205 Lincoln Draw, Hays, Kansas Feasibility Study , and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Hays, Kansas have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

---

**John T. Bird**  
**City Attorney**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

\_\_\_\_\_  
TOBY DOUGHERTY  
City Manager

DATE: \_\_\_\_\_



# Commission Work Session Agenda

## Memo

**From:** Toby Dougherty, City Manager

**Work Session:** August 20, 2015

**Subject:** Fraternal Order of Police Lodge 48 Inc.  
2016-2018 Memorandum of Agreement

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

### Summary

The City of Hays' meet and confer team have reached a tentative agreement with the Fraternal Order of Police (FOP) Lodge 48 Inc. for a three year term. The current agreement is set to expire at the end of 2015. This tentative agreement includes wages as the only automatic annual opener, a \$2,050 pay adjustment for 2016, \$1,500 pay adjustment to the bottom of the pay ranges, changing Short Term Disability payments from 100% to 70%, and minor clerical changes.

Staff recommends approval of the FOP 2016-2018 Memorandum of Agreement.

### Background

The current FOP Memorandum of Agreement is set to terminate the end of 2015. The entire three year agreement was open for discussion by both parties. City representatives during the meet and confer process included Toby Dougherty, City Manager, Paul Briseno, former Assistant City Manager, Don Scheibler, Chief of Police, Carolyn McCollum-Scantlin, Director of Communications, and Erin Giebler, Director of Human Resources. Jeff Ridgway and Wade Park represented the FOP.

### Discussion

The City and FOP began the meet and confer process in March of 2015 to discuss the agreement. A tentative agreement was reached after four meetings and mediation. The following are substantive changes to the agreement:

- The Memorandum of Agreement covers three years 2016-2018.
- Clerical changes were made throughout the contract due to Communications becoming its own department.
- Section 11 – Paid Time Off changed Short Term Disability payments from 100% to 70%.
- Section 16 – Wages/Administration of the Pay Plan allowed for a \$2,050 pay adjustment for 2016 with the bottom range increased by \$1,500.
- Only automatic opener is wages/administration of the pay plan.

### **Legal Consideration**

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

### **Financial Consideration**

For the term of the agreement, the City of Hays agrees to budget \$9,500 per average employee to provide health insurance. This is the same amount budgeted since 2011 which will result in no increase in insurance expenditures budgeted. The \$2,050 pay adjustment will be counterbalanced with projected increased sales tax revenues.

### **Options**

The City Commission has the following options:

1. Adopt the agreement between the City of Hays and the FOP, Fraternal Order of Police Lodge 48 Inc.
2. Reject the agreement between the City of Hays and the FOP, Fraternal Order of Police Lodge 48 Inc. and give staff further direction
3. Take no action

### **Recommendation**

Staff recommends the agreed upon language for the 2016-2018 Memorandum of Agreement between the City of Hays and FOP Fraternal Order of Police Lodge 48 Inc.

### **Action Requested**

Authorize the Mayor, City Manager, Police Chief and the Director of Communications to sign the 2016-2018 Memorandum of Agreement.

### **Supporting Documentation**

FOP 2016-2018 Memorandum of Agreement

**MEMORANDUM OF AGREEMENT**

**CITY OF HAYS  
AND  
FRATERNAL ORDER OF POLICE  
LODGE 48 Inc.**

**JANUARY 1, 2016 –  
DECEMBER 31, 2018**

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## **MEMORANDUM OF AGREEMENT**

### **PREAMBLE**

This agreement is entered into on this 27<sup>th</sup> day of August, 2015 between the City of Hays, Kansas, hereinafter referred to as the City or employer, and Hays Fraternal Order of Police, Lodge 48 Inc., hereinafter referred to as the FOP.

It is the purpose of this agreement to promote, in a cooperative manner, harmonious relations between the City and the FOP, to provide for an equitable and peaceful procedure for the resolution of differences relating to work and other conditions of employment.

The City Commission of the City of Hays, Kansas, agrees that through the City Manager and his designated representatives, it will meet and confer with the Hays Fraternal Order of Police, Lodge 48, Inc. The City recognizes the FOP as the sole and exclusive meet and confer agent for the purpose of establishing salaries, wages, and other conditions of employment for all full-time personnel employed by the Hays Police Department and the Communications Center, excluding the Chief of Police, Assistant Chief of Police, Police Lieutenants, Director of Communications, and other full-time exempt positions.

The term "paid, full-time personnel" is applied without regard to sex, rank, division or duty to personnel employed by the City of Hays, Kansas, Police Department and Communications Center.

### **SECTION 1. APPLICABILITY OF KANSAS STATUTES**

The City of Hays and the FOP specifically agree that all proceedings under this agreement shall be governed by the provisions of the Kansas Public Employer-Employee Relations Act (K.S.A. 75-4321 et. Seq.) and amendments thereto.

### **SECTION 2. RECOGNITION**

The City recognizes the FOP as the exclusive agent for all full-time non-exempt employees of the Police Department and the Communications Center.

### **SECTION 3. DISCRIMINATION**

The provisions of this agreement shall be applied equally to all officers in the bargaining unit without discrimination as to age, marital status, race, color, creed, religion, national origin, order affiliation, political affiliation, sex, physical handicap, or ancestry. The FOP shall share equally with the City the responsibility for applying the provisions of the agreement.

All references to officers in this agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

### **SECTION 4. REPRESENTATIVES AND MEET AND CONFER SESSIONS**

There shall be 3 representatives and 1 alternate for the FOP to serve as the meet and confer unit. Members of the bargaining unit selected to serve as the duly authorized representatives shall be certified in writing to the Chief of Police, Director of Communications and the City Manager or his designee. Meetings between the FOP

representatives will receive their usual compensation when such meetings are held at the City's request during regular working hours of an officer. FOP representatives will be subject to call by their department head for special duty or emergency duty during meet and confer sessions. An emergency is defined as unforeseen events affecting the department's ability to perform its mission. Representatives and alternates shall be certified in writing prior to the first meet and confer session. Either party wishing to change said certified representatives shall receive authorization from the other party before said change shall be made.

#### **SECTION 5. BULLETIN BOARDS**

The City agrees to furnish bulletin board space in the Police Department to be used by both the FOP and the City. The FOP shall limit the posting of notices and bulletins to this bulletin board. Notices posted shall bear the signature of the proper FOP representative. No bulletins or notices shall contain anything derogatory or in any way reflect negatively upon the City, FOP, or any employee.

#### **SECTION 6. VISITS BY FOP REPRESENTATIVES**

The City agrees that accredited representatives of the Fraternal Order of Police, upon approval of the department head, shall have reasonable access to the premises of the City during regularly scheduled meal periods or rest breaks, as long as such FOP business does not interfere with the operation of the City of Hays.

#### **SECTION 7. GRIEVANCE PROCEDURES**

Grievance, for the purpose of this agreement, shall mean any misunderstanding relating to interpretations arising from the specific language of the written agreement itself. Only matters involving whether the employer or employees are complying with the express provisions of this agreement shall constitute grievances under this section. For the purpose of this section, the FOP Stewards shall be designated, in writing, to the Department Head and City Manager by January 1 of each year.

The filing or pendency of any grievance under the provisions of this section shall in no way impede, delay or interfere with the right of the employer to take the action complained of, subject however, to a final decision on the grievance.

Grievances shall be processed as follows:

**Step One:** The complainant shall first orally present the matter to the employee's immediate supervisor. Normally, this will be done personally by the employee. Under circumstances where it is deemed necessary by the employee and the Union, the employee may request the presence of the FOP Steward when presenting the matter to the immediate supervisor. It is not contemplated by the parties that this will be a frequent occurrence at this stage of the grievance procedure. This shall be done within 5 working days of the date the complainant knew or reasonably should have known of the incident or occurrence giving rise to the grievance or all rights enjoyed under this article shall be forfeited.

**Step Two:** If within 5 working days after oral presentation to the immediate supervisor the grievance still exists, the FOP shall present to their department head, a written

grievance stating all the facts of the incident in detail and the article or articles of this agreement which have been violated. At this step, and at any succeeding step, all parties shall have the right to make a record of the proceedings. The department head shall in all cases reduce his decision to written copies of which shall be given to all parties involved.

**Step Three:** If within 5 working days after presentation of the grievance to the department head the grievance still exists, the services of the Federal Mediation & Conciliation Services (FMCS) will be requested and both parties agree to jointly participate in grievance mediation.

**Step Four:** If, after participating in grievance mediation with FMCS, the grievance still exists, the grieving party can appeal to the City Manager for a grievance hearing. The City Manager or his designee shall make careful inquiry into the facts and circumstances of the grievance. The City Manager or his designee shall have access to all documents related to the grievance. The decision as rendered by the City Manager or his designee shall be final and binding, subject to all statutory and constitutional rights relating to court review.

#### **SECTION 8. PROBATION**

All newly hired employees and promoted employees shall be considered undergoing an orientation period of 6 consecutive months unless the probationary employee attends the Kansas Law Enforcement Training Center (KLETC) during the first 6 months, in which case the orientation period will be extended to cover the length of time at the KLETC. If, at any time during the 6-month period, the employee's performance is found to be less than satisfactory, the employee's supervisor may recommend the employee's dismissal or demotion. However, based upon the demonstrated job performance of the employee, he may be considered for permanent appointment at any time during the probationary period, or the probationary period may be extended beyond the 6 month period. Any probationary employee may be discharged, without cause, and without recourse under any sections of this agreement. For promoted current employees, see Section D-5(b), of the Personnel Manual on Probationary Period.

#### **SECTION 9. SENIORITY**

Seniority shall be defined and implemented as follows:

- A. City Seniority -- City seniority shall be defined as the length of service with the City measured from the employee's most recent date of hire by the City, or the date of rehiring by the City after previous termination. City seniority shall be a factor in the consideration of days off, paid-time-off (PTO) and holidays, provided the employee shall be otherwise qualified. PTO shall be scheduled by their department head with due consideration being given to requests from officers which shall be determined among officers of equal rank by seniority; provided, however, that each officer shall be permitted to exercise his right of seniority only once each year prior to March 1.

- B. Classification Seniority -- Classification seniority shall be defined as the length of service, by an employee, in a specific position within the employee's Department.
- C. Loss of Seniority -- All seniority shall be lost and an employee shall cease to be an employee of the City upon the occurrence of any of the following:
- (1) If the employee resigns, quits, or is discharged;
  - (2) If the employee fails to report from a leave of absence;
  - (3) If the employee, while being on layoff, fails to return to work within 14 calendar days after mailing, by registered or certified mail, to the last known address of the employee, a notice for him to return to work.
- D. Reduction in Force – The City shall have the right to discontinue any operations in part or entirely, and to lay off personnel when it is in the best interests of the City. Employees laid off shall be considered for employment in other City departments if job openings exist and the employee is qualified for the available position.
- (1) In the event of a layoff for any reason, employees shall be laid off in the inverse order of their position in seniority within the department.
  - (2) Employees shall be called back from layoff according to position seniority in the department. No new employees shall be hired in any classification until all employees on layoff status in that classification have had an opportunity to return to work.
  - (3) Employees being laid off shall be given at least 30 days advance written notice of the layoff.
  - (4) Employees being called back to work shall be notified in writing by certified United States mail sent to the most recent address provided to the Director of Human Resources by the employee. The employee shall be given 14 days from the date the certified letter was mailed to respond as to his intentions to return to his previous employment. If no response is received by the end of the 14<sup>th</sup> day, the hiring process will begin.

#### **SECTION 10. HEALTH INSURANCE**

The City agrees to budget \$9,500 per average employee to provide family health insurance.

An employee who has at least 10 years of service with the City of Hays, and retires from employment with the City, shall be able to remain on the City's Health Insurance Program until he: (a) reaches the age of 65; or (b) fails to pay the monthly premium payments. The retiree may elect to have the same members of his family

covered as he did during employment with the City. The retiree’s monthly premium will be based on the COBRA rate, which is established prior to each contract year with the assistance of the Plan Administrator. Coverage for the retiree and his family members (if covered under the Plan), will be identical to the coverage experienced by active City employees. When a retired employee reaches the age of 65 and terminates health insurance coverage with the City of Hays, his dependents may continue coverage under COBRA if they are eligible.

**SECTION 11. PAID TIME OFF (PTO)**

In recognition of the varying work schedules of City employees and each employee’s diverse need for time away from work, the City provides a general leave policy of paid-time-off (PTO). PTO shall be accrued by full-time employees to use for vacations, illness, on or off the job injuries, medical/dental appointments, personal business, child care problems, pregnancies, for care of immediate family members, funerals, or for any other valid absence as determined by the employee’s supervisor.

A. PTO Accrual Rate and Process

Personnel shall accrue the following amount of PTO:

Months of Service	Accrual Hours Per Payroll	Max Annual Amount of Accrual Hours
0 – 47	7.4	192.4
48 – 107	8	208
108 – 167	8.6	223.6
168 – 227	9.3	241.8
228+	9.9	257.4

PTO accrual shall increase to the next level with the beginning of the payroll period in which the employee’s service (the date he started working for full time the City most recently) date falls, and the employee meets the appropriate years of service in accordance with the above schedule.

B. PTO Accrual During Absence

Employees will no longer accrue PTO after two weeks of absence from the job, or during any time during which Short Term Disability or Worker’s Compensation is being paid to the employee.

C. Eligibility for PTO

Employees shall accrue PTO hours immediately upon employment, however, an employee may not use these hours until after three full months of employment, or as approved by their department head or his designee.

In the event that an employee must be off the job but is not eligible for or does not have a sufficient amount of PTO time available, he may submit a leave request for leave without pay. The approval or non-approval of such request will be determined by their department head or his designee.

D. Maximum Accumulation of Paid Time Off

Employees shall have a maximum amount of PTO accrual equal to the number of hours they accrue during their anniversary year. Employees who exceed the accrual maximum shall not be credited with further PTO accrual until their accruals are reduced below the maximum accrual level. A waiver of the maximum accumulation rule may be granted under special circumstances with the permission of the City Manager.

E. Computing Scheduled or Unscheduled General Leave

Any absence for a fraction or part of a day shall be charged in increments of not less than one-half (½) hour.

F. Scheduling of PTO

PTO shall be distinguished between scheduled and unscheduled time off.

(1) Scheduled PTO:

- (a) The scheduling of time off shall be at the discretion of the supervisor based upon operational considerations. Every effort will be made to accommodate the employee's requested dates for PTO.
- (b) Scheduled leave should be submitted to the supervisor no later than three (3) days in advance of the requested leave unless otherwise directed by the employee's supervisor. The supervisor shall have the option of denying or rescheduling the leave to another date and/or time based upon operational or business considerations.
- (c) Scheduled PTO must have the prior approval of the employee's supervisor.

(2) Unscheduled PTO:

In the event the employee is unable to work due to unforeseen personal illness or injury, or for other unforeseen reasons, the following provisions shall apply:

- (a) If an employee is unable to report to work for any reason, he shall communicate this fact to his supervisor in accordance with his department/division rules and regulations. Such notification shall be made each time a scheduled work shift shall be missed unless authorization has been granted by the supervisor covering a prolonged absence of specified duration. Unless an employee can show good cause, failing to comply with this provision shall be considered an unscheduled absence without pay. Absences not

reported in accordance with these provisions shall be subject to disciplinary action.

- (b) The employee may be required to furnish medical verification or other proof that unscheduled use of PTO was unavoidable to his supervisor.
- (c) The unscheduled use of PTO which is considered to be excessive by the supervisor shall be investigated and the employee may be subject to disciplinary action. Supervisory personnel will document the reasons for initiating an investigation and the conclusion of their investigation.

G. Family Medical Leave.

The City will comply with state and federal law in all respects as pertains to Family and Medical Leave Act.

While on Family and Medical Leave, the City will continue to provide the employee's health care coverage under the same provisions as prior to the leave for up to, but not exceeding 6 months as long as the employee remains employed by the City. Where the employee fails to return from leave, the City can recover the premium(s) that have been paid on behalf of the employee to maintain health care coverage.

H. Worker's Compensation

The City will comply with state and federal law in all respects as pertains to Worker's Compensation.

At no time shall an employee use PTO and receive Worker's Compensation benefits simultaneously. An employee that is injured on the job and is eligible for Worker's Compensation benefits will not be eligible to collect Short Term Disability benefits.

If the injured employee is on the City's health insurance program at the time of the injury, the City will continue to provide the injured employee's health care coverage under the same provisions as prior to the leave for up to, but not exceeding 6 months as long as the employee remains employed by the City of Hays.

I. Payment for PTO at Separation

Upon separation from employment with the City, employees who terminate in good standing and give a two-week notice of resignation will be paid for accrued but unused PTO on their final paycheck at their current rate of pay. In the event of death, the employee's heirs shall be entitled to payment for any accrued PTO.

J. Short Term Disability Benefit

- (1) Full-time employees are eligible for and shall be covered by a Short Term Disability Benefit the first of the month following three full months of employment. After the first of the month following three months of employment, and following two weeks of continuous illness or injury, an employee will be eligible to apply for Short Term Disability leave. The first two weeks of illness or injury leave must be charged to PTO. If the employee has no PTO time available, he may apply for leave from work without pay.
- (2) The Short Term Disability Benefit shall provide coverage for the period of disability in excess of the first two weeks for a maximum period of 24 weeks or until the employee is eligible for disability benefits under the Kansas Police and Fire Retirement System or Kansas Public Employee Retirement System, if sooner.
- (3) Short Term Disability Benefit payments will total 70% of the employee's base pay and will be considered taxable income to the employee. Maternity leave will be considered a short term disability. Employees will not receive overtime or any additional compensation for attending court while on Short Term Disability.
- (4) Any employee incurring an illness or injury which will prevent the employee's return to work in excess of two weeks shall contact his supervisor to request Short Term Disability leave. The request shall be submitted in writing and shall be accompanied by a signed statement to the City from a duly licensed medical doctor verifying: (1) that the employee is medically unable to perform assigned duties; (2) the medical condition involved; and (3) the anticipated length of the required absence. The City reserves the right to require an employee to submit to an examination by one or more City designated physicians at any time during the duration of the Short Term Disability leave to confirm the disability.
- (5) While on Short Term Disability, if the employee is on the City's health insurance program at the time of his injury or illness, the City will continue to provide the employee's health care coverage under the same provisions as prior to the leave for up to, but not exceeding 6 months as long as the employee remains employed by the City.
- (6) Any employee who makes a false claim for Short Term Disability leave or who misrepresents the reasons for requesting Short Term Disability leave, shall be subject to disciplinary action up to and including dismissal.

## **SECTION 12. KPERS & KP&F and Retirement**

All eligible certified law enforcement officers shall be covered under the Kansas Police and Firemen's Retirement System (KP&F). Employees that are not eligible for KP&F will continue to be covered under the KPERS program.

Those employees who retire from service with the Hays Police Department shall be provided recognition of their services. The Department shall maintain a policy providing retired certified officers with the necessary identification and annual training to carry a concealed handgun as outlined by State and Federal laws. Such officer shall be responsible for all expenses for necessary materials to comply with the requirements.

## **SECTION 13. CIVIL LEAVE**

- A. Employees who are required to report for jury duty are to notify their supervisor as soon as possible. The supervisor is to modify the employee's work schedule as required for the employee to properly serve on jury duty. Time spent on jury duty is counted as leave with pay, and is not to be used to qualify for overtime pay.
- B. Employees who are required to serve as a witness or advisor to the court as part of their duties of employment with the City are to immediately notify their supervisor. The supervisor shall modify the employee's work schedule as needed for these duties. Time spent as a witness or advisor to the court on behalf of the City shall count as hours worked.
- C. Employees who are required to appear in court or for other legal proceedings not related to their City employment are to use PTO or leave without pay as needed to meet this legal requirement.
- D. Employees who receive fee for jury duty, or for serving as a witness or advisor services related to their duties with the City, are required to turn these payments over to the City.

## **SECTION 14. WITNESS FEES AND COURT TIME**

For each occurrence, employees shall receive pay equal to their regular rate for actual time worked for court appearances arising from the employee's direct employment with the City, when they are required to appear while off duty. Employees will not receive court time pay for appearances while on-duty. All off-duty appearances shall be made with the employee dressed in his Department uniform.

## **SECTION 15. LENGTH OF SERVICE BONUS**

The City agrees to pay a bonus to eligible employees based upon the City seniority (length of service) of said employee with the City of Hays. The bonus shall be calculated and paid bi-weekly on any overtime earned by an employee that is eligible for the longevity bonus. At the end of the payroll year, the bonus amount on the base pay for eligible employees for the preceding year will be ascertained. The bonus on the

base pay for eligible employees for each payroll year, which will coincide with the time period covered by employees' W-2 Wage and Tax Statement for each fiscal year, will be paid no later than January 15 of the following year. Eligibility for bonuses shall be determined by anniversary dates occurring before January 1<sup>st</sup> of each contract year.

Upon termination of employment, the bonus on base earnings will be paid to eligible employees, and determined by the salary earned to the date of termination.

Longevity bonuses based on length of service shall be paid on the basis of the following percentages:

- After 5 years service, 2%
- After 8 years service, 3%
- After 10 years service, 4%
- After 15 years service, 5%
- After 20 years service, 6%
- After 25 years service, 7%

### **SECTION 16. WAGES / ADMINISTRATION OF THE PAY PLAN**

For fiscal year 2016 the City will make the following adjustments: the City will provide employees of the FOP bargaining unit with a \$2,050 pay adjustment effective with the first payroll in 2016 and the City will increase the beginning of the present pay grades by \$1,500.

### **SECTION 17. HOLIDAYS**

The following days shall be recognized and observed as paid holidays:

- a. New Year's Day, January 1
- b. Memorial Day, last Monday in May
- c. Independence Day, July 4
- d. Labor Day, first Monday in September
- e. Veterans' Day, November 11
- f. Thanksgiving Day, fourth Thursday in November
- g. First Friday after Thanksgiving
- h. Christmas Eve, December 24
- i. Christmas Day, December 25

Any day designated by the City Manager on which any other City employees are given a holiday.

Determination of holiday pay for shift personnel shall be based on the actual date of the holiday. For employees who normally work Monday-Friday schedules, holidays falling on a Saturday or Sunday shall be observed either on the Friday before the holiday or the Monday immediately following.

### **SECTION 18. HOLIDAY COMPENSATION**

An employee whose regularly scheduled work day falls on any City recognized holiday shall receive his regular pay for the scheduled hours of work. This employee shall receive additional holiday compensation at the rate of one and one-half times (1½) his regular rate of pay as holiday compensation for any hours worked on the holiday,

not to exceed his regular scheduled hours of work. Any hours worked as overtime, which is time exceeding the regularly scheduled work hours, shall be compensated at the rate of one and one-half (1½) times his regular rate of pay. No additional holiday compensation will be paid for these overtime hours.

An employee whose scheduled day off falls on any City recognized holiday shall receive, in addition to his day off, additional pay as holiday compensation equal to the amount of hours the employee would regularly be scheduled for work. Celebrated holiday hours shall be counted as time worked.

An employee who is required to work his regularly scheduled day off, or is called to work a portion thereof, as overtime on a holiday, shall receive one and one-half (1½) rate of pay for hours worked. An employee called back to duty on a holiday shall receive a minimum of 2 hours pay.

### **SECTION 19. OVERTIME**

Overtime will be paid in accordance with the Fair Labor Standards Act (FLSA). Approval to work overtime shall be given by their department head or his designated representative. PTO shall be considered as time worked for the purpose of computing overtime.

### **SECTION 20. EMERGENCY PROVISIONS**

If the safety of the employee during emergency conditions makes it necessary for the City to prescribe the areas in which he shall eat his meals, the City shall be obliged to furnish adequate meals.

### **SECTION 21. ADVANCE NOTICE FOR SHIFT CHANGE**

An officer will normally be given adequate advance notice of any change to his regular hours of work, except when an emergency, as determined by the City Manager and/or their department head, exists. An emergency is defined as an unforeseen event affecting the department's ability to perform its mission. Such advance notice shall normally be 48 hours prior to said change.

### **SECTION 22. WORK ASSIGNMENT IN HIGHER CLASSIFICATION**

During routine operations, when an employee is specifically assigned by their department head to fulfill the duties and responsibilities of a higher job classification for a period of more than fourteen (14) consecutive calendar days, the employee shall be compensated by computing the percentage difference between his current range and the range in which he is serving. The employee's current pay will then be increased by that percentage difference to derive the new rate of pay. The pay increase shall be retroactive after the employee has served more than fourteen (14) consecutive calendar days in the higher classification. This additional compensation shall remain in effect until such time as the additional duties are reassigned to another employee when, the employee will revert back to their original pay.

### **SECTION 23. STRIKES AND LOCKOUTS**

As is provided by Kansas Law, the FOP or any employee shall not engage in a strike, slowdown or other work stoppage, or otherwise engage in prohibited practices as

defined and prohibited by Kansas Statute or this agreement. The FOP will not encourage, recognize or condone any such activities on the part of City employees. Should City employees engage in strikes, slowdowns, work stoppages, or other prohibited practices, they shall be subject to disciplinary action.

Likewise, as prohibited by Kansas Law, the City shall not engage in a lockout or other practice prohibited by Kansas Statute or this agreement.

#### **SECTION 24. CLOTHING**

The City will arrange for the purchase of uniforms on a fit-to-size basis, and will arrange for the cleaning of such uniforms and pay for same. Police Detectives and Investigators shall receive a clothing allowance in the amount of \$500.00 for their first year in the position, with an allowance of \$500.00 provided in subsequent years.

#### **SECTION 25. EVIDENCE OF BAD FAITH**

Evidence of bad faith shall be defined as provided under the Public Employer-Employee Relations Act of the State of Kansas.

#### **SECTION 26. PROHIBITED PRACTICE OF THE EMPLOYEE OR EMPLOYEE ORGANIZATION**

It shall be a prohibited practice for public employees or an employee organization to directly or indirectly contact any member of the Governing Body of the City for the purpose of discussing, influencing, or attempting to change any condition of employment pertaining to the employees or employee organization during the meet and confer process.

#### **SECTION 27. MONTHLY FOP DUES DEDUCTED FROM PAYCHECK**

The City agrees for the duration of this agreement that it will deduct the local FOP membership fees once each month from the pay of each employee who authorizes such deduction in writing. Authorization cards signed by the employee shall be furnished to the City by the FOP. All sums deducted shall be remitted by the City within 10 days of such deduction by check, to Fraternal Order of Police, Lodge 48, Inc.

For the services provided, the FOP agrees to pay to the City, an annual fee of \$25.00 prior to February 1st of each year.

#### **SECTION 28. SAFETY AND HEALTH**

The City and the FOP agree to cooperate to the fullest extent in the promotion of safety. The City has established a Safety Committee comprised of both management and workforce employees to make all reasonable efforts to correct unsafe working conditions. The Director of Human Resource and the City's Risk Management Consultant provide directive and guidance for the committee's functions. The Police Chief shall appoint one member to the Safety Committee from a list of five employees recommended by the FOP. The employees agree to notify their supervisor and/or departmental committee representatives in writing of any safety hazard of which they are aware.

**SECTION 29. FALSE ARREST INSURANCE**

The City agrees to procure false arrest insurance in an amount not less than \$500,000 per officer. The City agrees to pay all premiums for said false arrest insurance.

**SECTION 30. SAVINGS CLAUSE**

Should any section or portion thereof of this contract be held unlawful and unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific section, or portion thereof, directly specified in the decision, upon the issuance of such a decision. The parties agree to immediately negotiate a substitute, if possible, for the invalidated section or portion thereof.

**SECTION 31. RATIFICATION**

This agreement is subject to the ratification of the Fraternal Order of Police, Lodge 48, membership and the approval of the City Commission of Hays, Kansas.

**SECTION 32. TERMINATION**

The termination date of the Memorandum of Agreement shall be December 31, 2018. However, Section 16 "Wages / Administration of the Pay Plan" may be reopened on an annual basis if notice of intention to do so is received in writing by the other party prior to March 1 of each succeeding year. Additional items may be reopened, if mutually agreed upon in writing by both parties.

IN WITNESS WHEREOF, the City and the Fraternal Order of Police, Lodge 48, have hereunto set their hands the date set out below.

FOR THE FOP

FOR THE CITY

\_\_\_\_\_  
President Date

\_\_\_\_\_  
Mayor Date

\_\_\_\_\_  
Vice-President Date

\_\_\_\_\_  
City Manager Date

\_\_\_\_\_  
Secretary-Treasurer Date

\_\_\_\_\_  
Chief of Police Date

\_\_\_\_\_  
Director of Communications Date