

Memo

To: City Commission
From: Toby Dougherty, City Manager
Date: 7-28-16
Re: August 4, 2016 Work Session

Please find the attached agenda and supporting documentation for the August 4, 2016 Work Session.

Item 2 – Discussion of Location for Westbound I-70 Monument Sign

Please refer to the attached memorandum from Rick Rekoske, Convention and Visitors Bureau Director, regarding the westbound I-70 monument sign. As you recall, the Kansas Department of Transportation informed us that we would not be allowed to locate the westbound monument sign in KDOT right-of-way, as per directive by the Federal Highway Administration. City staff evaluated several possible locations for the westbound sign with two locations standing out. We are recommending pursuing a private easement immediately north of the KDOT right-of-way up-road from the original location.

Item 3 – 2016 Street Maintenance – Supplemental Diamond Grinding Contract

Please refer to the attached memorandum from John Braun, Assistant Director of Public Works, regarding a supplemental diamond grinding contract. Part of the 2016 Street Maintenance involved diamond grinding on 27th Street and Canterbury. After working for a few days, it was determined that the original contractor could not supply the desired outcome. Therefore, City staff asked that they cease work on the project. City staff then contacted the company that had the second place bid and asked if they would be interested in providing the service. There are adequate monies in the Special Highway account to fund the slight increase in cost.

Item 4 – Possible Changes to the Extraterritorial Jurisdiction

The Ellis County Commission expressed its intent to modify the extraterritorial jurisdiction, commonly referred to as the three-mile boundary. The Commission directed the County Administrator to meet with the City Manager to discuss possible modifications to the boundary. While eliminating some property from the boundary where development is unlikely to occur, the City's growth areas would still be protected. The County Administrator and I met several times to discuss possible changes, and the resulting map was produced with input from City and County staff. The map was shown to the Planning Commission at its July 18, 2016 regular meeting. The

Planning Commission was generally supportive of the proposed modification; however, it did not have any formal communication. The proposed map is being presented to the City Commission for input that will be shared with the Ellis County Commission at a future meeting.

Item 5 – Lots 19 & 20, Hays Airport Industrial Park, Hays Medical Center – Surface Nondisturbance Agreement and Declaration

Please refer to the attached memorandum from John Bird, City Attorney. Hays Medical Center has purchased Lots 19 and 20 at the Hays Airport Industrial Park which includes the former NEW facility. The City owns the mineral rights. Hays Medical Center has asked for a Surface Nondisturbance Agreement. This means the City would agree not to drill for subsurface minerals on the property. City staff has no problem making this recommendation as, due to avigation easements, we have no intention of drilling on the property. John Bird will have more information at the work session.

aw

**CITY OF HAYS
CITY COMMISSION WORK SESSION
THURSDAY, AUGUST 4, 2016 – 6:30 P.M.
AGENDA**

1. **ITEM FOR REVIEW: [July 21, 2016 Work Session Notes \(PAGE 1\)](#)**
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
2. **ITEM FOR REVIEW: [Discussion of Location for Westbound I-70 Monument Sign \(PAGE 5\)](#)**
DEPARTMENT HEAD RESPONSIBLE: Rick Rekoske, CVB Director
3. **ITEM FOR REVIEW: [2016 Street Maintenance – Supplemental Diamond Grinding Contract \(PAGE 13\)](#)**
DEPARTMENT HEAD RESPONSIBLE: Greg Sund, Director of Public Works
4. **ITEM FOR REVIEW: [Possible Changes to the Extraterritorial Jurisdiction \(PAGE 19\)](#)**
PERSON RESPONSIBLE: Toby Dougherty, City Manager
5. **ITEM FOR REVIEW: [Lots 19 & 20, Hays Airport Industrial Park, Hays Medical Center – Surface Nondisturbance Agreement and Declaration \(PAGE 35\)](#)**
PERSON RESPONSIBLE: John T. Bird, City Attorney
6. **OTHER ITEMS FOR DISCUSSION**
7. **EXECUTIVE SESSION (IF REQUIRED)**
8. **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, July 21, 2016 – 6:30 p.m.

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

July 7, 2016 Work Session Notes

There were no corrections or additions to the minutes of the work session held on July 7, 2016; the minutes stand approved as presented.

Adoption of Unified Development Code

Greg Sund, Director of Public Works, explained that the rewrite of the zoning and subdivision regulations, now known as the Unified Development Code (UDC), has been ongoing since June of 2014. This project benefited greatly from input from staff, developers, realtors, contractors, engineers, the consultant, and other various community interest groups. As a result of this input, many edits were made to the original draft resulting in a final product that is much different from the draft first produced at the onset of the project. With the changes made since receiving the draft from Kendig Keast, it is truly a Hays document. The proposed UDC better reflects the needs of the City today than do the current zoning and subdivision regulations.

Bret Keast, owner and CEO of Kendig Keast Collaborative, provided a brief overview of the UDC. He explained that the UDC is a collection and consolidation of ordinances that guide the development or redevelopment of property within the City of Hays and its three-mile planning area. It is a single source of standards, regulations, and procedures to aid development in gaining approval.

City staff feels the draft UDC represents the needs of the community and stakeholders and protects the long-term interest of the community at large.

Commissioner Schwaller asked if this new code presents a problem with enforcement.

City Manager, Toby Dougherty, responded that this should be easier to oversee from a regulatory standpoint than our current code because it is easier to understand.

At the July 28, 2016 Commission meeting, Commissioners will be asked to approve the ordinance adopting the UDC as presented and as recommended by the Planning Commission.

2017 Budget Discussion

City Manager, Toby Dougherty, stated the 2017 budget had been presented and asked if the Commissioners had any clarifications or changes to be made to the budget. He also asked for City Commission input on allocations for outside agencies, including Quality of Life and Economic Development, as some of these entities are asking for an increase in funding for 2017.

It was the consensus of the Commission to hold outside agency funds to the 2016 levels.

Commissioner Schwaller stated that it would be difficult for the City to spend more money given the very tight budget situation that we face.

Commissioner Jones asked why we fund the Downtown Hays Development Corporation (DHDC) when we don't fund the Chamber of Commerce, other than being a member. In 2007, the Commission cut the DHDC's funding by 10 percent and announced it would continue to reduce funding gradually in future years. That trend did not continue. Commissioner Jones suggested decreasing their funding by 10 percent for 2017.

Commissioner Schwaller agreed it was not the intention of the Governing Body to fund them in perpetuity, but suggested the Commission give them notice before cutting support.

City Manager, Toby Dougherty, stated that the Hays Public Library submitted a request to slightly increase the mill levy funds allocated to the library. The increased request is due to the library receiving word it would not qualify for

a state library grant unless its tax level increased. The increase amounts to approximately one-fourth of a mill, or nearly \$51,000.

Finance Director, Kim Rupp stated to maintain the 25 mills for the City we have to reduce the employee benefit fund contingency line by \$51,000 and or subsidize with general fund money.

At the July 28, 2016 Commission meeting, the Commissioners will be asked to set the date for a public hearing for the 2017 budget to be held during the Commission meeting on August 11, 2016.

Other Items for Discussion

Commissioner Schwaller encouraged everyone to attend “Thunder on the Bricks” this weekend.

Vice-Chairperson Musil thanked City crews for their efforts in removing the tree limbs due to the recent storm. He also asked what the procedure is when citizens are asked to move their vehicles within a certain time frame in order for work to be done on the streets.

City Manager, Toby Dougherty, stated contractors make every attempt to give citizens plenty of notice to move their vehicles. He stated with all the work we do on streets it is not a pervasive issue.

Chairperson Phelps commended the collaborative effort of City employees, in response to the recent storm.

The work session was adjourned at 7:47 p.m.

Submitted by: _____

Brenda Kitchen – City Clerk

Commission Work Session Agenda

Memo

From: Rick Rekoske, Director CVB

Work Session: August 4, 2016

Subject: I-70 Monument Signs Revised Location

Person(s) Responsible: Rick Rekoske, Director of CVB

Summary

The City awarded a contract for the construction of “Welcome to Hays” signs at the March 10th, 2016 City Commission meeting. The original plan called for construction of the westbound sign within the I-70 right of way, just east of the Commerce Parkway exit. In addition, the plan also included an eastbound sign near Arnhold Park on the south side of the interstate. Subsequently, the westbound sign was not approved by the Kansas Department of Transportation and Federal Highway Administration. Two alternative locations are being considered for the westbound sign. City Staff recommends a location along the north side of I-70 on private property just east of the original location.

Background

On March 14th, 2016 the City of Hays was informed by KDOT our submitted application was received and KDOT would inspect the location for the westbound monument sign location and provide the approval to build within 60 days. The westbound sign would be placed in the I-70 right of way under a DOT Form 304 Right of Way Use Permit.

The Federal Highway Administration (FHWA) informed KDOT (May 2016) the use of interstate signage is going to be restricted; The FHWA is concerned about the use of Interstate Right of Way for the placement of gateway signs and monuments at the entry to communities. Furthermore, on June 23rd, 2016 the Kansas Department of Transportation informed the City of Hays the westbound location just east of the Commerce Parkway exit previously approved by KDOT would not be an acceptable location for the new I-70 “Welcome to Hays” monument sign.

Two alternate locations are being considered for the westbound monument signs. The proposed sign locations are: the private property adjacent to the I-70 right of way on the north side of the interstate, just a short distance east of the original location, and the city property located near the old I-70 rest area. See attached Location Maps. Preliminary site work will be required to compact the base and build a two foot high earthen mound to raise the signs making them more noticeable. This would be accomplished under separate contract with a local dirt contractor at an estimated cost of \$3,000 for either location. The private property on the north side of I-70 would require the acquisition of a permanent signage easement at a one-time cost of \$1,645 and the cost to construct a

barbed wire fence around the sign to keep livestock from the sign. There are no additional costs for the south side location.

Discussion

City Staff has located two options for the placement of the westbound I-70 Monument Signs.

1. North Side location on private property
2. South Side location near the old I-70 rest area

There will be no landscaping around the sign other than the re-establishment of native grasses in areas disturbed by construction. City Parks Department will be responsible for seeding the native grasses and future maintenance of the signs and mowing. A sign application for the north side location has already been submitted to KDOT and is currently under review by the Bureau of Right of Way. City Staff expects a response from KDOT by the end of August. Placement of the monument signs will commence upon final approval of the sign location. The expected completion date of the entire project is October 31st, 2016.

Legal Consideration

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

Financial Consideration

Estimated Costs:

Option 1 (north side location)

One (1) Monument Sign (Tobin Rupe Stoneworks contract)	\$24,140
Signage Easement (agreement pending site approval)	\$1,645
Site Prep and tree removal (estimated)	\$1,000
Earthen mound construction (estimated)	\$1,500
Fence construction (estimated)	\$2,500
In-house seeding (Parks Dept labor and material)	\$117.50
<u>TOTAL COST (North Location)</u>	<u>\$30,902.50</u>

Option 2 (south side location)

One (1) Monument Sign (Tobin Rupe Stoneworks contract)	\$24,140
Signage Easement (none required)	
Site Prep and tree removal (none required)	
Earthen mound construction (estimated)	\$1,500
Fence construction (none required)	
In-house seeding (Parks Dept labor and material)	\$117.50
<u>TOTAL COST (South Location)</u>	<u>\$25,757.50</u>

Options

The City Commission has the following options:

1. The City Commission may approve the recommendation to accept the north side I-70 location.
2. Choose the south side location property already owned by the City.
3. Provide further guidance on how staff should proceed.

Recommendation

Staff recommends the location on the north side of I-70, and authorizing the expenses associated with that location.

Action Requested

Authorize staff to take all actions necessary for the construction of the westbound “Welcome to Hays” sign at the north location.

Supporting Documentation

Location Map

Street Views for North and South locations along I-70

WELCOME TO HAYS MONUMENT SIGN LOCATIONS

NORTH AND SOUTH LOCATIONS

Original
Northside
Location

Proposed
Northside
Location

Optional
Southside
Location

Google





NE Corner Sec 36, T13S, R18W

Fairground Road

1 acre
Temporary
Easement

60' x 80'
Permanent
Easement

1960 ft



Intersection of East line of
Sec 36 and I-70 Right of Way

Commission Work Session Agenda

Memo

From: John Braun, Assistant Director of Public Works

Work Session: August 4, 2016

Subject: 2016 Street Maintenance – Supplemental Diamond Grinding Contract

Person(s) Responsible: Greg Sund, Director of Public Works

Summary

In March, the City Commission approved bids for 2016 Street Maintenance Projects. Diamond Grinding sections of Canterbury and 27th Streets was included. The contractor hired to grind the bumps from the concrete streets has been unable to achieve the level of improvement expected by the City. Staff recommends awarding a contract to the next low bidder, West Fork LLC in the amount of \$168,080.12 to complete the project. Funding would come out of Special Highway.

Background

At the March 10, 2016 Regular Meeting, the City Commission accepted bids for various street maintenance projects authorizing the City Manager to enter contracts for execution. One of those was for diamond grinding the bumps off the concrete pavement on Canterbury between 12th and 13th Street and also on 27th Street from Vine to Sherman. The diamond grinding project was based on a prototype project accomplish in 2013 by West Fork, LLC (formerly Iowa Erosion Control) to grind Commerce Parkway between 22nd Street and the I-70 interchange, which was highly successful.

The low bidder for Diamond Grinding this year (2016) was APAC of Hays in the amount of \$164,603.20. West Fork LLC of Iowa also bid the project but they were about \$4,000 higher at 168,080.12. Subsequently, a contract was entered with APAC, and work began on July 6, 2016 on Canterbury between 12th and 13th Street. The contract documents specified, “The contractor will be expected to make two passes to achieve the desired ride quality improvement. Should more than two passes be required, the City and Contractor may negotiate a price for additional work.”

It took the contractor seven (7) days to finish two passes on Canterbury. On Monday, July 18th, they started grinding on 27th Street in the west bound lanes between Broadway and Sherman. It soon became apparent that the result of two passes of grinding was not producing the ride improvement desired.

City Staff brought this to the attention of the contractor on July 19th and had further discussion on site on July 20th. APAC's grinding subcontractor (Interstate Grinding of Garden City) admitted that they are not capable of accomplishing the desired results with the equipment they have, and that taking another pass would not make it much better. Interstate Grinding regularly does work for KDOT, and has done work in Hays before, most recently 41st Street west of Hall Street. The owner of Interstate Grinding stated this is only the second job in his 13 years of grinding that he has not been able to complete. On the morning of July 21st, City staff issued a suspension of any further work on the project.

Discussion

City Staff has contacted the next low bidder, West Fork, LLC in regards to accomplishing the work that APAC was not able to complete. West Fork has much larger equipment than Interstate Grinding, and they successfully accomplished this same work on Commerce Parkway in 2013. West Fork has agreed to honor their bid price of \$168,080.12, and could accomplish the work in October.

The areas ground by the current contractor would have to be redone to achieve the desired improvement. Therefore, it will take the full amount of West Fork's original bid to complete the job. Note that this project also includes a significant amount of pavement markings, which includes the entire intersections of 27th & Vine and 13th & Canterbury.

Staff is working with the City Attorney on terminating the contract with APAC, and determining due compensation.

Legal Consideration

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

Financial Consideration

Below is a summary of funds available for street maintenance:

FUNDING

Special Highway and Street Project Funding - approved at March 10, 2016 CC Meeting

Special Highway	\$ 1,122,237.00
Special Highway Contingency	\$ 50,000.00
Capital Reserve	\$ 802,338.70
Total	\$ 1,974,575.70

EXPENDITURES

Bid Projects	Awarded	Actual	Difference	
Concrete Patch	\$ 91,008.00	\$ 91,008.00	\$ -	\$2,049.75 overage paid out of contingency
Microsurfacing	\$ 410,396.00	\$ 331,840.16	\$ (78,555.84)	Complete
Preservative Seal	\$ 50,090.82	\$ 50,090.82	\$ -	Complete
Seal Coat	\$ 180,251.68	\$ 175,134.68	\$ (5,117.00)	Underway
Polypatch	\$ 43,470.00	\$ 43,470.00	\$ -	Underway

Curb and Brick	\$ 96,995.00	\$ 96,995.00	\$ -	Not Started
Mill and Overlay	\$ 757,761.00	\$ 757,761.00	\$ -	Not Started
Diamond Grinding	\$ 164,603.20	\$ 30,037.62	\$ (134,565.58)	Suspended
Total Projects	\$ 1,794,575.70	\$ 1,576,337.28	\$ (218,238.42)	

Other Special Highway	allocated	actual/anticipated		
Pavement Assessment	\$ 50,000.00	\$ 25,900.00	\$ (24,100.00)	Underway
Sidewalk	\$ 40,000.00	\$ 40,000.00	\$ -	
In-house	\$ 40,000.00	\$ 40,000.00	\$ -	
Contingency	\$ 50,000.00	\$ 50,000.00	\$ -	\$17,486 current remaining balance
Subtotal Other	\$ 180,000.00	\$ 155,900.00	\$ (24,100.00)	

Total Expenditures	\$ 1,974,575.70	\$ 1,732,237.28	\$ (242,338.42)
--------------------	-----------------	-----------------	-----------------

Supplemental Diamond Grinding		\$ 168,080.12	\$ 168,080.12	Pending
-------------------------------	--	---------------	---------------	---------

Total with Supplemental Grinding	\$ 1,974,575.70	\$ 1,900,317.40	\$ (74,258.30)
----------------------------------	-----------------	-----------------	----------------

Awarding a \$168,080.12 contract to West Fork LLC to finish the Diamond Grinding Project would still leave nearly \$75,000 in Special Highway to cover contingency and other yet identified street maintenance needs.

Options

The City Commission has the following options:

- Enter a contract with West Fork LLC to complete the Diamond Grinding Project.
- Provide alternate direction to City Staff
- Do nothing

Recommendation

Staff recommends entering a contract with West Fork LLC to complete the Diamond Grinding Project.

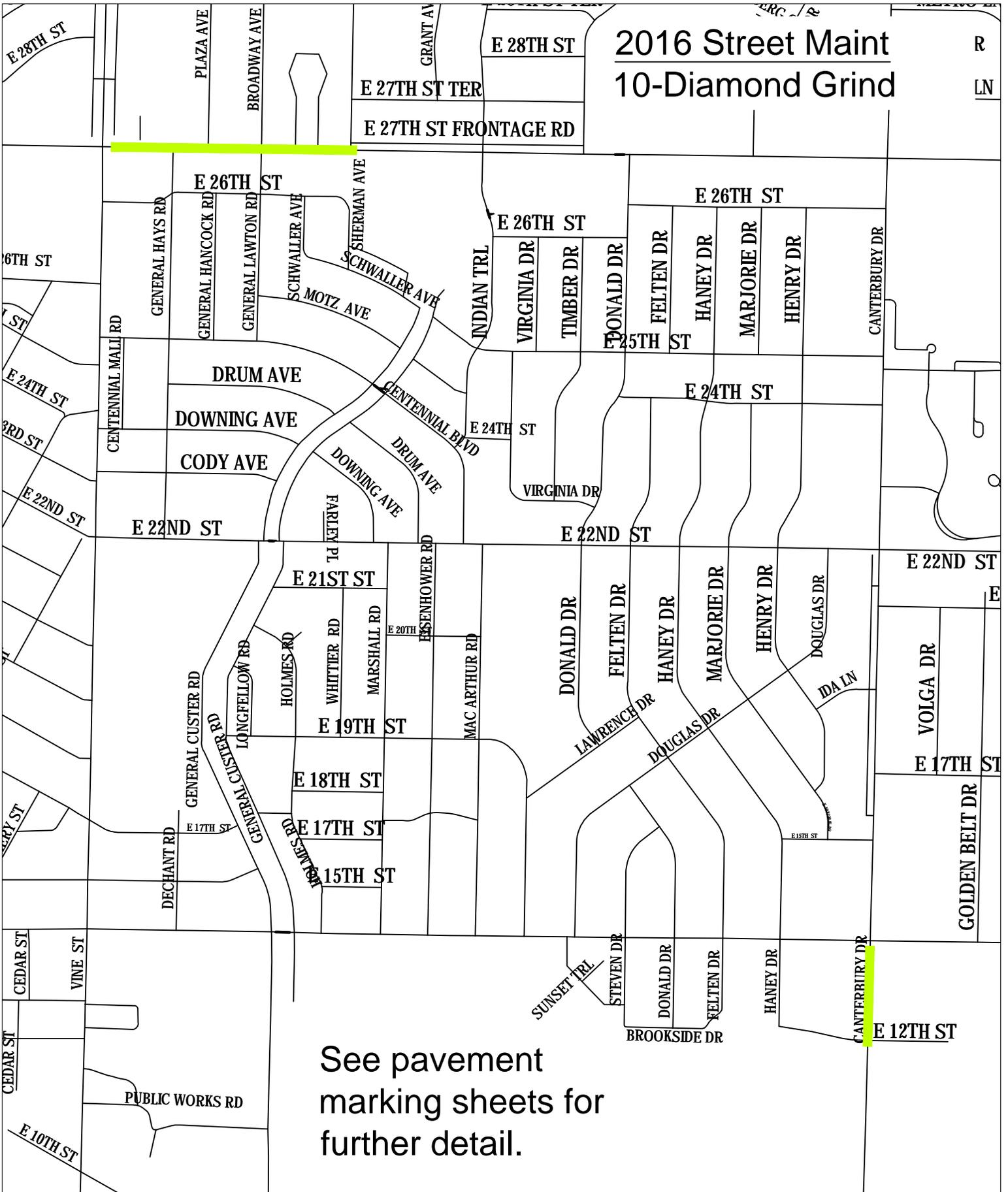
Action Requested

Authorize the City Manager to enter a contract with West Fork LLC in the amount of \$168,080.12 for Diamond Grinding Canterbury from 12th to 13th Street and 27th Street from Vine to Sherman to be funded out of Special Highway.

Supporting Documentation

Location Map
Diamond Grinding Bids

2016 Street Maint 10-Diamond Grind



City of Hays Project 2015-23
 2016 Street Maintenance
 Bid Tabs
 BID DATE: February 2, 2016

0.4246

		Apac 5		West Fork 7	
		Unit Price	Total	Unit Price	Total
10a Diamond Grind	12500 SY	\$ 5.66	\$ 70,750.00	\$ 7.25	\$ 90,625.00
10b Durable Pavement Marking - 4" Yellow	6328 LF	\$ 1.80	\$ 11,390.40	\$ 3.15	\$ 19,933.20
10c Durable Pavement Marking - 12" Yellow	159 LF	\$ 20.00	\$ 3,180.00	\$ 13.13	\$ 2,087.67
10d Durable Pavement Marking - 4" White	521 LF	\$ 1.80	\$ 937.80	\$ 3.15	\$ 1,641.15
10e Durable Pavement Marking - 6" White	2570 LF	\$ 4.00	\$ 10,280.00	\$ 4.20	\$ 10,794.00
Durable Pavement Marking - 24" White Stop Bar					
10f	273 LF	\$ 40.00	\$ 10,920.00	\$ 23.10	\$ 6,306.30
Durable Pavement Marking - 24" White Cross					
10g Walk	688 LF	\$ 40.00	\$ 27,520.00	\$ 23.10	\$ 15,892.80
Durable Pavement Marking - Bike Lane Symbols					
10h	4 EA	\$ 375.00	\$ 1,500.00	\$ 800.00	\$ 3,200.00
10i Durable Pavement Marking - Arrows - LEFT	25 EA	\$ 375.00	\$ 9,375.00	\$ 550.00	\$ 13,750.00
10j Durable Pavement Marking - Arrows - RIGHT	2 EA	\$ 375.00	\$ 750.00	\$ 550.00	\$ 1,100.00
10k Pavement Marking Removal	1 LS	\$ 18,000.00	\$ 18,000.00	\$ 2,750.00	\$ 2,750.00
Total Bid Item #10			\$ 164,603.20		\$ 168,080.12

Commission Work Session Agenda

Memo

From: Toby Dougherty, City Manager

Work Session: August 4, 2016

Subject: Possible Changes to the Extraterritorial Jurisdiction

Person(s) Responsible: Toby Dougherty, City Manager

Summary

The Ellis County Commission directed the County Administrator to initiate discussion with the City of Hays on possible modifications to the extraterritorial zoning jurisdiction (ETJ), sometimes referred to as the three-mile boundary. The City Manager and County Administrator met and developed a revised ETJ boundary that was presented to the Hays Area Planning Commission for comment at its July 18, 2016 regular meeting. The map is now being presented to the City Commission for further comment which will then be provided to the County Commission as it determines what, if any, changes to the ETJ are necessary.

Background

The City of Hays has had some sort of authority over zoning and subdivision regulations in the extraterritorial jurisdiction since 1973. In the absence of County zoning, State law gives cities the authority to enforce zoning and subdivision regulations up to three miles outside of their corporate limits. The current extraterritorial jurisdiction has been in place since Ellis County adopted zoning in 2006. Shortly after Ellis County adopted countywide zoning, the Ellis County Commission and Hays City Commission signed an ordinance/resolution (attached) that spelled out the current ETJ. The Ellis County Commission can unilaterally make changes to the City of Hays' ETJ.

Discussion

During a regular meeting, the Ellis County Commission discussed making modifications to the City of Hays' extraterritorial jurisdiction. At that meeting, the County Administrator was directed to reach out to the Hays City Manager to discuss possible modifications to the ETJ. Through subsequent meetings and discussions with staff, the map being presented was developed. The map removes approximately 19 square miles from the current ETJ while still protecting the City's anticipated growth areas for the future. One of the most notable changes is the removal of all privately-held land on the south and west sides of the State-owned properties. City staff feels the changes are acceptable and still provide protection of the growth areas for the short and mid-range future.

The ETJ is not an immutable line. It is designed to be modified as cities grow to protect growth areas. The ETJ should be revisited periodically. City staff suggests that a review be formalized during the annual review of the Comprehensive Plan conformity and land use map, with any suggested changes being brought forward from the Planning Commission and shared with the City Commission and Ellis County Commission.

The Hays Area Planning Commission was presented the proposed modification to the ETJ at the July 18th regular meeting. While there was discussion on the matter, the Planning Commission was generally accepting of the modifications and had no formal recommendation or communications to pass on to the City Commission. This item is being presented for input only and any comments will be shared with the Ellis County Commission as it determines what, if any, changes it would like to make to the ETJ.

Legal Consideration

At such time as any actual changes in the legal boundaries of the extraterritorial jurisdiction are proposed, the process will include the Planning Commission and then a modification of the Interlocal Governmental Agreement with Ellis County, all of which is able to be accomplished. There will need to be a Resolution passed by the County, mirrored by an Ordinance passed by the City.

Financial Consideration

There are no financial considerations as this is a land use matter.

Options

This item is being presented for discussion purposes. If the City Commission is satisfied with the proposed map, that will be shared with the Ellis County Commission. If the City Commission would like to suggest modifications to the proposed map, that will also be shared with the Ellis County Commission.

Recommendation

City staff recommends that the proposed map be shared with the Ellis County Commission as receiving a positive recommendation from the City Commission.

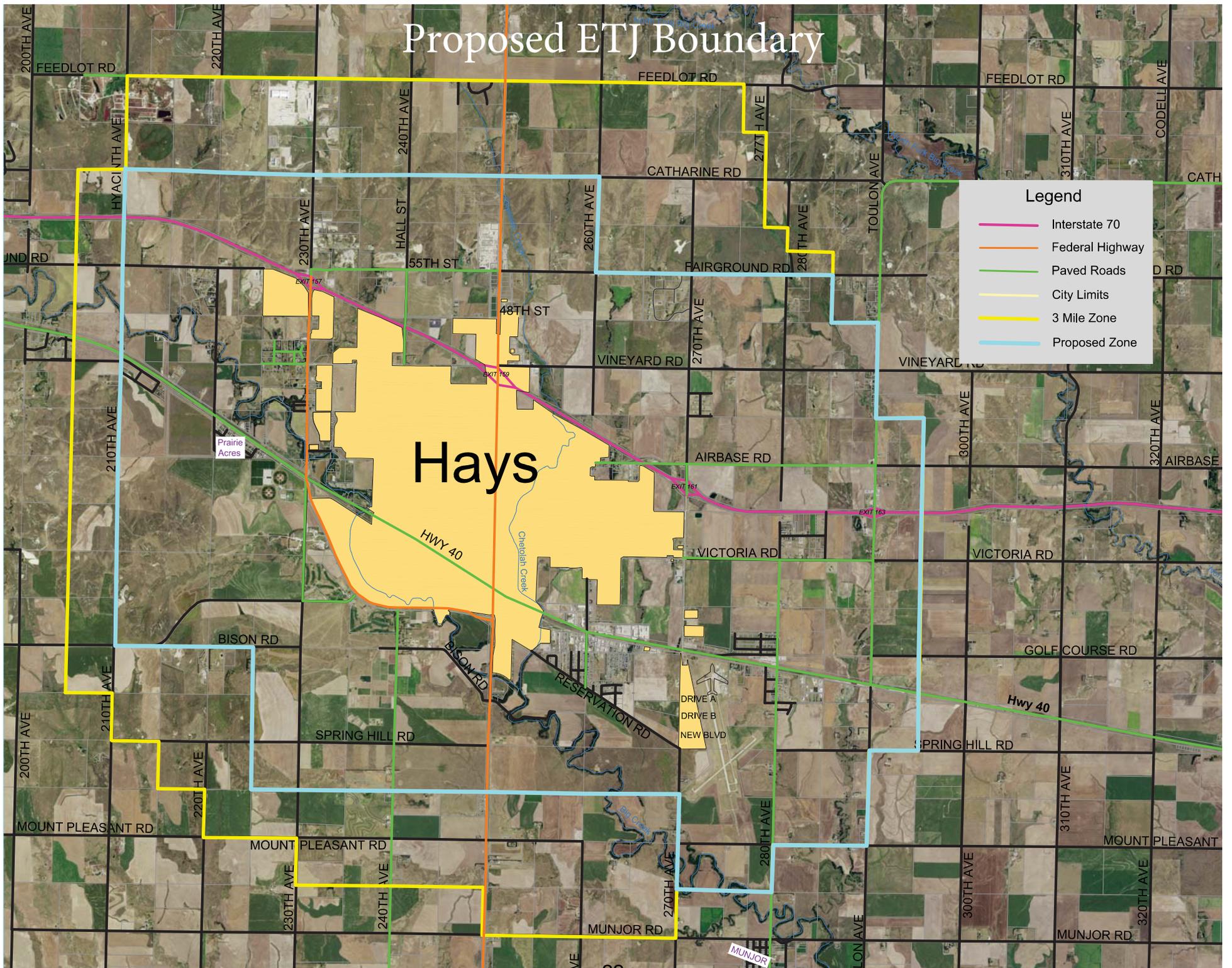
Supporting Documentation

Current Extraterritorial Jurisdiction

Proposed Modification

Ellis County Resolution 2007-8/City of Hays Ordinance No. 3721

Proposed ETJ Boundary



ELLIS COUNTY RESOLUTION NO. 2007-8
CITY OF HAYS ORDINANCE NO. 3721

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ELLIS COUNTY, KANSAS, AND AN ORDINANCE OF THE CITY OF HAYS, KANSAS, PROVIDING FOR THE AMENDMENT OF ORDINANCE NO. 2479, PASSED AS A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ELLIS COUNTY, KANSAS AND AN ORDINANCE BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS ON APRIL 25, 1974, AND PROVIDING FOR THE HAYS AREA PLANNING COMMISSION AND HAYS AREA BOARD OF ZONING APPEALS, PRESCRIBING THE METHODS AND MEANS OF ESTABLISHMENT OF SAID BODIES, THEIR POWERS AND DUTIES AND CONTINUING THE EFFECTIVENESS OF CERTAIN ZONING ORDINANCES, SUBDIVISION REGULATIONS AND LAND USE RESTRICTIONS AND REGULATIONS WITHIN THE CORPORATE LIMITS OF THE CITY OF HAYS, KANSAS AND WITHIN THREE (3) MILES OF ITS CORPORATE LIMITS.

WHEREAS, Ellis County, Kansas, and the City of Hays, Kansas, by virtue of Joint Resolution/Ordinance Number 2479, on April 25, 1974, established a Planning Commission, as authorized by law, known as the Hays-Ellis County Planning Commission; established the area of jurisdiction of the Planning Commission within the corporate limits of Hays, Kansas and outside of but within three miles of the corporate limits of the City of Hays; established a Planning Commission, defining its makeup and the method of selection and duties; established a Board of Zoning Appeals, its makeup, method of selection and duties; ratified then-existing zoning and subdivision regulations and rules; established methods of budgeting and administering the entities established by said Joint Resolution/Ordinance; and

WHEREAS, the Board of County Commissioners of Ellis County, Kansas has, by virtue of Resolution No. 2006-17 and 2006-18 and enabling legislation of the State of Kansas, now adopted

RESOLUTION NO. 2007-8

ORDINANCE NO. 3721

Page 2

subdivision and zoning regulations for the unincorporated areas of Ellis County and excepting certain portions surrounding the Cities of Ellis and Hays, Kansas; and

WHEREAS, it is the intent of the Board of County Commissioners of Ellis County, Kansas, and the governing body of the City of Hays, Kansas, pursuant to K.S.A. 12-715b and other enabling legislation, for the City of Hays, Kansas, to continue to govern, establish, fund and administer the Planning Commission and Board of Zoning Appeals for the area within its corporate limits and outside and not more than three miles from the corporate limits of the City of Hays, Kansas, if located in the following described area:

In Township 13 South, Range 17 West, the following:

All of Sections 30 and 31; the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 18; the West $\frac{1}{2}$ and the Southeast $\frac{1}{4}$ of section 19; the Southwest $\frac{1}{4}$ of Section 29; and the West $\frac{1}{2}$ of Section 32.

In Township 14 South, Range 17 West, the following:

All of Sections 6, 7 and 18; and the West $\frac{1}{2}$ of Sections 5 and 8.

In Township 13 South, Range 18 West, the following:

All of Sections 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36; the West $\frac{1}{2}$ and the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 12; and all of Section 13 except the East $\frac{1}{2}$ of the Northeast $\frac{1}{4}$.

In Township 14 South, Range 18 West, the following:

All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22 and 23; and the North $\frac{1}{2}$ of Sections 20, 21 and 24.

In Township 13 South, Range 19 West, the following:

RESOLUTION NO. 2007-8

ORDINANCE NO. 3721

Page 3

All of Sections 12, 13, 24, 25 and 36; and the East ½ of Sections 14, 23, 26 and 35.

In Township 14 South, Range 19 West, the following:

All of Sections 1 and 12; the East ½ of Section 2; the Northeast ¼ of Section 11, and the Northeast ¼ of Section 13; and

WHEREAS, any zoning ordinance or subdivision regulations, rules and maps adopted under the provisions of prior law or Joint Resolution/Ordinance Number 2479, shall continue in full force and effect until and unless modified or amended as provided by law;

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Ellis County, Kansas, and

NOW, THEREFORE, be it ordained by the Governing Body of the City of Hays, Kansas:

ARTICLE I

PLANNING COMMISSION

1. That there is hereby established a Planning Commission as authorized by K.S.A. 12-715b *et seq.*, to be known as the Hays Area Planning Commission, hereinafter called the "Hays Area Planning Commission."

2. That the area of jurisdiction of the Hays Area Planning Commission, hereinafter called the "Planning Area," shall include that area within the corporate limits of the City of Hays and that area outside and not more than three miles from the corporate limits of the City of Hays, Kansas, if located in the following described area:

In Township 13 South, Range 17 West, the following:

All of Sections 30 and 31; the South ½ of the Southwest ¼ of Section 18; the

RESOLUTION NO. 2007-8

ORDINANCE NO. 3721

Page 4

West ½ and the Southeast ¼ of section 19; the Southwest ¼ of Section 29; and the West ½ of Section 32.

In Township 14 South, Range 17 West, the following:

All of Sections 6, 7 and 18; and the West ½ of Sections 5 and 8.

In Township 13 South, Range 18 West, the following:

All of Sections 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36; the West ½ and the West ½ of the Southeast ¼ of Section 12; and all of Section 13 except the East ½ of the Northeast ¼.

In Township 14 South, Range 18 West, the following:

All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22 and 23; and the North ½ of Sections 20, 21 and 24.

In Township 13 South, Range 19 West, the following:

All of Sections 12, 13, 24, 25 and 36; and the East ½ of Sections 14, 23, 26 and 35.

In Township 14 South, Range 19 West, the following:

All of Sections 1 and 12; the East ½ of Section 2; the Northeast ¼ of Section 11, and the Northeast ¼ of Section 13.

3. The Hays Area Planning Commission shall consist of nine (9) members appointed by the Mayor with the consent of the City Commission of the City of Hays. In making said appointments, the City shall obtain from the County Commission its requests for appointments of individuals who reside outside the corporate limits and in the three mile zone and, subject to the final statutory power of the Mayor to make said appointments, those recommendations shall be considered by the Mayor for said appointment. The County shall submit its requests for appointment in

RESOLUTION NO. 2007-8

ORDINANCE NO. 3721

Page 5

whatever numbers it desires, to give the Mayor a wide choice of candidates and the City shall publicize the appointment process to allow input from all interested parties in advance of the appointments. All Hays Area Planning Commission members shall reside within the Planning Area, and at least three (3) members, but no more than four (4), shall reside outside of but within three (3) miles of the corporate limits of the City of Hays, Kansas.

4. That all existing members, appointed under the provisions of Ordinance No. 2479, shall continue in office until and unless replaced as provided herein.

5. That all appointments for new terms shall be for three-year terms from the first day of May of the year in which they are appointed.

6. That vacancies on the Hays Area Planning Commission caused by death, resignation, or other disability of any member shall be filled for the unexpired term only.

7. The members of the Hays Area Planning Commission shall serve without compensation, but may be reimbursed for expenses actually incurred in the performance of their duties.

8. That the members of the Hays Area Planning Commission shall elect one of their number as Chairman, one as Vice-Chairman, who shall serve one year or until their successors have been selected. A Secretary, who need not be a member of the Hays Area Planning Commission, shall be designated to perform all necessary clerical tasks.

9. That the members of the Hays Area Planning Commission shall meet at least once each month, at such time and place as they shall fix by resolution, and if a member has three or more unexcused absences, this may be cause for removal from the Hays Area Planning Commission.

RESOLUTION NO. 2007-8

ORDINANCE NO. 3721

Page 6

10. That special meetings of the Hays Area Planning Commission may be called at any time by the Chairman, or in his absence by the Vice-Chairman.

11. That a majority, five members, of the Hays Area Planning Commission shall constitute a quorum for the transaction of business and all actions taken shall be by a vote of a majority of those voting.

12. That the Hays Area Planning Commission shall cause a proper record to be kept of its proceedings, said record to be kept in the office of the Secretary.

13. That the Hays Area Planning Commission is hereby authorized to make or cause to be made and amended from time to time a comprehensive plan for the Planning Area which may include, but is not limited to, recommendations for principal highways, bridges, airports, parks, and recreational areas, schools, public institutions, public utilities, public financial plan, land use plan, and zoning, and subdivision regulations. The existing comprehensive plan, as established and amended, pursuant to Ordinance No. 2479, shall continue in full force and effect.

14. That the Hays Area Planning Commission shall have those powers and duties as prescribed by law for City Planning Commissions and shall hold public hearings as required by statutes for City Planning Commissions and shall make recommendations to the City on planning, zoning, and subdivision matters which affect land located within the corporate limits of the City of Hays and within three (3) miles of the corporate limits of the City of Hays, Kansas.

ARTICLE II

BOARD OF ZONING APPEALS

1. That the City establishes a Hays Area Board of Zoning Appeals, as authorized by

RESOLUTION NO. 2007-8

ORDINANCE NO. 3721

Page 7

K.S.A. 12-722 through K.S.A. 12-724, hereinafter called the "Board."

2. That the Board shall have the same area of jurisdiction as the Hays Area Planning Commission.

3. The Board shall consist of five (5) members, which shall be appointed by the Mayor with the consent of the City Commission. In making said appointments, the City shall obtain from the County Commission its requests for appointments of individuals who reside outside the corporate limits and in the three mile zone and, subject to the final statutory power of the Mayor to make said appointments, those recommendations shall be considered by the Mayor for said appointment. The County shall submit its requests for appointment in whatever numbers it desires, to give the Mayor a wide choice of candidates and the City shall publicize the appointment process to allow input from all interested parties in advance of the appointments. None of the members shall hold any other public offices in the City or County except that one member shall be a member of the Hays Area Planning Commission. All Board members shall reside within the Planning Area, with at least one member to reside outside the corporate limits of the City of Hays and within three (3) miles of the corporate limits of the City of Hays, Kansas.

4. That all existing members, appointed under the provisions of Ordinance No. 2479, shall continue in office until and unless replaced as provided herein.

5. That all appointments for new terms shall be for three-year terms from the first day of May of the year in which they are appointed.

6. That vacancies shall be filled by appointment for the unexpired term only.

7. That the members of such Board shall serve without compensation, but may be

RESOLUTION NO. 2007-8

ORDINANCE NO. 3721

Page 8

reimbursed for expenses actually incurred in the performance of their duties.

8. That the Board shall elect one of its members as Chairman, one as Vice-Chairman, who shall serve one year or until their successors have been selected. A Secretary, who need not be a member of the Board, shall be designated to perform all necessary clerical tasks.

9. That meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine.

10. That a majority, three members, of the Board shall constitute a quorum for the transaction of business and all actions taken shall be by a majority of those voting.

11. That the Board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decision of the Board and the vote upon each question.

12. That the Board shall have those powers and duties as established by ordinance and resolution and state law.

13. That records of all official actions of the Board shall be filed in the office of the City Clerk and shall be a public record.

ARTICLE III

EXISTING REGULATIONS

That any zoning ordinance or subdivision regulations, rules, and maps adopted by the City or County under the provisions of the act of which this act is amendatory, shall continue in force and effect as though adopted under the provisions of this act, until and unless the same is modified or new regulations are adopted as provided in this act.

ARTICLE IV

BUDGET

On or before the first Monday in June of each year, the Hays Area Planning Commission shall submit to the City a proposed budget for the forthcoming year. The City of Hays shall provide for an annual budget, and pursuant to said agreement shall appropriate funds for the expenses and costs of staff services, office space and equipment, contractual services, and other relevant expenses required to carry out the purposes and functions of the Hays Area Planning Commission. That the City of Hays shall administer the funds of the Hays Area Planning Commission.

ARTICLE V

ADMINISTRATION

That the City shall appoint a Zoning Administrator who will be the enforcing agent for the zoning and subdivision regulations in the entire area of jurisdiction.

ARTICLE VI

This Joint Resolution and Ordinance shall constitute an agreement between the City of Hays, Kansas, and Ellis County, Kansas, as required in K.S.A. 12-715b *et seq.* and shall also constitute a resolution of the Board of County Commissioners of Ellis County, Kansas, and an Ordinance of the City of Hays, Kansas, and shall be effective upon its passage and adoption by the Board of County Commissioners of Ellis County and the Governing Body of the City of Hays, acting separately, after publication as provided by law. A fully executed and attested copy shall be filed with the County Clerk of Ellis County, Kansas, and the City Clerk of Hays, Kansas.

RESOLUTION NO. 2007-8
ORDINANCE NO. 3721
Page 10

ARTICLE VII

If this joint resolution and ordinance, or any part thereof, shall be held or determined to be invalid or unconstitutional, such determination shall not be held or construed to change or annul any provisions hereof or application of the act which can be given effect without the invalid provision or applications.

ARTICLE VIII

To the extent that this Resolution/Ordinance varies from or amends the provisions of Ordinance No. 2479 of the Code of Ordinances of the City of Hays, Kansas, as passed on April 25, 1974, and as published on May 2, 1974, this Resolution/Ordinance shall supersede, amend and repeal said Ordinance and this Resolution/Ordinance shall take effect and be in force from and after its passage and publication in the Hays Daily News, the official city newspaper.

ARTICLE IX

PASSED AND APPROVED by the Board of County Commissioners of Ellis County, Kansas, this 7th day of May, 2007.

BOARD OF COUNTY COMMISSIONERS
ELLIS COUNTY, KANSAS


VERNON L. BERENS
Chairman

RESOLUTION NO. 2007-8
ORDINANCE NO. 3721
Page 11


DENNIS J. PFANNENSTIEL


PERRY HENMAN



ATTEST:


ALBERTA KLAUS
County Clerk

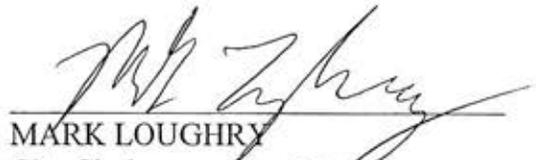
(SEAL)

PASSED AND APPROVED by the Governing Body of the City of Hays, Kansas, this 10th
day of May, 2007.

CITY OF HAYS, KANSAS


TROY HICKMAN
Mayor

ATTEST:


MARK LOUGHRY
City Clerk

(SEAL)



Commission Work Session Agenda

Memo

From: John T. Bird, City Attorney

Work Session: August 4, 2016

Subject: Lots 19 & 20, Hays Airport Industrial Park
Hays Medical Center – Surface Nondisturbance
Agreement and Declaration

Person(s) Responsible: John T. Bird, City Attorney

Summary

Hays Medical Center is purchasing the surface rights in Lots 19 and 20 at Hays Airport Industrial Park from Heart of America Development Corporation. The City of Hays owns the minerals under these lots. Hays Medical Center has requested a Surface Nondisturbance Agreement and Declaration from the City of Hays to ensure that there will be no drilling for minerals on the property.

Background

The City of Hays owns the mineral rights under the property but by virtue of an avigation easement in conjunction with the airport cannot drill for minerals. The Plat and Dedication of The Hays Airport Industrial Park filed in 1986 and the replat of Lots 9-20 filed in 1996, are of surface rights only and both reserve a right of flight for the passage of aircraft in the airspace above the surface of subject property.

Discussion

Hays Medical Center is seeking assurance that The City of Hays will not go upon the surface to drill for minerals. Because of the avigation easement required by the FAA the City of Hays cannot drill for minerals on these lots and dedicated only surface rights to ensure that mineral production and exploration would not occur in the Hays Airport Industrial Park. The Surface Nondisturbance Agreement and Declaration would be filed of record to reiterate the City's intent with regard to minerals and make the non-utilization of the surface of the land purchased by Hays Medical Center a covenant running with the land.

Legal Consideration

There are no legal obstacles to proceeding with any of the options listed by City Attorney.

Financial Consideration

There is no financial impact in executing the Surface Nondisturbance Agreement and Declaration since the City of Hays is subject to the avigation easement that restricts it from going upon the surface to produce the minerals it retains.

Options

The City Commission has the following options:

- Approve the Surface Nondisturbance Agreement and Declaration as presented
- Reject the Surface Nondisturbance Agreement and Declaration
- Request changes to the Surface Nondisturbance Agreement and Declaration before it is approved

Recommendation

The City Attorney recommends that the Surface Nondisturbance Agreement and Declaration be approved and signed.

Action Requested

Approve the Surface Nondisturbance Agreement and Declaration and direct the Mayor to sign it on behalf of the City of Hays.

Supporting Documentation

Aerial - Location

Surface Nondisturbance Agreement and Declaration



SURFACE NONDISTURBANCE AGREEMENT AND DECLARATION

This Surface Nondisturbance Agreement and Declaration (“Declaration”) is made and entered into this ____ day of _____, 2016, by the City of Hays, Kansas, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas (the "City").

WHEREAS, the City owns minerals underlying the following described property:

Lots Nineteen (19) and Twenty (20), REPLAT OF LOTS 9-20 OF THE HAYS AIRPORT INDUSTRIAL PARK to the City of Hays, Ellis County, Kansas

(the “Property”); and

Hays Medical Center, Inc., a Kansas corporation (“HMC”), has contracted to purchase the Property from Heart of America Development Corporation, a Kansas corporation (“HOA”) **which consists of solely the surface rights in and to the Property;** and

To assist HMC in the purchase of the Property from HOA, City agrees that City shall have no right to use the surface of the Property to produce the minerals thereunder or for any other purpose whatsoever, without written consent in advance from HMC or its successor in title.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the City agrees as follows:

1. Nondisturbance. The City, its lessees, agents, contractors, successors and assigns (“the City Parties”) will not utilize the surface of the Property to produce the minerals thereunder or for any other purpose whatsoever. The City may produce the minerals underlying the Property only by directional or horizontal drilling not

located on the Property, or by inclusion of the minerals underlying the Property in a unit.

2. Mineral Ownership. City represents and warrants that it owns the minerals underlying the Property, that it has made no transfers of the minerals underlying the Property, and that no other entity has any ownership interest in said minerals.
3. Default. If any of City's successors in interest default on the terms of this Declaration, such defaulting successor will indemnify and hold harmless HMC and each of its officers, members, managers, successors and assigns from and against any and all damages, losses, obligations, liabilities, claims, actions and costs and expenses (including but not limited to court costs and attorneys' fees) suffered, sustained, incurred or required to be paid due to such default. This provision shall not, under any circumstances, apply to City.
4. No Transfer of Minerals. The parties agree that this Declaration does not transfer or assign any ownership interest in said minerals to any third party.
5. Covenant Running With the Land. This Declaration shall constitute a covenant running with the land.
6. Recording. This Declaration shall be recorded in the real property records of Ellis County, Kansas, at the office of the Register of Deeds.

IN WITNESS WHEREOF, this Declaration is made and executed as of the date set forth above.

CITY OF HAYS, KANSAS

By: _____

Title: Mayor _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
ELLIS COUNTY)

BE IT REMEMBERED, that on this ____ day of _____, 2016, before me, a Notary Public within and for the County and State aforesaid, came _____, Mayor of the City of Hays, Kansas, who is personally known to me to be the same person who executed the foregoing instrument as Mayor, and said person duly acknowledged to me his/her execution of the same as and for his/her free and voluntary act and deed, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at Hays, Kansas, the date last above written.

Notary Public

My Appointment Expires: